



## Reconstructing Copyright-Based Fiduciary Security in the Digital Economy: An Indonesian Legal Perspective

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### Abstract

Copyright has been recognized as an object of fiduciary security under Law Number 42 of 1999, yet its implementation continues to face structural barriers. This study aims to identify and analyze the normative and administrative problems that hinder the imposition of fiduciary security over copyright, and to formulate regulatory and institutional reconstruction strategies necessary for enabling copyright to function effectively as collateral within the financing system. The research employs a normative legal specification with a descriptive-analytical design, applying both a statute approach and a conceptual approach. Data were collected through document study and literature review, and analyzed qualitatively by interpreting positive legal norms and administrative documents related to copyright-based fiduciary security. The findings reveal three principal obstacles: the absence of valuation standards, the lack of system integration between the Directorate General of Intellectual Property and the Directorate General of General Legal Administration, and the unavailability of technical protocols for intellectual property transactions. The study recommends strengthening valuation standards, integrating registration systems, and formulating implementing regulations as the basis for reconstructing the use of copyright as an object of fiduciary security. This research contributes theoretically by enriching the discourse on guarantees over intangible assets, practically by offering a regulatory and institutional framework for policymakers and financial institutions, and academically by addressing the gap that links legal norms, institutional capacity, and technical procedures in the imposition of copyright-based fiduciary security.

### Keywords:

Copyright; Fiduciary;  
Intellectual property;  
Intangible assets;  
System integration.

## A. INTRODUCTION

Changes in the structure of the global economy have shifted the locus of productive capacity toward intangible assets, giving intellectual property a

growing significance in contemporary systems of production, distribution, and financing.<sup>1</sup> This broader economic movement has positioned intellectual creations as resources with measurable

<sup>1</sup> Ruth Towse and Trilce Navarrete Hernández, *Handbook of Cultural Economics*, 3<sup>rd</sup> ed. (Cheltenham: Edward Elgar Publishing, 2020), p. 7.

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value, particularly within knowledge-based sectors that rely on creativity and digital innovation. Copyright, situated within this category, has assumed an expanded role as an economic asset whose utility extends beyond its traditional function as a legal safeguard for expressive works.<sup>2</sup> Its commercial attributes allow it to participate in various economic arrangements, including forms of financing that recognize its transferable and monetizable character. These developments invite closer examination of how a legal system accommodates the immaterial and dynamic nature of copyright when it becomes embedded within the financial architecture of modern markets.

The legal framework governing fiduciary security in Indonesia provides only limited guidance for the treatment of intangible assets, leaving copyright without a clear normative foundation when positioned as collateral.<sup>3</sup> The statutory recognition of intangible objects in the Fiduciary Law remains general in character and does not articulate

procedures for registration, valuation, or enforcement that reflect the distinctive properties of copyright.<sup>4</sup> This absence of detailed norms creates uncertainty regarding the legal status of economic rights within a guarantee structure, particularly when their value fluctuates and depends on market performance. The incomplete articulation of these elements indicates that the normative architecture has not yet evolved to accommodate the operational requirements associated with the use of copyright in financing arrangements.<sup>5</sup> This condition reflects the fact that classical Indonesian legal doctrine conceptualizes fiduciary security as a trust-based guarantee mechanism emphasizing publicity, executorial force, and legal certainty, originally developed to accommodate movable property outside physical possession rather than complex intangible assets such as copyright.<sup>6</sup>

Administrative arrangements surrounding the use of copyright as fiduciary collateral reveal a parallel set of constraints that stem from the

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<sup>2</sup> Gönenç Gürkaynak *et al.*, "Intellectual Property Law and Practice in the Blockchain Realm," *Computer Law & Security Review* 34, No. 4 (August 2018): 847-862, <https://doi.org/10.1016/j.clsr.2018.05.027>, p. 851.

<sup>3</sup> Islambek Rustambekov, Said Gulyamov, and Anna Ubaydullaeva, *Intellectual Property in the Digital Age* (Roma: Roma TrE-Press, 2024), p. 64.

