

# OPTIMIZING INTELLECTUAL PROPERTY RIGHTS IN BANKRUPTCY PROCESS

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## Abstract

Intellectual Property Rights (IPR), which consist of copyrights, brands, and patents, are exclusive rights granted by the State to legal subjects as a form of State protection for innovative products. These economic rights certainly have value for each owner, especially if these rights are indeed the selling point of a business activity. Furthermore, the practice of the Curator as a Probate Court, which has the task of carrying out the settlement of bankrupt assets to fulfill the rights of creditors from bankrupt debtors, must be able to optimize Intellectual Property Rights as assets that can be cleaned up and cause an increase in bankrupt debt. This research aims to Intellectual Property Rights to increase bankrupt debt. This study uses a normative juridical approach. This study's results provide information on how to optimize intellectual property assets can only be implemented during the bankruptcy stage.

**Keywords:** Optimizing, Intellectual Property Rights, Bankruptcy

## INTRODUCTION

Intellectual Property Rights (IPR) are rights that originate from the creative activities of human intellect and are expressed to the general public in various forms, which have benefits and are useful in supporting human life, also having economic value. The field covered by intellectual property rights is very broad because it includes all intellectual property consisting of literary, artistic, and scientific creations, inventions, industrial designs, brands, and layout designs of integrated circuits. <sup>1</sup>The nature of Intellectual Property Rights is material rights. The right to work is defined as intellectual, so when something is created based on the work of the brain, it is defined as Intellectual Property Rights. <sup>2</sup>

Intellectual property rights come from the translation of the English term intellectual property rights. Rights in material law are part of intangible objects or immaterial objects. This can be seen in Article 499 of the Civil Code, which states that objects include goods and rights. Article 503 of the Civil Code also emphasizes that objects consist of tangible and intangible objects. Thus, the rights in Article 499 are intangible objects in Article 503 of the Civil Code.

As objects, the characteristics of property rights are also attached to IPR. One of them is transferable to other parties. The transfer of IPR refers to the transfer of movable objects, which can be done directly (hand to hand), not through transferring names. IPR can be transferred through buying and selling, inheritance, grants, or agreements. One type of agreement to transfer IPR is a license agreement. Licensing grants permission to utilize IPR belonging to another party through royalty payments. <sup>3</sup>

Both tangible and intangible objects can become the right objects. The right to a tangible object is called an absolute right to an object, while the right to an intangible object is called an absolute right to a right. The following is a table of differences between tangible and intangible objects.<sup>4</sup>

### **Tangible Objects:**

Examples: houses, land, chairs, products, vehicles, computers, books, and paintings.

What is transferred: property rights, possession of objects, through agreements

Legal protection: civil law and criminal law.

### **Intangible Objects**

Examples: property rights, lease rights, usufructuary rights, copyrights, and trademark rights.

What is transferred: intellectual property rights, use of intellectual property rights, through licenses (permits). One of the most fundamental principles of copyright protection is the concept that copyright only relates to the embodiment or fixation of a work.<sup>5</sup>

Legal protection: intellectual property rights law

The exclusive right granted by the State to IPR actors (Inventors, Creators, Designers, and so on) is intended as a reward for their work (Creativity) so that other people can further develop it so that. With this IPR system, the interests of society are determined through market mechanisms.

Protection of intellectual property rights aims to provide law regarding the relationship between property, creators, designers, owners, intermediaries who use it, and the benefits from utilizing IPR within a certain period.

As an important part of awarding a work of science, art, or literature, each individual or group needs to understand intellectual property rights to raise awareness of the importance of intellectual creativity and innovation as abilities that need to be achieved by every human.

IPR is a movable but intangible object that provides exclusive rights in the form of economic rights and moral rights attached to the owner of IPR, thus making IPR an ownership asset of high value. Intellectual property rights can be included in bankrupt assets (bankrupt boedel).

The sale of the bankrupt debtor's assets, in this case, intellectual property rights, can cause uncertainty because it is related to determining the economic value of said intellectual property rights. In this case, this journal focuses on the concept of legal certainty, the economic value of registered intellectual property rights transferred due to companies or individual rights owners being declared bankrupt. Settlement of bankruptcy cases and formulating the concept of legal certainty of the economic value of registered intellectual property rights transferred as a result of companies or individual rights owners being declared bankrupt.

This research is normative legal research or also called research, through descriptive literature searches. The results of this study are bankrupt assets as long as they have a selling price/value under the control of the Curator and are used to settle debtors' debts to creditors. Debtors who

own assets in the form of Intellectual Property Rights that have commercial value will be managed by the Curator to settle debts to creditors. If you want to determine IPR as bankrupt assets, you need a study of material law.

