

Legal Certainty of Copyright-Based Fiduciary Security: Indonesian vs. Malaysian Law

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Abstract

This study examines the legal uncertainty surrounding the recognition and enforceability of copyright as an object of fiduciary security in Indonesia—where copyright is expressly permitted as collateral under Article 16(3) of the Copyright Law—compared with Malaysia, which provides no statutory basis for copyright-based secured transactions, with the aim of analyzing the regulatory gaps, identifying comparative insights, and proposing normative solutions to strengthen Indonesia's framework for copyright-based financing. Employing a normative legal research method, this study utilizes a statute approach by examining key legislation governing fiduciary security and copyright in both countries, supported by doctrinal analysis through the lenses of Gustav Radbruch's theory of legal certainty and Satjipto Rahardjo's progressive legal theory. The findings reveal that Indonesia has established a more advanced and coherent regulatory foundation for copyright-based fiduciary security through the synergy of the Fiduciary Security Law, the Copyright Law, and Government Regulation No. 24/2022 on the Creative Economy, which together recognize copyright as a transferable and collateralizable intangible asset; however, significant implementation challenges persist, including the absence of standardized valuation mechanisms, limited institutional literacy, fragmented registration systems, and a lack of detailed execution procedures for handling default. In contrast, Malaysia's Copyright Act 1987 restricts copyright transactions to ownership, assignment, and licensing—without any mechanism for creating or registering security interests—resulting in the inability of financial institutions to treat copyright as a viable collateral asset and limiting access to credit for creative-industry actors. Comparative analysis further demonstrates that Malaysia's more structured IP commercialization ecosystem provides useful lessons for Indonesia, particularly in valuation expertise and institutional coordination, although Indonesia

remains normatively superior due to its explicit statutory authorization. Overall, this study concludes that Indonesia's legal framework provides substantial yet still evolving certainty for copyright-based fiduciary security, and recommends harmonizing regulations, establishing accredited valuation institutions, integrating copyright and fiduciary registries, and enhancing creditor–debtor protection mechanisms to optimize copyright's role as a financial asset and strengthen the nation's creative-economy financing landscape.

Keywords: Copyright; Fiduciary Security; Legal Certainty; Creative Economy; Comparative Law

Introduction

The rapid growth of innovation-driven and creative economies has significantly transformed the perception of assets within contractual relationships. Traditionally, the value of a business entity was assessed primarily through the ownership of tangible assets such as land, machinery, or physical inventories. However, in today's digital and creative economy, the sources of economic value have shifted fundamentally toward intangible assets. Among these, copyright has emerged as a strategic form of intellectual property that carries substantial commercial value through licensing, reproduction, distribution, and other economic rights. Copyright is no longer viewed merely as a creative output but as a capitalizable intangible asset capable of enhancing business competitiveness, market positioning, and access to financing.

Within the Indonesian legal system, the regulatory framework for fiduciary security provides a foundation for recognizing copyright as an object of fiduciary collateral. Law No. 42 of 1999 on Fiduciary Security stipulates that fiduciary rights may be imposed on movable property, both tangible and intangible. This provision accommodates the inherent nature of copyright, which is an intangible asset that can be owned, transferred, and economically exploited. The legal basis is strengthened by Article 16(3) of Law No. 28 of 2014 on Copyright, which explicitly affirms that copyright may serve as an object of fiduciary security. In contractual relations, this mechanism enables creators or copyright holders to utilize the economic value of their works as collateral without relinquishing moral rights or physical control over the work.

Despite this clear normative basis, the implementation of copyright as fiduciary collateral continues to face several challenges. A primary obstacle is the

absence of standardized valuation mechanisms and officially recognized institutions capable of determining the economic value of copyright. As a result, financial institutions remain hesitant to accept copyright as collateral due to uncertainties regarding liquidity and recovery value in the event of default. Moreover, the execution of copyright-based fiduciary security lacks comprehensive technical guidelines, particularly regarding public auction procedures, the transfer of economic rights, and the protection of moral rights during execution.

To strengthen intellectual-property-based financing, the Indonesian government introduced Government Regulation No. 24 of 2022 on the Creative Economy, which affirms that copyrighted works may be used as collateral for obtaining financing. However, effective implementation requires greater regulatory harmonization between the Copyright Law, the Fiduciary Security Law, and banking regulations. It also necessitates supporting infrastructure such as accredited valuation institutions, integrated information systems linking the Directorate General of Intellectual Property with the Fiduciary Registration Office, and capacity-building for creative industry actors. With such improvements, copyright has the potential to function as an effective and sustainable form of fiduciary collateral while contributing to the growth of Indonesia's creative economy.

