

COPYRIGHT LAW AS COLLATERAL UNDER PAWN AND FIDUCIARY SCHEMES: A PERSPECTIVE BASED ON DSN-MUI FATWA NO. 25 OF 2002 ON RAHN AND DSN-MUI FATWA NO. 68 OF 2008 ON RAHN TASJILY

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Abstract:

Collateral is a fundamental requirement in credit transactions, both in conventional and Islamic banking and financial institutions. However, with the advancement of the times, it becomes necessary to examine the legal framework governing the use of copyright as collateral under a pawn scheme. Furthermore, how can copyright be utilized as collateral in credit transactions in accordance with both positive law and Islamic law? This study adopts a normative-empirical approach, analyzing regulations related to intellectual property rights—particularly copyright—and secured transactions such as Law No. 28 of 2014 on Copyright, Bank Indonesia Regulation No. 9 of 2007 on Bank Credit Collateral, and the DSN-MUI Fatwa No. 68 of 2008 on Rahn Tasjily. The findings of this study indicate that under the Copyright Law, copyright can indeed serve as collateral in credit transactions, but only through the fiduciary scheme. In practice, however, both conventional and Islamic banks have not yet fully implemented copyright-based collateral due to the absence of specific regulations that comprehensively govern such practices.

Keywords: *Copyright Law, Collateral, Fiduciary, Pawn, Rahn, Islamic Banking, DSN-MUI Fatwa.*

INTRODUCTION

In the current era of globalization, where technology continues to advance rapidly, human needs have increased across various aspects of life. Most industrialized nations have recognized the importance of economic development through innovation to effectively and efficiently meet these needs. In Indonesia, this recognition is embodied in the establishment of the Creative Economy Agency (BEKRAF), a state institution dedicated specifically to addressing creative economy issues.

As time and technology evolve, the concept of wealth has also undergone transformation. The legal system has categorized wealth into three main forms: recognition of individual ownership rights over intangible property; tangible property such as land and buildings; and intellectual property, derived from the product of human intellect. All countries, to varying degrees, recognize rights arising from intellectual creation, such as copyrights, patents, trademarks, and trade secrets (Budi Agus Riswandi, 2005).

Intellectual Property Rights (IPR) play a significant role in supporting the creative economy. Holders of IPR, particularly copyrights, possess exclusive rights that allow them to independently or collaboratively commercialize their works through licensing or franchising agreements. These exclusive rights include both moral and economic rights.

Copyright, as a form of intellectual property, can carry substantial material value when utilized effectively. It has a marketable economic value due to the intellectual effort involved in its creation (Law

No. 28 of 2014 on Copyright). This economic value arises because the creation of a work demands mental labor, an expression of intellect that grants copyright its monetizable essence (OK Saidin, 2004). Investment in copyright, cultural heritage, franchising, and the creative economy may be undertaken by individuals, community groups, private companies, state-owned enterprises, regional government entities, national and private institutions (including foundations, cooperatives, and associations), mass media, academic institutions, and research organizations. In practice, franchising investment is generally undertaken by individuals or private enterprises (Iswi, 2015).

Creating a valuable intellectual work is not a simple task; it requires significant effort, creativity, and often financial resources. Similar to starting a business, capital is essential, and such funding is typically sought through financial institutions—whether banks or non-bank lenders. As is widely understood, financing agreements between banks and borrowers often require collateral as a form of moral and legal assurance by the debtor to the creditor.

Article 16 of the Indonesian Copyright Law (UUHC) states that copyright may be used as fiduciary collateral. However, from the perspective of collateral law, copyright may also serve as a pledgeable asset. Nevertheless, in practice, the use of copyright as collateral, whether through fiduciary or pledge (rahn) schemes, has yet to be widely implemented by financial institutions, especially within both conventional and Islamic banking sectors. This study, therefore, aims to examine "The Legal Framework of Copyright as Collateral through Pledge and Fiduciary Schemes from the Perspective of DSN-MUI Fatwa No. 25 of 2002 on Rahn and DSN-MUI Fatwa No. 68 of 2008 on Rahn Tasjily."

RESEARCH METHOD

This study employs a normative-empirical legal research method. The normative aspect involves analyzing laws and regulations related to intellectual property rights, particularly copyright, and the legal frameworks governing collateralization through pledge (gadai) and fiduciary transfer. Key statutory sources include Law No. 28 of 2014 concerning Copyright, Bank Indonesia Regulation No. 9 of 2007 concerning Bank Loan Collateral, and relevant fatwas issued by the Indonesian Ulema Council (DSN-MUI), namely Fatwa No. 25 of 2002 on Rahn and Fatwa No. 68 of 2008 on Rahn Tasjily.

