

IP-Driven Fiduciary Security and Legal Certainty: Confronting Challenges in Indonesia's Law of Obligations

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Abstract

The key legal problem in this study lies in the lack of regulatory clarity and valuation standards for using Intellectual Property (IP) as an object of fiduciary security, which undermines legal certainty and creditor protection in Indonesia's law of obligations. This research aims to analyze the legal framework and propose normative solutions to strengthen the enforceability of IP-driven fiduciary security. Using a normative legal research method with a statute-based approach, this study examines relevant laws including the Fiduciary Security Law (Law No. 42/1999), the Mortgage Law (Law No. 4/1996), and the Creative Economy regulations (PP No. 24/2022), supported by Radbruch's theory of legal certainty and Satjipto Rahardjo's progressive legal theory. The findings reveal that although Indonesian law recognizes IP as a transferable intangible asset eligible for fiduciary security, implementation remains limited due to the absence of standardized valuation procedures, fragmented regulations, and uncertain execution mechanisms. Financial institutions remain reluctant to accept IP as collateral, fearing difficulty in enforcing and liquidating such assets. This research underscores the need for revising the Fiduciary Security Law to integrate explicit provisions for IP-based collateral, establishing accredited IP valuation services, and linking fiduciary and IP registration systems to ensure transparency and predictability. Strengthening these regulatory and institutional frameworks would enhance creditor confidence, improve debtor access to financing, and promote the use of IP as a legitimate economic asset in Indonesia's law of obligations, thereby contributing to the growth of the creative economy and fostering innovation.

Keywords: Fiduciary Security; Intellectual Property Rights; Legal Certainty; Law of Obligations; Creative Economy

Introduction

The term related to Intellectual Property Rights (IPR), or Hak Kekayaan Intelektual (HKI), originally derives from the English term Intellectual Property Rights (IPR), which refers to rights obtained from creative works and the intellectual capabilities of individuals (Reskin & Wirdyaningsih, 2022). IPR encompasses various forms, including patents, trademarks, copyrights, and trade secrets (Aprilia et al., 2024). The objectives of IPR include encouraging society to generate new ideas, fostering innovation, and developing intellectual assets that hold strategic value for the nation (Wulandari & Fokky Fuad, 2024; Lie et al., 2024). According to data from ADCO Law, citing official information from the Ministry of Law and Human Rights of the Republic of Indonesia, the contribution of IPR to the national Gross Domestic Product (GDP) increased during the period 2019–2022. In 2019, the contribution of IPR reached IDR 1,105 trillion, or approximately 7% of the average GDP, placing Indonesia as the third-largest contributor globally after the United States and South Korea. This demonstrates the significant role of IPR in driving economic growth and enhancing the competitiveness of Indonesia's creative industries. Theoretically, IPR can serve as an object of collateral in the banking sector because it is legally recognized as an asset with potential financial benefits for its owner and can be used as security to obtain credit facilities from financial institutions (Dalimunthe & Wahyuni, 2023).

IPR also has the potential to generate income for creative economy actors through royalties when protected ideas are utilized by other parties (C., 2024; Disemadi et al., 2025). In principle, IPR may also function as fiduciary collateral, which is closely related to security law and contract law, particularly concerning property and proprietary rights (Ratna & Sari, 2020). Law Number 42 of 1999 concerning Fiduciary Security defines fiduciary security as a security right over movable assets, whether tangible or intangible, as well as immovable assets such as buildings that cannot be encumbered with mortgage rights under Law Number 4 of 1996 concerning Mortgage Rights. This security remains under the

control of the fiduciary giver as collateral for certain debts, granting priority rights to the fiduciary recipient over other creditors. Prior to the enactment of the Fiduciary Law, fiduciary security was limited to movable objects such as inventory, receivables, and vehicles. However, due to evolving societal needs, the Fiduciary Law now covers both tangible and intangible movable assets, as well as immovable assets that cannot be subject to mortgage rights under Law No. 4 of 1996 (Zakaria et al., 2023).