Theoretically, intellectual property can serve as collateral in the banking sector because it is legally recognized as an asset capable of generating financial benefits for its owner, and therefore may be used as security to obtain credit from financial institutions (Dalimunthe & Wahyuni, 2023). IPR can generate income for creative actors through royalty payments when their protected works are used by others (C., 2024). In principle, IPR can also function as an object of fiduciary security, closely connected to guarantee law and contract law, especially those concerning property rights and the law of assets (Ratna & Sari, 2020). The Indonesian Fiduciary Security Law—Law No. 42 of 1999—defines fiduciary security as a security right over movable objects, whether tangible or intangible, and immovable objects that cannot be burdened with a mortgage under Law No. 4 of 1996 on Mortgage Rights. This security remains in the possession of the

fiduciary grantor while providing a preferential position to the fiduciary recipient over other creditors. Initially, fiduciary security applied mainly to movable goods such as inventory, receivables, and vehicles. However, due to evolving economic needs, the law now extends to both tangible and intangible movable assets, as well as certain immovable assets (Zakaria et al., 2023).

Despite this regulatory framework, the application of IPR as an object of fiduciary security in Indonesia continues to face obstacles, particularly regarding the lack of clear standards for assessing the economic value of IPR. Although Article 16(3) of Law No. 28 of 2014 on Copyright allows copyrights to be used as collateral, many financial institutions remain reluctant to accept IPR as security due to uncertainties in valuation, execution processes, and asset volatility (Santoso, 2024). Moreover, the registration of fiduciary security involving IPR is often improperly conducted at the Fiduciary Registration Office, posing legal risks to creditors during default situations. This gap between normative expectations and practical implementation underscores the limitations of Law No. 42 of 1999, which should ideally provide a strong legal basis for expanding fiduciary collateral to include IPR.

To address this gap, regulators must ensure clearer and more comprehensive provisions regarding the valuation of intellectual property. Although Article 12(1) of Government Regulation No. 24 of 2022 on the Creative Economy outlines cost-based, market-based, and income-based valuation methods, their implementation remains uncertain (Sudjana, 2013). Consequently, revising the Fiduciary Security Law is imperative to align with digital economic developments and to provide more detailed technical guidance on valuation and efficient execution mechanisms (Wulandari & Fokky Fuad, 2024). Such improvements will strengthen the recognition of IPR as a viable and valuable asset in financing systems through fiduciary mechanisms.

Previous studies have examined related fiduciary security issues. Raja et al. (2021) identified persistent problems in the execution of fiduciary security, including creditors' failure to register fiduciary deeds or registering them only after debtors default, as well as unlawful actions by creditors in executing collateral contrary to Article 29 of the Fiduciary Security Law. Hanum and Dewi

(2022) found that if a debtor transfers a fiduciary object to a third party under a financing contract, the fiduciary agreement becomes invalid due to the loss of ownership over the collateral. Likewise, Rizkiathallah and Purwanto (2024) emphasized that SPBB documents, functioning as symbols of ownership transfer, may serve as fiduciary collateral in trade transactions to secure financing.

Further, Pujiono et al. (2025) noted that fiduciary security over buildings situated on land owned by others may refer to the Indonesian Civil Code as its legal basis, provided that the fiduciary deed is executed by a notary and registered accordingly to ensure legal certainty. Gudiato et al. (2022) highlighted that NFTs possess potential as fiduciary collateral despite the absence of specific regulations governing them. Challenges arise regarding taxation and valuation due to the nature of virtual assets. Government initiatives—such as the draft law on movable assets—represent early steps toward addressing these emerging issues. Overall, previous studies tend to focus on fiduciary security involving non-IPR assets; research specifically examining IPR as fiduciary collateral remains limited, particularly in the areas of regulation, implementation, and legal certainty—indicating a clear research gap.

Against this backdrop, the present study contributes an innovative perspective by analyzing legal certainty in the application of fiduciary security based on intellectual property, specifically identifying challenges and proposing solutions within Indonesia's contractual and guarantee system. The study highlights the need to revise Law No. 42 of 1999 on Fiduciary Security to adapt to digital economic advancements, safeguard the rights of creditors and debtors, and optimize the use of IPR as economically valuable collateral. This research employs a normative legal methodology using a statute approach, examining key legislation such as the Fiduciary Security Law and the Mortgage Law (Law No. 4 of 1996). Analytical frameworks include Gustav Radbruch's theory of legal certainty and Satjipto Rahardjo's progressive legal theory.

In addition, this study undertakes a comparative analysis of the regulatory frameworks governing IPR-based fiduciary security in Indonesia and Malaysia. The comparison is essential because both jurisdictions share similar legal traditions influenced by civil law principles and colonial legal developments, yet

they have adopted different approaches in integrating intellectual property into secured transaction systems. Malaysia's legal framework—particularly through its Companies Act, Personal Property Security mechanisms, and more mature IP commercialization policies—offers useful insights into how a more coherent valuation system and creditor-protection mechanisms can be structured. By contrasting these systems, the study aims to identify regulatory gaps in Indonesia's fiduciary regime, highlight best practices from Malaysia, and formulate recommendations that align with Indonesia's economic and legal context.

The significance of this comparative approach lies in its contribution to strengthening Indonesia's legal readiness in the digital and knowledge-based economy. As intellectual property becomes an increasingly valuable commercial asset in Southeast Asia, the ability of legal systems to recognize, value, and enforce IPR-based collateral will determine the competitiveness of national financing ecosystems. Understanding how Malaysia has operationalized IP collateralization offers not only a regional benchmark but also practical lessons for improving Indonesia's legal certainty, financial inclusion for creative industries, and overall economic resilience. Thus, the comparative insights generated from this study are expected to support policymakers, legal practitioners, and financial institutions in designing a more robust and predictable legal framework for IPR-based fiduciary security in Indonesia.