The empirical component is conducted through field studies and interviews with legal practitioners and financial industry stakeholders to understand the practical implementation and challenges of using copyright as collateral in banking institutions, both conventional and sharia-based. This dual approach allows the research to bridge theoretical legal constructs with real-world application, identifying gaps between regulation and practice. The findings are then analyzed qualitatively to formulate legal arguments and policy recommendations.

RESULT AND DISCUSSION

In the current era of globalization, rapid technological advancements have significantly elevated human needs across various aspects of life. Many industrialized countries have recognized the strategic importance of developing creative industries, particularly those based on intellectual property rights (IPRs). According to Hariyanti (2010), this sector is considered essential for several reasons: it is not reliant on natural resources, it is renewable in nature, it can serve as a major source of foreign exchange, it adds value to products and services, enhances national image and pride, is environmentally friendly, generates substantial employment opportunities, fosters creativity, and helps instill moral values in society.

Creative industries based on IPRs are among the sectors that require strategic development. To support such development, rights holders often require financial capital. Therefore, legal innovation is necessary to enable the use of copyrights as collateral in credit or financing schemes.

Collateral is derived from the term *zerkheid* or *cautie*, which denotes the debtor's ability to fulfill or repay obligations to the creditor by pledging economically valuable assets as security for the received credit or loan (Usman, 2009). In the Indonesian context, "jaminan" (guarantee or collateral) is rooted in the word "jamin," meaning "to be responsible."

Collateral plays a critical role in both conventional and Islamic financial transactions. Therefore, the existence of legal provisions regulating guarantees is crucial. According to Salim H.S. (2012), collateral law encompasses all legal norms governing the relationship between guarantors and guarantee recipients in the context of encumbering collateral to access credit facilities.

In banking practice, collateral is a prerequisite for loan agreements. The term "credit" originates from the Latin word *crede*, meaning "trust" (Wangawidjaja Z., 2012). The fundamental distinction between conventional credit and Islamic financing lies in the return mechanism: conventional banks apply interest, while Islamic banks operate based on contractual principles in line with Sharia.

Generally, Islamic banks finance transactions in the forms of trade, lease, profit-sharing, and equity participation (Law No. 21 of 2008 on Islamic Banking). Financing is granted only when a customer's application is accompanied by eligible collateral. Banks are obligated to conduct credit analysis to mitigate potential default risks. Murti (2010) identifies key principles of sound credit: written agreements must exist, lending must not be extended to clearly unviable ventures, banks must avoid speculative investments in stocks, and lending must respect maximum exposure limits.

Collateral feasibility is a key consideration in determining the debtor's eligibility for financing, known as the prudential standard (Anshory, 2008). Collateral also serves as an instrument of repayment in the event of default.

In Indonesia, five types of collateral are recognized:

- a. Pledge (*Gadai*): the right of a creditor over a movable item delivered by the debtor as security for a debt, granting the creditor priority in repayment (Civil Code 1838);
- b. Fiduciary Transfer: ownership rights transferred on the basis of trust, while the object remains in the debtor's possession (Law No. 42 of 1999 on Fiduciary Guarantees);
- c. Mortgage (*Hak Tanggungan*): security rights over land and immovable property attached to the land;
- d. Ship Hypothec (*Hipotek Kapal*): where ships above 20 gross tons are mortgaged as collateral (Law No. 17 of 2008 on Shipping);
- e. Warehouse Receipt: a document certifying ownership of goods stored in a certified warehouse.

In Islamic economics, collateral is grounded in the concepts of *rahn* (pledge) and *kafalah* (guarantee), with both mechanisms requiring mutual consent and agreement to be legally valid.

IPRs include copyrights, patents, trademarks, industrial designs, integrated circuit layout designs, trade secrets, and plant variety protection. All these rights are classified as movable assets and can be used as loan collateral under pledge or fiduciary schemes.

Copyrights, in particular, are intellectual assets in the fields of science, arts, and literature that play a strategic role in supporting national development and general welfare, as mandated by the 1945 Constitution of the Republic of Indonesia (Law No. 28 of 2014 on Copyrights). Copyright is defined as an exclusive right granted automatically to creators upon the realization of their work in tangible form, subject to legal limitations.

