



Volume 38 No 3, September 2023

DOI: 10.20473/ydk.v38i3.44756

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Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

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FAKULTAS HUKUM UNIVERSITAS AIRLANGGA



Article history: Submitted 10 April 2023; Accepted 1 June 2023; Available Online 7 September 2023.

Let's Play Content as a Fiduciary Collateral under Indonesian Law: Potential Challenges

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Abstract

This paper examines the potential implementation challenges of GR 24/2022, specifically related to Let's Play content as a fiduciary collateral. With the rising popularity amongst the younger generation, Let's Play Content has two issues, namely (i) copyright infringement and (ii) inadequate legal instruments. Utilizing a normative juridical analysis, we found that Let's Play content creators may potentially violate copyright laws if they fail to obtain permission or comply with fair use or fair dealing provisions. Furthermore, the current legal instruments available in Indonesia are found to be insufficient, which creates difficulties for stakeholders to mitigate legal risks. To ensure legal certainty and accurate valuations, the government should add supplementing provisions in the implementing regulations, coordinate with relevant parties and conduct education and training programs for appraisers. These steps are necessary in creating a fair business environment and supporting Indonesia's creative industry growth.

Keywords: Creative Economy; Fiduciary Collateral; Intellectual Property; Let's Play Content.

Introduction

The issuance of Government Regulation Number 24 of 2022 concerning the Complementary Regulation of Law Number 24 of 2019 concerning Creative Economy (the "GR 24/2022") reaffirms the Indonesian government's (the "government") commitment to provide inclusive financing services for creative economy actors, especially those classified as Micro, Small, and Medium Enterprises ("MSMEs"). Under Law Number 24 of 2019 concerning the Creative Economy (the "Creative Economy Law"), the government is obligated to facilitate intellectual property-based financing schemes for creative economy actors. This provision mandates the formation of a government regulation on

intellectual property-based financing schemes, which is then realized through GR 24/2022.

The government has set a target to achieve USD 26.46 billion in export value from the creative economy by 2023 while creating 22.29 million job openings, by attracting investment in this sector.¹ However, the development of the creative economy is currently encountering several challenges in its implementation. These include limited access to financial support, insufficient promotion efforts, inadequate infrastructure, insufficient capacity building for creative economy players, and a lack of synergy among stakeholders.² These obstacles have the potential to hinder the growth and success of the creative economy. Therefore, it is crucial to address these issues through effective policies and strategies to ensure the long-term sustainability and advancement of the creative economy.

The rise in internet users has caused a perceptual adaptation in the creative economy industry. According to the report published by Hootsuite and Are We Social, the number of internet users in Indonesia reached 204.7 million people compared to a population of 277.7 million in January 2022.³ The data indicate that internet penetration in Indonesia reached 73.7% in early 2022, increasing by 1% or 2.1 million people in one year. Looking at the data on internet usage, the number of internet users in Indonesia has grown rapidly. In early 2012, there were 39.6 million internet users in Indonesia.⁴ In this regard, an increase in the number of internet users by 519% can be seen over ten years. One way of using the internet for entertainment is by playing video games. In Indonesia itself, the video game market has attracted considerable attention. Based on an article written in *Republika.co.id*, the number of online video game players in Indonesia is the highest in Southeast Asia.⁵

¹ I Gusti Ayu Dewi Hendriyani, 'Siaran Pers: Menparekraf: Pencapaian Target Parekraf 2023 Perlu Ditopang Dengan Deregulasi' (*Kementerian Pariwisata dan Ekonomi Kreatif/Badan Pariwisata dan Ekonomi Kreatif*, 2023).

² Government Regulation Number 24 of 2022 on Implementing Regulation of Law Number 24 of 2019 on Creative Economy, Elucidation.

³ Simon Kemp, 'Digital 2022: Indonesia' (*Datareportal*, 2022).