Research Method

The research method employed in this study is the normative legal research method. This method is characterized by its objective of conducting a comparative legal analysis between Indonesia and Malaysia, while also examining the law through three fundamental legal values, one of which is the principle of legal certainty (Disemadi, 2022). The purpose of this study aligns with these characteristics, which forms the basis for selecting this research method. In addition, this study applies a statute approach, which involves examining relevant legislation such as Law Number 42 of 1999 on Fiduciary Security, Law Number 4 of 1996 on Mortgage Rights, Law Number 28 of 2014 on Copyright, as well as

Malaysia's Copyright Act 1987 (Act 332). For data collection, this research utilizes library research, through which the researcher gathers secondary data that have been previously compiled and published. Secondary data are typically associated with normative legal research (Tan, 2021). The legal materials analyzed in this study include primary legal materials, such as the aforementioned Indonesian and Malaysian statutes. The analysis is conducted using a descriptive qualitative approach, whereby legal materials are examined to understand and evaluate the regulatory framework governing fiduciary security and copyright protection within the context of evolving digital developments.

This study, the analytical framework is grounded in the Progressive Law Theory introduced by Prof. Satjipto Rahardjo, who asserts that law exists for human beings, not the other way around. From this perspective, law must be evaluated and improved when societal issues arise, rather than forcing individuals to conform rigidly to legal norms (Adnyani et al., 2024; Aulia, 2018; Ramdan & Zahrulswendar, 2021). This theory is highly relevant to examining legal certainty in fiduciary security involving intellectual property rights (IPR). Such an approach is essential to identifying challenges and formulating solutions within Indonesia's contractual system, particularly in the context of dynamic legal developments. Within this framework, national regulations—including the Fiduciary Security Law—must be continuously adapted to technological and societal advancements to ensure fair and responsive legal certainty. Furthermore, this study also employs Gustav Radbruch's Theory of Legal Certainty as an analytical tool. Radbruch posits that legal certainty is a fundamental guarantee of justice for individuals; without legal certainty, justice within society cannot be realized. Legal certainty is therefore one of the core objectives of law, essential to maintaining social order (Imam et al., 2023; Kurniawan, 2024; Prasja et al., 2023). In the context of assessing legal certainty for fiduciary security based on intellectual property rights, Radbruch's theory is particularly relevant as it underscores the importance of clarity, consistency, and predictability in legal rules to ensure adequate protection for all involved parties. Considering that the use of IPR as an object of fiduciary security still faces regulatory challenges, legal certainty becomes crucial to safeguarding the rights and interests of both creditors

and debtors, and to supporting the sustainability of IPR-based financing systems in Indonesia.

Results and Discussions

Legal Framework Governing Intellectual Property–Based Fiduciary Security within the Indonesian Law of Obligations

The term Intellectual Property Rights (IPR), commonly translated into Indonesian as *Hak Kekayaan Intelektual*, refers to the legal rights arising from creative works and the intellectual capabilities of individuals (Reskin & Wirdyaningsih, 2022). Intellectual property encompasses various categories, including patents, trademarks, copyrights, and trade secrets (Aprilia et al., 2024). The primary purpose of IPR protection is to motivate society to generate new ideas, promote invention, and build intellectual assets that hold strategic value for national development (Wulandari & Fokky Fuad, 2024). According to ADCO Law, citing official data from the Ministry of Law and Human Rights of the Republic of Indonesia, the contribution of IPR to Indonesia's national Gross Domestic Product (GDP) grew significantly between 2019 and 2022. In 2019, IPR contributed IDR 1.105 trillion—or approximately 7% of Indonesia's GDP—positioning the country as the third-highest contributor of IPR-based economic value globally, after the United States and South Korea. This demonstrates the pivotal role of IPR in driving economic growth and strengthening the competitiveness of the creative industries in Indonesia.

Intellectual Property Rights (IPR) refer to the legal rights granted to creators and inventors over the products of their intellectual and creative efforts. IPR protect intangible assets—such as copyrights, trademarks, patents, industrial designs, and trade secrets—which arise from human creativity and intellectual capability. As explained in the literature, IPR constitute *intangible movable property* that embodies economic value and can be legally owned, transferred, and commercialized (Agustianto, Fitri & Angelyn, 2023). Because these rights derive from intellectual activity rather than physical form, they serve not only as legal

protection for creators but also as strategic assets capable of generating continuous economic benefits through licensing, royalties, and commercial exploitation.