Nevertheless, the implementation of IPR as an object of fiduciary collateral in Indonesia still faces various challenges, particularly regarding the lack of clear regulations for assessing the economic value of IPR. Although Article 16 paragraph (3) of Law No. 28 of 2014 concerning Copyright allows copyright to be used as collateral, many financial institutions remain reluctant to accept IPR as security due to uncertainties in execution and fluctuations in asset value (Santoso, 2024). In practice, the registration of fiduciary security for IPR at fiduciary registration offices is often not properly conducted, creating legal risks for creditors in cases of default. This condition reflects a gap between practical realities and the normative expectations set out in Law Number 42 of 1999 concerning Fiduciary Security, which ideally provides a strong legal basis for expanding fiduciary objects, including IPR.

To address this issue, authorities need to ensure that regulations concerning the valuation of IPR are more detailed and consistently implementable. Although Article 12 paragraph (1) of Government Regulation No. 24 of 2022 concerning the Creative Economy introduces valuation methods such as cost, market, and income approaches, their implementation remains unclear (Sudjana, 2013). Therefore, revising the Fiduciary Law is essential to accommodate developments in the digital economy and to provide clearer technical guidelines for valuing IPR and ensuring more efficient execution mechanisms (Wulandari & Fokky Fuad, 2024). Through these measures, IPR is expected to function effectively as an important asset within financing systems through fiduciary mechanisms, thereby increasing its recognition as acceptable collateral by financial institutions.

Several previous studies have examined similar phenomena. Raja et al. (2021) identified issues in the execution of fiduciary security, including creditors failing to register fiduciary guarantees at the Fiduciary Registration Office or registering them only after debtor default to enable execution. Additionally, violations by creditors in executing fiduciary objects contrary to Article 29 of the Fiduciary Law were noted. Hanum and Dewi (2022) concluded that if a debtor transfers the fiduciary object to a third party within a financing agreement, the fiduciary agreement becomes invalid, as the collateral object constitutes an essential element of the agreement. The loss of ownership over the fiduciary object also results in legal consequences that must be considered. Furthermore, Rizkiathallah and Purwanto (2024) emphasized that SPBB contains elements that allow it to function as collateral for goods through a fiduciary system. As a symbol of transfer of ownership rights, SPBB is frequently used in trade to obtain financing from financial institutions and serves as proof of ownership of inventory that can be used as fiduciary collateral to ensure debt repayment.

Another study by Pujiono et al. (2025) states that fiduciary security over buildings located on land owned by another party may refer to the Civil Code as a legal basis, provided the asset has economic value. Such fiduciary objects can be formalized through a Fiduciary Deed drawn up by a notary and registered at the Fiduciary Registration Office to ensure legal certainty. Finally, Gudiato et al. (2022) demonstrate that NFTs have the potential to be used as fiduciary collateral objects, although specific regulations governing them are not yet available. Challenges also arise in taxation due to difficulties in defining and valuing virtual assets. Government initiatives, such as the draft law on movable object security, represent initial steps to address these issues. Therefore, clearer regulations and collaboration among institutions such as the Financial Services Authority (OJK), the Ministry of Finance, and others are necessary to ensure proper implementation of legal and tax frameworks for NFTs. Most previous studies have focused on fiduciary guarantees involving non-IPR objects, such as movable goods and other assets. Research specifically addressing IPR as an object of fiduciary collateral remains limited in terms of regulatory framework, implementation, and legal certainty. This limitation indicates a clear research gap.

Accordingly, this study offers a novel contribution by analyzing legal certainty in fiduciary guarantees based on Intellectual Property Rights, particularly in identifying challenges and solutions within Indonesia's legal system. It also emphasizes the need to revise Law Number 42 of 1999 concerning Fiduciary Security to align with developments in the digital economy, protect the rights of creditors and debtors, and maximize the utilization of IPR as an economically valuable collateral object within Indonesia's financing system. This research employs a normative legal method with a statutory approach, examining relevant legislation such as Law Number 42 of 1999 concerning Fiduciary Security and Law Number 4 of 1996 concerning Mortgage Rights. The analytical framework is based on Gustav Radbruch's theory of legal certainty and Satjipto Rahardjo's progressive legal theory.

From an academic perspective, this study contributes to expanding knowledge regarding legal certainty in fiduciary guarantees related to Intellectual Property Rights, particularly in addressing challenges and identifying solutions within the Indonesian context. Practically, it offers recommendations for the government and relevant authorities to revise Law Number 42 of 1999 to enhance legal certainty in the application of fiduciary guarantees for IPR. However, this study is limited to the legal certainty of fiduciary guarantees related to IPR and does not cover other aspects of fiduciary security or non-IPR objects.