⁴ *ibid.*

⁵ Rahma Sulistya, 'Jumlah Gamers Online Indonesia Terbanyak Di Asia Tenggara' (*Republika*, 2020).

Indonesia's creative economy industry has seen a surge in market popularity, with entertainment content in the video game genre being one of its most prominent products.⁶ This can be attributed to the exponential growth of social media platforms like TikTok and YouTube, which have provided content creators with a vast audience. Additionally, the general public's positive perception of video game content has contributed to its success, especially with the popularity of games like Mobile Legends and Minecraft. The rise of well-known content creators such as Windah Basudara, MiawAug, Jess No Limit, and Milyhya further highlights the increasing demand for engaging and entertaining video game content.⁷

Let's Play content is a genre of online video content in which content creators play video games and provide commentary, reactions, and interactions with their audience. Let's Play content has become increasingly popular in recent years, with many content creators building large followings and establishing themselves as part of the video game industry. One of the primary reasons for the popularity of Let's Play content is the growth of the video game industry itself; as more people play video games, the demand for content related to video games has increased.⁸

Moreover, with the rise of platforms such as Twitch and YouTube, Let's Play content has become more accessible and easier to create. The process of creating Let's Play content inevitably involves the recording of the played video game. In addition, the content creator's reactions are also recorded. These two recordings are then combined into a video containing the content creator playing the video game. The video is then uploaded to digital platforms such as YouTube and allows the content creator to earn revenue from, for example, advertisement views. Let's Play content has proven to be a valuable source of income for content creators.⁹

⁶ *ibid.*

⁷ Vina Insyani, 'Windah Basudara Hingga Jess No Limit Kuasai YouTube Indonesia' (*UZone*, 2022).

⁸ Sebastian C. Mejia, 'Fair Play: Copyright Issues and Fair Use in Youtube' "Let's Plays" and Video Game Livestreams' (2020) 7 Intellectual Property Brief.[2].

⁹ Dan Hagen, 'Fair Use, Fair Play: Video Game Performances and "Let's Plays" as Transformative Use' (2018) 13 Washington Journal of Law, Technology & Arts.[247].

In the context of intellectual property, the video created by the content creator falls under the category of “Work” and is, therefore, subject to Law Number 28 of 2014 concerning Copyright (the “Indonesian Copyright Law”). Similarly, the video game being recorded also falls under the category of “Work”. The recorded video game is protected by Indonesian Copyright Law, which means that its use must first be granted permission by the author, i.e., the video game developer, or the copyright holder. Often, in the creation of recorded videos, permission from the author or copyright holder is not obtained. According to the Indonesian Copyright Law, the unauthorized creation of such videos potentially violates Indonesian Copyright Law, if the conditions stipulated in Articles 43 to 51 of the Indonesian Copyright Law are not met.

Based on Article 9 paragraph (2) of GR 24/2022, a video created by a content creator can be used as a fiduciary collateral. However, Article 10 of GR 24/2022 stipulates that, before an intellectual property can be used as a collateral for a debt, it requires the intellectual property to (i) be registered and (ii) to have been commercialized. These two requirements are relatively easy for content creators to fulfill. However, they do not ensure that the content creator’s video does not infringe on the intellectual property rights of others. In such conditions, issues may arise when a content creator’s content is used as a collateral.

Based on the above descriptions, we identify three research questions, namely:

1. How is Let’s Play content deemed as works under the Indonesian Copyright Law?
2. How are Let’s Play content deemed as collateral objects under Indonesian collateral law?
3. How does the potential illegality of Let’s Play content affect its use as collateral objects?

Research Methodology

This paper utilizes normative analysis which begins with examining the legal framework of intellectual property rights in Indonesia, specifically on copyright law and its stipulations toward Let’s Play content. This paper also compares provisions

from several other countries on fair use or fair dealing. The next chapter explores the concept of collateral objects under Indonesian collateral law and how Let's Play content can be deemed as a collateral object. Finally, this paper analyzes the potential legal issues surrounding the use of Let's Play content as a collateral object.