Given their economic value, IPR play an increasingly important role as alternative collateral in fiduciary security arrangements, especially within modern financing schemes. Indonesian law recognizes that intangible assets, including IPR, may serve as fiduciary collateral, as reflected in the Fiduciary Security Law and reinforced by sector-specific regulations such as Article 16(3) of the Copyright Act, which explicitly allows copyright to be used as a fiduciary guarantee. Academic studies emphasize that because IPR qualify as intangible movable property with transferable ownership, they meet the legal criteria for collateral in credit agreements (Agustianto, Fitri & Angelyn, 2023). Their role as collateral is further supported by Government Regulation No. 24/2022 on the Creative Economy, which recognizes the commercial potential of IPR and enables their use as security to improve access to financing for creative industry actors (Santoso, 2024). Thus, IPR-based fiduciary guarantees serve as an innovative financing mechanism that leverages the economic value of creative works while expanding credit opportunities for creators, MSMEs, and other business actors (Chairunnisa, Sudirman & Disemadi, 2024).

In addition to regulatory and institutional challenges, the practical acceptance of copyright as fiduciary collateral is also influenced by the level of awareness and understanding among stakeholders, including creators, financial institutions, and legal practitioners. Many copyright holders—particularly those in the creative economy sector—have yet to fully recognize the economic potential of their works as bankable assets. Conversely, banks often remain conservative in their credit risk assessment models, relying heavily on traditional collateral such as land or machinery. This gap in perception contributes to the slow adoption of copyright-based financing schemes, despite strong legal support. Strengthening institutional literacy on the economic valuation of creative works, alongside capacity-building for financial institutions, is therefore essential to enhance trust and encourage broader utilization of copyright as collateral.

Furthermore, the integration of copyright into fiduciary financing highlights the need for a more adaptive legal framework in response to digital transformation. Copyrighted works—whether in the form of digital content, software, audiovisual materials, or online publications—circulate rapidly within global digital markets, making their economic value more dynamic and scalable. This evolution necessitates regulatory mechanisms that not only recognize copyright as collateral but also address cross-border licensing, digital infringement risks, and the valuation of digital assets. As Indonesia continues to position itself as a regional hub for the creative economy, ensuring that copyright can function effectively as fiduciary collateral will require continuous legal refinement, technological infrastructure, and broader collaboration between government, industry, and financial institutions. With these improvements, copyright has the potential to become a powerful instrument for inclusive economic growth and creative industry financing.

The development of an innovation- and creativity-driven economy has shifted the paradigm regarding the perception of assets as collateral within contractual relationships (Yuliandari, 2022). In traditional economic structures, the value of a business entity was generally measured through its tangible assets, such as land, buildings, machinery, or physical inventory. However, in today's modern economy—marked by rapid digital transformation and advancements in information technology—the sources of economic value have fundamentally evolved. Business success is no longer determined solely by physical assets but increasingly by the capacity for innovation and mastery of intangible assets, particularly intellectual property rights (IPR) (Manalu et al., 2023).

Intellectual property now occupies a strategic position as an economic resource capable of generating competitive advantage and sustainable added value. Various forms of IPR, including copyrights, trademarks, patents, industrial designs, and trade secrets, have become essential components in shaping a company's market position, strengthening brand identity, and attracting investment and financing opportunities. In this context, IPR is no longer merely the product of creative endeavors or a symbol of business identity;

it is widely recognized as a strategic economic asset that can be capitalized upon to support business continuity and growth (Lubis, 2020).

Within the Indonesian legal system, the regulation of fiduciary security is specifically governed by Law Number 42 of 1999 on Fiduciary Security. This law provides a solid legal foundation for imposing fiduciary rights over movable property, whether tangible or intangible, without requiring the physical transfer of the object of security to the creditor. This provision is particularly significant for IPR, which by nature is intangible and therefore cannot be transferred physically like other movable goods. Consequently, the Fiduciary Security Law opens a legal pathway for IPR to be used as collateral for debt obligations.

Normatively, the legal basis for imposing fiduciary security on IPR can be found in Article 1(4) of the Fiduciary Security Law, which defines objects as all items that may serve as fiduciary collateral, whether tangible or intangible, that can be owned and transferred. Registered IPR—such as trademarks, patents, or copyrights—meets this qualification as intangible property that can be owned and transferred, thereby allowing it to be used as fiduciary collateral. Furthermore, Article 5(1) affirms that ownership rights over the object of fiduciary security remain with the fiduciary grantor. This provision accommodates the inherent nature of IPR, allowing debtors to continue utilizing their IPR in business activities during the contractual term. Thus, business actors do not lose their exclusive rights but may leverage them as collateral, while creditors receive legal protection through the security right. Additionally, Article 11(1) requires fiduciary agreements to be executed through a notarial deed and registered with the Fiduciary Registration Office to obtain legal force against third parties. This requirement applies equally to IPR used as collateral, thus ensuring priority rights for creditors in cases of dispute or execution.

The legal framework governing IPR-based fiduciary security has further evolved following Indonesia's transition toward an innovation-driven economy. IPR is formally recognized as an intangible asset eligible to serve as fiduciary collateral, as stipulated in the Fiduciary Security Law and reinforced by Government Regulation Number 24 of 2022 on the Creative Economy (Tantowi, 2022). These regulations provide legal certainty for business actors to

use IPR—such as copyrights and patents—as collateral while retaining their exclusive rights throughout the agreement period (Febriani & Sarjana, 2024). In doing so, business actors can continue utilizing and commercializing their IPR, while creditors obtain legal protection through formally registered fiduciary rights.