<sup>4</sup> Lionel Bently, Brad Sherman, Dev Gangjee, and Phillip Johnson, *Intellectual Property Law*, 6<sup>th</sup> ed. (Oxford: Oxford University Press, 2022), p. 53.

<sup>5</sup> Matthew Rimmer, "Lady Ada: Limor Fried, Adafruit Industries, Intellectual Property and Open Source Hardware," *Journal of Intellectual Property Law & Practice* 16, No. 10 (October 2021): 1047-1061, <https://doi.org/10.1093/jiplp/jpab041>, p. 1050.

<sup>6</sup> J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, Cet. 1 (Bandung: Citra Aditya Bakti, 1997), p. 239.

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fragmented structure of institutional responsibilities.<sup>7</sup> Copyright registration is managed by the Directorate General of Intellectual Property, while fiduciary registration falls under the Directorate General of General Legal Administration, and the absence of coordination between these databases complicates the verification of ownership, encumbrance status, and legal validity.<sup>8</sup> The lack of interlinked systems is accompanied by the absence of technical protocols and standardized valuation procedures, leaving financial institutions without a reliable administrative basis for assessing risk or determining the enforceability of copyright-based guarantees.<sup>9</sup> These conditions illustrate an administrative environment that is not yet equipped to support the operational requirements associated with the use of intangible assets in secured transactions.<sup>10</sup>

Empirical observations within international studies highlight persistent obstacles in the use of intellectual

property as collateral, particularly in jurisdictions where institutional interoperability and valuation standards remain underdeveloped.<sup>11</sup> Similar conditions appear in the Indonesian context, where the rapid expansion of the creative economy has not been accompanied by administrative mechanisms that enable copyright to participate in formal financing structures. Financial institutions continue to face difficulties in assessing risk because copyright lacks standardized valuation and verifiable encumbrance records, and these uncertainties limit its practical recognition as a collateral asset.<sup>12</sup> The gap between the growing economic relevance of copyright and the absence of supporting administrative infrastructure underscores the significance of examining this issue within the contemporary financing landscape.

Scholarly work on the use of intellectual property in secured transactions has expanded across jurisdictions, although

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<sup>7</sup> Dominique Guellec and Caroline Paunov, "Digital Innovation and the Distribution of Income," NBER Working Paper No. 23987 (Cambridge, MA: National Bureau of Economic Research, November 2017), 1-43, <https://doi.org/10.3386/w23987>, p. 7.

<sup>8</sup> World Intellectual Property Organization, "What Is Intellectual Property?," 2025, <https://www.wipo.int/en/web/about-ip>, accessed August 5, 2025.

<sup>9</sup> Dick Bryan, Michael Rafferty, and Duncan Wigan, "Capital Unchained: Finance, Intangible Assets and the Double Life of Capital in the Offshore World," *Review of International Political Economy* 24, No. 1 (January 2017): 56-86, <https://doi.org/10.1080/09692290.2016.1262446>, p. 61.

<sup>10</sup> Ranti Fauza Mayana and Tisni Santika, "Intellectual Property-Based Financing Scheme for Creative Industry in Indonesia: Policy, Progress, Challenges and Potential Solutions," *The Journal of World Intellectual Property* 28, No. 1 (2025): 95-113, <https://doi.org/10.1111/jwip.12322>, p. 97.

<sup>11</sup> Naufal Rizqiyanto, M. Rizqi, Fahmil Alfian Rizkia Afsa, and Badreddine Berrahlia, "Tax Regulation Challenges in the Digital Economy Era: Legal Analysis and Implications in Indonesia," *Trunojoyo Law Review* 7, No. 1 (January 2025): 57-90, <https://doi.org/10.21107/tlr.v7i1.28540>, p. 72.

<sup>12</sup> David Mhlanga and Mufaro Dzingirai, *Financial Inclusion and Sustainable Development in Sub-Saharan Africa*, 1<sup>st</sup> ed. (London: Routledge, 2024), <https://doi.org/10.4324/9781003515715>, p. 53.