The formulation of the research problems in this study focuses on two main aspects. First, how is the legal framework governing fiduciary security based on Intellectual Property Rights within the Indonesian law of obligations, given the existing regulatory ambiguities and implementation challenges, particularly concerning the valuation of economic value and execution mechanisms. Second, what normative solutions can be proposed for regulating fiduciary security based on Intellectual Property Rights within the Indonesian law of obligations, in order to ensure legal certainty, enhance the confidence of financial institutions, and optimize the utilization of IPR as collateral within the national financing system.

Research Method

The research method employed in this study is normative legal research. This method is characterized by its objective to conduct comparative legal analysis and to examine the law based on the three fundamental legal values, one of which is legal certainty (Disemadi, 2022). The objectives of this study align with these characteristics, forming the basis for the selection of this research method. In addition, this study applies a statutory approach by examining relevant legislation, including Law Number 42 of 1999 concerning Fiduciary Security (Fiduciary Law) and Law Number 4 of 1996 concerning Mortgage Rights (Mortgage Law). In terms of data collection, this research utilizes a literature study, whereby the researcher gathers secondary data that have been previously available and compiled. Secondary data are generally associated with normative legal research methods (Tan, 2021). The legal materials analyzed in this study consist of primary legal materials, such as Law Number 42 of 1999 concerning Fiduciary Security and Law Number 4 of 1996 concerning Mortgage Rights. The analysis is conducted using a descriptive qualitative approach, in which the collected legal materials are examined to understand and evaluate consumer protection regulations in the context of digital development.

Results and Discussions

Legal Regulation of Intellectual Property-Based Fiduciary Security in the Indonesian Law of Obligations

The development of an innovation- and creativity-based economy has driven a paradigm shift in how assets are perceived as objects of security within contractual relationships (Yuliandari, 2022; Situmeang, Disemadi, & Fitri, 2024). In traditional economic systems, the value of a business entity is generally measured based on ownership of tangible assets such as land, buildings, machinery, or other physical inventory. However, in the context of the modern economy—characterized by rapid digital transformation and advances in information technology—the perception of sources of economic value has undergone a fundamental change. Today, the success and value of a company are no longer solely determined by physical assets, but increasingly depend on

innovative capabilities and control over intangible assets, such as Intellectual Property Rights (IPR) (Manalu et al., 2023).

IPR now holds a strategic position as an economic resource capable of generating competitive advantage and sustainable added value (Agustianto et al., 2024; Nursalim et al., 2024). Various forms of IPR—including copyrights, trademarks, patents, industrial designs, and trade secrets—have become essential components in determining a company's market position, strengthening brand image, and attracting investment and financing access. In this context, IPR is no longer merely the result of creative processes or a symbol of business identity, but has been recognized as a strategic economic asset that can be capitalized to support business sustainability and growth (Lubis, 2020).

Within the Indonesian legal system, fiduciary security is specifically regulated under Law Number 42 of 1999 concerning Fiduciary Security (Fiduciary Law). This law provides a strong legal foundation for the imposition of security over movable assets, both tangible and intangible, without requiring the physical transfer of the secured object to the creditor. This provision is particularly significant in the context of IPR, which by nature is immaterial and cannot be physically transferred like other movable assets. Thus, the Fiduciary Law opens legal space for the use of IPR as collateral for debt obligations.

Normatively, the legal basis for imposing fiduciary security over IPR can be found in Article 1 point 4 of the Fiduciary Law, which defines an object as anything that can be used as fiduciary collateral, whether tangible or intangible, and that can be owned and transferred. In this regard, registered IPR that has obtained legal recognition (such as certificates of trademarks, patents, or copyrights) qualifies as intangible property that can be owned and transferred, and therefore may serve as an object of fiduciary security. Furthermore, Article 5 paragraph (1) stipulates that ownership rights over the object of fiduciary security remain with the fiduciary grantor. This provision accommodates the distinctive nature of IPR, which can continue to be utilized by the debtor in conducting business activities during the term of the agreement. In other words, business actors do not lose their exclusive rights over their IPR but may use it as collateral, while creditors receive legal protection in the form of a secured interest.