Whether all objects can be used as collateral for debt payments depends on what objects are used to guarantee the debt. In carrying out the settlement of bankruptcy assets in the form of trademark rights, the Curator requires an appraisal (assessment of an asset). The appraisal is based on a recommendation from the Public Appraisal Service Office (KJPP) as a standard for evaluating assets in Indonesia.

Thus, we can see that IPR consists of copyrights, brands, and patents, and each has economic value for the owner and the creator. This economic value makes IPR one of the assets for every legal subject who owns, controls or has rights over said IPR. Furthermore, what if the subject of the owner of the IPR is declared bankrupt, along with all the legal consequences?

Bankruptcy is "Faillissement een gerechtelijk beslag op het gehele vermogen van een schuldenaar ten behoeve van zijn gezamenlijke schuldeiser." (Algra, NE, 1974:425) (Bankruptcy is a general confiscation of all the assets of a debtor (the debtor) to pay off his debts to creditors (the creditor). Debt in the business world is usually done by perpetrators and business actors, individuals and companies. Business actors who are still able to repay their debts are usually called business actors who are still "solvable," while business actors who are unable to pay their debts are also called "insolvable" (Marina Regina Fika, 2007: 2)

Business actors unable to pay past due debts or, in other words, are in a state of stopping payments may become a forerunner to the emergence of a bankruptcy process. These debts are sometimes in the process of paying off debts that only sometimes go well and smoothly. Often, the financial situation of business actors is at the lowest point of their ability to pay debts, so they arrive at a situation b stop paying. Debt can also be said to be a situation involving the financial problems of a business actor who is still in good faith to fulfill obligations to his creditors but can no longer pay his due debts.

Experts also express the definition of Bankruptcy based on various perspectives, and these differences appear in the narratives listed in each meaning. However, it should be understood that these differences in the narrative are distinct from the substance of the meaning of Bankruptcy, which shows the similarity that Bankruptcy is a creditor's obligation. That must be paid to the debtor as his rights. The meaning of this definition includes:

### **Bankruptcy:**

- MN Purwosutjipto states that Bankruptcy is "everything related to the event of Bankruptcy, while Bankruptcy is a state of stopping paying one's debts.
- Bankruptcy is the complete confiscation of all the assets of the bankrupt. Consequently, the bankrupt is prohibited from continuing his business and taking legal actions, except with the supervisor's or executor's approval.
- According to Munir Fuady and M. Hadi Subhan's opinion, peace in the settlement of bankruptcy assets has different characteristics from peace in PKPU. Conciliation in

bankruptcy leads to the process of settling the debts of debtors through settlement of bankruptcy assets, while reconciliation in <sup>6</sup>

Bankrupt according to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations:

"Bankruptcy is a general confiscation of all the assets of a bankrupt debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge".<sup>7</sup>

Etymologically, the term bankruptcy comes from the word "bankrupt." When traced more fundamentally, the term "bankrupt" is found in the vocabulary of Dutch, French, Latin, and English, with different terms. In Dutch, Bankruptcy comes from the term "failliet," which has a double meaning, namely as a noun and an adjective. In French, Bankruptcy comes from the word "faillite," which means a strike or payment jam, while people who strike or stop paying in French are called "lefaili." The verb "failir" means to fail. The word "to fail" is known in English with the same meaning. In Latin, it is called "failure." In English-speaking countries, Bankruptcy and Bankruptcy are represented by the words "bankrupt" and "bankruptcy." (Victor M Situmorang and Hendri Soekarso, 1994:18-19 and Zainal Asikin, 2001:26-27.

Bankruptcy and postponement or postponement of payments (surseance) are usually associated with debt problems between someone who can be called a Debtor (now through Law Number 37 2004) are called Debtors) with those who have funds called Creditors. Problems will arise if the debtor has difficulty repaying the debt. In other words, the debtor stops paying his debts. The situation of stopping paying debts can occur due to the:

1. Unable to pay;
2. Do not want to pay.
3. IPR is a movable but intangible object that gives exclusive rights in the form of economic rights and moral rights attached to the owner of IPR to make IPR an ownership asset of high value. Intellectual property rights can be included in bankrupt assets (bankrupt boedel). The sale of the bankrupt debtor's assets, in this case, intellectual property rights, can cause uncertainty because it is related to determining the economic value of said intellectual property rights.

In this case, this journal focuses on the concept of legal certainty, the economic value of registered intellectual property rights transferred due to companies or individual rights owners being declared bankrupt. Settlement of bankruptcy cases and formulating the concept of legal certainty of the economic value of registered intellectual property rights transferred as a result of companies or individual rights owners being declared bankrupt. This research is normative legal research or also called research, through descriptive literature searches.