Despite this regulatory accommodation, practical implementation still faces significant challenges (Aspan, 2024). A primary obstacle is the absence of standardized valuation mechanisms and officially recognized valuation institutions for assessing the economic value of IPR. This gap leads financial institutions—particularly banks—to remain hesitant to accept IPR as collateral, given the difficulty in assessing liquidity and predicting asset recovery in cases of default (Purwaningsih et al., 2020). Moreover, not all types of IPR are explicitly regulated as eligible fiduciary objects, contributing to ongoing legal uncertainty in practice (Purwaningsih et al., 2020).

Another issue relates to the execution of IPR as fiduciary collateral. Although the Fiduciary Security Law provides creditors with executorial rights, the process for public auction of IPR lacks clear technical guidelines, especially regarding valuation methods and open-market sale mechanisms (Ridho, 2024). This regulatory gap complicates risk assessment for financial institutions and affects their willingness to rely on IPR as collateral. Thus, strengthening technical regulations and establishing supporting infrastructure—such as an accredited IPR valuation body—is urgently needed. Overall, the government and relevant stakeholders must harmonize regulations governing IPR and fiduciary security while developing an integrated information system linking the IPR registry and the fiduciary registry. In addition, training and certification programs for IPR valuers are essential to enhance creditor confidence in IPR-based financing (Febriani & Sarjana, 2024). Clear regulations and strengthened institutional cooperation are crucial to ensuring that IPR can be effectively and extensively leveraged as fiduciary collateral in Indonesia. This demonstrates the growing need for robust protection and utilization of IPR in line with the expansion of the country's creative economy.

Comparative Analysis of Copyright-Based Fiduciary Security in Indonesia and Malaysia

The regulation of copyright as a fiduciary security object in Indonesia and Malaysia demonstrates two fundamentally different legal philosophies regarding the treatment of intangible assets. Indonesia expressly recognizes copyright as a valid object of fiduciary security, while Malaysia restricts copyright transactions to ownership, assignment, and licensing. This divergence arises from Indonesia's civil-law framework that allows flexible collateralization of intangible property, contrasted with Malaysia's common-law tradition that limits security interests to explicitly regulated categories. Indonesia's Copyright Law (Law No. 28/2014) provides the clearest basis for such collateralization. Article 16(3) of this law explicitly states "*Hak Cipta dapat dijadikan sebagai objek jaminan fidusia.*" This statutory provision strongly affirms that copyright holds not only cultural but also economic and financial value. Malaysia, however, contains no corresponding article in the Copyright Act 1987 permitting fiduciary or security interest formation. As a result, the two jurisdictions diverge significantly in terms of access to creative-industry financing.

Indonesia's legal recognition of copyright as fiduciary collateral is reinforced by its general fiduciary security regime. Law No. 42/1999 on Fiduciary Security allows creditors to obtain priority rights over movable property—both tangible and intangible—without requiring physical transfer. Article 1(4) of this law defines fiduciary objects as "*benda yang berwujud maupun tidak berwujud, yang dapat dimiliki dan dialihkan.*" This definition directly includes copyright, provided it is legally transferable. The statutory construction ensures that creators or copyright owners retain possession and use of their works while granting security rights to creditors. Malaysia does not possess a parallel provision that explicitly includes intangible intellectual property within a secured-transactions framework. Consequently, Malaysian financial institutions cannot perfect a security interest over copyright through statutory registration.

The Indonesian system further mandates formal registration to strengthen creditor protection. Under Article 11(1) of the Fiduciary Security Law, "*Pendaftaran jaminan fidusia merupakan syarat untuk mendapatkan kekuatan*

eksekutorial terhadap pihak ketiga.” This means that copyright used as collateral must be notarized and registered in the Fiduciary Registry Office to obtain legal force. The registration process also functions to create transparency for third parties regarding competing claims. Malaysia, however, has no IP-secured-transaction registry that recognizes copyright as collateral. The Malaysian Copyright Act’s registration system is optional and serves only for evidentiary purposes. As a result, the enforcement mechanisms available to creditors in Indonesia do not exist in Malaysia.

Indonesia’s recognition of copyright as fiduciary security is part of a broader state policy supporting the creative economy. Government Regulation No. 24/2022 on the Creative Economy strengthens this approach by enabling IP-based financing mechanisms. This regulation instructs financial institutions to evaluate the economic value of copyright and consider it as a credit-worthy intangible asset. Malaysia lacks an equivalent government regulation to operationalize copyright financing. While the Malaysian government encourages creative-industry development, it does not provide a legal infrastructure to collateralize copyright. This policy gap limits Malaysia’s creative-sector access to commercial credit markets. Indonesia, by contrast, provides the complete legal backbone for such financing.

Malaysia’s Copyright Act 1987 focuses primarily on defining rights, ownership, transfer, and enforcement. It allows commercial exploitation but not collateralization. Section 26 of the Act states: *“The author shall be the first owner of the copyright in a work.”* This confirms proprietary status but does not expand copyright into a financial instrument. Section 27 provides that copyright *“may be assigned... in writing signed by or on behalf of the assignor.”* Assignment involves transfer of ownership—not creation of a security interest. Thus, Malaysia conceptualizes copyright strictly as a proprietary and licensable asset rather than a collateralizable one.