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most studies approach the subject through discrete perspectives such as legal doctrine, valuation methodology, or the economic implications of IP-backed financing.<sup>13</sup> These contributions offer important insights, yet they often examine normative requirements, administrative arrangements, and financial considerations as separate domains rather than as components of an integrated system.<sup>14</sup> Existing analyses of copyright in the Indonesian context similarly concentrate on formal normative provisions or descriptive accounts of creative industry financing, leaving limited attention to the interaction between legal rules, institutional capacity, and technical procedures.<sup>15</sup> This gap suggests that the structural conditions influencing the feasibility of copyright-based guarantees have not been fully articulated within the literature, creating a need for a study that situates these dimensions within a unified analytical framework.<sup>16</sup>

This study examines the normative and administrative issues that shape the treatment of copyright as fiduciary

collateral and seeks to formulate a regulatory and institutional framework that reflects these conditions. The analysis is conducted through a normative and conceptual approach that engages with statutory provisions, institutional arrangements, and administrative practices to explore how legal norms interact with the operational structures that support secured transactions involving intangible assets. This orientation provides the basis for articulating a coherent understanding of the conditions under which copyright may function as a viable collateral object within Indonesia's financing landscape.

## B. RESEARCH METHODS

This research adopts a normative legal research specification using a descriptive-analytical type of inquiry, employing the statute approach to examine the governing legal framework, the conceptual approach to articulate the theoretical construction of copyright as an intangible asset, the institutional approach to identify administrative

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<sup>13</sup> David Heller, Leo Leitzinger, and Uwe Walz, "Intellectual Property as Business Loan Collateral: A Taxonomy of Institutional and Economic Determinants," *GRUR International* 73, No. 5 (May 2024): 379-392, <https://doi.org/10.1093/grurint/ikae043>, p. 382.

<sup>14</sup> Weixiu Li and Bo Li, "Intellectual Property Pledge Financing and Enterprise Innovation: Based on the Perspective of Signal Incentive," *Sustainability* 15, No. 13 (January 2023): 1-21, <https://doi.org/10.3390/su151310448>, p. 12.

<sup>15</sup> Nadia Naim and Noor Suhaida Kasri, "Intellectual Property and Islamic Finance: Opportunities and Challenges for a New Islamic Intellectual Property Finance Framework," *Thunderbird International Business Review* 67, No. 3 (2025): 395-412, <https://doi.org/10.1002/tie.22430>, p. 397.

<sup>16</sup> Dodik Setiawan Nur Heriyanto and Alif Muhammad Gultom, "Intellectual Property as Collateral: The Future of Indonesian Intellectual Property Legal Policy in Commercial Transactions," *JATISWARA* 39, No. 2 (July 2024): 136-150, <https://doi.org/10.29303/jtsw.v39i2.730>, p. 144.

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and inter-agency constraints, and a limited comparative approach to observe jurisdictions with integrated IP-security systems. The data consist of primary legal materials, including statutes, regulations, and judicial decisions, as well as secondary and tertiary legal sources obtained through literature and document review. The collected materials are analysed through qualitative descriptive and interpretative reasoning to identify normative gaps and administrative barriers, allowing the study to formulate a regulatory and institutional reconstruction aligned with the research problems outlined in the introduction.

## C. RESULTS AND DISCUSSIONS

### 1. Normative Issues in the Fiduciary Treatment of Copyright

The regulatory framework governing fiduciary security in Indonesia formally recognizes the possibility of imposing fiduciary rights over intangible objects, as reflected in Article 1(2) and Article 4 of Law No. 42 of 1999, and further reinforced by Article 16(3) of Law No. 28 of 2014, which explicitly permits copyright to function as collateral.

Although this recognition establishes a legal foundation at the normative level, the relationship between these statutory provisions remains insufficiently elaborated, leaving a conceptual gap regarding how copyright should be treated within the broader structure of fiduciary guarantees.<sup>17</sup>

Copyright, as a form of intellectual property, possesses characteristics that differ from conventional intangible collateral such as receivables.<sup>18</sup> Its immaterial nature, fluctuating economic value, and reliance on creative and digital markets complicate the determination of its legal status when subjected to a fiduciary encumbrance. These features introduce challenges in defining the object of security, establishing its scope, and proving its economic value, raising normative questions that cannot be resolved by relying solely on general statutory formulations.