Additionally, Article 11 paragraph (1) requires that fiduciary agreements be executed in the form of a notarial deed and registered at the Fiduciary Registration Office to obtain legal force against third parties. This requirement also applies to IPR as an object of security, ensuring that creditors obtain priority rights in the event of disputes or execution.

The legal regulation of IPR-based fiduciary security in Indonesia has evolved alongside the transformation toward an innovation- and creativity-driven economy (Chairunnisa, Sudirman, & Disemadi, 2019). Within the national legal framework, IPR is recognized as an intangible asset that can serve as an object of fiduciary security, as regulated under Law Number 42 of 1999 and reinforced by Government Regulation Number 24 of 2022 concerning the Creative Economy (Tantowi, 2022). These provisions provide a clear legal basis for business actors to use IPR—such as copyrights and patents—as collateral for financing without losing their exclusive rights during the term of the agreement (Febriani & Sarjana, 2024). Accordingly, business actors may continue to manage and exploit their IPR, while creditors are protected through formally registered fiduciary security rights.

However, despite the regulatory framework accommodating IPR as an object of fiduciary security, its implementation still faces several challenges (Aspan, 2024). One of the primary obstacles is the absence of standardized mechanisms for valuing the economic worth of IPR, as well as the lack of officially recognized appraisal institutions. This condition causes financial institutions, particularly banks, to remain hesitant in accepting IPR as loan collateral due to difficulties in assessing and ensuring the asset's liquidity in the event of default (Purwaningsih et al., 2020). Moreover, not all types of IPR are explicitly regulated as eligible objects of fiduciary security, leading to legal uncertainty in practice (Purwaningsih et al., 2020).

Another issue concerns the execution of IPR as an object of fiduciary security. Although the Fiduciary Law grants executorial rights to creditors, the process of public auction for IPR assets still lacks clear technical guidelines, particularly in determining market value and mechanisms for openly selling such assets (Ridho, 2024). This creates additional challenges for financial institutions

in assessing risks and potential recovery through the execution of IPR collateral. Therefore, strengthening technical regulations and supporting infrastructure—such as establishing IPR appraisal institutions—is necessary.

Overall, the government and relevant stakeholders need to harmonize regulations concerning IPR and fiduciary security, as well as develop an integrated information system connecting IPR and fiduciary registration offices. In addition, training and certification for IPR appraisers are essential to enhance financial institutions' confidence in the value of IPR as collateral (Febriani & Sarjana, 2024). Clear regulations and strong inter-institutional collaboration are crucial to ensure that IPR can be effectively utilized as fiduciary security in Indonesia. This reflects the growing importance of protecting and optimizing IPR in line with the expansion of the creative economy in Indonesia.

Normative Solutions in Regulating Intellectual Property-Based Fiduciary Security within the Indonesian Law of Obligations

Intellectual Property Rights (IPR), which include patents, copyrights, trademarks, and trade secrets, can be utilized as collateral in fiduciary security arrangements (Anas et al., 2024). IPR enables individuals and businesses to leverage the economic value of their intellectual creations to obtain loans or engage in other financial transactions. The transfer of IPR as fiduciary collateral involves the transfer of ownership rights, and the process is governed by relevant legal frameworks such as the Civil Code, IPR laws, and fiduciary security law (Aprilia et al., 2024). The regulation of IPR-based fiduciary security within the Indonesian law of obligations aims to clarify the treatment of intangible IPR assets, establish valuation methods, and ensure legal certainty in the registration process. The ultimate objective is to facilitate the use of IPR as collateral and to optimize its economic value within Indonesia's legal framework (Dalimunthe & Sriwahyuni, 2023).

Addressing the intangible nature of IPR-based fiduciary collateral, such as copyrights, presents challenges for traditional collateral systems that rely on

tangible property (Aulia, 2018). A normative solution to bridge this gap involves developing specific valuation methods and procedures tailored to Intellectual Property Rights. Within the law of obligations, the current use of IPR as collateral remains limited and largely dependent on individual bank assessments. Therefore, standardizing valuation methods through government-led initiatives or the establishment of specialized appraisal services in the banking sector is essential to ensure consistency and reliability.

