

Legal Issues In Implementing The Legislation Provisions Regarding Youtube Content As Fiduciary Collateral

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Abstract. Technological developments have a positive impact on legal subjects in earning income in the form of nominal money. Uploading videos on the YouTube application can make money according to YouTube's terms, and videos uploaded to YouTube pages can be classified as intellectual property rights. The government makes it easy for creative economy actors to obtain easy financing or credit from financial institutions. The formulation of the problem proposed by the author concerns legal issues regarding the implementation of statutory provisions regarding YouTube content as fiduciary collateral. The research results show that there are legal problems regarding the application of statutory provisions regarding YouTube content as fiduciary collateral, namely determining the economic value of YouTube content, weak security of YouTube content, and regulation of collateral execution.

Keywords: Youtube Content, Issues, Sanctions

Abstrak. Perkembangan teknologi memberikan dampak positif bagi subjek hukum dalam mendapatkan penghasilan berupa nominal uang. Mengunggah video di aplikasi YouTube dapat menghasilkan uang sesuai dengan ketentuan YouTube, dan video yang diunggah ke laman YouTube dapat diklasifikasikan sebagai Hak Kekayaan Intelektual. Pemerintah memberikan kemudahan bagi para pelaku ekonomi kreatif untuk mendapatkan pembiayaan atau kredit yang mudah dari lembaga keuangan. Rumusan masalah yang diajukan oleh penulis ialah permasalahan hukum mengenai implementasi ketentuan perundang-undangan konten YouTube sebagai jaminan fidusia. Hasil penelitian menunjukkan bahwa terdapat permasalahan hukum mengenai penerapan ketentuan perundang-undangan mengenai konten YouTube sebagai jaminan fidusia, yaitu penentuan nilai ekonomis konten YouTube, lemahnya pengamanan konten YouTube, dan pengaturan eksekusi jaminan.

Kata kunci: Konten Youtube, Permasalahan, Sanksi

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INTRODUCTION

Economic growth in Indonesia is currently experiencing rapid progress, including in the field of Indonesia's digital economy as reported by the Ministry of Finance of the Republic of Indonesia, which increased by 20 percent from 2021 to USD 146 billion in 2025 with an increase that will continue to occur. Indonesia's digital economy is the largest among neighboring countries and is very strong. The government supports the development of Indonesia's digital ecosystem by encouraging regulatory policies that support innovation, solid financial infrastructure, and fiscal support, such as tax incentives and financing support for MSMEs.¹

Technological developments in the modern era make it easier for legal subjects to earn money. One way is to upload videos to YouTube, in this case, the term YouTuber is usually used. A YouTuber is a person who has a lot of followers on a YouTube account and has a big influence on his followers.

Reporting from iNews.id citing Business Insider, to make money from YouTube you need 1,000 subscribers, apart from that the channel must collect a minimum of 4,000 hours of watch time in the last 12 months. A YouTuber's salary is calculated from cost per mille (CPM), where the income in the form of money that will be obtained from every 1,000 views of advertisements that appear on YouTube videos is the nominal CPM that the YouTuber will receive, namely IDR 7,000 per ad impression, and the cost per click (CPC) that will be obtained from people who click on ad impressions that appear on the video with a nominal CPC for one click is IDR 5,000-IDR 12,000. YouTube account is valuable because it has material value where the owner gets income from the account.²

¹ Kementerian Keuangan Republik Indonesia, "Wamenkeu: Ekonomi Digital Indonesia Sangat Kuat dan Terbesar di antara Negara Tetangga", Available at: <https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Wamenkeu-EkonomiDigital-IndonesiaSangatKuat#:~:text=Ekonomi%20digital%20Indonesia%20diproeksikan%20tumbuh,antara%20negara%20negara%20tetangga%20kita>, last accessed: 11 March.

² NEWS, Berapa Subscriber untuk Mendapatkan Uang di Youtube, Available at <https://www.inews.id/techno/internet/berapa-subscriber-untuk-mendapatkan-uang-di-youtube-ini-syaratnya>, last accessed: 18 October 2022

According to the provisions of Article 499 of the Civil Code, the term 'objects' refers to every physical object and every intangible right that can be subject to ownership and controlled through property rights..³ This article states that an object is anything that can be controlled by a legal subject that possesses property rights, in the forms of tangible objects, referred to as goods, and intangible objects, referred to as rights.. Tangible objects such as motor vehicles, land, etc., are regulated in the Civil Code, while intangible objects such as copyrights and patents are not regulated in the Civil Code but are regulated in the Intellectual Property Rights Protection Law.