The absence of implementing norms in both the Fiduciary Law and the Copyright Law creates substantial uncertainty regarding the procedures for binding, recording, and enforcing copyrights in fiduciary arrangements.<sup>19</sup> Neither statute provides clear guidance on the form of the deed, the mechanism

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<sup>17</sup> Ernst-Ulrich Petersmann, "JIEL Debate: Methodological Pluralism and Its Critics in International Economic Law Research," *Journal of International Economic Law* 15, No. 4 (December 2012): 921-970, <https://doi.org/10.1093/jiel/jgs040>, p. 925.

<sup>18</sup> Keith E. Maskus, "Intellectual Property Rights and Economic Inequality: Theory and Evidence1," *Stockholm Intellectual Property Law Review* 5, No. 1 (September 2022): 1-70, <https://doi.org/10.53292/2d3a6004.50f031e5>, p. 47.

<sup>19</sup> Chi Zhang, *Legal Protection of Private Equity Investors in China: Practice, Challenges and Reform* (London: Routledge, 2019), <https://doi.org/10.4324/9780429058325>, p. 146.

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of encumbrance, nor the evidentiary requirements for establishing value.<sup>20</sup> This normative vacuum places notaries and financing institutions in an undefined procedural environment where the legality and enforceability of their actions cannot be easily ascertained.<sup>21</sup>

These normative gaps generate practical implications for legal certainty, particularly with respect to the validity of encumbrances and the protection of parties involved in financing transactions.<sup>22</sup> When statutory recognition of copyright as collateral is not supported by concrete provisions for its operationalization, financial institutions tend to avoid objects whose legal treatment lacks clarity.<sup>23</sup> This situation undermines confidence in the predictability and stability of the fiduciary regime and restricts the integration of copyright into formal credit mechanisms.

The central normative issue lies in the disjunction between the statutory recognition of intangible assets as collateral and the absence of a legal

structure capable of accommodating the distinctive characteristics of copyright. Without detailed normative elaboration that addresses issues of valuation, encumbrance, and enforcement, the legal possibility of using copyright as fiduciary security remains largely theoretical. This misalignment between legal norms and the nature of the underlying asset forms the core obstacle to the functional use of copyright as collateral and provides the central focus for examining the normative dimension of fiduciary law in this context.

## 2. Administrative and Institutional Issues in the Fiduciary Treatment of Copyright

The administrative landscape surrounding the fiduciary treatment of copyright reveals a structural disconnection between the institutions responsible for recording intellectual property and those tasked with administering fiduciary registrations. The Directorate General of Intellectual Property maintains its own registry

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<sup>20</sup> Sabine Dörry, "The Dark Side of Innovation in Financial Centres: Legal Designs and Territorialities of Law," *Regional Studies* 59, No. 1 (December 2025): 1-27, <https://doi.org/10.1080/00343404.2022.2107629>, p. 11.

<sup>21</sup> Syaifullah Noor, Kamil Ismail Banapon, and Tamboa Ketum Levis, "Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia: Distorsi Praktik Restorative Justice Dalam Penegakan Hukum Pidana Di Indonesia," *Peradaban Hukum Nusantara* 2, No. 1 (June 2025): 1-30, <https://doi.org/10.62193/ze7dhp98>, p. 24.

<sup>22</sup> Muhammad Husein Murtadho, "The Meaning of the Phrase 'For Public Knowledge' in the Crime of Defamation in Digital Space: Makna Hukum Frasa 'Supaya Diketahui Umum' Dalam Delik Pencemaran Nama Baik Di Ruang Digital," *Peradaban Hukum Nusantara* 2, No. 1 (July 2025): 70-95, <https://doi.org/10.62193/yt8nrz69>, p. 81.

<sup>23</sup> Sarah Hupp Williamson, *Criminology Explains Human Trafficking* (Oakland: University of California Press, 2024), p. 87.

