



Opportunities Implementing Intellectual Property Rights Auctions as Fiduciary Guarantee Objects

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ABSTRACT

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This study aims to determine and examine how the auction processes for the execution of tangible objects differ from those for the execution of intangible objects and to identify the factors that impede the implementation of auctions for fiduciary collateral in the form of IPR, particularly copyrights and patents, in Indonesia. This study is a normative legal research with a statutory regulatory and conceptual approach. The data used are secondary, namely, primary and secondary legal materials. Primary legal materials are in the form of related laws and regulations. Secondary legal materials consist of various sources directly related to primary legal materials and function as support in research activities. The results of this study indicate that the procedures for submitting an auction application and conducting an auction for tangible movable and intangible movable objects are essentially the same. The auction process aligns with the theory of utility, which provides benefits in the form of legal protection and legal certainty for both creditors and debtors. Factors that hinder the implementation of fiduciary guarantee auctions include legal and technical constraints. Legal constraints, such as regulations that do not provide optimal benefits, are not in line with the theory of utility. Technical constraints, such as banks' reluctance to accept IPR as collateral and differences in Indonesian culture from that of developed countries, can raise concerns about legal certainty and social benefits.



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Introduction

Indonesia has regulations regarding copyright protection in Law Number 28 of 2014 concerning Copyright and Patent Protection, and regarding patents in Law Number 13 of 2016 concerning Patents. Both laws provide a strong legal basis for copyright and patent owners to claim exclusive rights and protection for their works or inventions. However, as economic needs evolve, the need arises to use IPR optimally, including as collateral in financing through banking services. IPR, as an intangible movable object, is guaranteed through banking services in the form of accompanying economic value. Objects are anything that can be an object of rights that can be legally distinguished into movable and immovable objects, registered air. Movable objects can be legally distinguished into tangible and intangible objects. Tangible objects are anything that has a real form and can be felt through the five human senses, while intangible objects are those that do not have a physical form.¹

Indonesia has provided an opportunity to obtain financing secured by intellectual property rights (IPR) through Law Number 42 of 1999 concerning Fiduciary Guarantees, which allows intangible movable property to be used as fiduciary collateral. IPR are categorised as intangible movable objects because they contain rights.³ IPR holders who pledge their assets as financing objects are referred to as debtors. Therefore, if a debtor defaults, the bank, as

¹ Eleni Linaki and Konstantinos Serraos, 'Recording and Evaluating the Tangible and Intangible Cultural Assets of a Place through a Multicriteria Decision-Making System', *Heritage*, 3.4 (2020), 1483–95 <<https://doi.org/10.3390/heritage3040082>>.

the financing provider (creditor), has the right to enforce the collateral through an auction to execute the fiduciary object. Law Number 28 of 2014 concerning Copyright, Article 16, paragraph (3), stipulates that copyright can be used as fiduciary collateral. Article 16, paragraph (4), of Law Number 28 of 2014 concerning Copyright states that the implementation of provisions regarding copyright as fiduciary collateral must be carried out in accordance with statutory provisions. Article 108 of Law Number 13 of 2016 concerning Patents also states that patent rights can be used as fiduciary collateral. Provisions regarding the requirements and procedures for using patents as fiduciary collateral are further regulated through government regulations. Based on these two articles, both copyright and patent rights can be used as fiduciary collateral, which aligns with Law Number 42 of 1999 concerning Fiduciary Collateral.

The potential use of intellectual property rights (IPR) as fiduciary collateral in auctions represents a significant development in Indonesian law and economics, opening new opportunities for business actors, particularly small and medium enterprises (MSMEs), start-ups, innovators, and those with intellectual property.² This is particularly true for parties without tangible assets, such as land and/or buildings, or other tangible assets, as collateral. The primary function of collateral in a debtor–creditor relationship is to provide certainty and legal protection to the creditor. This collateral serves as a safeguard to ensure that loans can be repaid, particularly in the event of debtor default. All matters relating to auctions in Indonesia are regulated and implemented by the Ministry of Finance of the Republic of Indonesia through the Directorate General of State Assets (DJKN) and its subordinate office, the State Assets and Auction Services Office (KPKNL). Since 1908, auctions have been included in Indonesian legislation, with the enactment of the *Vendu Reglement Ordinance* on February 28, 1908, in *Staatblad* 1908 Number 189, in conjunction with *Stb.* 1941 No. 3, and *Vendu Instructie* in *Staatblad* 1908 Number 190 in conjunction with *Stb.* 1930 No. 85. Based on Article II of the Transitional Provisions of the 1945 Constitution, both remain in effect to this day.