YouTube is a video-based social media page that has been known and popular since 2012. It was launched in May 2005. YouTube makes it easy for its users to access various information using their gadgets and does not charge large fees. YouTube also provides a page for people who like to be creative by uploading videos and can be watched by many people with more than one billion users. According to YouTube site statistics, as of March 2015, content creators or video uploaders on YouTube have uploaded 10,000 videos and received input or made money from these video uploads. The average viewer of video content reached by YouTube is aged 18 to 34 years and accesses a variety of content such as music, films, news, sports, vlogs, and others.⁴

The government issued Government Regulation Number 24 of 2022 on the Creative Economy (hereinafter referred to as Government Regulation Number 24 of 2022), which states that an intellectual property that meets certain requirements can be used as a collateral for a debt at bank institutions and non-bank financial institutions, which in this regulation explained regarding intellectual property-based financing schemes.⁵ The assessment of bank institutions and non-bank institutions regarding intellectual property that will be used as collateral for debt is that if the owner of the work registers a loan application with a bank or non-bank with collateral in the form of intellectual property, then the bank will carry out an assessment before finally

³ Riky Rustam, *Hukum Jaminan*, UII Press, Yogyakarta, 2017, p. 2

⁴ Eribka Ruthellia David dkk, "Pengaruh Konten Vlog dalam Youtube terhadap Pembentukan Sikap Mahasiswa Ilmu Komunikasi Fakultas Ilmu Sosial dan Politik Universitas Sam Ratulangi", *E-Journal Acta Diurna* Vol.5. No.1. Mei 2017, p.3.

⁵ Youtube, *Kini Konten Youtube Bisa jadi Jaminan Utang ke Bank*, Available at: https://www.youtube.com/watch?v=_V3796oZA5g, last accessed: 18 October 2022.

deciding whether to provide a loan or not, and also determine how much the loan will be, which can be given to the applicant concerned.⁶

The use of intellectual property as a debt collateral is explained in Article 9 paragraph (1), Government Regulation Number 24 of 2022 which states that in implementing intellectual property-based financing schemes, non-bank financial institutions use intellectual property as an object of debt collateral. Furthermore, Article 25a also mentions an inventory of intellectual property-based creative economy products in the form of digital content.⁷ YouTube content is said to be digital content, reported by UKMINDONESIA.ID, as works expressed in video form that can be accessed via computers, laptops and/or smartphones where the internet is available.⁸

YouTube content includes Intellectual Property Rights because it is someone's work expressed in physical media, they automatically have a copyright over the work, the copyright owner has special rights to use the work, one of which is whether other people are allowed to use his work or not. Works protected by copyright include audio-visual works, sound recordings, musical compositions, written works, visual works, video games, computer software, and dramatic works.⁹ Calculation of the value of intellectual property including YouTube content was reported by detikfinance, PT Bank Rakyat Indonesia (Persero) Corporate Secretary Aestika Oryza Gunarto said, there are certain aspects that need to be perfected in the implementation and infrastructure of Government Regulation Number 24 of 2022, such as asset valuation methods, asset binding, and technical implementation.¹⁰ What are the legal challenges in implementing statutory provisions regarding the use of YouTube content as fiduciary collateral, despite the banks' disagreement regarding its

⁶ Wawancara Youtube, Konten Youtube Bisa Dijadikan Jaminan Pinjaman Utang di Bank, Available at: <https://www.youtube.com/watch?v=ukL3WmS4dXI>, last accessed: 18 October 2022

⁷ Government Regulation Number 24 of 2022

⁸ UKMINDONESIA.ID, "Pentingnya Membuat Konten di Youtube bagi Bisnis", Available at : <https://www.ukmindonesia.id/baca-deskripsi-posts/pentingnya-membuat-konten-di-youtube-bagi-bisnis>, last accessed: 22 December 2022

⁹ Bantuan Youtube, Apa yang dimaksud dengan Hak Cipta, Available at: <https://support.google.com/youtube/answer/2797466?hl=id>, last accessed: 22 December 2022

¹⁰ Detikfinance, Konten Youtube jadi Jaminan Utang, Gimana Cara Hitung Nilainya, Available at: <https://finance.detik.com/berita-ekonomi-bisnis/d-6196800/konten-youtube-jadi-jaminan-utang-gimana-carahitung-nilainya>, last accessed: 18 December 2022.

suitability as debt collateral? Based on interviews conducted by the author with representatives from Bank BRI, Bank Mandiri, and Bank BSI, certain issues arise concerning the assessment of nominal value and the establishment of a binding guarantee when utilizing YouTube content as collateral in banking transactions.¹¹ Looking at the background of the research above, the next issue that needs to be discussed is: What legal problems arise if YouTube content can be used as fiduciary collateral?