Fiduciary security requires a registration process to ensure legal certainty for both creditors and debtors. In the context of IPR regulation, it is necessary to clarify the procedures for registering IPR as collateral in order to simplify processes, reduce bureaucratic barriers, and maintain a balance between protecting creditors' security interests and safeguarding debtors' rights (Anas et al., 2024). This requires the establishment of a clear legal framework, standardized procedures, and robust enforcement mechanisms. Although Indonesia's legal framework—particularly Law Number 42 of 1999 concerning Fiduciary Security and related regulations—provides a general foundation, further clarification of provisions specifically addressing IPR as collateral is needed as a targeted normative solution (Pujiono et al., 2025). Banks must also develop internal policies aligned with these normative solutions, including stricter borrower assessments and more robust collateral valuation practices.

The Creative Economy Law Number 29 of 2019, together with subsequent regulatory developments such as Government Regulation Number 24 of 2022, plays a significant role in shaping the use of IPR as fiduciary collateral within the IPR system (Aprilia et al., 2024; Pujiono et al., 2025). However, these regulations must still account for the specific needs and challenges of the creative economy sector. Government-led initiatives to develop standardized guidelines for IPR valuation and registration would provide greater clarity and consistency across the banking sector. The establishment of specialized appraisal services under recent regulations, including due diligence mechanisms for IPR, can assist financial institutions in accurately assessing IPR-based collateral (Reskin & Wiryaningsih, 2022). Such measures would enhance the feasibility and

accessibility of IPR as collateral within the law of obligations, thereby supporting economic growth and the development of Indonesia's creative economy.

Another important step is to establish clear regulations regarding the types of IPR assets eligible as collateral and the rights and obligations of the parties involved in contractual relationships. This would ensure transparency and prevent multiple encumbrances over the same asset (Anas et al., 2024). Additionally, fiduciary regulations should be simplified in cases of default by providing faster judicial processes and more efficient asset liquidation procedures. This includes verifying borrowers' creditworthiness and the value of collateral prior to loan approval. Borrowers must also be provided with clear and concise information regarding their rights and obligations under fiduciary agreements, along with well-defined procedures for dispute resolution, including mediation or arbitration mechanisms (Aprilia et al., 2024).

The role of IPR in fiduciary security within the law of obligations also necessitates a comprehensive risk management framework. This includes the implementation of non-disclosure agreements (NDAs), licensing arrangements to protect intellectual property, internal control mechanisms, and safeguards against misuse of IPR assets (Pujiono et al., 2025). Banks are required to possess adequate infrastructure and expertise in risk management mechanisms, supported by legal capacity to effectively enforce fiduciary agreements involving intangible assets such as IPR, which are increasingly used as collateral (Disemadi, 2022; Anas et al., 2024). Even without awaiting formal legal reforms, the adoption of these normative solutions would enable banks to independently create a more stable and predictable environment for fiduciary security. Ultimately, this would enhance trust and confidence in the banking system while benefiting both creditors and debtors by providing more secure and efficient mechanisms for lending and collateralization involving IPR assets.

Conclusion

The legal framework governing fiduciary security based on Intellectual Property Rights (IPR) in Indonesia demonstrates significant development in line with the transformation of an economy increasingly driven by innovation and

creativity. IPR, which encompasses patents, copyrights, trademarks, and trade secrets, is now recognized as an intangible asset that can serve as an object of fiduciary security, thereby providing opportunities for business actors to leverage its economic value in accessing financing. Although existing regulations, such as Law Number 42 of 1999 concerning Fiduciary Security and the Creative Economy Law, have established a clear legal foundation, several implementation challenges remain. These include issues related to the valuation of IPR's economic value and the absence of standardized execution mechanisms. The proposed normative solutions—such as the development of specialized valuation methods for IPR, the simplification of registration procedures, and the establishment of professional appraisal services—are expected to enhance legal certainty and increase financial institutions' confidence in accepting IPR as collateral.

In addition, it is essential to establish a clear legal framework governing the rights and obligations of the parties within contractual relationships, as well as efficient dispute resolution mechanisms. Through these measures, the utilization of IPR as an object of fiduciary security is expected to become more optimal, thereby fostering the growth of the creative economy and expanding access to financing for business actors in Indonesia. More broadly, strengthening regulatory frameworks and supporting infrastructure, along with fostering collaboration among the government, financial institutions, and business actors, will be key to creating a conducive ecosystem for the development of IPR-based fiduciary security. Ultimately, IPR-based fiduciary security is expected to contribute significantly to economic growth and innovation in Indonesia in the future.

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Competing Interest

The authors declare that there are no competing interests.