According to Article 16(4) of the Copyright Law, copyrights may serve as fiduciary collateral in accordance with applicable laws. However, in practice, the application of copyrights as loan collateral in the banking sector remains underdeveloped. As of now, Bank Indonesia only recognizes the following forms of collateral: (a) traded securities and stocks pledged; (b) land and buildings mortgaged; (c) machinery affixed to land mortgaged; (d) aircraft and vessels above 20 cubic meters hypothecated; (e) motor vehicles and inventory covered by fiduciary arrangements; and (f) warehouse receipts covered by warehouse receipt guarantees (Hariyanti, 2010).

Table 1. Types of Collateral According to Article 46 of Bank Indonesia Regulation No. 9 of 2007

Type of Collateral	Security Mechanism	Legal Basis
Securities and shares actively traded on the Indonesia Stock Exchange or holding investment-grade ratings	Pledge	Indonesian Civil Code, Articles 1150–1160
Land, buildings, residential properties	Mortgage (<i>Hak Tanggungan</i>)	Law No. 4 of 1996 on Mortgage Rights
Machinery integrated with land	Mortgage (<i>Hak Tanggungan</i>)	Law No. 4 of 1996 on Mortgage Rights

Aircraft or sea vessels with a volume over 20 cubic meters	Hypothec	Law No. 17 of 2008 on Shipping and Law No. 1 of 2009 on Aviation
Motor vehicles and inventory	Fiduciary Transfer	Law No. 42 of 1999 on Fiduciary Guarantee
Warehouse receipts	Warehouse Receipt Guarantee Right	Law No. 9 of 2006 in conjunction with Law No. 9 of 2011 on Warehouse Receipt System

The term "credit collateral" as defined in the Bank Indonesia Director Decree No. 23/69/KEP/DIR dated February 28, 1991, Article 2 paragraph (1), is "the bank's confidence in the debtor's ability to repay the credit in accordance with the agreed terms." To establish such confidence, banks are required to conduct a thorough assessment prior to granting credit, taking into account the debtor's character, capacity, capital, collateral, and business prospects (Muhamad Djumhana, 2000). According to the elucidation of Article 8 of Law No. 10 of 1998, the form of collateral may include goods, projects, or accounts receivable financed by the respective credit.

Collateral is generally required to be based on a written agreement, formalized through a notarial deed that is standardized and executorial in nature. The executorial aspect means that if the debtor defaults, the bank may directly request the execution of the collateral through the district court without undergoing a lengthy litigation process. Such agreements serve to uphold the principle of prudence in credit or financing arrangements, ensuring full repayment of the credit facility (Hariyanti, 2010c).

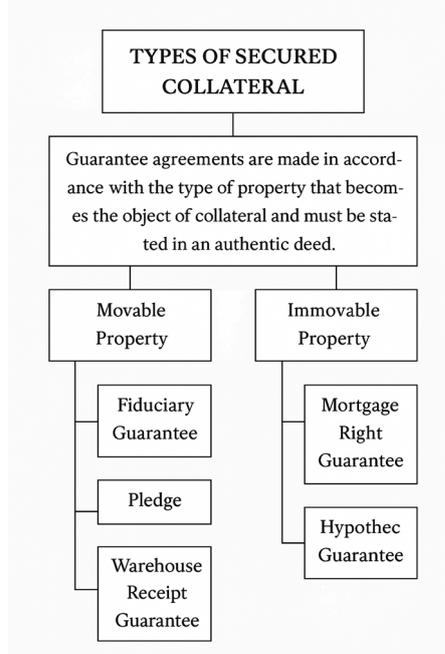


Figure 1. Types of Secured Collateral

In the Indonesian legal system, collateral is categorized into two primary types: security rights over immovable property (*hak tanggungan*) and security rights over movable property, which include pledge (*gadai*) and fiduciary transfer (*fidusia*). The distinction lies in the creditor's control over the collateral: (a) collateral under the creditor's possession, such as pledge and retention rights; and (b) collateral not under the creditor's possession, such as fiduciary transfer, mortgage rights, hire purchase, and hypothec.

Pledge is governed by Articles 1150 to 1161 of the Indonesian Civil Code and institutionally regulated by Government Regulation No. 10 of 1990 concerning Pawnshops. The establishment of a pledge involves two stages: (a) the initial agreement wherein the debtor commits to providing movable property as security for a loan, which is consensual and obligatory; and (b) the delivery of the pledged item into the

creditor's possession. Given that pledged items are movable, they must be removed from the debtor's control. flevin.com

The requirements for a valid pledge include:

1. An existing principal debt agreement.
2. A subsequent pledge agreement serving as an accessory to the principal agreement.
3. Delivery of the pledged item to the creditor.
4. Transfer of possession, not ownership, of the pledged item from debtor to creditor.
5. Possibility of third-party custody of the pledged item with mutual consent.
6. Prohibition of the pledged item remaining under the debtor's control.