METHODOLOGY

Type of Research carried out by the author is normative juridical legal research. Normative juridical legal research is library legal research carried out by examining library materials and/or secondary data. Research Approach used by the author is a conceptual approach by analyzing problem solving in research from the aspect of legal concepts and norms in statutory regulations which form the background of the research.

RESULT AND DISCUSSION

Legal problems arise if YouTube content can be used as fiduciary collateral

YouTube is a social media by facilitating its users to share media with video types. YouTube is used by most users as a place to find information, listen to songs, watch movies, and others. Video uploaders on YouTube with followers and large audiences are entitled to loyalty or payment, so YouTube has economic value for uploaders.¹²

According to Law Number 28 of 2014 on Copyright (hereinafter referred to as Copyright Law), YouTube content is a creation and the creator of the YouTube content is referred to as the creator, for that the creator of the YouTube content is entitled to copyright on their creation, which is a YouTube content.

¹¹ Interview with Interviewee Representative of Bank BRI, Bank Mandiri, dan Bank BSI, 4 December 2022

¹² DailySocial, "Kilas Balik Sejarah Youtube Sebelum Jadi Platform Video Terbesar di Dunia", Available at: <https://dailysocial.id/post/apa-itu-youtube>, Last accessed: 21 February 2024

Copyright is a private right derived from human thought in the fields of science, art, and literature. Copyright will apply automatically when the creation was born, with civil rights attached to the creator. Copyright is regulated in Law No. 28 of 2014. Copyright is part of intellectual property with a very broad scope of protective objects because it includes science, art, literature, and computer programs.¹³

The copyright protected in YouTube content is cinematography so that if someone plagiarizes, the affected party can report to the authorities. Plagiarized YouTube content violates the economic rights of the main creator as described in Article 9 paragraph (1) letter b of the Copyright Law. Copyright violators will be subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of 1 billion, in accordance with Article 113 paragraph (3) Copyright Law.¹⁴ Criminal sanctions are the ultimate or last resort if administrative sanctions and civil sanctions are considered insufficient in addressing and achieving the goal of straightening the societal balance.¹⁵ The state provides rules for criminal threats against Intellectual Property Rights (IPR) violators with a form of complaint offense, namely complaints from aggrieved parties are the main requirement for public prosecutors in carrying out their duties, so that if there is no complaint then the prosecutor will not prosecute.¹⁶

YouTube account owners who upload videos that have a large audience and followers can apply for debt to the bank using YouTube content as collateral with several requirements, one of which is registered and received an intellectual property certificate.¹⁷ Collateral (*jaminan* in Indonesian) is a term that comes from the word "*jamin*" which means dependency.¹⁸ The Civil Code explains the meaning of

¹³ Ujang Badru Jaman, dkk., "Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital", Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia, Vol.3. No.1. 2021, p.11.

¹⁴ Bahasan.id, "Bagaimana Perlindungan HKI dalam Konten Youtube", Available at: <https://bahasan.id/bagaimana-perlindungan-hki-dalam-kontenyoutube/#:~:text=Jika%20menilik%20kembali%20dalam%20Undang,terhadap%20ciptaannya%20 yakni%20konten%20Youtube>, Last accessed: 10 March

¹⁵ Sudikno Mertokusumo, "Penemuan Hukum Sebuah Pengantar", Liberty, Yogyakarta, 2006, p. 128.

¹⁶ Direktorat Jenderal Kekayaan Intelektual, "Opera DJKI: Sertifikat sebagai Persyaratan Mengajukan Aduan Pelanggaran KI", Available at: <https://dgip.go.id/artikel/detailartikel/opera-djki-sertifikat-sebagai-persyaratan-mengajukan-aduan-pelanggaranki?kategori=agenda-ki>, Last accessed: 11 January.

¹⁷ Dkdata.co.id, "Konten Youtube Bisa Jadi Jaminan Utang di Bank Mulai Juli", Available at: <https://katadata.co.id/desyetyowati/digital/63edc1eda3e69/konten-youtube-bisa-jadijaminan-utang-di-bank-mulai-juli>, Last accessed: 21 February

¹⁸ Abdul R Saliman, "Hukum Bisnis Untuk Perusahaan", Prenada Media Group, Jakarta, 2008, p. 19.

collateral which consists of several legal literatures written by collateral law experts. Article 1131 of the Civil Code states that collateral is all property belonging to the debtor, both movable and immovable, both present and future, shall be regarded as collateral for all obligations of a person.¹⁹

Article 1 point 23 of the Banking Law states that collateral is an additional security submitted by customers (debtors) to banks with the aim of obtaining credit or financing facilities on a sharia basis. Collateral is an additional guarantee (accessory) submitted to the bank by the debtor with the aim of obtaining a loan facility from the bank.²⁰

