International Journal of Business, Law, and Education
Publisher: IJBLE Scientific Publications Community Inc.
Volume 7, Number 1, 2026
https://ijble.com/index.php/journal/index

Legal Protection for Intellectual Property Rights Holders When Intellectual Property Serves as Debt Collateral: Addressing Indonesia's Enforcement Lacuna

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ABSTRACT
This article examines a regulatory disjunction in Indonesia: intellectual property rights (IPR) are formally recognized as fiduciary collateral, yet the legal framework remains incomplete at the enforcement stage. Using normative legal research with statutory, conceptual, and analytical approaches, the study evaluates primary, secondary, and tertiary legal materials through qualitative, descriptive, and prescriptive analysis. The findings show that IPR has a valid de jure status as collateral but remains practically subordinate because the law does not clearly regulate the object and method of realization, post-sale registration, accredited valuation, or the relationship between transferred economic rights and inalienable moral rights. These deficiencies weaken legal certainty for creditors and debtors. The article proposes an integrated framework consisting of IPR-specific enforcement procedures, standardized valuation, interoperable digital registries, contractual protection of moral rights, adaptive liquidation mechanisms, insurance and escrow arrangements, and specialized judicial oversight with proportional realization. Reform of the Fiduciary Guarantee Law and its implementing regulations is necessary to convert formal recognition into an enforceable and balanced secured-financing regime.

Keywords: intellectual property rights; fiduciary security; debt collateral; legal protection; enforcement lacuna; Indonesia.

DOI. https://doi.org/10.56442/ijble.v7i2.1523

INTRODUCTION

In the creative economy, corporate and individual wealth increasingly derives from intangible rather than exclusively tangible assets, with intellectual property rights (IPR) constituting a particularly important source of commercial value (Wulandari et al., 2024). The expansion of Industry 4.0 and the digital economy has accordingly positioned intellectual property as a significant driver of innovation and economic growth. In Indonesia, Government Regulation No. 24 of 2022 on the Implementation of the Creative Economy Law provides a formal basis for intellectual-property-based financing and permits IPR to be used as debt collateral. This policy reflects an effort to adapt the law of secured transactions to the economic characteristics of creative and knowledge-based industries.

A substantial gap nevertheless remains between the normative recognition of IPR as collateral (das sollen) and the operational capacity of Indonesia's secured-transactions framework (das sein). The principal difficulty arises after default, because the applicable legislation does not provide a sufficiently detailed mechanism for identifying, valuing, transferring, and realizing intangible collateral. From the perspective of Radbruch's theory of legal certainty, a legal regime must be sufficiently clear, coherent, and enforceable to produce predictable outcomes (Azzahra et al., 2025). Where enforcement procedures are incomplete, the creditor's priority and recovery rights become uncertain, while the debtor is exposed to the risk of disproportionate or undervalued realization.

The regulatory disjunction is particularly evident in the application of Law No. 42 of 1999 on Fiduciary Guarantees (the Fiduciary Guarantee Law) to IPR. Although the statute formally encompasses tangible and intangible movable property, its enforcement architecture was developed primarily around assets that can be physically identified, seized, and sold. IPR, by contrast, is legally constructed, temporally limited, and often commercially exploited through licences, royalty streams, or continuously updated digital products. Consequently, formal eligibility as fiduciary collateral has not yet been matched by an operational framework capable of giving the security right equivalent practical effect.

The first barrier concerns the absence of specific procedures for realizing IPR collateral. Conventional fiduciary enforcement generally relies on public auction or supervised private sale of an identifiable asset. In the case of IPR, however, the object of enforcement may be framed as the registration certificate, the economic right itself, a licence, or a stream of royalty receivables. Further uncertainty arises where the commercial use of a patent, software program, or other protected subject matter depends on technical knowledge retained by the original creator. These difficulties may render the creditor's enforcement right practically ineffective and thereby weaken legal certainty in civil enforcement (Ali, 2025).

The second barrier concerns valuation. The economic value of IPR is often volatile and depends on factors such as the remaining term of protection, market demand, licensing arrangements, technological obsolescence, and the enforceability of the underlying right. Indonesia does not yet have a comprehensive, legally integrated system of accredited appraisers and mandatory valuation standards specifically designed for intellectual property collateral. A reliable appraisal must combine legal due diligence with recognized economic methodologies, including income-, market-, and, where appropriate, cost-based approaches. Without such standards, both overvaluation and undervaluation create material risks for creditors and debtors.