Under Islamic principles, pledge (*rahn*) is permissible as per the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Fatwa No. 25 of 2002. Key stipulations include:

1. The creditor (*murtahin*) holds the right to retain the pledged item (*marhun*) until the debtor (*rahin*) fulfills the debt obligation.
2. The pledged item and its benefits remain the property of the debtor.
3. The creditor may not utilize the pledged item without the debtor's consent and must not diminish its value.
4. Maintenance and storage responsibilities primarily lie with the debtor, although the creditor may undertake these tasks, with associated costs borne by the debtor.
5. Maintenance costs must not be tied to the loan amount.
6. Upon default, the creditor must notify the debtor to settle the debt.
7. If the debtor fails to repay, the pledged item may be sold through sharia-compliant means, with proceeds used to cover the debt, maintenance, storage, and sale costs.
8. Any surplus from the sale returns to the debtor, while any deficit remains the debtor's responsibility.

In the context of pledging copyright, the moral rights of the creator remain intact, regardless of the transfer of economic rights. The pledged item, comprising the copyrighted work and its certificate, is held by the creditor and may be executed upon debtor default through court order, *parate* execution, or private sale. Under DSN-MUI Fatwa No. 25 of 2002, disputes are to be resolved via arbitration.

Fiduciary transfer, derived from the Latin '*fides*' meaning 'trust,' involves the transfer of ownership rights to the creditor while the debtor retains possession of the collateral. Subekti defines fiduciary transfer as the transfer of ownership based on trust, serving as security for a debt. Initially applied to movable tangible assets, fiduciary transfer now extends to intangible and certain immovable assets not subject to mortgage rights. bfi.co.id+1 ejournal2.undip.ac.id+1 flevin.com

Law No. 42 of 1999 on Fiduciary Guarantees defines fiduciary transfer as a security right over movable tangible or intangible assets and certain immovable assets not encumbered by mortgage rights, remaining under the debtor's control. Copyright, as an intangible movable asset, qualifies for fiduciary transfer and can be partially or wholly transferred through inheritance, grants, *waqf*, wills, written agreements, or other legally recognized means.

In bankruptcy scenarios, as per Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, all debtor assets, including copyrights, may be transferred to creditors, particularly those with preferential rights. This also applies when copyrights are used as fiduciary collateral; upon debtor default, the creditor may execute and transfer the rights over the copyrighted work.

The establishment of a fiduciary agreement requires:

1. A principal debt agreement.
2. A fiduciary agreement as an accessory to the principal agreement.
3. A consensual agreement wherein the debtor commits to transferring ownership rights to the creditor as security.
4. A *constitutum possessorium* arrangement, allowing the debtor to retain possession of the collateral.
5. A usage agreement permitting the debtor to utilize the collateral.

Under DSN-MUI Fatwa No. 68 of 2008 on Rahn Tasjily, fiduciary transfer is permissible, with the debtor retaining possession and the creditor holding the ownership certificate. This aligns with the legal requirement that fiduciary agreements be formalized through notarial deeds and registered with the Fiduciary Registration Office under the Ministry of Law and Human Rights. In the case of copyright, the certificate serves as the primary collateral, while licensing or franchising agreements generating royalties may serve as additional collateral.

Public appraisers play a crucial role in determining the valuation of copyrights used as fiduciary collateral. According to Article 12 paragraph (3) of Government Regulation No. 24 of 2022, appraisers must:

1. Hold a public appraiser license from the Ministry of Finance.
2. Possess expertise in intellectual property valuation.
3. Be registered with the ministry overseeing creative economy affairs.

Despite the regulatory framework, practical challenges persist due to the lack of detailed technical guidelines across relevant institutions, including banking regulations on accepting intellectual property as collateral.