It is hoped that this journal's purpose is to explain IPR, which is a bankruptcy asset, as long as it has a selling price/value under the control of the Curator and is used to settle debtors' debts to creditors. Debtors who own assets in the form of Intellectual Property Rights that have commercial value, assets will be managed by the Curator to settle debts to creditors. If you want to determine IPR as bankrupt assets, you need a study of material law. Whether all objects

can be used as collateral for debt payments depends on what objects are used to guarantee the debt. In carrying out the settlement of bankruptcy assets in the form of intellectual property rights, the Curator requires an appraisal (Assessment of an asset). The appraisal is based on a recommendation from the Public Appraisal Service Office (KJPP) as a standard for evaluating assets in Indonesia.

### **Problems**

The problems in this writing are as follows: How can Intellectual Property Rights (IPR) belong to legal subjects in bankruptcy increase the Boedel bankruptcy?

### **RESEARCH METHOD**

The research method used is normative legal research, namely studies examining the laws and regulations that apply or apply to a particular legal issue. Normative legal research is often called doctrinal research, whose objects of study are documents, laws, regulations, and library materials.<sup>8</sup>

### **DISCUSSION**

IPR (Intellectual Property Rights) is an exclusive right given by regulation to a person or group of people over their copyrighted work. In simple terms, IPR includes copyrights, patents, and trademark rights. However, if seen in more detail, IPR is part of two objects: intangible objects (immaterial objects). HKI is divided into 2 parts, namely:

1. Copyright is an exclusive right for creators or recipients of rights to publish or reproduce their creations or give permission for it without prejudice to restrictions according to applicable laws and regulations.

2. Industrial property rights, which include:

a. A patent is an exclusive right granted by the state to an inventor for his invention in the field of technology, who, for a certain period, carries out the invention himself or gives approval to another party to carry it out.

b. Industrial Design is a creation of a shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in a three-dimensional or two-dimensional form that gives an aesthetic impression and can be realized in a three-dimensional or two-dimensional pattern as well as can be used to produce a product or commodity.

c. A brand (trademark) is a sign in the form of a picture, name, word, letters, numbers, arrangement of colors, or a combination of these elements that has a distinguishing feature and is used in trading activities of goods or services.

d. Overcoming unfair competition practices (repression of unfair competition);

circuits (layout design of integrated circuits) is an exclusive right granted by the Republic of Indonesia to designers of their creations to carry out their work for a certain period or to give approval to other parties to exercise this right.

f. Trade Secrets Are information that is not known by the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the trade secret owner.

In discussing this journal, the author will focus on the brand's description (trademark). Differentiating power and used in trading activities of goods or services.<sup>9</sup> According to HMN Purwosutjipto, SH. As quoted by H. Oka Saidin, a mark is a sign by which a certain object is personalized to distinguish it from other similar objects.<sup>10</sup> H. Oka Saidin himself concluded that what is meant by the word brand is a sign to distinguish similar goods or services produced or traded by a person or group of persons or legal entities with similar goods or services. Produced by other people, which has differentiating power as well as a guarantee for its quality and is used in trading goods or services.

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Right to a Mark is an exclusive right granted by the State to a Mark owner registered in the General Register of Marks for a certain period by using the Mark himself or by permitting other parties to use it.<sup>12</sup>

These marks include Trademarks and Service Marks or Collective Marks. A trademark is a mark used on goods traded by a person or several people jointly or a legal entity to differentiate them from other similar goods. Meanwhile, a Service Mark is a Mark used for services traded by a person or several people jointly or a legal entity to differentiate it from other similar services. Moreover, Collective Marks are Marks used on goods and/or services with the same characteristics traded by several people or legal entities to differentiate them from other similar goods and/or services.

Intellectual Property Rights (IPR), particularly Trademarks and Copyrights, are difficult to determine. The legal actions taken by the curator regarding Intellectual Property Rights (IPR) are very limited, namely trying to get the Debtor to get royalties that should be obtained according to the license contract that has been made or selling Intellectual Property Rights (IPR) assets if this is possible.

Often in the books of bankrupt debtors, Intellectual Property Rights are not identified and are not listed as assets. This is, of course, due to the Debtor's limitations in assessing intangible and intangible assets. Although without realizing it, sometimes a Limited Liability Company is more widely known than a product brand, an Intellectual Property Right because in people's daily life, the product brand is more familiar than the company that produces it.

The most underlying reason curators do not optimize Intellectual Property Rights (IPR) is because Intellectual Property Rights (IPR) still need to be registered. Optimization of

Intellectual Property Rights (IPR) is only carried out on Intellectual Property Rights (HKI) that have been registered and still have value when the company goes bankrupt by continuing the Intellectual Property Rights (IPR) license agreement that previously existed and liquidating the Intellectual Property Rights assets (IPR). If it is possible to liquidate it, Intellectual Property Rights (IPR) will be liquidated, but this depends on the prospective buyer who will buy it.