Over time, the *Vendu Reglement* has undergone several changes and additions.³ The *Vendu Reglement* is the sole auction regulation in force in Indonesia, and its implementation is regulated by the Minister of Finance Regulation (PMK). This PMK then became the basis for auctions conducted by the KPKNL. Based on the latest PMK, PMK 122/PMK.6/2023, IPR is included in the category of intangible movable objects that can be auctioned. The Directorate General of Intellectual Property (DJKI) has also emphasised that all types of IPR legally recognised in Indonesia can be used as collateral/fiduciary objects, which, in principle, can be auctioned if an execution occurs.⁴ This is reinforced by Article 119 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, which states that "Fiduciary guarantee certificates received by Financing Service Business providers as collateral in the context of fulfilling consumer obligations as referred to in the law regarding fiduciary guarantees have executorial power." Banks in Indonesia are reluctant to accept intangible movable property as collateral in financing contracts because of its abstract nature and difficulty in conventional valuation, particularly in auction applications. The absence of auction applications that use IPR as fiduciary collateral is a significant issue that requires attention. Without clear, definitive regulations, their use cannot function optimally.

Method

This study employs a normative legal research methodology, focusing primarily on the systematic examination of library materials and secondary data sources. To provide a comprehensive legal analysis, the research framework integrates both statutory and conceptual approaches. The statutory approach is utilised to examine relevant regulations, whereas the conceptual approach clarifies legal doctrines and principles pertinent to the subject matter. Furthermore, the gathered data are analysed using a qualitative descriptive method, and conclusions are formulated

² Lailatul Farochah, Abdul Rokhim and Ahmad Syaifudin, 'Intellectual Property Rights as Fiduciary Collateral in Indonesian Legal Framework', *Academia Open*, 11.1 (2026) <<https://doi.org/10.21070/acopen.11.2026.13164>>; Annisa Fitria and others, 'The Use of Intellectual Property Rights as Collateral for Debt: Legal Regulations and Valuation Analysis', *JUSTISI*, 12.1 (2026), 300–313 <<https://doi.org/10.33506/js.v12i1.4680>>.

³ Raden Ibnu Arly, HM Isnaeni and Hufron -, 'Modernization of Regular *Vendu* Reviewed from Sociological Philosophy and Juridistic', *International Journal of Scientific and Research Publications (IJSRP)*, 9.12 (2019), p9629 <<https://doi.org/10.29322/IJSRP.9.12.2019.p9629>>; Ni Made Ayu Sintya Dewi and Made Gde Subha Karma Resen, 'Harmonization of Authority for Making Auction Minutes Between Notaries and Auction Officials', *Acta Comitatus*, 6.01 (2021), 41 <<https://doi.org/10.24843/AC.2021.v06.i01.p04>>.

⁴ Arif Budi Kusuma and Suherman Suherman, 'Legal Certainty of Intellectual Property That Becomes an Object of Debt Collateral in Bank Financial Institutions According to Government Regulation Number 24 of 2022', *International Journal of Law, Crime and Justice*, 2.2 (2025), 166–73 <<https://doi.org/10.62951/ijlcv2i2.618>>.

using deductive reasoning. This logical progression ensures that specific legal issues are addressed by moving from general legal norms to precise, actionable legal applications.⁵

Results and Discussion

Research results from secondary data, comprising primary and secondary legal materials, indicate several potential obstacles to implementing IPR Fiduciary Guarantee Auctions. These obstacles can be divided into legal and technical categories. The first legal obstacle is the lack of technical guidelines for implementing IPR auctions. A more comprehensive legal basis for auction implementation in Indonesia includes recognising IPR as an object of fiduciary guarantees. This provision is specified in Article 3, letter e, of Law Number 42 of 1999 concerning Fiduciary Guarantees, which states that intangible movable objects pledged as fiduciary guarantees, including IPR, can be auctioned.⁶ Legally, IPR has been recognised as an asset that can be pledged through Law Number 28 of 2014 concerning Copyright, Law Number 13 of 2016 concerning Patents, and Law Number 24 of 2019 concerning the Creative Economy. However, its implementation in practice has not been optimal. Despite the existence of SPI 320, which regulates the basis for assessing intangible assets, and SPI 321, which regulates the assessment of intellectual property as collateral for debt, financial institutions, particularly banks, remain reluctant to accept IPR as collateral. This situation is further exacerbated by OJK Regulation No. 40/POJK.03/2009, which does not mention IPR as collateral in the allocation for asset quality assessments, as specified in Article 45.⁷