Collateral is classified into various kinds derived from existing literature, hence, each literature has a different point of view in classifying collateral, examples from few literatures are as follows;²¹

a. Statutory Collateral and Treaty-Based Collateral

Collateral based on the law is a collateral with the basis contained in the law, in Article 1131 of the Civil Code determines the provisions against all property belonging to the debtor, which already exists or will exist can be used as collateral for its creditors. Collateral based on agreements are collateral that exist because of agreements that occur between 2 (two) or more parties in the form of fiduciary rights, mortgages, personal guarantees, and bank guarantees.

b. General and Special Collateral

Article 1131 of the Civil Code explains that general security is a form of security that encumbers all of the debtor's assets and is addressed to all creditors.²² Special collateral are only intended for certain creditors and the object of the collateral has special provisions, such as pawn, fiduciary, and mortgage rights are given if the insured is a person or legal entity or a bank guarantee.

¹⁹ R.Subekti dan R.Tjitrosudibio, "Kitab Undang-Undang Hukum Perdata", Pradnya Pratama, Jakarta, 2008, p.291.

²⁰ HS, H. Salim, "Perkembangan Hukum Jaminan di Indonesia", PT Rajagrafindo Persada, Jakarta, 2014, p.2.

²¹ Rachmadi Usman, "Hukum Jaminan Keperdataan", Sinar Grafika, Jakarta, 2009, p. 74.

²² *ibid.*

The type of wealth that can be used as debt collateral is in the form of fiduciary collateral for intellectual property, contracts in creative economic activities, and or collection rights in creative economic activities. The requirements for utilizing YouTube content as debt collateral include submitting a proposal, operating a creative economy business, have an agreement related to intellectual property related to creative economy products, and have an intellectual property certificate.

Intellectual Property Rights (IPR) is a right that comes from the work, passion, and creativity of intellectual abilities that contribute to the advancement of human life and have economic values. Intellectual property is the right to enjoy economically derived from intellectual creativity, and economic rights are rights that are useful for obtaining economic benefits for creations in the form of royalties or awards.²³ IPR is a special right, given by the State to people who have rights with the basic foundation of the Law. IPR is born from the work created by someone in the form of legal construction of intellectual property protection as the work of the creator.²⁴

It is stated in Article 9 and Article 25a that intellectual property can be used as an object of fiduciary collateral. A fiduciary transfer of ownership is an agreement on the burden of immovable and movable objects, whether tangible or nontangible, based on trust. Tan Kamelo stated that fiduciary is a transfer of ownership of rights to objects based on trust and provided that the control of the object remains with the owner. Fiduciary collateral is a security right over tangible and intangible movable objects, as well as buildings located on the surface of the land, whether registered or unregistered, which cannot be encumbered and controlled by the fiduciary, used as collateral for debt repayment by prioritizing preferred creditors in receiving fiduciary. The Civil Code classifies tangible objects such as motor vehicles, land, and others. Intangible objects such as copyrights, patents that are not regulated in the Civil Code but are regulated in the IPR Protection Act.²⁵

²³ Nurachmad, Much, "Segala tentang HAKI Indonesia", Buku Biru, Yogyakarta, 2011, p.16.

²⁴ Much Nurachmad, "Segala Tentang HAKI Indonesia", Buku Biru, Yogyakarta, 2012, p.17

²⁵ Riky Rustam, "Hukum Jaminan", UII Press, Yogyakarta, 2017, p. 4.

In reality, the use of YouTube content as an object of debt collateral has not been implemented by financial institutions because it has obstacles that have not been resolved or solutions from Government Regulation No. 24 of 2022. The limitations of calculations and arrangements in YouTube content as debt collateral is one of the problems and to date, no solution has been found.

The object used in the trust collateral can be the copyright of the YouTube content, because according to the nature of the copyright on the content uploaded on YouTube on the basis of Article 16 paragraph (1) of Law No. 28 Year 2014 on Copyright (hereinafter Copyright Law) is a movable but non-material license. Regulations governing the existence of copyright of YouTube content as an object of trust collateral are contained in Article 16 paragraph (3) of the Copyright Law. The provisions contained in the Copyright Law consist of regulations that have not yet been completed with enforcement regulations as well as facilities that interfere, credit with the object of collateral on the copyright of YouTube content to date have not been enforced.²⁶