TABLE I. Comparative Table

Aspect	Indonesia	Malaysia
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Legal basis	Art. 16(3) Law 28/2014: copyright may be used as fiduciary collateral	No statutory basis for copyright as collateral
Secured transaction law	Law 42/1999 allows intangible property as fiduciary objects	No equivalent fiduciary statute
Registration	Mandatory fiduciary registration (Art. 11 Law 42/1999)	No collateral registration available
Transferability	Copyright transferable + collateralizable	Copyright transferable only by assignment (s.27 Akta 332)
Execution	Detailed procedures under Arts. 29–34 Law 42/1999	No execution mechanism for copyright collateral
Policy support	Government Regulation 24/2022 (Creative Economy)	No creative-economy IP financing framework

Indonesia's structural advantage is also visible in its execution mechanism for fiduciary objects. When default occurs, creditors may execute collateral through public auction or direct sale as authorized by Articles 29–34 of the Fiduciary Security Law. These provisions ensure that copyright, once bound by fiduciary security, can be liquidated to satisfy outstanding obligations. Malaysia, lacking such provisions, cannot legally enforce copyright as collateral. This significantly restricts the financing tools available for its creators and SMEs. The inability to execute copyright as a security object makes Malaysian banks reluctant to consider intangible IP assets when issuing loans. Indonesia's execution structure therefore offers stronger legal certainty.

Another significant distinction arises from the treatment of economic rights. Indonesia's Copyright Law grants copyright owners exclusive economic rights under Article 9(1), including reproduction, distribution, communication, and adaptation. These rights can be transferred, pledged, or utilized

economically, enhancing their suitability for fiduciary transactions. Malaysia's Section 13 of the Copyright Act similarly defines exclusive rights but does not extend them into the domain of secured financing. Because Malaysia offers no statutory mechanism to pledge economic rights without transferring ownership, the copyright owner risks losing economic control if assignment is used in financing. Indonesia, therefore, provides a more balanced approach between creditor security and creator autonomy.

Moral rights add an additional layer of complexity. Indonesia's Article 5 of the Copyright Law stipulates that moral rights cannot be waived even when economic rights are transferred or used as collateral. This ensures authors retain attribution and integrity rights even during fiduciary binding. Malaysia, through Section 25 of the Copyright Act 1987, likewise protects moral rights but does not address their interaction with fiduciary or security interests. The absence of such interaction underscores the fact that Malaysia does not anticipate collateralization of copyright. Thus, Indonesia's copyright-financing system demonstrates greater normative coherence.

Due to Indonesia's explicit legal framework, the valuation of copyright becomes a necessary component of financing decisions. Government Regulation No. 24/2022 mandates the involvement of certified IP valuers. The valuation process allows banks to assess the projected revenue streams derived from copyright exploitation. Malaysia has no equivalent statutory valuation requirement for financing purposes. While valuation may occur informally during negotiations, no legal infrastructure requires or standardizes the process. As a result, Malaysian copyright valuation remains underdeveloped in the credit sector.

Indonesia's regulatory ecosystem encourages financial institutions to recognize intangible assets as viable collateral. This approach aligns with global trends that acknowledge intellectual property as a driver of economic growth. Malaysia, meanwhile, continues to rely heavily on traditional collateral such as land, equipment, and fixed assets. Without modernizing its secured-transactions framework, Malaysia risks limiting the innovation potential of its creative industries. Indonesia's approach also aligns with the TRIPS Agreement's

encouragement of IP commercialization. Malaysia complies with TRIPS but does not extend IP into the financial sphere.

Indonesia's supportive ecosystem is further strengthened by collaboration between the Ministry of Law and Human Rights and the Ministry of Tourism and Creative Economy. The policy objective is to convert creative works into liquid assets. Malaysia's ecosystem, although supportive of copyright enforcement, does not translate that support into financing mechanisms. Without legislative reform, Malaysia's creators must rely primarily on licensing deals rather than collateralized credit. This limits long-term scalability, especially for small creative enterprises. Indonesia therefore positions itself more competitively in the global creative-economy landscape.

In evaluating legal certainty, Indonesia's framework provides clarity across statutory provisions, administrative processes, and execution rules. Legal certainty is essential to fiduciary transactions, where ownership and use remain separated. Malaysia lacks such certainty because copyright cannot legally function as collateral. Although Malaysian courts recognize assignment and licensing disputes, they have not adjudicated copyright-collateralization issues. Indonesia's courts, however, have begun to address disputes involving IP valuation and fiduciary execution, contributing to jurisprudential development. Malaysia will require substantial legal reform to achieve similar clarity.

Indonesia also benefits from consistent terminology across its statutes. Both the Copyright Law and Fiduciary Security Law recognize intangible property as transferable and collateralizable. Malaysia's Copyright Act, by contrast, restricts terminology to ownership, assignment, and licensing without reference to security interests. This terminological limitation prevents the judiciary from interpreting copyright as collateral. As legislative interpretation in Malaysia relies heavily on statutory wording, courts cannot expand copyright usage beyond what is explicitly allowed. Thus, Malaysia's legislative silence equates to legal prohibition.