The third barrier concerns the registration and transfer of rights following enforcement. The realization of collateral must produce a legally valid and registrable transfer to the purchaser. At present, however, no fully self-executing rule requires the Directorate General of Intellectual Property (DJKI) to record a transfer solely on the basis of fiduciary auction minutes or equivalent evidence of sale. This institutional fragmentation is inconsistent with the preventive and repressive dimensions of legal protection (Hadju et al., 2026). The lack of real-time interoperability between the fiduciary registry administered by the Directorate General of General Legal Administration (AHU) and the DJKI database also creates risks of double pledging, unauthorized transfers, and administrative disputes.

Taken together, these problems constitute an enforcement lacuna: procedural rules for realizing intangible collateral are incomplete; operational standards for valuation remain fragmented; and administrative rules do not ensure automatic synchronization and post-sale registration. This study therefore examines two questions: first, what is the legal status of IPR as an object of fiduciary security within Indonesia's secured-transactions system? Second, what legal framework should be developed to close the enforcement lacuna while providing balanced protection and legal certainty for creditors and debtors?

METHODS

This study employs normative legal research, which focuses on the systematic interpretation and evaluation of rules, principles, and doctrines within positive law (Sukmawan & Damayanti, 2025). It combines statutory, conceptual, and analytical approaches (Antony et al., 2026). The statutory approach examines the Fiduciary Guarantee Law, the Copyright Law, the Patent Law, Government Regulation No. 24 of 2022, and related regulations both vertically and horizontally to identify inconsistencies and regulatory gaps. The conceptual and analytical approaches apply the theories of legal certainty and legal protection to the problems of collateral identification, valuation, registration, moral rights, and post-default realization.

The legal materials comprise primary, secondary, and tertiary sources. Primary materials include binding legislation and other authoritative legal instruments. Secondary materials include scholarly books, journal articles, and previous studies that interpret or critically evaluate the primary materials. Tertiary materials, including legal dictionaries and encyclopaedias, are used to clarify concepts and terminology (Zainuddin & Dinda Karina, 2023). The materials were collected through documentary research and were inventoried, classified, and organized according to the two research questions.

The materials were analysed qualitatively through descriptive and prescriptive legal reasoning. The descriptive stage identifies the existing legal position and the institutional barriers to enforcement. The prescriptive stage evaluates those barriers against the principles of legal certainty, proportionality, and legal protection, and then formulates a coherent regulatory construction. Deductive reasoning is used to move from general legal norms and theories to the specific problems associated with the enforcement of IPR collateral.

RESULTS AND DISCUSSION

1. Legal Status of Intellectual Property Rights as Fiduciary Collateral in Indonesia

The legal basis for treating IPR as fiduciary collateral begins with its classification as intangible movable property (Dalimunthe & Wahyuni, 2023). Article 499 of the Indonesian Civil Code defines property (benda) broadly to include goods and rights capable of ownership (Kheista et al., 2024). Because transferable economic rights have patrimonial value, they can in principle constitute objects of security. Law No. 42 of 1999 further provides that fiduciary security may encumber both tangible and intangible movable property. These provisions establish the formal legal eligibility of IPR to perform a collateral function comparable to that of other movable assets.

More specific recognition appears in sectoral legislation (Estu Lestari, 2025). Article 16(3) of Law No. 28 of 2014 on Copyright and Article 108(1) of Law No. 13 of 2016 on Patents expressly allow the relevant economic rights to serve as objects of fiduciary security. Government Regulation No. 24 of 2022 strengthened this policy by establishing a regulatory framework for intellectual-property-based financing. Read together, these instruments recognize IPR as a legally valid financial asset that may support access to credit.

Formal recognition, however, does not by itself establish effective enforceability. The object of the security must be defined with sufficient precision: it may consist of the registered economic right, specified exploitation rights, royalty receivables, or a defined combination of these interests. A certificate merely evidences registration and should not automatically be equated with the full economic asset. Where the deed fails to identify the encumbered interest, its territorial scope, duration, licences, and associated income streams, the creditor's priority and realization rights remain uncertain. In practice, this uncertainty contributes to the treatment of IPR as supplementary rather than primary collateral.