Article 10 of Government Regulation No. 24 explains that the copyright of YouTube content has been registered in the Ministry of Law and Human Rights and is managed independently of YouTube content copyright or the rights have been transferred to someone. The above-mentioned provisions are deemed not binding on the applicable norms due to the inconsistency of copyright clauses on the YouTube content may be the object of a trust collateral. The cause of the emergence of various legal problems is that there will be a community of YouTube creators who produce original video content by purchasing view services, then content creators will take care of the requirements that meet the criteria so that the content can be used as an object of trust collateral and will cause difficulties to be executed because some of the rights The copyright cannot be marketed in the sense of a sale and purchase agreement made between the copyright owner and the buyer, the content creator is the right holder

²⁶ Aura Mayshinta, dan Muh.Jufri Ahmad, "Perlindungan Terhadap Kreditur Pemegang Jaminan Fidusia Atas Hak Cipta Konten Youtube", Available at: <http://repository.untagsby.ac.id/21613/6/JURNAL%20PENELITIAN.pdf>, Last accessed: 31 May 2023

who has the authority to submit work which will be paid in full by the buyer. Article 18 and Article 30 of the Copyright Law regulates the sale of copyright of the YouTube content in a breakdown. The copyright of YouTube content that will be sold in a breakdown in its execution when the termination agreement has reached 25 years the copyright of such YouTube content by itself will return to the rights of the creator of the content. The further problems that will arise are as follows:

1. Unwillingness of Content Creators to Register Their Work

Copyright protection is intended to protect rights with the aim of relating to the protection of economic rights and moral rights in a work of creation. In general, it is divided into two concepts; the right to publish and the right to copy. Copyright registration is not mandatory, but copyright should still be registered or recorded in the Directorate General of Intellectual Property (DJKI) database, intended to have physical documentary evidence of the collateral protection, in addition to the original document on the recording of the creation can be authentic evidence in the event of a dispute in court, with the basic steps for recording copyright is as follows: ²⁷

- a. Account registration on the Copyright DJKI website;
- b. After the account is verified, login to the Copyright DJKI;
- c. Select the new application menu, then fill in the data form related to the work and its creator completely;
- d. Upload several document attachment requirements, one of which is a sample of the creation in pdf format;
- e. Next, click submit and agree if you feel that all data and attachment documents are correct;
- f. Don't forget to pay the non-tax state revenue (PNPB) copyright fee;
- g. The DJKI will examine and assess to approve the application for the recording of the creation.

The level of awareness of creative economy actors in registering IPR for their works is very low. A musician who is also known as an IPR activist, Melanie Subono, stated that the IPR registration process is perceived as complicated and time-consuming. The

²⁷ Loyal, "Perlindungan Hak Cipta Konten Video Youtube", Available at: <https://prolegal.id/perlindungan-hak-cipta-konten-video-youtube/>, Last accessed: 17 June 2024.

complexity that becomes an obstacle occurs from the fulfilment of registration requirements to the recording procedure.²⁸

The Ministry of Industry assesses that the awareness of Small and Medium Industries (SMI) to register IPR is still very weak, so it is very understandable if there is a struggle for trademarks. The Director General of the Ministry of Industry, Euis Saedah, has indicated that the target for this year was to register 150 brands. However, only 100 brands were registered, and out of those, only 60 brands successfully passed the registration process. This discrepancy can be attributed to certain challenges faced by SMIs, such as the perceived complexity of the registration process, which requires the submission of a synopsis. Additionally, cost-related concerns have been raised. It is worth noting that the registration process for IPR, including copyrights, patents, brands, industrial designs, and integrated circuit layout designs, is provided free of charge.

The lack of awareness of creative economy actors in registering copyrights on their YouTube content has led to the non-realization of Government Regulation No. 24 of 2022 are not realized. One of the requirements of YouTube content to be eligible as an object of collateral is that the work has been recorded and registered with the relevant ministry responsible for legal affairs, this registration process requires providing a recording letter and an Intellectual Property Rights (IPR) certificate.²⁹ The limited awareness among actors to register their work stands as a significant challenge in realizing the utilization of YouTube content as a fiduciary collateral.

2. Determination of the economic value of an intellectual property right YouTube content

The economic value determination of a right to be a debt collateral to this day still requires further assessment by the Financial Services Authority (hereinafter referred

²⁸ Tempo, "Enggan Mendaftarkan Hak Kekayaan Intelektual", Available at: <https://koran.tempo.co/read/ekonomi-dan-bisnis/475372/mengapa-pelaku-ekonomi-kreatif-malasmendaftarkan-hak-kekayaan-intelektual>, Last accessed: 17 June 2024.