The discussion on intellectual property collateral through the fiduciary mechanism has also been explored by several previous researchers. In the banking sector, Prihantiwi and Pujiyono identified various obstacles such as regulations and perception.¹⁰ Setianingrum also found that there are debates regarding the mechanisms of asset valuation and security attachment in various circles.¹¹ The perception toward copyrights also has remained a challenge to the implementation of the law. Unlike other forms of collateral such as land or buildings, copyrights are intangible assets and may not be easily understood by all stakeholders. As a result, banks and financial institutions may be hesitant to accept copyrights as collateral due to concerns over the value and liquidity of these assets.¹² Furthermore, society itself may not view copyrights as valuable assets, which may lead to a lack of demand for loans secured by copyrights.¹³

This paper aims to contribute to the existing literature on the legal status of Let's Play content in Indonesia both as an intellectual property and a collateral object, and the potential legal issues surrounding such content, which hopefully can provide valuable insights for policymakers, legal practitioners, and stakeholders. The authors acknowledge that previous research has addressed the issue of intellectual property collateral in a general sense. However, it should be noted that the specific substance of GR 24/2022 is still in its early stages of discussion, as it is a relatively recent development.

¹⁰ Lidwina Tessa Kurnia Prihantiwi [et., al.], 'Problematika Hak Cipta Sebagai Jaminan Fidusia Dalam Transaksi Kredit Perbankan Di Indonesia' (2020) 8 Jurnal Privat Law.[200].

¹¹ Reni Budi Setianingrum, 'Fidusia, Mekanisme Penentuan Nilai Ekonomis Dan Pengikatan Hak Cipta Sebagai Objek Jaminan' (2016) 23 Jurnal Media Hukum.[229].

¹² Ranti Fauza Mayana, 'Skema Pembiayaan Berbasis Kekayaan Intelektual: Peluang, Tantangan dan Solusi Potensial Terkait Implementasinya' (2022) 1 Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat.[22].

¹³ *ibid.*

Let's Play Content under Indonesian Copyright Law

Let's Play refers to a video in which one or more people play a video game while providing commentary on their actions and the game itself and the video can be captured through screenshots or video footage, and the social and interactive aspect is emphasized, with the audience able to converse with the presenters between episodes.¹⁴ The edited video is then uploaded to social media platforms like YouTube and TikTok, where they generate revenue from advertising. The platform earns money from the advertisements displayed on the videos, and the content creators earn a share of that revenue through AdSense or other advertising programs. The Let's Play genre has become a lucrative business for many content creators, and the popularity of this type of content continues to grow, attracting millions of viewers worldwide.¹⁵

While Let's Play content remains a popular form of entertainment for gamers and viewers alike, it raises important questions about the limits of copyright laws and the protection of intellectual property. The issue of Let's Play content has been a topic of debate in recent years, particularly regarding its legality and potential copyright infringement. Although Let's Play content creators can generate income from their videos, using gameplay footage from video games raises concerns about the violation of copyright laws. As video games themselves are protected by copyright, the use of their content in Let's Play videos could potentially infringe on the rights of the game developers. This issue has been highlighted by several high-profile cases, such as the controversy between Nintendo and Let's Play creator Zack Scott over his use of footage from their games.¹⁶

The Indonesian Copyright Law protects works such as video games. This protection means no one can economically benefit from the work without the consent of the author or the copyright holder. Article 9 of the Indonesian Copyright

¹⁴ Kristoffer S. Fjællingsdal, 'Let's Play: A Modern Social Gaming Dimension? Exploring a "New" Aspect of the Gamer as a Social Entity', *Conference Paper at Norwegian University of Science and Technology* (2014).[1-2].