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for copyright ownership, while the Directorate General of General Legal Administration operates a separate system for fiduciary deeds, and the absence of interoperability between these databases prevents the formation of a unified chain of verification.<sup>24</sup>

This fragmentation limits the ability of officials to validate ownership status or identify existing encumbrances through institutional channels, leaving much of the verification process dependent on documents submitted by applicants rather than on synchronized and independently verifiable records. The administrative gap that emerges from this separation shapes the practical conditions under which copyright is expected to function as collateral and forms the initial barrier to its reliable integration into the fiduciary regime.

The absence of institutional connectivity affects the reliability of verification processes, as officials are unable to confirm ownership, encumbrance history, or potential disputes through coordinated administrative channels. Without a shared database or standardized cross-

checking mechanism, the authentication of copyright as collateral depends heavily on applicant-provided documents, which vary in quality and are not always supported by records that can be independently traced. This condition introduces procedural uncertainty for notaries and financing institutions, who must assess the legal standing of an asset without access to authoritative information.<sup>25</sup> The administrative environment that emerges from these limitations restricts the capacity of institutions to recognize copyright as a securely verifiable object within the fiduciary system.

The administrative challenges extend beyond fragmented registration systems and include the absence of technical protocols that outline the procedures for binding, valuing, and processing copyrights within fiduciary arrangements. Financial institutions lack standardized valuation models, and notaries operate without a clear set of administrative guidelines that specify the documentary and procedural requirements for encumbering intangible assets.<sup>26</sup> These gaps prevent the

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<sup>24</sup> Akbar Adi Satria Achmad, Anwar Budiman, and Uyan Wiryadi, "Konsekuensi Hukum Dan Tantangan Penggunaan Konten YouTube Sebagai Jaminan Fidusia Dalam Ekonomi Kreatif Di Indonesia," *Binamulia Hukum* 13, No. 2 (December 2024): 289-296, <https://doi.org/10.37893/jbh.v13i2.850>, p. 292.

<sup>25</sup> Jin Chen, Eric Viardot, and Alexander Brem, "Innovation and Innovation Management," in *The Routledge Companion to Innovation Management* (London: Routledge, 2019), 1-20, p. 11.

<sup>26</sup> Helitha Novianty Muchtar, Miranda Risang Ayu, and Muhamad Amirulloh, "Intellectual Property Financing in Indonesia: A Comparative Study with China and South Korea," *Kasetsart Journal of Social Sciences* 44, No. 4 (November 2023): 1175-1190, <https://so04.tci-thaijo.org/index.php/kjss/article/view/268995>, p. 1182.

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establishment of predictable workflows and hinder the institutionalization of copyright as an asset whose value can be assessed in a consistent and traceable manner. The absence of technical standards generates uncertainty for market actors and limits the operational readiness of the fiduciary system to accommodate intangible property.

The cumulative effect of these administrative barriers reduces the capacity of financing institutions to integrate intellectual property into their risk assessment frameworks. Institutions that depend on verifiable and standardized data hesitate to accept assets whose legal and economic characteristics cannot be confirmed through institutional processes. Creative industry actors, who rely heavily on intellectual property to access credit, encounter significant obstacles when administrative structures cannot support the recognition of intangible assets as collateral. These conditions reveal the broader institutional misalignment between the needs of the financing sector and the administrative tools currently available to support copyright-based guarantees.

Experiences from several jurisdictions illustrate how institutional integration can strengthen the credibility of intellectual property as collateral. South Korea has pursued a system that links its intellectual property office with commercial authorization agencies, enabling continuous monitoring of the legal status of registered rights. The European Union, through the European Union Intellectual Property Office, employs a digital framework that allows financial institutions to access updated information on registered assets, while Singapore has introduced the IP ValueLab ecosystem that combines legal authorities, valuers, and financing entities in a single platform.<sup>27</sup> These models demonstrate the significance of administrative architectures that establish clear channels for information exchange and reduce reliance on manual verification.<sup>28</sup>

Other jurisdictions highlight the importance of unified registries that consolidate information on ownership, valuation, and encumbrance status.<sup>29</sup> Japan's Intellectual Property Finance Scheme integrates patent databases with financial institutions, allowing market

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<sup>27</sup> Taina Pihlajarinne, Jukka Mähönen, and Pratyush N. Upreti, *Intellectual Property Rights in the Post Pandemic World: An Integrated Framework of Sustainability, Innovation and Global Justice* (Cheltenham: Edward Elgar Publishing, 2023), p. 101.