The actions taken by the curator related to optimizing Intellectual Property Rights (IPR) are still limited to Intellectual Property Rights (IPR) assets which will add to the acquisition of bankrupt budels, such as Intellectual Property Rights (HKI), which are being licensed and Intellectual Property Rights (HKI) which can be for sale.<sup>10</sup> If there is a license agreement regarding Intellectual Property Rights (IPR) that is still being implemented when the Limited Liability Company (PT) is declared bankrupt, then the license agreement will be analyzed to determine whether it is necessary to continue or not if it is not necessary to continue then the curator will perform calculations regarding the receivables that the debtor should receive. If there is no ongoing licensing agreement, Intellectual Property Rights (IPR) are optimized through settlement, namely by selling Intellectual Property Rights (IPR) assets through auctions or private sales.<sup>1</sup>

### **A. In Bankruptcy**

Assets with the most dominant role when the company runs normally will have a low value during liquidation. The assets with the most dominant role are, of course, assets with special purposes, such as patents, brand rights, trade secret rights, industrial design rights, distributor networks, consumer networks, advertising systems, etc. Assets with specific uses are generally not trading assets, so they are not.

Assets with special purposes will be saved from the decline in value, considering that the value of assets with special purposes during going concerned is higher than the value during liquidation.<sup>13</sup> Efforts to restructure a company in bankruptcy will be relevant if it is carried out based on considerations including the bankrupt company has assets dedicated to certain economic activities, these assets must remain with the company, and the absence of these assets greatly affects the company's assets.<sup>14</sup> Thus, after considering several ways to maximize Intellectual Property Rights (IPR) assets during a going concern, through continuing the company's business activities (going concern in bankruptcy), the bankrupt debtor represented by the curator can take the following actions:

- 1) Carry Negotiating payments and increasing business capital, then the debtor will manage the company independently. Or
- 2) Carry out restructuring, be it a merger, acquisition, or consolidation, with other parties or the creditors themselves.
- 3) IPR Optimization Actions through Liquidation.

Asset liquidation means that assets are liquidated or cashed through the transfer of ownership rights to assets in a fast procedure. In this case, all forms of transfer of intellectual property rights assets are aimed at paying the debts of bankrupt debtors to their creditors.

Referring to the theory of value in liquidation, it can be seen that assets that have a special purpose will have a low value during liquidation, and so on. The more special the assets, the lower the value of assets in liquidation.<sup>15</sup>We can take an example from machines. Suppose the machine has many uses, such as an excavator. In that case, its value tends to be stable because it can be used in many operational activities, such as property, mining, and road construction, so excavators can be categorized for general purposes. Meanwhile, when we compare it with the printing equipment used in the ceramics industry, it can only be used in the ceramics industry. The liquidation value will be very low because it can only be used in ceramic production business activities.

Following this, according to the author, assets with a special purpose will have far more value if the Curator has more to continue the business or apply the principle of an ongoing concern than liquidating special purpose assets. By resuming the business of the bankrupt debtor, the Curator is also trying to improve the bankrupt debt and improve the business cycle between debtors and creditors so that by maintaining the Intellectual Property Rights of the bankrupt debtor, the Curator can make the IPR more commercial. As an example of a leading fried chicken brand previously, the brand from the culinary business was exclusively managed by the owner group, namely the brand owner's family. When the Limited Liability Company, as the legal subject running the fried chicken business, goes bankrupt, the Curator decides to make a franchise agreement because this partnership agreement will have new investors, and the business of the bankrupt debtor will revive.

Hoped that from the implementation of ongoing concern, the debtor can work together and synergize by helping the Curator work even though the debtor is no longer authorized to manage his assets. However, the debtor can provide suggestions or input to the Curator regarding any matters that can help a bankrupt company be able to do On Going Concern so that the result will be the rehabilitation of the bankrupt debtor company during the bankruptcy process. The debtor company will return to on (reactivate) when the bankruptcy process is ended.

## CONCLUSION

1. Intellectual Property Rights (IPR) are often not recorded as assets that have value in the books of bankrupt debtors. So that the curator still has difficulties entering HKI as a bankrupt bank which will be settled later.
2. Intellectual Property Rights are assets that are included for special purposes. So IPR should be utilized jointly by resuming the business continuity of the bankrupt debtor in order to protect the value of these assets. Because if IPR is liquidated, its economic value will be destroyed.

## Suggestion

1. Curator must understand that Intellectual Property Rights (IPR) have economic value as a bankruptcy. As well as in determining the economic value, the curator must also involve appraiser officials and other experts as a consideration in determining the value of assets or bankrupt cases.

2. The curator must also have a sense of business, not only immediately make arrangements. Suppose it is considered that the bankrupt debtor can be improved by resuming the bankrupt debtor's business. In that case, the curator must be able to run the debtor's business and position himself as the business leader with the aim that the bankrupt debtor can recover after the continuation of the bankruptcy business carried out by the curator.

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