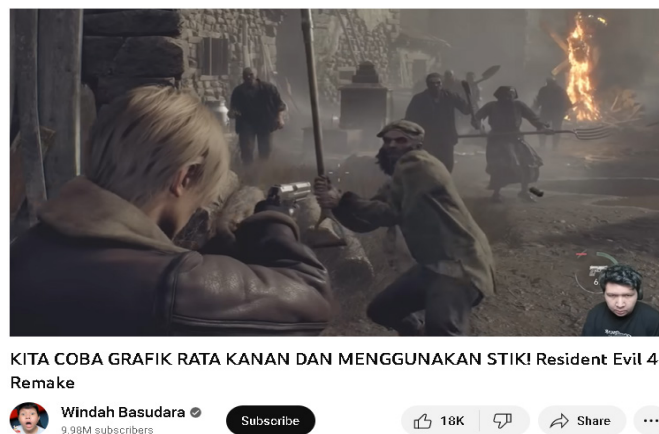
¹⁵ Hagen (n 9).[265].

¹⁶ BBC, 'Nintendo to Profit from User Videos Posted to YouTube' (*BBC*, 2013).

Law outlines several ways in which an individual can obtain economic benefits from the work, namely publishing, duplicating, translating, adapting, arranging, transforming, distributing, performing, announcing, communicating, and renting the work. On the other hand, as Let's Play content involves recording gameplay footage accompanied by commentary, it is important to consider how this type of work fits into the legal framework of the Indonesian Copyright Law.¹⁷

When a content creator creates Let's Play content, they are essentially creating a recording of themselves playing a video game. They are not creating a copy of the game itself. The recording that the content creator produces is a replay of what is happening on their screen.¹⁸ In other words, they are documenting what is happening on their screen in the form of a video. At the same time, the video and sound that they are documenting are created by the video game developer. Therefore, they do not create a copy of the game, instead, they are using the video and sound inside the game for their content.

Picture 1. Example of Let's Play content uploaded to the internet¹⁹



The visuals and sounds that appear on the content creator's screen are triggered by the content creator clicking a mouse or pressing buttons on a keyboard or controller (making inputs into the machine, computer, or gaming console).

¹⁷ *ibid.*, Article 9(1).

¹⁸ Ash Kapriyelov, 'An Analysis of the New Media Phenomena Known as "Let's Play"' (Liverpool John Moores University 2016).[4].

¹⁹ Windah Basudara, 'KITA COBA GRAFIK RATA KANAN DAN MENGGUNAKAN STIK! Resident Evil 4 Remake' (*Youtube*, 2023).

Simultaneously, the content creator then records the video and audio that appear on the screen, which transforms the format from a video game to a recorded video. Once recorded, the video and audio cannot be controlled or altered, only played back. Therefore, when a content creator creates Let's Play content, the content creator transforms the video and audio format from their original form as part of a video game to a recorded video format.

Under Indonesian Copyright Law, two terms are relevant to changes in video and audio formats: "adaptation" and "other works resulting from transformation". Elucidation of Article 40 paragraph (1) letter n provides:

"What is meant by "adaptation" is to transform a Work into another form. For example, from a book into a movie. What is meant by "other works of transformation" is changing the format of the Work into another format. For example, pop music into dangdut music".

Under the elucidation of the Indonesian Copyright Law, something is considered an "adaptation" if it is a result of a change in form, such as from a book to a film. On the other hand, things are considered "other works resulting from transformation" if they are a result of a change in format, such as from pop music to dangdut music. Thus, under copyright law, the result of the screen recording process above can be deemed as an "adaptation", as what happens here is a change in form from the original form as part of a video game to a form of recorded video.

Based on the above analysis, the process of making recorded videos through screen recording can be considered as "adapting". As a result, this activity falls under the prohibition outlined in Article 9(2) in relation to Article 9(1) of the Indonesian Copyright Law, which stipulates, among others, that one cannot adapt a work without obtaining consent from the author (e.g., video game developer) or copyright holder (e.g., publisher). Thus, creating Let's Play content without the author's consent violates the Indonesian Copyright Law. Therefore, it is necessary to obtain consent for Let's Play content to be legal.