The second legal obstacle relates to the legal status of auctions. The most fundamental obstacle lies in the intangible nature of IPR and its legal protection, specifically regarding moral and economic rights. In the case of copyright, the law distinguishes between economic rights (which can be granted) and moral rights (which are inherent in the creator and cannot be transferred).⁸ Selling economic rights without ensuring protection for the inherent moral rights can give rise to new legal disputes after the auction, as the buyer is bound by the limitations of the original creator's moral rights. The Fiduciary Guarantee Law authorises creditors to execute collateral if the debtor defaults, either through a private sale or a public auction. However, when the collateral is IPR, the auction process presents unique challenges, particularly regarding the transfer of rights and the protection of third parties.⁹

Copyright as an exclusive right includes two main components: moral rights and economic rights. Not all aspects of copyright can be transferred through an auction process.¹⁰ This is because the nature of copyright is always attached to the subject/owner, and the exercise of economic rights cannot always be carried out without the creator's involvement, even though the creator plays a major role in the results of their creation.¹¹ For example, a songwriter can determine which singer is worthy of performing their compositions in various concerts or other activities so that their compositions can be sold in the market and the creator receives royalties as previously calculated. If an auction is held and the economic rights are then transferred to the auction winner, the creator no longer has the right to determine who is worthy of singing their compositions; overall, the creator also loses their economic rights because, after there is an auction winner, the creator's economic rights are transferred to the auction winner so that the auction winner then has the right to publish, reproduce, translate, adapt, arrange, or transform, distribute performances, announcements, communications, and the rental of the work, as written in Article 9 of the Copyright Law. Copyright auctions require a clear separation between economic rights, which can be transferred to another party, and moral rights, which remain the creator's permanent property. Moral rights, which include the creator's right to be named and the right to maintain the integrity of their work, are personal and non-transferable,

⁵ Tunggal Ansari and Setia Negara, 'Normative Legal Research in Indonesia: Its Originis and Approaches', *Audito Comparative Law Journal (ACLJ)*, 4.1 (2023), 1–9 <<https://doi.org/10.22219/ACLJ.V4I1.24855>>; Ujang Charda S, 'Typology Of Legal Research Methods In Normative And Sociological Thinking', *Fox Justi: Journal of Legal Studies*, 12.1 (2021), 111–18 <<https://doi.org/10.58471/justi.v12i1.769>>.

⁶ Farochah, Rokhim and Syaifudin.

⁷ I Putu Agus Suarsana Ariesta, 'Prospects for Intellectual Property Rights as Collateral for Indonesian Banking', *Sutasoma Journal*, 1.2 (2023), 99–103 <<https://doi.org/10.58878/sutasoma.v1i2.221>>.

⁸ Arif Budi Kusuma and Suherman Suherman.

⁹ Sulastris Sulastris, Andrianto Adhi Nugroho and Surahmad Surahmad, 'Legal Risk Transformation: Loss of Creditors' Enforcement Rights of Third-Party Fiduciary Guarantees Objects Due to Lack of Registration', *Bacarita Law Journal*, 6.1 (2025), 8–14 <<https://doi.org/10.30598/bacarita.v6i1.21098>>.

¹⁰ Hendra Tanu Wijaya, 'The Concept of Economic Rights and Moral Rights of Creators According to the Civil Law and Common Law Systems', *IUS QUILA IUSTUM Law Journal*, 10.23 (2003), 152–68 <<https://doi.org/10.20885/iustum.vol10.iss23.art8>>.

¹¹ Lili Sekararum Utami, Subianta Mandala and Darwati Darwati, 'Legal Aspects of Moral Rights and Economic Rights in Music Creation from AI Music Generators', *Indonesian Education Journal*, 6.7 (2025), 2925–41 <<https://doi.org/10.59141/japendi.v6i7.8114>>.

even through an auction.¹² The inclusion of the creator's name, even if the economic rights have been transferred to the auction winner, provides state protection for the creator of their work, ensuring that the public knows whose work they are enjoying. This benefits the creator because it ensures that their name remains known, regardless of whether their work is performed by anyone, and that the economic rights have been transferred.