²⁹ Kekayaan Intelektual, "Mulai Juli 2023, Konten Youtube Bisa Jadi Jaminan di Bank Available at: <https://kontrakhukum.com/article/youtube-jaminan-bank/>, Last accessed: 17 June

to as the OJK), since the ecosystem of IP rights in the secondary market is still weak and there's no sufficient mechanisms to measure the economic value of IPR.³⁰

Measuring the economic value is a crucial aspect for banking institutions, as they must exercise careful consideration when granting loans. The determination of whether a debtor is eligible or not in receiving a loan is reviewed from the principle of 5C (Fives of Credit), one of the principles of which collateral and is said to be of paramount importance because the bank institution must accept collateral from the debtor which has the function of security when the debtors cannot pay their obligations. Compulsory collateral is analyzed from a jurisprudential and economic point of view so that the validity of the collateral is known.³¹

The debtor may be hindered or failed to fulfil their obligation to repay their loan for it requires security in the form of a value or more than the nominal amount issued by the bank, so that the bank will still get the money that has been borrowed. The collateral is a form of legal certainty for the creditor that the debtor will perform his obligations, collateral is divided into two types: collateral of authenticity or trust and individual collateral. The provisions relating to trust collateral is contained in Law No. 42 of 1999 on trust based on the assignment of property rights, which states that the fiduciary transfer of ownership remains in the possession of the debtor and can be used for business activities.³²

Collateral in the form of goods, land, securities, etc. are common, in contrast to YouTube content in assessing it is still unclear because there are no guidelines or basis in assessing the nominal value of copyright on YouTube content. The rejection of bank institutions on copyright as a fiduciary collateral is very large because it has

³⁰ Linda Hasibuan, "Konten YouTube Jadi Jaminan Bank, Ini Penjelasan Kemenkum HAM", Available at: <https://www.cnbcindonesia.com/lifestyle/20220726150429-33-358684/konten-youtube-jadi-jaminanbank-ini-penjelasan-kemenkumham#:~:text=Jakarta%2C%20CNBC%20Indonesia%20%2D%20Kementerian%20Hukum,Tahun%202022%20tentang%20Ekonomi%20Kreatif>, Last accessed: 5 February

³¹ I Made Adi Guntara dan Ni Made Ari Yuliantini Griadhi, "Penerapan Prinsip 5C Sebagai Upaya Perlindungan Terhadap Bank di Dalam Menyalurkan Kredit", *Journal Ilmu Hukum*, Vol.7. No.8. 2019, p. 9-10

³² Heddy Kandou, Dhaniswara K Harjono, dan Aartje Tehupieory, "Jaminan Fidusia Sebagai Jaminan Kebendaan yang Memberi Hak Mendahului dalam Perolehan Pelunasan Hutang", *E-Journal Uki*, Vol.7. 2021, p. 134-135

constraints on the nominal assessment of a YouTube content.³³ Article 12 of Government Regulation No. 24 of 2022 on the Creative Economy states that the nominal measurement of intellectual property rights using the following approaches:

1) Cost Approach

The approach provides an indication of value by applying the economic principle that a buyer does not overpay for an asset to obtain an asset with the same utility at the time of purchase.

2) Market Approach

This approach produces an indication of value by using a comparison between the asset being valued and a comparable asset for which transaction value information is available.

3) Income Approach

Generates an indication of value by changing future cash flows and adjusting them to the present.

On the aforementioned approach, the Government Regulation No. 24 of 2022 has not regulated in detail regarding the technical assessment of the economic value of intellectual property rights in the form of YouTube content that can be used by banks. Financial institutions' consideration of the use of YouTube content as collateral is understandable because it is still new and there is no regulation used as a basis or guideline. OJK states that a special institution is needed to manage the system of assessing the economic value of intellectual property rights to provide certainty in the value of a fiduciary collateral so that the right holder or creditor gets back the money that has been loaned if the debtor fails to complete his obligations.³⁴

3. Weaknesses in the security of YouTube content

Weak security on YouTube content could cause the content to be hacked and reduces the economic value of the content. Article 1 point 23 of the Copyright Law explains

³³ Humas FH UI, "Hak Cipta Sebagai Jaminan Fidusia Terhambat Sistem Valuasi", Available at: <https://law.ui.ac.id/hak-cipta-sebagai-jaminan-fidusia-terhambat-sistem-valuasi/>, Last accessed: 4 February

³⁴ Hunmas FH UI, "Hak Cipta Sebagai Jaminan Fidusia Terhambat Sistem Valuasi" Op.Cit.

that hacking is the illegal duplication of works and/or related rights products and the widespread distribution of the resulting goods to obtain economic benefits.³⁵

Hacking is an action carried out by forcibly opening a system, computer or network using permission or not using permission. Hacking actions carried out without obtaining permission from certain authorities are said to be illegal in some countries. Criminal Defense Lawyer hackers who hack without permission can be said to have committed a crime, namely an illegal act, even though the hacker did not steal information and damage the system.³⁶