CONCLUSION

This study concludes that collateral is an essential component in credit and financing transactions, both in conventional and Islamic financial systems. In this context, intellectual property rights, particularly copyrights, can serve as valid collateral due to their intangible yet economically valuable nature. Article 16 of Law No. 28 of 2014 on Copyright explicitly permits copyrights to be used as fiduciary collateral. Additionally, if the copyright takes a tangible form such as paintings, sculptures, or carvings, it may also be pledged under a pawn (rahn) scheme. Both fiduciary and pawn-based collateralization of copyright are permissible under Islamic law, provided that the process aligns with the guidelines set forth in DSN-MUI Fatwa No. 25 of 2002 on Rahn and Fatwa No. 68 of 2008 on Rahn Tasjily. However, the practical implementation of copyright as collateral in credit transactions has yet to be fully realized, primarily due to the lack of revision in Bank Indonesia Regulation No. 9 of 2007 on Credit Collateral, which does not yet provide specific technical provisions. Furthermore, appraisers face challenges in evaluating such assets, as the current regulations do not adequately address the operational aspects required by each institution.

REFERENCES

- [1] A. Wangsawidjaja Z. (2012). *Pembiayaan Bank Syariah*. Gramedia Pustaka Utama.
- [2] Abdul Ghofur Anshory. (2008). *Penerapan Prinsip Syariah dalam Lembaga Keuangan, Lembaga Pembiayaan dan Perusahaan Pembiayaan*. Pustaka Pelajar.
- [3] Abdul R. Saliman, Hermansyah, A. J. (2005). *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus*. Penerbit Prenada Media.
- [4] Budi Agus Riswandi. (2005). *Hak Kekayaan Intelektual dan Budaya Hukum*. Raja Grafindo.
- [5] Gunawan Widjaja, A. Y. (2000). *Jaminan Fidusia*. PT RajaGrafindo Persada.
- [6] H.R. Daeng Naja. (2005). *Hukum Kredit dan Bank Garansi (The Bankers Hand Book) (1st ed.)*. PT. Citra Aditya Bakti.
- [7] Iswi Hariyanti. (2010a). *Hak Kekayaan Intelektual Sebagai Jaminan Kredit*. Media HKI Ditjen HKI, Kemenkumham, VII.
- [8] Iswi Hariyanti. (2010b). *Prosedur Mengurus HAKI*. Pustaka Yustisia.
- [9] Iswi Hariyanti. (2010c). *Restrukturisasi dan Penghapusan Kredit Macet*. PT Elex Media Komputindo.
- [10] Iswi, H. Y. C. (2015). *Peran HKI dalam Pengembangan Waralaba dan Ekonomi Kreatif*. Media HKI Ditjen HKI, Kemenkumham, XII.
- [11] *Kitab Undang-Undang Hukum Perdata (KUH Perdata) 1838*, 11 (2019).
- [12] Muhamad Djumhana. (2000). *Hukum Perbankan di Indonesia*. PT. Citra Aditya Bakti.
- [13] MUI, D. S. N. (2008). *Fatwa Dewan Syariah Nasional NO: 68/DSN-MUI/III2008_Rahn Tasjily*. 51, 3.

- [14] MUI, D. S. N. (2016). Fatwa Dewan Syariah Nasional Nomor: 25/DSN-MUI/III/2002. Dewan Syariah Nasional MUI, 7(1), 3.
- [15] Murti, S. D. I. A. (2010). Perjanjian Kredit dengan Jaminan Fidusia Atas Kendaraan Bermotor Yang Dijual Pada Pihak Ketiga Pada PT. Bank Danamon (Persero) Tbk Unit DSP Pracimantoro Wonogiri. Universitas Diponegoro.
- [16] OK.Saidin. (2004). Aspek Hukum Hak Kekayaan Intelektual. Raja Grafindo.
- [17] Rachmadi Usman. (2009). Hukum Jaminan Keperdataan. Sinar Grafika.
- [18] Salim.H.S. (2012). Perkembangan Hukum Jaminan di Indonesia. PT Raja Grafindo Persada.
- [19] Sari, P. M. (2023). Problematika Valuasi Hak Cipta Sebagai Objek Jaminan Fidusia. 6(2), 5307–5320.
- [20] Subekti. (1982). Jaminan-Jaminan untuk Pemberian Kredit Menurut Hukum Indonesia (10th ed.). PT. Alumni.
- [21] Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia, Jdih 1 (1999).
- [22] UU NO.17 Tahun 2008 Tentang Pelayaran, 61 (2008).
- [23] UU No.21 Tahun 2008 Tentang Perbankan Syariah, المجلد 49 69 (2008). https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/MT_Globalization_Report_2018.pdf[http://eprints.lse.ac.uk/43447/1/India_globalisation_society_and_inequalities\(Isero\).pdf](http://eprints.lse.ac.uk/43447/1/India_globalisation_society_and_inequalities(Isero).pdf)<https://www.quora.com/What-is-the>
- [24] UU No. 28 Tahun 2014 Tentang Hak Cipta (2014).