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NEW GOVERNMENT REGULATION ENABLING IP-BASED FINANCING TO SUPPORT DEVELOPMENT OF CREATIVE ECONOMY

On 12 July 2022, Indonesian government has enacted Government Regulation Number 24 of 2022 on the Implementing Regulation of Law Number 24 of 2019 on Creative Economy (“**GR 24/2022**”). As the title suggests, GR 24/2022 serves as the implementing regulation for Law Number 24 of 2019 on Creative pEconomy (“**Law 24/2019**”). GR 24/2022 will come into effect in one (1) year as of its enactment.

Under Law 24/2019, the Indonesian government is mandated to develop the ecosystem of creative economy, among others by way of (i) development of research; (ii) development of education; (iii) facilitation of funding and financing; (iv) provision of infrastructure; (v) development of marketing system; (vi) provision of incentives; (vii) facilitation of intellectual property; and (viii) protection of creative products. GR 24/2022 in particular addresses the implementation of development of creative economy by way of facilitation of funding and financing of creative economy through intellectual property-based financing.

IP-Based Financing for Creative Economy Funding

GR 24/2022 reaffirms intellectual property-based financing (*skema pembiayaan berbasis kekayaan intelektual*) (“**IP-Based Financing**”), a scheme which utilizes intellectual property as a security to obtain financing from bank and non-bank financial institution, as a way to obtain funding for development of creative economy business by entrepreneurs.

Intellectual property as security in IP-Based Financing is conducted in the form of:

- a. fiducia security over the intellectual property;
- b. a contract over creative economy activities, (e.g., license agreement, work contract/work instruction); and/or
- c. receivables from creative economy activities (e.g., receivables from royalty).

GR 24/2022 sets out several criteria of that must be fulfilled in order for an intellectual property to be qualified for an IP-Based Financing as follows:

- a. Such intellectual property must be recorded or registered at the relevant ministry, being the Director General of Intellectual Property under the Ministry of Law and Human Rights; and
- b. Such intellectual property must be commercialized/generating income by the owner or by other party based on agreement.

In order to obtain IP-Based Financing, entrepreneurs shall submit application to financial institution encompassing:

- a. Financing proposal;
- b. Evidence of possession of creative economy business;
- c. Evidence of engagement related to the intellectual property of a creative economy product; and
- d. Registration letter or intellectual property certificate.

Following such application, financial institution will conduct:

- a. Verification of the creative economy business;
- b. Verification of the registration letter or intellectual property certificate in order to ensure that such intellectual property can indeed be executed as a security in the event of non-performance; and
- c. Valuation of the encumbered intellectual property conducted by an intellectual property appraisal and/or appraisal panelists, through (i) cost approach; (ii) market approach; (iii) income approach; and/or (iv) other approach as may be applicable,

wherein following satisfaction of the above process, such financial institution may proceed to drawdown the financing amount to the entrepreneurs. Entrepreneurs must afterwards register receipt of such IP-Based Financing in a registration system managed by Ministry of Tourism and Creative Economy.

Dispute Resolution

Article 40 of GR 24/2022 provides that dispute related to IP-Based Financing can be resolved through court or through an out-of-court settlement wherein such out-of-court settlement must be conducted by an alternative dispute resolution institution approved by Indonesia Financial Service Authority/OJK.