Malaysia's financial landscape further complicates copyright financing. The country's banking standards are conservative and require collateral with stable valuation and liquid markets. Copyright, with its fluctuating economic

value, is viewed as too risky without a legal framework supporting security interests. Indonesia, through Government Regulation 24/2022, directly addresses these risks by allowing certified valuers to appraise IP assets. Malaysia has yet to develop a similar accreditation system. This results in a structural disadvantage for Malaysian creators.

In Indonesia, the fiduciary system ensures that creators retain possession and usage of their copyright even after collateralization. Article 5(1) of the Fiduciary Security Law states: *“Hak milik atas benda yang menjadi objek jaminan fidusia tetap berada pada Pemberi Fidusia.”* This provision allows creators to continue monetizing their copyright while securing loans. Malaysia’s assignment-based financing model, by contrast, transfers ownership and thus deprives creators of economic control. This inhibits sustainable creative-industry growth. Consequently, Indonesia’s fiduciary approach is superior in supporting creator welfare.

Malaysia’s reluctance to develop copyright-based financing mechanisms may stem from concerns over administrative complexity and valuation challenges. However, Indonesia’s experience demonstrates that these barriers can be overcome through targeted regulation. The establishment of valuation guidelines, fiduciary registration systems, and execution procedures creates a workable financing environment. Malaysia currently lacks all three components, rendering it unable to treat copyright as a financial asset. The absence of a secured-transactions infrastructure also deters banks from experimenting with IP-based lending. Indonesia’s progress offers a model for Malaysia to emulate.

An important implication of Indonesia’s model is its alignment with economic inclusion goals. Creative workers who lack physical assets may still access financing based on the strength of their intellectual property. Malaysia’s legal design does not permit such access, limiting opportunities for start-ups, artists, filmmakers, and digital creators. Indonesia therefore facilitates a more inclusive financing ecosystem. The Malaysian system, by contrast, maintains barriers that disproportionately affect emerging creative entrepreneurs. Reform in Malaysia would support innovation competitiveness in the region.

Regional harmonization could strengthen ASEAN's creative-economy ecosystem. Indonesia's leadership in IP-based financing sets an important benchmark for neighboring countries. Malaysia could adopt similar provisions by amending the Copyright Act 1987 to include security interests. Such an amendment would expand financing channels while preserving ownership and moral rights. Indonesia and Malaysia could also collaborate through cross-border IP financing frameworks. Harmonization would reduce legal fragmentation within ASEAN's creative-industry markets.

Indonesia's policy direction appears geared toward improving implementation challenges such as valuation, market liquidity, and enforcement. Malaysia, meanwhile, must first address the fundamental absence of statutory authority before addressing implementation concerns. Without express legislation, administrative or judicial bodies cannot authorize copyright collateralization. Indonesia's multifaceted approach—from legislation to regulation to administrative practice—creates a holistic copyright-financing ecosystem. Malaysia will need a similarly comprehensive reform strategy. Only then can Malaysia unlock the economic potential of copyright-based financing. Indonesia and Malaysia diverge sharply in their treatment of copyright as a financial asset. Indonesia explicitly allows copyright to be used as fiduciary collateral, supported by robust statutory provisions such as Article 16(3) of the Copyright Law and Articles 1(4) and 11(1) of the Fiduciary Security Law. Malaysia's Copyright Act 1987 contains no equivalent security-interest provisions, allowing only assignment and licensing transactions. This fundamental difference affects legal certainty, access to financing, economic inclusivity, and creative-industry development. Indonesia thus provides a more progressive and adaptive legal framework. Malaysia can benefit significantly by reforming its copyright law to align with Indonesia's model. Harmonized reforms would also strengthen ASEAN's regional creative-economy integration.

Normative Solutions for Regulating Copyright-Based Fiduciary Security in Indonesia

A core normative solution for strengthening the regulation of copyright-based fiduciary security in Indonesia lies in clarifying the legal status of copyright as a financial asset within the law of obligations. Copyright, which encompasses a broad spectrum of creative works and exclusive economic rights, has increasingly become a source of economic value for individuals and businesses seeking access to credit (Anas et al., 2024). Its use as fiduciary collateral allows borrowers to leverage intellectual creations to obtain financing without relinquishing full ownership. However, because copyright is intangible by nature, its transfer and encumbrance must be supported by a clear legal basis grounded in the Civil Code, Copyright Law, and Fiduciary Security Law (Aprilia et al., 2024). A stronger statutory link among these laws would ensure legal certainty for both creditors and debtors during the transfer, registration, and enforcement stages. The overarching goal of the normative framework is therefore to formalize the utilization of copyright as collateral while maintaining consistency across Indonesia's legal system governing obligations and security rights (Dalimunthe & Sriwahyuni, 2023).

