



Obstacles and alternative solutions to the valuation of YouTube content as collateral in intellectual property based financing

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Abstract

The rapid globalization of the creative economy sector means that Intellectual Properties can be used as collaterals. One of them is YouTube content which is the result of creativity that has copyright. The mechanism for this is regulated in Law Number 24 of 2019 concerning Creative Economy. To provide a legal certainty on the creative economy, the Government has issued Government Regulation Number 24 of 2022 concerning Implementation Regulations of Law Number 24 of 2019 on the Creative Economy. It provides benefits for creative economy actors, one of whom is a content creator or YouTuber. As the owner of copyright which is one of intellectual properties, he or she can cultivate and utilize it. However, although normatively intellectual property can be used as an object of collateral, this still raises several challenges that can hinder its implementation. One of them is the valuation of YouTube content as a collateral for debt. This research used normative legal research methods and the results were analyzed by using statutory and conceptual approaches which might be a solution to the problem of YouTube content valuation through collateral monitoring & evaluation, a monitoring of credit and collateral in banking.

Keywords: Collateral, YouTube, copyright, intellectual property rights

Introduction

The rapid globalization of the creative economy sector means that Intellectual Properties can be used as collaterals. One of them is YouTube content which is the result of creativity that has copyright. Regulation contained in Law Number 24 of 2019 concerning Creative Economy (hereinafter referred to as Creative Economy Law) Article 1 Paragraph (1) states that, "Added value from intellectual property that originates from human creativity based on cultural heritage, science and/ or technology can be realized." Creative economy is a manifestation of development in the fields of finance and intellectual property which offers facilities in obtaining economic rights for those involved. The appropriateness of these rights is inherent in intellectual creativity which can be used as collateral for banking and non-financial institutions (Rafli *et al.*, 2023) ^[7].

YouTube content is a work of art in the form of videos uploaded to the social media platform, YouTube. This is included in cinematography copyright which is regulated in Law Number 28 of 2014 on Copyright (hereinafter referred to as UUHC). The implementation of these laws and regulations is in line with the conditions of Indonesia, which is an archipelagic country where there is a lot of diversity, including diversity in arts and culture, which needs to be protected by law through statutory regulations (Dewi and Mangala, 2022) ^[13].

To provide a legal certainty regarding the creative economy, the Government issued Government Regulation Number 24 of 2022 concerning Implementation Regulations of Law Number 24 of 2019 concerning Creative Economy (hereinafter referred to as Government Regulation on the Creative Economy). It includes intellectual property-based financing mechanisms. The economic principles of Intellectual Property Rights in the Creative Economy Law include the theory of natural law which respects every result

of the human mind so that it is useful and can support life for society, especially the perpetrators. (Rafli *et al.*, 2023) ^[7].

The regulation provides benefits for creative economy actors, one of whom is a content creator or YouTuber. As the owner of copyright which is one of intellectual properties, he or she can cultivate and utilize it. However, although normatively intellectual property can be used as an object of collateral, this still raises several challenges that can hinder its implementation. One of them is the valuation of YouTube content as collateral for debt.

Research Method

This research used a normative legal research method and the results were analyzed by using statutory and conceptual approaches. To solve this legal issue, primary and secondary legal materials were collected and then analyzed by using a technique for collecting legal materials by means of a literature study regarding YouTube content as debt collateral. (Marzuki, 2016) ^[10].

Research Results and Discussion

a. Economic Value of Intellectual Property YouTube Content as Collateral

The use of intellectual property rights can influence the development of the business world and drive the national economy. However, not all intellectual properties can be used as collaterals for financing. To be used as collaterals for financing, the intellectual properties must have been recorded or registered with the Ministry of Law and Human Rights of the Republic of Indonesia and either they have been managed independently or the rights of which have been transferred to another party. Apart from that, intellectual property must have creative economic elements in it or be created by creative economic actors (Husny, 2023) ^[12].

One sector of the creative economy that can be guaranteed is YouTube content. It is included in a cinematographic work as a human creative work in the context of Intellectual Property law which receives protection through the copyright regime. Protection of cinematographic works in the UUHC is stated in Article 40 Paragraph (1) Letter m. Based on this provision, cinematographic works – from the beginning to the end of the creation – including those made in the form of video, will receive copyright protection in the creative economy industry related to the creation of video production, films, and photography services, which include cinematography (Mahartha, 2018) ^[1].

