



Problems of Settling Intellectual Property Bankruptcy Estate

Erlan Nopri

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir. Sutami No. 36, Kec. Jebres, Kota Surakarta, Central Java, Indonesia, 57126
erlannopri@student.uns.ac.id

Hartiwiningsih Hartiwiningsih

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir. Sutami No. 36, Kec. Jebres, Kota Surakarta, Central Java, Indonesia, 57126
hartiwiningsih@staff.uns.ac.id

Budi Agus Riswandi

Faculty of Law, Universitas Islam Indonesia
Jl. Kaliurang Km. 14,5 Yogyakarta, Indonesia
budiagusr@uii.ac.id

Abstract— The primary objective of this study is to analyze and formulate the problems of resolving bankruptcy assets for intellectual property rights. This research employs a doctrinal or normative legal research with a statutory and conceptual approach. This research utilizes primary and secondary legal materials, employing qualitative analysis. This research states that intellectual property rights are an intangible object that has economic value (*intangible asset*), so it is appropriate to use intellectual property rights as bankruptcy assets to pay off debtors' debts. Problems occur when the curator settles the bankruptcy estate of intellectual property rights and experiences difficulties in appraisal, because there are no statutory regulations that govern the value of intellectual property rights, resulting in a legal vacuum and the need for a special institution regarding the valuation of intellectual property rights.

Keywords— *Bankruptcy, Intellectual Property Rights, Problems*

I. INTRODUCTION

Intellectual Property Rights (IPR) are an intangible object or movable asset that can be used as an object of collateral. IPR is a right that arises from activities as a result of human's thought patterns which can create a product or process that benefits for the sustainability of human life.[1] One form of IPR that can be used as the subject of fiduciary collateral is copyright[2] and patent rights.[3] The IPR can be guaranteed if it has sales value and is presented in a binding written agreement.

IPR as an intangible asset is a material right that has inherent moral rights and economic value. If there is a party who wants to utilize the IPR, they must obtain the rights holder's approval to obtain a license to use the rights and have to pay for royalties. Looking at the provisions of Article 499 of the Civil Code, the definition of an object encompasses all items and rights that are subject to control through property rights. This implies that the object in question might refer to either property rights or intellectual property rights, so categorizing IPR as a form of intangible asset.

The development of IPR in the current technological era, IPR is included in company assets that do not have a physical form so that they can act as collateral for the company's financial obligations. IPR, possessing economic value, can significantly contribute to enhancing a company's overall worth. Consequently, in the unfortunate event of a company's bankruptcy, these IPR assets might serve as a crucial support mechanism. IPR can be used as a way to pay off debt because it has economic value in it. However, this can happen if the debtor cannot pay his obligations to the creditor, giving rise to a legal situation of default and resulting in insolvency.

Insolvency according to Sutan Remy Sjadeini occurs when a debtor is unable to fulfill his debt obligations and in conditions where the debtor's total debt exceeds the entire value of his assets.[4] Bankruptcy refers to the comprehensive seizure of all assets belonging to a debtor who is unable to meet their financial obligations. The administration and resolution of this process are overseen by a Curator, who operates under the guidance and scrutiny of a Supervisory Judge.[5] The primary responsibility of the curator is to oversee and administer the bankruptcy estate, including the management and resolution of its affairs.[5] Bankruptcy assets can have

physical form or not have physical form such as IPR, the explanation regarding bankruptcy assets only regulates bankruptcy assets which are excluded or cannot be part of bankruptcy assets.[5]

Curators in managing and/or settling bankruptcy assets, especially IPR, have challenges, because assessing IPR bankruptcy assets is complex and requires a special approach. This assessment is a crucial step in determining the true value of bankruptcy assets, especially IPR. The curator is responsible for ensuring the adherence to relevant rules and regulations during the bankruptcy proceedings, while also safeguarding the interests of all involved parties. Based on the background above, the author formulates the problem, namely, what are the problems with the process of settling bankruptcy assets which constitute intellectual property rights?

II. LITERATURE REVIEW

The legal system in Indonesia has a series of regulations that specifically protect intellectual property rights (IPR).[2] As a form of copyright, legal recognition and protection provided by the state to IPR owners was at least initiated due to the existence of international conventions. Indonesia's agreement to be involved in TRIPs held by the WTO then requires improvements to the IPR recognition. Based on this history, the government enacted the Copyright Law in 1987 to adjust copyright recognition standards and agreements agreed upon in TRIPs. One of the methods used by the government to confirm these regulations then refers to the provisions for registering objects whose copyright wishes to be protected. Suppose we refer to the existing doctrine on the European Continent. In that case, copyright should be able to attach automatically to works that have become a manifestation or expression of someone's ideas. If the creation is still an idea, then the legal protection effort that can be taken is to protect patent rights.