YouTube content can be hacked by irresponsible individuals, YouTube provides a solution by providing a copyright infringement complaint page for users by accessing the page via the YouTube website. Copyright violators will receive a copyright strike resulting in their YouTube account being permanently deleted. The drawback is that YouTube cannot determine copyright ownership and it is listed on the website. Legal protection for account owners is considered very difficult because hackers usually do not include their identity and address on the account.³⁷ Hacking YouTube accounts raises doubts from banks about accepting collateral in the form of YouTube content because it can reduce its economic value, so legal protection for intellectual property to provide YouTube content as collateral is very important.³⁸

Hacking in YouTube video content is in continuity with the definition of YouTube. Baskoro stated that YouTube is a digital media where users can freely upload, download, and share videos on the YouTube media page which can be accessed by users all over the world. Judging from the opinion expressed by Baskoro, YouTube gets free access or can be accessed and downloaded for free and will prevent piracy or hacks on YouTube video content. The application of YouTube content as collateral is the same as other collateral objects, where it requires a separate agreement outside

³⁵ Pasal 1 angka 23 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta

³⁶ Tirto.id, "Mengenal Apa Itu Peretasan dan Hukum di Indonesia Bagi Pelaku", <https://tirto.id/mengenal-apa-itu-peretasan-dan-hukum-di-indonesia-bagi-pelaku-gwjQ>,

Last accessed: 15 March

³⁷ Sinurat Tedy Setiada, dkk, "Perlindungan Hak Cipta di Situs Youtube", Ilmu Hukum, Vol.9. No.2. 2020, p. 333

³⁸ Viskha Purwita Lana, dkk, "Urgensi Kelengkapan Teknis dalam Regulasi Penggunaan Konten Youtube Sebagai Jaminan", Padjajaran Law Review. Vol.10. No.2. 2022, p.10.

the main agreement but is still bound by the main agreement because it is continuous with the debt collateral. One of the contents of this collateral agreement is what will be executed if there is a default in the implementation of the fiduciary transfer of ownership.³⁹ The execution provisions for YouTube content as a form of fiduciary transfer of ownership are the basis for the Fiduciary Law because the Government Regulation Number 24 of 2022 does not regulate the execution of fiduciary collateral for intellectual property rights including copyright.

4. Arrangements for the Execution of Fiduciary Collateral Objects in the form of YouTube Content Copyright

Another problem regarding the implementation of collateral in the form of copyright for YouTube content is related to the arrangement or management of collateral objects in the form of movable and immovable property based on the Fiduciary Law which was issued in 1999 and to date does not exist. There have been changes to regulations, so these regulations do not cause fiduciary security problems in Indonesia.⁴⁰ This raises questions and problems if there are developments that are not accommodated by law, such as developments in intellectual property rights, including copyright, which are the object of fiduciary collateral. The object of fiduciary collateral in copyright is an intangible object that causes creditors to hesitate in guaranteeing the execution of the collateral if the debtor defaults. In implementing intellectual property rights collateral, in this case YouTube content refers to the Fiduciary Law, and adjustments are made to the collateral provisions in the form of copyright. YouTube content is a work in creative digital form which has similarities to the creative economy. Digital works are developed using technology and published on digital platforms.⁴¹

Creative works are entitled to protection and the preservation of their inherent rights, including YouTube content which falls under the scope of copyright. These rights

³⁹ Widya Marthauli Handayani, "Keberlakuan Hukum Hak Cipta sebagai Objek Jaminan Fidusia Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Jurnal Legislasi Indonesia*, Vol.16. No.2. 2019, p. 221

⁴⁰ Irene Maria, Switcha, "Problematik Pelaksanaan Hak Cipta Atas Permainan Video Sebagai Objek Jaminan Fidusia" *Padjajaran Law Review*, Vol.9. No.1. 2021, p. 8.

⁴¹ Fitri Astari Asril, Rika Ratna P, Tasya Safiranita R., "Perlindungan Hak Cipta pada Platform Digital Kreatif YouTube", *Jurnal Jurisprudence*, Vol.10. No.2. 2020, p.148.

encompass both economic and moral aspects, necessitating the creator's responsibility to safeguard them. Economic rights, such as royalties, are typically associated with the work's owner, and the collection of royalties is overseen by the Collective Management Institute.⁴² The aforementioned explanation serves as the foundation for considering YouTube content, registered with the Director General of Intellectual Property Rights, as a viable object of fiduciary collateral. This registration ensures the recognition and protection of economic royalty rights associated with the content used as collateral.