YouTube content is created by sacrificing energy, thoughts, time and even a lot of money as well as knowledge and all other forms of idealism that come together to get the best work in its field. In this case, when a YouTube channel gets a lot of subscribers and has attractive visual appearances and contents, it has the opportunity to get sponsorship which will, in return, get economic benefits by promoting its products through YouTube contents. (Ningsih and Maharani, 2019) ^[2].

Apart from that, YouTube content has other economic value through the advertising. YouTube creators cannot choose the type or content of advertisements that will be placed in the video that has been uploaded. This is written in the Google AdSense's own policies and regulations. Google AdSense will choose the advertisements that will be displayed based on the conditions and system used by AdSense itself. Google automatically displays content-targeted ads by carrying out several contextual, placement and personalized targeting methods according to the its system. Placement of advertisements in the form of images, text or videos is conducted by means of its own advertisement database but it will appear automatically in places determined by the creator (Fathudin and Mukromin, 2021) ^[3].

AdSense or Google's online media advertising program is the main source of money for YouTubers. *Google Help* explains that the first step to earn money from YouTube is to fulfill the specified requirements which are:

1. Follow all monetization policies;
2. Live in a country/region where the YouTube Partner Program is available;
3. Have no active community guidelines strikes;
4. Have 4000 watch hours;
5. Have minimal subscribers of 1000;
6. Have a linked AdSense account (Khasanah and Herawati, 2023) ^[9].

Simply put, YouTubers are compensated for each ad view on their channel but the rates vary depending on the region, demographics and even industry.

a. Alternative Solution to YouTube Content Valuation as Collateral in Credit Agreements

In today's digital era, the economic aspects of intellectual property are less useful for industry owners, especially creative industries in Indonesia. It happens when creative industry owners in the digital realm, namely YouTube content as part of copyright, question the aspect of increasing capital through ownership of intellectual property. Even though in several Intellectual Property Laws such as the UUHC, it has been normed that intellectual

property can be used as a fiduciary collateral; it is actually, however, difficult to realize. (Mughtar *et al.*, 2021) ^[4].

One of the factors that supports YouTube content copyright as collateral is related to the valuation. This obstacle is the reason why banks have not been able to accept Intellectual Property Rights (IPR) as collateral. In Indonesia there is no clear concept regarding the assessment of IPR assets, IPR assessment institutions and the concept of due diligence for IPR, especially copyright. This ambiguity gives rise to unclear legal protection regarding collateral in Indonesia. In the banking context, a credit policy should outline responsibilities for appraisal and define standard and formal appraisal procedures, including reference to reassessment of the credit extension. The types and accepted limits on the number of assessments should be described for each type of credit facility (Kurniawan, 2020) ^[6].

In case of credit, a Collateral Appraisal is required. In Indonesia, Public Appraisers are regulated in the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 101/PMK.01/2014 on Public Appraisers. Article 1 Paragraph (1) of the regulation provides an understanding of appraisal, namely the process of providing a written opinion on the economic value of an appraisal object in accordance with the Indonesian Appraisal Standards. Furthermore, Article 1 Paragraph (2) states that an appraiser is someone who has competence in carrying out assessment activities and has passed at least the initial assessment training. Meanwhile, Article 1 Paragraph (3) limits Public Appraisers as appraisers who have obtained permission from the Minister to provide services as regulated in the Minister's regulations on public appraisers (Ibrahim, 2020) ^[8].

As in property valuation, copyright valuation procedures, in this case YouTube content, can be carried out by applying generally accepted methods in the valuation of Intangible Assets in accordance with the Indonesian Valuation Code of Ethics and Indonesian Valuation Standards set by the Indonesian Society of Appraisers in the Indonesian Valuation Standards Edition VII of 2018 (Henrianto, 2023) ^[5].

There are 3 methods that are widely used in assessing Intellectual Property Rights, including copyright, namely:

- a. Cost approach
- b. Market approach
- c. Income approach.

There are 3 things that must be considered in the income approach method, namely:

1. Identifying potential future income from IPR types or services;
2. Measuring income period;
3. Measuring the risk that comes from income, so the essence of this approach is to determine the value of the future from cash flow (Mughtar *et al.*, 2021) ^[4].