If we refer to the Copyright Law issued by the government in 2014, copyright should be a form of exclusive right. The creator automatically owns this exclusive right when declaring the work he has created. Then, from copyright, economic rights and moral rights will also arise. Economic rights are a form of right to obtain economic benefits from the work produced. Meanwhile, moral rights are related to the rights inherent in the owner or creator of the work. They cannot be removed even if ownership of a work has been transferred. This study attempts explicitly to discuss assets in bankruptcy cases relating to IPR. For this reason, it is specifically necessary to have a proper understanding of bankruptcy. Referring to the Bankruptcy Law promulgated by the government in 2004, *bankruptcy* is defined as a form of general confiscation of all assets of a bankrupt debtor carried out by a curator and supervised by a supervisory judge.[6]

Based on government protection for a work considered part of an asset with economic value, questions arise when there is bankruptcy for the owner of the IPR. To study this problem, it is necessary to carry out a study using the theory of interpretation put forward by Dworkin.[7] This theory will significantly limit the meaning of works recognized as part of IPR and the legal process when the asset owner experiences bankruptcy. Referring to interpretation theory, the process of interpreting a legal rule will significantly impact the judge's success in enforcing the applicable legal rules. Each mandate from the Law will have a philosophical value that the legislator who created it wants to convey. For this reason, in interpreting the limitations of the Law, judges need to have extensive knowledge to interpret the mandate of the Law correctly. In this case, the same logic must also be used to resolve issues regarding IPR assets in the general bankruptcy confiscation process according to Indonesian Law.

III. METHOD

This research is normative legal research, which includes inventory, interpretation and evaluation activities of positive law that applies in society with the aim of finding juridical solutions to current legal problems.[8] The analysis of legal materials in this research was carried out using qualitative analysis, in other words the legal materials are arranged in an orderly, structured, and logical manner to make it easier to interpret and analyze legal materials. Qualitative analysis is carried out by describing and illustrating data and facts then interpreted and presented in sentence form to answer research problems.

IV. DISCUSSIONS AND RESULTS

Bankruptcy assets encompass objects that possess a discernible price or sale worth. If the assets involved in a bankruptcy case are deemed to have a marketable worth, they will be liquidated through an auction process overseen by either the Curator or the Inheritance Property Center (BHP). If their selling value appears to have a chance on being developed, efforts will be taken to assure its continued productivity and profitability for the bankrupt estate, in order to settle the debtor's outstanding debt (*On Going Concern*). The curator has a legal obligation to resolve the debtor's outstanding debt with the creditor. In the event that the debtor possesses IPR that hold commercial value, these assets will be utilized for the purpose of resolving outstanding debts owed to creditors. In settling the bankruptcy estate, the curator needs to carry out an *appraisal*. The *appraisal* is based on recommendations from the Public Appraisal Services Office (KJPP) as the Indonesian standard for assessing an object.

Bankruptcy assets refer to the assets owned by an individual or business that has been legally declared bankrupt. These assets are under the supervision and management of the designated inheritance office. It is important to note that bankruptcy assets might take the shape of tangible commodities or intangible rights.[8] Upon the declaration of bankruptcy, the curator assumes the responsibility of managing and overseeing the bankruptcy assets. This role is subject to the oversight of the supervising judge, regardless of any legal challenges such as cassation or judicial review that may be initiated against the bankruptcy judgment.

The interpretation that has been made is that IPR is an object that has economic value, so it is appropriate for IPR to be a bankruptcy asset to pay off the debtor's debt. The interpretations that can be applied to make IPR objects into bankruptcy assets are actually a necessity for the bankruptcy process in Indonesia, because currently the Bankruptcy Law and PKPU cannot accommodate the pace of sociological developments in society, especially in the economic sector. The development of science and technology has rapidly developed producing various kinds of discoveries, creations or innovations which possess economic value and can be utilized as assets in the event of bankruptcy.

Its implementation in order to increase the objectivity and quality of the results of business appraisals of intangible assets that are the object of bankruptcy assets, requires assessment guidelines and presentation of appraisal reports for intangible assets that can encourage professionalism, independence and objectivity of parties carrying out activities as appraisers. However, due to the absence of statutory regulations governing the mechanism for assessing intangible assets that can be determined in calculating the value of IPR objects that become bankrupt assets in bankruptcy cases, the existing intangible asset assessment method is used in the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number: Kep-620/Bl/2011 concerning Guidelines for Valuation and Presentation of Intangible Asset Valuation Reports in the Capital Market which is currently included in Financial Services Authority Regulation VIII C.5.

When an equivalent analysis is conducted regarding the valuation guidelines and the manner in which intangible asset valuation reports are presented in the capital market, these guidelines can be adopted into the valuation report of an IPR object that is a bankruptcy estate, because after all the valuation method uses the 2015 *Indonesian Valuation Standards* (SPI 2015) Edition VI, which refers to the 2013 *International Valuation Standards* (IVS) issued by the *International Valuation Standards Committee* (IVSC).