However, under the Indonesian Copyright Law, there is a way for Let's Play content to be legal without the author's consent, which is if it is within the scope of the "copyright limitations". The Indonesian Copyright Law does not explain what

it meant by “limitations”, but, under Article 1.1, it can, however, be interpreted that such “limitations” are imposed toward the “exclusive right” of the author, and under elucidation of Article 4, it can be interpreted as that the Indonesian Copyright Law limits the exclusivity of obtaining the economic benefits from the work for certain conditions stipulated under Articles 43 to 51. These certain conditions have been understood by many Indonesian legal scholars to be “fair use”.²⁰

As a comparison, under the US law, the criteria that must be considered to determine whether a work is protected by fair use are: (i) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (ii) the nature of the copyrighted work, (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (iv) the effect of the use upon the potential market for or value of the copyrighted work. The first case to establish the fair use doctrine in United States (“US”) law was *Folsom v. Marsh*.²¹ In this case, the judge gave an opinion that later became the basis of the modern fair use doctrine:

“In short, we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work”.²²

Further, the United Kingdom law stipulates a copyright limitation doctrine known as the doctrine of fair dealing. Fair dealing is a non-infringing use of a copyrighted work that is intended for a specific purpose, e.g., criticism, comment, news reporting, or teaching.²³ Fair dealing provisions can be found in Chapter III Acts Permitted in relation to Copyright Works, which includes the purposes of caricature, parody or pastiche. The difference between fair use and fair dealing then is the nature of the restriction. Fair use gives the content creator more room to

²⁰ Rika Ratna Permata [*et., al.*], ‘Regulasi Doktrin Fair Use Terhadap Pemanfaatan Hak Cipta Pada Platform Digital Semasa Dan/Atau Pasca Pandemi Covid-19’ (2021) 13 *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*. [133].

²¹ Lloyd L. Weinreb, ‘Fair Use’ (1999) 67 *Fordham Law Review*. [1291].

²² West Publishing Company, ‘FOLSOM V. MARSH’ (1841) 9 *Federal Cases*.

²³ Prashant Rahangdale, ‘Fair Dealing: Limitation To Copyright?’ (2017) 6 *Global Journal of Multidisciplinary Studies*. [267].

use works that have been protected by copyright, provided that the use of such works meets the parameters provided by the law. On the other hand, fair dealing only allows the use of protected works for certain purposes that are specifically mentioned in the law.

At the platform level, YouTube has implemented a similar fair use policy with the US Copyright law. This means, users are allowed to use copyrighted material under specific circumstances, such as for commentary, criticism, news reporting, teaching, research, and parody, without infringing on the copyright holder's rights. However, the policy also addresses international differences in copyright exceptions and offers a Fair Use Protection Initiative, providing legal support for content creators facing potential copyright infringement lawsuits. Copyright removal requests are subject to scrutiny, and copyright holders must consider whether their material qualifies for exceptions before requesting removal.²⁴

Let's Play Content under Indonesian Civil Law

Property rights (*zakelijk recht*) in the *Burgerlijk Wetboek* (the "Indonesian Civil Code") are classified into two types, namely property rights that provide collateral (*zakelijk zekerheidsrecht*) and property rights that provide enjoyment (*zakelijk genotsrecht*).²⁵ The type of collateral arrangement used depends on the type of the object itself. Property rights that provide security are further classified into several categories, namely pledges, fiduciary collateral, mortgage, and security rights (*Hak Tanggungan*).²⁶ The pledge is used for movable objects,²⁷ while a mortgage is used for specific immovable objects, e.g., a certain type of ship and airplane. Security rights are used to provide collateral for land and objects related to land. Meanwhile, fiduciary collateral is used to provide collateral for immovable objects, tangible

²⁴ 'Fair Use on YouTube' (*Google*).