A significant normative challenge arises from the intangible nature of copyright, which differs fundamentally from traditional forms of property used in fiduciary security, such as land or machinery. Traditional collateral systems are built on physical possession, stable valuation, and straightforward liquidation mechanisms. Copyright, however, cannot be physically handed over and its market value depends on projected economic exploitation, popularity, and licensing potential (Aulia, 2018). To overcome this structural mismatch, Indonesia requires a specialized valuation framework tailored to copyright. Normatively, this necessitates the development of standardized valuation methodologies led by government policy or by establishing accredited copyright valuation services within the banking sector. Such initiatives would ensure uniform valuation practices across financial institutions, preventing arbitrary or inconsistent assessments of copyright value. Standardizing valuation is therefore essential to enhance predictability and strengthen creditor confidence.

Another crucial normative solution concerns the registration process, which is central to ensuring legal certainty in fiduciary security. Registration provides transparency, prevents double-pledging, and secures creditor priority. However, registration procedures for copyright-based collateral are currently fragmented because the system does not fully integrate copyright registries with the fiduciary registration system (Anas et al., 2024). To address this issue, Indonesia must clarify the procedural stages for registering copyright as collateral and streamline the administrative workflow to reduce bureaucratic barriers. A standardized and accessible registration system would protect creditor security interests while preserving debtor rights, such as continued use of the copyrighted work during the loan period. This approach requires a coherent legal framework, uniform administrative procedures, and a clear enforcement mechanism—elements that remain underdeveloped in existing regulations (Pujiono et al., 2025).

The role of the Creative Economy Law No. 24/2019 and Government Regulation No. 24/2022 is also central to developing a normative solution. These instruments demonstrate Indonesia's commitment to operationalizing copyright as a viable collateral asset. Nevertheless, their implementation must be adapted to the specific needs and structural challenges within the creative economy sector. To this end, government-led initiatives must include detailed guidelines on valuation procedures, registration requirements, and risk assessment models. The regulation's establishment of expert valuation services—particularly due diligence and copyright audits—represents a significant normative advancement that aids banks in accurately assessing copyright offered as collateral (Reskin & Wirdyaningsih, 2022). Through these mechanisms, copyright becomes a more accessible and reliable asset within the Indonesian law of obligations and financial markets.

A further normative requirement is clarifying which types of copyright assets may be accepted as collateral and defining the rights of parties involved in the transaction. Without such clarity, risks of double collateralization, ownership disputes, or conflicting claims may arise (Anas et al., 2024). Normatively, Indonesia must develop explicit rules specifying eligibility criteria for various

copyright assets, along with procedural safeguards to ensure transparency in the selection and collateralization process. Additionally, Indonesia should simplify the enforcement framework for handling default cases. This includes establishing faster judicial processes and more efficient liquidation mechanisms, adapted to the unique characteristics of copyright assets. Clear borrower disclosure requirements, creditor due diligence obligations, and standardized dispute-resolution mechanisms—such as mediation or arbitration—would further strengthen the normative foundation of copyright-based fiduciary security (Aprilia et al., 2024).

The effective use of copyright in fiduciary security requires a comprehensive risk-management framework. Because copyright is easily copied, modified, or misused, risk mitigation must include confidentiality agreements (NDAs), licensing safeguards, and internal control mechanisms to prevent unauthorized exploitation of the asset (Pujiono et al., 2025). Banks therefore need the institutional capacity and expertise to evaluate copyright ownership, validity, market potential, and legal risks. While regulatory reforms are important, banks can independently adopt normative solutions through internal policies—such as stricter borrower vetting and robust copyright-collateral assessment procedures—without waiting for legislative amendments (Disemadi, 2022; Anas et al., 2024). By implementing these internal normative measures, financial institutions can foster a stable lending environment and build trust in the system. Ultimately, this generates mutual benefits for both creditors and debtors, enabling copyright to function as a secure, efficient, and economically empowering collateral asset within Indonesia's system of obligations.

Conclusion

The analysis demonstrates that Indonesia offers a far more advanced and comprehensive legal framework for the recognition and operationalization of copyright-based fiduciary security compared to Malaysia, integrating explicit statutory authority through Article 16(3) of the Copyright Act and the broad definition of fiduciary objects under Articles 1(4) and 11(1) of the Fiduciary

Security Law. The findings further reveal that Indonesia's approach is strengthened by Government Regulation No. 24/2022 and emerging valuation and registration mechanisms that transform copyright into a bankable intangible asset capable of supporting creative-economy financing. Conversely, Malaysia's Copyright Act 1987 restricts copyright transactions to ownership, assignment, and licensing, with no legal basis for fiduciary or secured-interest formation, thereby limiting access to credit and constraining the growth of its creative industries. The study also identifies key implementation challenges within Indonesia—such as valuation gaps, limited institutional literacy, and underdeveloped execution guidelines—which necessitate normative solutions involving standardized valuation systems, integrated registration platforms, clearer enforcement procedures, and enhanced risk-management protocols. Overall, the research concludes that Indonesia has laid a strong but still evolving foundation for a copyright-based fiduciary security regime, positioning itself as a regional leader in creative-asset financing, while Malaysia requires significant statutory reform to achieve comparable legal certainty, economic inclusivity, and alignment with contemporary creative-economy needs.

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Competing Interest

The authors declare that there are no competing interests.