In carrying out intangible assets, there are 3 common methods used in do valuation, namely:

1. *Income Based Approach Method* is an assessment method used to analyze and assess the value of Intangible Assets which can be measured economically based on the potential income generated by these assets within a certain period of time.
2. *Cost Based Approach* is a comprehensive valuation approach applied to estimate the intrinsic value of Intangible Assets by involving detailed and in-depth analysis of anticipated future income, expected cash flows, as well as potential cost reductions associated with the utilization or ownership of Intangible Assets in a certain period of time.
3. *Market Based Approach* is based on the fair market value of the same market object, of course with the same goods or substitute goods.[9] *Market Based Approach* can only be applied by using market data from the intangible assets that are the object of assessment and comparable intangible assets.

Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number: Kep-620/Bl/2011 concerning Guidelines for Valuation and Presentation of Intangible Asset Valuation Reports in the Capital Market, which is currently included in Financial Services Authority Regulation VIII C.5, which cannot actually be carried out on assessment or valuation of an IPR because this regulation is only intended for intangible assets in the capital market, whereas the valuation of IPR has different material from intangible assets in the capital market.

This then creates a legal vacuum in terms of the valuation of IPRs, especially IPRs that are part of bankruptcy assets, because statutory regulations do not yet accommodate the valuation of IPRs of bankruptcy assets. The problem of the absence of statutory regulations and special institutions regarding IPR valuation will have an impact on the settlement of bankruptcy assets, especially for curators who have this authority. Curators in settling IPR bankruptcy assets will be hampered due to the problem of there being no norms and institutions in the current valuation of IPR.

In various countries, for example in Singapore, running a business and providing intellectual property-based loans is a main thing. Singapore has regulations implementing intellectual property assessments that are technically feasible. Government support by providing financing assistance through government banks ensures legal certainty and ensures inventors' rights. The implementation of intellectual property assessment in Singapore is very structured starting from coordination between institutions, the creation of intellectual property valuation guidelines, accreditation for asset assessment institutions and the role of the intellectual property office in carrying out intellectual property assessments.

Through the role played by The Intellectual Property Office of Singapore (IPOS), the main objective is to manage Intellectual Property Rights by increasing legal awareness among the public about the importance of protecting IPR, providing the necessary facilities and infrastructure, and facilitating the progress and

development of IPR.[10] IPOS has established an institution that specifically deals with IPR valuation, namely through the IP Value Lab (IPVL).[10] IPVL is part of the IPOS subsidiary structure which focuses on promoting and developing management and strategies related to Intellectual Property Rights (IPR), optimizing the commercialization and economic use of IPR, as well as assessing the value of IPR assets.[11] IPVL plays a role in helping Intellectual Property Rights (IPR) asset owners to be able to use their IPR assets as collateral.

Law should be able to act as an element in changing society for the better. In essence, it must show that the law maintains and maintains what has been achieved. Law must help the process of societal change, because a developing society is a dynamic society. The function of law in national development is not only to guarantee certainty and order, but also law can be oriented as a means of reform in society.[11]

In relation to bankruptcy law, the state of bankruptcy regulations in general, and regarding the settlement of bankruptcy assets, especially intangible assets such as IPR, does not yet have any further interpretation or regulation regarding this matter. If bankruptcy law is viewed as a regulatory system, then in this case there is more than one element or part that is interrelated. Bankruptcy law in Indonesia does not yet show the existence of a unified, comprehensive legal system that can guarantee good bankruptcy regulation. Judging from its legal construction, bankruptcy law is included in matters that regulate the assessment of bankruptcy assets. There is no special assessment institution for intangible movable objects such as IPR, so there is a need for reform in this field to achieve legal certainty in bankruptcy.

IPR in the current technological era is in the public spotlight due to the development of digital transformation. This has an impact on how bankruptcy law responds to sociological changes that occur in society. The development of IPR will certainly become an asset for debtors in the future, this cannot be separated from the government currently conducting a review of IPR as collateral for obtaining banking credit. This means that the assets of IPR bankruptcy debtors will increase in the future.

V. CONCLUSION

The problem with settling IPR bankruptcy assets is that there are no norms and institutions for assessing bankruptcy assets, especially assessing intangible movable objects, which in this discussion are IPR. The lack of clarity regarding the regulations for this matter in the Bankruptcy Law and PKPU as well as the absence of an assessment agency should require legal reform, especially in the field of bankruptcy law. Thus, the task of the Curator in carrying out the settlement of bankruptcy assets, especially regarding IPR, is to find legal certainty in carrying out his duties as intended in Article 69 of the Bankruptcy Law and PKPU. The author suggests for policy makers that this can be resolved, because the law should help the process of change in society which is building on the changes currently occurring which are very dynamic. As a consequence, legislation governing the assessment of intellectual property rights is imperative, particularly in the context of insolvency asset settlements. Additionally, to address the existing legal void, a specialized institution dedicated to intellectual property rights valuation must be established.

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