²⁵ Frieda Husni Hasbullah, *Hukum Kebendaan Perdata: Hak-Hak Yang Memberi Kenikmatan Jilid 1* (In-Hill Co 2002)..[60].

²⁶ Frieda Husni Hasbullah, *Hukum Kebendaan Perdata: Hak-Hak Yang Memberi Jaminan Jilid 2* (In-Hill Co 2009).[18-22].

²⁷ *ibid.*[24].

movable objects, and intangible movable objects.²⁸ In addition to the Indonesian Civil Code, collateral is also regulated in Law No. 4 of 1996 on Security Rights (*Hak Tanggungan*) on Land and Objects Related to the Land (the “Security Rights Law”) and Law No. 42 of 1999 on Fiduciary (the “Fiduciary Collateral Law”).

The nature of copyright as a property is different from the concept of property in the Indonesian Civil Code. Sardjono argues that copyright is a *sui generis* property because it is regulated in a particular law, which has a distinction between moral rights and economic rights. While moral rights cannot be assigned or transferred, economic rights can be. On the other hand, a work is also recognized as an “object” and copyright itself is the right to reproduce the object. Nonetheless, the Indonesian Copyright Law emphasizes the position of copyright as an intangible movable object.

The Indonesian Copyright Law acknowledges the use of Copyright as fiduciary collateral and recognizes “adaptation” of works as protected works. Furthermore, any work authored is considered a “work” under the Indonesian Copyright Law, hence, when a content creator produces a Let’s Play video, it counts as a “work”, until proven otherwise. In this particular case, the Let’s Play content qualifies as an adaptation work. As a result, the Let’s Play content can be used as fiduciary collateral under the Indonesian Copyright Law.

Fiduciary collateral is a form of material security that emphasizes the aspect of trust, which is characterized by not transferring ownership rights to collateral objects. Ownership remains with the debtor, but the ownership over the collateral object is left to the creditor as the beneficiary. Therefore, to prevent re-education, registration is required for every fiduciary collateral object. This registration process aims to ensure that the beneficiary of the collateral has legal rights over the collateral object and to provide legal protection for the debtor and creditor.

One of the potential opportunities associated with copyright as collateral is the use of economic rights as security in a fiduciary agreement. The fiduciary collateral

²⁸ Hasbullah (n 25).[53].

involves pledging the economic rights of copyright as collateral. This arrangement allows the owner of the copyright to obtain financing while retaining ownership and control over the copyrighted material.

In Indonesia, there are differences in the characteristics of collateral, as shown in the table below:

Table 1. Fiduciary Collateral Comparison

Fiduciary Collateral			
Object	Flat/Apartment House	Car	Copyright
Type	immovable object	tangible movable object	intangible movable object
Proof of Ownership	Certificate of Unit Ownership (<i>Sertifikat Hak Milik Satuan Rumah Susun</i>)	Motor Vehicle Owner's Book (<i>Buku Pemilik Kendaraan Bermotor</i>)	Certificate of Registration (<i>Surat Pencatatan Ciptaan</i>), unless proven otherwise
Asset Value	tends to appreciate in value	tends to depreciate in value	volatile
Secondary Market Ecosystem	considered sufficient	considered sufficient	considered insufficient

GR 24/2022 stipulated that the assessment of an Intellectual Property can be performed using four approaches, such as cost, market, income, and other valuation approaches that follow applicable standards. The assessment is conducted by Intellectual Property appraisers or appraisal panels, which must meet the following criteria: having a public appraiser permit from the ministry responsible for financial affairs of the state, having expertise in Intellectual Property appraisal, and is registered with the ministry responsible for creative economy government duties. GR 24/2022 further regulates that creative economy actors must register any financing provided by banks or non-bank financial institutions in the designated registration system.