Some individuals suggest implementing fiduciary collateral for YouTube content by selling, auctioning, or disbursing collateral in the form of royalties through financial institutions to repay debts. In cases where debtors are unable to fulfill their obligations, private sales between banking institutions and copyright owners of digital works can be considered as a potential solution. To facilitate this process, the creation of an account is required to store the copyright owner's royalty payments in the bank. It is important to note that economic rights, in the form of royalties, are associated with the work's owner, and the supervision of royalty collection is overseen by the Collective Management Institute. This reasoning forms the basis for recognizing YouTube content, protected by copyright and registered with the Director General of Intellectual Property Rights, as a suitable object for fiduciary collateral, specifically in relation to economic royalty rights. Private sales are required to create an account that functions to store the copyright owner's royalty payments in the bank.⁴³

Another opinion states that the implementation of fiduciary collateral in the form of copyright, in this case YouTube content, is carried out by executing all rights, not only economic rights, and loyalty rights. Execution of fiduciary collateral is carried out if there is notification that the copyright holder has been declared in default. Financial institutions or banks have full authority to implement all rights and interests of

⁴² *Ibid.*, p. 154

⁴³ Djoko Hadi S., Agung Sujatmiko, "Royalti Hak Cipta Sebagai Obyek Jaminan Fidusia", E-Journal Undip, Vol.46. No.3. Juli 2017, p. 203.

debtors if the copyright is transferred to the bank as a creditor so that the bank can register copyright in the form of YouTube content in the name of the Director General's successor. Intellectual Property Rights, banks can exercise their rights over these rights. make it in the form of YouTube content.⁴⁴

The transfer of overall copyright ownership of YouTube content to banks has a long-term impact which is considered detrimental if you look closely, YouTube content is a digital work whose economic value will increase over time if the content creator continues to create it, work and creation that seen by a lot of people.⁴⁵ The value of royalty rights on YouTube content comes from advertising, the number of viewers, and the number of followers or subscribers of a YouTube account. Copyright is YouTube content that changes ownership completely so the owner of the digital work no longer plays a role or works on the content and will most likely cause a decrease in the number of viewers which can reduce the economic value of YouTube content copyright.

YouTube content that is used as collateral for debt will cause several problems for bank financial institutions and non-bank financial institutions, these problems are as explained by the author above, so government regulations are needed that regulate the arrangements or provisions related to these problems. Based on the description given by the researcher above, there are obstacles in its implementation so the legal sanctions contained in Government Regulation Number 24 of 2022 cannot be implemented since there is no regulation regarding the problems currently faced by bank financial institutions.

⁴⁴ Luh Inggita Dharmapatni, "Hak Cipta Sebagai Suatu Objek Jaminan Fidusia", *Lex Journal: Kajian Hukum & Keadilan*, Vol.2. No.2. 2018, p. 24-25.

⁴⁵ Andi Saputra, "Konten YouTube Saya Diberi Iklan, Bagaimana Cara Meminta Royaltinya?" available at: <https://news.detik.com/berita/d-5784323/konten-youtube-saya-diberi-iklan-bagaimana-cara-memintaroyaltinya>, Last accessed: 6 February

CONCLUSION

Based on the results of the discussions that have been made, it can be concluded as follows:

1. There are legal issues, first regarding the nominal assessment or economic value of intellectual property rights which have not regulated detail in Government Regulation Number 24 of 2022 on the Creative Economy in the form of YouTube content which can be used as collateral for banking institutions. Second, the weak security of YouTube content can be hacked by irresponsible parties, resulting in a decrease in the economic value of YouTube content and causing material losses for guarantors or banks. Third, the implementation of collateral in the form of copyright, namely YouTube content, regulations regarding collateral objects, both movable and immovable goods are regulated in the Fiduciary Law of 1999.
2. Cooperation between the Director General of Intellectual Property Rights in examining intellectual property certificates aims to provide convenience for the team assessing intellectual property that will be used as collateral. There is no special institution that handles the nominal assessment of YouTube content as collateral, so there is a need for training for the intellectual property assessment team consisting of relevant financial institutions. The government can collaborate with Electronic Transaction System Operators by updating the national cyber security strategy and increasing information security standards, then providing guidance and supervision of electronic system management aimed at preventing hacking of YouTube content which is an obstacle to being used as collateral for debt. The creation of new regulations by the Government which regulate in detail covering related technicalities, the use of YouTube content as collateral, as a complete legal basis or foundation is useful for providing protection and providing legal certainty to financial institutions and creators of YouTube intellectual works. If regulations regarding these technical matters are not carried out immediately, then the government's efforts to use YouTube content as collateral will be in vain because bank financial institutions

are reluctant to provide loans and royalties from content creators cannot be developed and utilized perfectly.

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COMPETING INTEREST

There is no conflict of interest in the publication of this article

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