Apart from that, the tangible appraisals in accordance with the Indonesian Appraisal Code of Ethics and Indonesian Appraisal Standards set by the Indonesian Appraisal Professional Society in the Indonesian Appraisal Standards VII Edition of 2018 have also been regulated and are in line with the Government Regulation on the Creative Economy in Article 12 Paragraph (1) Appraisal Intellectual Property as intended in Article 8 letter c uses:

- a. Cost approach
- b. Market approach
- c. Income approach; and/or
- d. Other assessment approaches which are in accordance with applicable assessment standards.

Furthermore, Article 12 Paragraph (2) of the Government Regulation concerning Creative Economy states that the assessment of Intellectual Property as referred to in Paragraph (1) is carried out by an Intellectual Property Appraiser and/or a panel of assessors. Meanwhile, Article 12 Paragraph (6) states that the assessment panel as referred to in Paragraph (2) is a group of people appointed by the financial institution.

Despite the fact that Intellectual Property Rights, namely YouTube Content in this case, is part of copyright and the creative economy which is a valuable business asset and a driving force for business and business development, the valuation of the economic value of Copyright still experiences various challenges. Among others is that financial institutions prefer tangible assets because it is difficult to determine the valuation of a copyright such as YouTube content as collateral due to its high risks and high value fluctuations and thus the economic value of a copyright is sometimes doubted. In the end, this causes the level of financial institutions' acceptance of Intellectual Property-based guarantees that require facilities and support, including support for financing facilities as an important means of the concept of the creative economy becoming a valuable creative industry, to remain very low. (Mayana, dkk, 2022) ^[11].

Apart from that, cases of piracy of YouTube content which is part of copyright often occur. This is because very few works circulating in the community have been registered with the government to obtain an intellectual property certificate. This frequent piracy is also caused by weak law enforcement regarding piracy problem and this leads to a decrease in the value of intellectual property. Therefore, financial institutions often reject intellectual property as collateral because its value will decrease if piracy occurs (Husny, 2023) ^[12].

One solution to solving the problem of evaluating YouTube content is collateral monitoring & evaluation, a credit and collateral monitoring which is very common in banking credit management practices. This monitoring can also include regular monitoring and evaluation of the collateral to ensure that its value can still cover the credit being applied for. When the bank finds that there is a possibility or risk of a decrease in the value of the collateral, the bank can request additional collateral to cover the insufficient collateral value. It can also be agreed from the start between the Bank and the Debtor that provisions of the debtor's obligations or the guarantor to replace or increase the collateral value in case the collateral value decreases or is insufficient. (Mayana, *et al*, 2022) ^[11].

Furthermore, in the context of YouTube content valuation, it is also very important to pay attention to the collateral monitoring & evaluation clause. Periodic evaluation of collateral to ensure that its value can still cover the proposed credit should be conducted. This clause can be applied to financial institution agreements with content creators or YouTubers. When the bank finds that there is a possibility or risk of decreasing the value of the collateral, the bank can request additional collateral. This kind of provision is also

often found in the provisions of a fiduciary collateral deed which essentially states, "If any part of the Fiduciary Collateral Object or among the Fiduciary Collateral Objects provided can no longer be used as collateral or has reduced in value, then the Fiduciary Giver hereby promises and therefore binds himself to replace parts of or Fiduciary Collateral Objects that cannot be used or have reduced in value with other Fiduciary Collateral Objects of the same type whose value is equivalent to the one being replaced and which can be approved by the Fiduciary Recipient" (Mayana, *et al*, 2022) ^[11].

Conclusion

YouTube content is an Intellectual Property Right which is part of Copyright. It has a high risk when pledged or when high fluctuations in value occur which causes the economic value of a copyright to become unstable. In addition, the high number of cases of piracy of YouTube content can also cause YouTube content to decline in value. This causes financial institutions to be doubted in accepting such Intellectual Property-based collaterals. Obstacles in the valuation of YouTube content used as collateral for debt can be overcome by providing a collateral monitoring & evaluation clause in the credit agreement and carrying out periodic evaluations of the collateral so that its value can still cover the credit being applied for.

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