In addition to regulatory and perception-related challenges, there are also issues related to the execution of the collateral. The process of enforcing collateral may be complicated when it comes to copyrights as the enforcement of copyrights requires specialized knowledge of intellectual property laws and may involve complex legal proceedings. Moreover, it may be challenging to sell copyrights as collateral if the secondary market for copyrighted works is not well-established.²⁹

²⁹ Normand Edwin Elnizar, 'Hak Cipta Sebagai Jaminan Fidusia Terhambat Sistem Valuasi' (*Hukumonline*, 2018).

Potential Challenges on Let's Play Content as a Collateral Object

Let's Play content has the potential to be considered a violation of copyright law due to its status as an "adaptation" of someone else's work. As such, the law requires permission from the author or copyright holder to adapt their work. The Indonesian Copyright Law requires content creators of Let's Play content to obtain permission from the video game developer or publisher, or at the very least, be within the scope of copyright limitations set out in Articles 43 to 51 of the Indonesian Copyright Law. However, a person can create Let's Play content without the permission from the video game developer or publisher, potentially violating copyright law.

Further, GR 24/2022 provides requirements that are relatively lenient for Let's Play content to be used as a collateral object, i.e., having it registered and having been commercialized. Article 10 GR 24/2022 stipulates:

"Intellectual Property that can be used as an object of debt collateral in the form of a. Intellectual Property that has been recorded or registered at the ministry that organizes government affairs in the field of law; and government affairs in the field of law; and b. Intellectual Property that has been managed either by itself and/or transferred its rights to other parties".

Furthermore, elucidation of Article 10 GR 24/2022 stipulates that "*the term 'Intellectual Property that has been managed' refers to Intellectual Property that has been commercialized by its owner or other parties based on an agreement*". Therefore, to fulfill the requirements of GR 24/2022 to collateralize the Let's Play content, the content creators simply need to have their Let's Play content registered and make revenue using the Let's Play content to fulfill the "commercialized" requirement under the GR 24/2022.

On the other hand, a content creator may collateralize Let's Play content that violates the Indonesian Copyright Law due to the regulation only requiring Let's Play content to have a certificate of registration for it to be collateralized in addition to having the content commercialized. Further, the registration examination itself only looks at whether the work is the same as works that have been registered in the general list of works, hence, it does not question the legality of the work itself, i.e.,

whether the work violates someone else's copyright as Article 68 of the Indonesian Copyright Law stipulates:

“Examination, as referred to in paragraph (1), is conducted to find out whether the Work or Related Rights product that is applied for is essentially the same or not the same as the Work recorded in the general register of Work or other intellectual property objects”.

Furthermore, Article 69 paragraph (4) Indonesian Copyright Law stipulates that “*Unless proven otherwise, the Copyright registration certificate as referred to in paragraph (1) is an initial evidence of ownership of a work or related rights product*”. Under the above provision, the Indonesian Copyright Law also seems to be uncertain whether a certificate of registration can evidence copyright ownership. This is evident in the addition of the phrase “unless proven otherwise” when stating the certificate of registration as an “initial proof of ownership”, which seems to anticipate the possibility of a lawsuit against the registered works. Therefore, under Indonesian Copyright Law, the legal status of a work is not dependent on whether or not the work is registered, instead, it depends on the court's decision.

As a comparison, the proof of land ownership, which is governed by Article 32 paragraph (1) GR No. 24/1997 which states that the certificate is a “*strong means of proof of ownership...*” Motor vehicle regulation also firmly states that the “*vehicle registration certificate is a legitimate proof of ownership*”. Indonesian Copyright Law only uses the phrase “*initial proof*” *per se*. This comparison confirms the understanding that the certificate of registration of the work does not carry the same weight as having strong or legitimate evidence for the holder's ownership of the work. In other words, holding a certificate of registration does not provide absolute proof that one is the owner of the work, instead, there is always room for the work ownership to be deemed invalid.