These various legal obstacles, when viewed from the theory of utility, demonstrate that the current regulations do not provide optimal benefits.¹³ These benefits include legal protection for the parties in the implementation of fiduciary guarantee agreements and the execution of fiduciary guarantees, particularly for banks as creditors. Banks prefer liquid assets as collateral over IPR. The second obstacle is technical. The reluctance of financial institutions, particularly banks, to accept IPR as collateral is due to a number of interrelated underlying factors, including: a. Copyright and patents are considered high-risk forms of collateral because their economic value is heavily influenced by unpredictable external variables, such as market tastes, industry dynamics, and the popularity of works, which can change unpredictably. A work that currently sells well on the market and earns substantial royalties for the creator may not necessarily sell well in the future. b. Valuing copyrights requires different competencies than valuing physical assets such as land, buildings, or vehicles. Valuing Copyright requires different competencies than valuing physical assets such as land, buildings, or vehicles. When a debtor who pledged IPR defaults, the enforcement of IPR as the object of fiduciary collateral can present various obstacles. In other words, the use of copyrights and patents as collateral in financing practices has the potential to complicate matters for financial institutions, particularly banks. This is based on several reasons, including the fact that determining the value of copyrights and patents is very complex. Determining their economic value requires a complex valuation process and additional costs. Determining their economic value requires a complex valuation process and additional costs. Financial institutions must also be prepared to bear the risks involved in this process. Although copyrights and patents provide economic rights that can be utilized by their creators, making them objects of fiduciary collateral is not easy. Use value and exchange value are crucial factors in the valuation process of copyrights and patents. Use value and exchange value are crucial factors in the valuation process of copyrights and patents. However, because this valuation process is complex and not simple, the role of an authorized and competent institution is required to determine this value objectively. This is in accordance with the provisions of the Standard Operating Procedure (SOP), which stipulates that an item eligible to be used as collateral must meet certain criteria. It must be easily identifiable in terms of its form, quantity, and physical condition. Additionally, it should be marketable or resalable, possessing marketable value. Lastly, the item must be easily enforceable, meeting the legal requirements that allow for the sale or seizure process.

The third reason is the challenges faced in the fiduciary guarantee auction process. Intellectual property rights (IPR) are intangible movable assets. If a debtor holding IP collateral defaults, banks face significant challenges in the fiduciary guarantee auction process. The challenge arises from whether the IP offered at auction will attract interest, given that IP is not a liquid asset that can easily attract buyers. This is exacerbated by Indonesian culture, in which Indonesians still lack interest in IP, unlike those in developed countries. This is due to the low level of public knowledge and understanding of IP. Furthermore, the communal nature of Indonesian society conflicts with the principle of individual IP protection.¹⁴ When IP is auctioned, prospective auction participants will assess the economic value of the auctioned IP and whether it will bring them future benefits.

Based on the theory of legal objectives, various technical obstacles can give rise to issues of legal certainty and social benefits. High risks create uncertainty for financing institutions, making them reluctant to accept IPR as collateral. This reduces the social benefits of IPR as an economic instrument. Furthermore, without competent IPR appraisers, IPR valuations become uncertain and inaccurate. Financing institutions will have difficulty determining the value and risks of IPR, which will influence their financing decisions. These considerations will create an imbalance between legal objectives: legal certainty is less fulfilled because IPR assessment standards and mechanisms are inadequate, and social benefits will be compromised because IPR's potential as an economic asset is not optimally utilised. From a utility theory perspective, the reluctance of banks to accept IPR as collateral stems

¹² Anastasia Theresia Puspasari, 'Review of the Concept of Exclusive Rights in Copyright Based on Hegel's Theory', *Dialogia Iuridica*, 13.2 (2022), 140–61 <<https://doi.org/10.28932/di.v13i2.4577>>.

¹³ Ben Depoorter, 'The Economics of Copyright Exemptions: A Comparative Analysis', in *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press, 2021), pp. 3–11 <<https://doi.org/10.1017/9781108671101.003>>.

¹⁴ Aji Baskoro and Annisa Hafizhah, 'Balancing Tradition And Innovation: Legal Framework For Protecting Communal Intellectual Property In The Borderless Age', *Indonesian Law Journal*, 16.1 (2023), 63–87 <<https://doi.org/10.33331/ilj.v16i1.128>>.

from the cultural malaise of Indonesian society, which is not yet aware of IPR's economic potential, which does not provide optimal benefits for banks. Banks do not feel they have legal protection that IPR used as collateral will be guaranteed to be sold if auctioned due to default by the debtor.

Conclusion

Factors hindering the implementation of fiduciary guarantee auctions include legal and technical constraints. Legal constraints in the implementation of IPR auctions in Indonesia include the lack of technical guidelines for IPR auctions and the legal status of auction objects related to the intangible nature of IPR and its legal protection, specifically in terms of moral and economic rights. These legal constraints, when viewed from the perspective of utility theory, indicate that the current regulations do not provide optimal benefits. These benefits include legal protection for the parties in the implementation of fiduciary guarantee agreements and the execution of fiduciary guarantees, particularly for banks as creditors. Banks prefer liquid assets as collateral over IPR. Technical constraints in the implementation of IPR auctions in Indonesia, namely, the unwillingness of financing institutions, especially banking institutions, to accept IPR as collateral, are caused by a number of interrelated fundamental factors, namely: Copyright and patents are considered a form of collateral with a high level of risk because their economic value is greatly influenced by external variables, and there are still limitations in the availability of appraisers who have special expertise to assess intellectual property assets. Based on the theory of legal objectives, various technical constraints that occur can give rise to problems of legal certainty and social benefits.

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