<sup>28</sup> Poh Kam; Kwek Wong and World Intellectual Property Organization, *Global Innovation Hotspots: Singapore's Innovation and Entrepreneurship Ecosystem* (Geneva: World Intellectual Property Organization, 2022), <https://doi.org/10.34667/tind.46720>, p. 44.

<sup>29</sup> Dinesh Kumar and Nidhi Suthar, "Assessing the Prospects and Constraints of Blockchain Technology for Intellectual Property Management," *The Journal of World Intellectual Property* 28, No. 1 (2025): 124-140, <https://doi.org/10.1111/jwip.12324>, p. 130.

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participants to access value-driven data and algorithm-based assessments that are consistent across transactions.<sup>30</sup> Reports from the World Intellectual Property Organization emphasize that the central barriers to IP-backed lending arise not from the scope of legal rights but from inconsistencies in valuation methods and the absence of institutions capable of producing reliable market data. These findings point to the need for administrative structures that can generate and maintain standardized information across the lifecycle of an intellectual asset.<sup>31</sup>

Institutional reform can take shape through mechanisms that allow regulatory and administrative actors to experiment with procedural models before formalizing them into binding rules. A regulatory sandbox provides a controlled environment in which agencies such as DJKI, the Directorate General of General Legal Administration, the Financial Services Authority, and valuation institutions can test data-sharing protocols and compatibility standards within a secure digital framework.<sup>32</sup> Some jurisdictions adopt co-regulation models that combine the

authority of governmental bodies with the expertise of market participants, offering flexible but evaluable governance structures that respond to the dynamic nature of intangible assets.<sup>33</sup> These arrangements underscore the significance of collaborative regulatory design in building infrastructures capable of supporting copyright-based financing.

The adjustment of Indonesia's fiduciary system to the characteristics of intellectual property requires administrative reforms that move beyond documentary requirements and embrace data integration, valuation consistency, and institutional collaboration. A framework that unites juridical foundations with structured managerial tools offers a pathway toward an operational environment where copyright can function as a credible collateral object. Strengthening administrative capacities through interoperable systems, standardized valuation practices, and coordinated regulatory governance provides the institutional basis needed to align the legal recognition of copyright with its practical use in the financing ecosystem.

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<sup>30</sup> World Intellectual Property Organization, "Securing Financing with Intellectual Property Assets," 2025, <https://www.wipo.int/en/web/business/securing-financing>, accessed August 5, 2025.

<sup>31</sup> Abbe Elizabeth Lockhart Brown, *Intellectual Property, Human Rights and Competition: Access to Essential Innovation and Technology* (Cheltenham: Edward Elgar Publishing, 2012), p. 86.

<sup>32</sup> Pengyuan Xu, Meiqing Zhang, and Min Gui, "How R&D Financial Subsidies, Regional R&D Input, and Intellectual Property Protection Affect the Sustainable Patent Output of SMEs: Evidence from China," *Sustainability* 12, No. 3 (January 2020): 1207-1225, <https://doi.org/10.3390/su12031207>, p. 1207.

<sup>33</sup> Mislav Mataija, *Private Regulation and the Internal Market: Sports, Legal Services, and Standard Setting in EU Economic Law* (Oxford: Oxford University Press, 2016), p. 98.

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## D. CONCLUSIONS

This study identifies two core obstacles that limit the functional use of copyright as an object of fiduciary security. The first concerns the normative dimension, where statutory recognition of intangible assets has not been supported by implementing provisions capable of addressing valuation, encumbrance, and enforceability, leaving copyright without a coherent legal construction within the fiduciary framework. The second relates to administrative and institutional constraints, reflected in fragmented registration systems, the absence of interoperable data infrastructure, and the lack of technical standards that hinder verification and operational certainty. Together, these findings show that the effective integration of copyright into the national financing system requires alignment between legal norms and administrative mechanisms through strengthened institutional coordination, standardized valuation practices, and an operational structure responsive to the characteristics of intellectual property.

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