The current framework also provides incomplete protection against competing dispositions. The fiduciary registry and the intellectual property registry are not integrated in real time, and the absence of a visible encumbrance notation in the DJKI database may allow double pledging or unauthorized transfer. Effective legal protection requires both preventive mechanisms, such as transparent registration and notice to third parties, and repressive mechanisms, such as an enforceable procedure for correcting or reversing unlawful transactions.

Doctrinally, fiduciary security gives the creditor a priority right and a form of droit de suite, under which the security interest follows the encumbered asset into the hands of a subsequent holder (Gozali & Hafidah, 2022). Applying these principles to IPR is nevertheless more complex than applying them to physical property. Intellectual property may be transferred by assignment, licensed in whole or in part, inherited, or exploited across multiple territories. Its economic life is also constrained by the remaining period of legal protection; for example, patents and simple patents are protected for finite statutory terms. If the right expires during the credit period, the collateral value may decline substantially or disappear when the protected subject matter enters the public domain.

Article 6 of the Fiduciary Guarantee Law requires the collateral object to be described specifically in the fiduciary deed. This requirement is particularly important for dynamic assets such as software, databases, and brands whose commercial form may evolve during the loan period. The deed should therefore contain accessory clauses governing updates, derivative versions, renewals, licences, and future royalty streams. The lack of a consistent prudential and accounting treatment for IPR also affects whether such assets can be recognized in collateral coverage, impairment calculations, or foreclosed-asset classifications. These limitations explain why IPR remains institutionally subordinate to conventional collateral despite its formal legal recognition.

2. Integrated Legal Framework for Closing the IPR Enforcement Lacuna

Closing the enforcement lacuna requires an integrated framework that combines preventive and repressive protection. The first pillar is the codification of IPR-specific realization procedures through implementing regulations or revision of the Fiduciary Guarantee Law. These rules should define the enforceable object, the evidence of default, notice requirements, methods of sale, treatment of existing licences, and the legal effect of the transfer. Because general public auctions may not attract buyers capable of assessing specialized intellectual property, the framework should also authorize a regulated secondary market or intellectual property exchange. A specialized market could improve price discovery and reduce the risk that collateral is sold materially below its commercial value.

The second pillar is a standardized valuation system administered through appraisers accredited for intangible assets. The government and the Financial Services Authority (OJK) should develop binding or officially recognized Indonesian valuation standards for intellectual property. Valuation should combine legal due diligence with an appropriate economic method, particularly an income approach for assets that generate predictable royalty or licensing revenue. Professional competence may be strengthened through coordinated accreditation involving both the OJK and the DJKI. Standardization would protect debtors against undervaluation while giving creditors a more reliable basis for determining collateral coverage and lending exposure.

The third pillar is digital registry interoperability. AHU-Online and DJKI-Online should operate through a single, synchronized data architecture. Once a fiduciary certificate is issued, the corresponding IPR record should automatically display an encumbrance notation, such as 'Pledged as Collateral'. Following a valid realization, auction minutes or other legally recognized proof of sale should be sufficient for the DJKI to register the transfer ex officio, subject to procedural safeguards and judicial review. This arrangement would reduce double pledging, unauthorized dispositions, and inconsistent registry records.

The fourth pillar is the contractual protection of moral rights. Realization may transfer economic rights, but the creator's inalienable moral rights remain protected under copyright law. Fiduciary deeds and sale documents should therefore include a proportionate rights-use clause specifying that the purchaser may exercise the transferred economic rights but may not distort the work or use it in a manner that unlawfully harms the creator's honour or reputation. Such a clause would reconcile the commercial function of collateral with the personal rights retained by the creator.

The fifth pillar is an adaptive liquidation mechanism supported by specialized institutional capacity (Urbsanisasi & Susana, 2025). The law should permit supervised private sales when they are likely to produce a better commercial outcome than a general auction, particularly for niche technologies, software, brands, or creative catalogues. A specialized technical unit responsible for IPR realization could assist with due diligence, preservation of digital assets, licence mapping, purchaser qualification, and coordination with the relevant registries. Its role should be procedural and technical, while disputes over validity, default, or proportionality remain subject to judicial control.

The sixth pillar is risk allocation through insurance and escrow arrangements. Intellectual property insurance may mitigate defined risks, including litigation, invalidation, or abrupt loss of market value, provided that coverage and exclusions are transparently regulated. In addition, royalty receivables generated after default may be directed to an escrow account under a legally supervised mechanism. Escrow should preserve the economic yield of the collateral, prevent dissipation, and ensure that collections are applied proportionately to the secured obligation.