If the collateralized Let's Play content has been found to violate the copyright of another person or entity, a court ruling may declare the content invalid and order the cancellation of its registration. This raises questions about the validity of the deed of fiduciary collateral agreement and whether the creditor can enforce the agreement in case of default. The requirements for a valid agreement are stipulated by Article

1320 of the Indonesian Civil Code, which stipulates that an agreement must fulfill the requirement of consent, capacity, certain subject matter, and permitted cause. A cause is considered illegal if it is prohibited by law or contrary to morals and public order, as stated in Article 1337 of the Indonesian Civil Code. Thus, an agreement shall be invalid if it violates laws and regulations.

To generate exclusive rights for the author, Article 1.1 of Indonesian Copyright Law requires the work to be “by laws and regulations”, as Article 1.1 of Indonesian Copyright Law provides:

“Copyright is the exclusive right of the author that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing the limitations by the provisions of laws and regulations”.

Therefore, if a work is created without complying with laws and regulations, such as by adapting someone else’s work without permission, under this interpretation, the “exclusive right” may not arise for the infringing work. Further, Article 1.5 Fiduciary Collateral Law requires the debtor to be the “owner” of the fiduciary object being collateralized. Article 1.5 Fiduciary Collateral Law also stipulates that a “*Fiduciary Grantor is an individual or corporation who owns the object of the Fiduciary Collateral*”. Under this provision, the debtor must own the object of the fiduciary collateral. Therefore, if collateralized Let’s Play content is found to have violated the copyright of another person or entity, and its exclusive right is deemed as having never existed, the collateral agreement may be found invalid due to the violation of Article 1.5 of the Fiduciary Collateral Law.

Conclusion

Let’s Play content may infringe game developers’ copyrights, potentially violating Indonesian Copyright Law. This is because it is considered an “adaptation”, which is subject to consent requirements from the game’s author or copyright holder. However, there are conditions outlined in Articles 43 to 51 that legal scholars view as “fair use”. While Let’s Play content can be used as collateral under GR 24/2022, challenges remain, including perception issues, regulatory hurdles, and execution

concerns. Despite these challenges, utilizing economic rights as security in a fiduciary agreement offers opportunities for copyright owners to secure financing while retaining ownership and control over their work.

The effective implementation of GR 24/2022 is crucial for Indonesia's creative industry. Based on this, we suggest adopting GR 24/2022's provisions into financial sector regulations, potentially through the Financial Service Authority or Bank Indonesia, addressing issues like intellectual property valuation and legality concerns. Such regulation will offer confidence due to the availability of legal assurance for financial industry players. Additionally, seamless coordination with relevant parties is vital for the success of collateralized copyrighted works. The registration authority's role is pivotal in this process. By ensuring adherence to existing regulations, a fair business environment can be established, promoting the creative industry in Indonesia. Education and training are also key, particularly for appraisers valuing intellectual property. A thorough understanding of intellectual property rights, including copyrights, will lead to more accurate valuations, ultimately supporting the growth of Indonesia's creative industry by facilitating financing for content creators and improving the quality and quantity of their work.

While this paper examines the legal framework surrounding Let's Play content in Indonesia and investigates its status as both a work under copyright law and a collateral object under collateral law, the paper falls short of providing a comprehensive analysis of the procedural mechanisms involved in the collateralization of Let's Play content. Furthermore, the juridical normative methodology adopted in this paper limits its scope to a legalistic perspective, which may overlook important insights from relevant authorities and stakeholders in the field of the creative economy and intellectual property. Therefore, future research could explore other methodologies to supplement the legalistic approach and provide a more holistic understanding of the collateralization of Let's Play content in Indonesia.

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HOW TO CITE: Muhammad Anas Fadli, Muhammad Pravest Hamidi, Farhan Azzahra Edwin and Rayyan Gustio Kevin Aritonang, 'Let's Play Content as a Fiduciary Collateral under Indonesian Law: Potential Challenges' (2023) 38 Yuridika.