The seventh pillar is a coherent judicial forum and a proportionality rule. Granting the Commercial Court specialized jurisdiction over disputed IPR collateral realization could reduce overlapping authority and promote technically informed adjudication. The framework should also incorporate proportional enforcement, consistent with the general orientation of the UNCITRAL Legislative Guide on Secured Transactions. Where the outstanding debt is materially lower than the value of the encumbered right, the law should permit partial realization, for example by transferring a limited territorial licence, a defined field of use, or a specified duration of economic rights, rather than requiring the sale of the entire asset.

Table 1. Juridical Characteristics and Enforcement Barriers: Conventional Collateral versus Intellectual Property

No.	Dimension	Conventional Collateral (Land Mortgage)	Intellectual Property as Fiduciary Collateral
1	Material character	Tangible asset with fixed location and physically ascertainable boundaries.	Intangible and legally constructed asset; may be dynamic, divisible, and exploited across jurisdictions.
2	Valuation profile	Relatively mature market and established valuation practices, including recognized land and professional appraisal benchmarks.	Value may be volatile and dependent on legal validity, remaining protection term, licensing income, technology, and market demand.
3	Enforcement forum	Established auction and judicial mechanisms involving the KPKNL and general courts.	No complete specialist procedure; requires technical support, coordinated registration, and appropriately specialized judicial supervision.
4	Liquidation market	Broad public auction market with generally recognizable asset characteristics.	Often illiquid and buyer-specific; may require a regulated IP exchange or supervised private sale.
5	Residual personal rights	Transfer is predominantly proprietary and economic.	Economic rights may transfer, while the creator's inalienable moral rights remain protected.
6	Registry integration	Land registration and encumbrance records are administered within an integrated land-registration framework.	Fiduciary and intellectual property registries are not yet interoperable in real time.

The principal contribution of this study is the formulation of a seven-pillar legal ecosystem that links realization procedures, valuation, registry interoperability, moral-rights protection, adaptive sales, risk mitigation, and specialized adjudication. This framework extends beyond studies that treat IPR collateral primarily as a valuation or banking issue. It identifies the legal interaction between the creator's continuing moral rights and the purchaser's post-realization economic rights as a central element of enforceable and balanced collateral design.

At the doctrinal level, the enforcement difficulty reflects a regulatory mismatch: a security regime developed around physically identifiable assets is being applied to a dynamic and legally constructed form of property without equivalent procedural adaptation. This mismatch may operate as a form of normative circumvention (rechtsontduiking) where formal recognition is used without supplying the mechanisms necessary to make the right effective. The proposed framework responds to that problem by combining domestic legal reform with internationally recognized principles of secured transactions, including functional enforcement and proportional realization.

The findings have practical implications for the OJK, the DJKI, the fiduciary registration authority, financial institutions, and professional appraisers. These institutions should coordinate valuation standards, registry notices, enforcement documentation, and safeguards for royalty income. The study is limited by its normative and jurisdiction-specific design; it does not empirically assess lender behaviour, appraisal capacity, or market demand for realized IPR. Future research should therefore examine the operational readiness of banks, appraisers, courts, and potential purchasers, and should test the proposed framework against different categories of intellectual property and creative-sector business models.

CONCLUSION

Indonesian law formally recognizes IPR as property capable of serving as fiduciary collateral. Copyright, patent, fiduciary-guarantee, and creative-economy regulations provide a sufficient normative basis for that status. Its practical legal position nevertheless remains weak because the framework does not clearly define the object of enforcement, standardize valuation, integrate the relevant registries, or ensure a registrable transfer after realization. The result is a gap between legal recognition and enforceability that undermines predictability for creditors and protection for debtors.

A credible IPR collateral regime therefore requires an integrated legal ecosystem rather than isolated regulatory amendments. The proposed framework combines IPR-specific realization procedures, standardized and accredited valuation, synchronized digital registration, protection of moral rights, adaptive sale mechanisms, insurance and escrow arrangements, specialized judicial supervision, and proportional realization. Implemented coherently, these measures would allow IPR to function not merely as supplementary collateral but as a legally certain and commercially credible financing instrument that balances the interests of rights holders, creditors, purchasers, and creators.

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