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## **The Legal Position Of Intellectual Property As Bankruptcy Property And Its Management And Settlement By The Curator**

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### **Abstract**

In insolvency, the Curator is in charge of managing and settling the *boedel* of bankruptcy property. The forms of bankruptcy property vary, one of which is Intellectual Property. Intellectual Property is a right arising from the result of a human mindset, which has economic value, so it can be said to be wealth. This paper discusses the legal position of Intellectual Property as bankruptcy property, as well as how it is managed and resolved by the Curator. Research methods used normative legal research methods. The results showed that Intellectual Property can be included in the *boedel* of bankruptcy property, but because it is an asset that has a special purpose, its value is high when the company is still operating, and it actually fell during liquidation. Therefore, before reaching the settlement phase, the Curator must first strive to optimize the value of Intellectual Property in the management phase during operation the company is still running and the value of Intellectual Property is still high.

**Keywords:** intellectual property, insolvency, bankruptcy property, management, settlement

### **INTRODUCTION**

Wealth Intelektual is a right arising from the result of a human mindset, which then produces a product or process that is useful for society. From the results of this mindset, Intellectual Property Rights holders can enjoy economically the results of their intellectual creativity which can be in the form of knowledge, technology, or art results.

The problem of ownership of Intellectual Property is a problem that continues to develop in accordance with the development of science and technology. At the beginning of its development, the problem was very simple, for example, it only concerned the demands so that it could be mastered and used for any purpose, anything it had discovered, created by its energy and intellectual abilities. The problem of Intellectual Property Rights today is increasingly felt more complex, it is no longer purely Intellectual Property Rights alone, where many interests are related to Intellectual Property Rights. Economic and political issues have become inseparable elements in discussing Intellectual Property Rights. One of them is regarding Intellectual Property Rights in relation to *the boedel* of bankruptcy property.

Article 21 of Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations (UUK-PKPU) states that Insolvency includes all debit assets or at the time the bankruptcy declaration decision is pronounced as well as everything obtained during insolvency. Thus, the insolvent estate also includes everything (property) acquired during the insolvency. The curator stipulated in the bankruptcy judgment is immediately in charge of administering and controlling the bankruptcy *boedel* from the moment the Debtor is declared bankrupt, under the supervision of the supervising judge, even if the judgment is filed for legal remedies either in the form of cassation or Judicial Review. A curator in insolvency is a party that has been established by law to exercise control and management of insolvent property for the benefit of debtors and creditors.

Management and settlement have different meanings according to UUK-PKPU, where management is an action carried out by the Curator since the bankruptcy declaration decision, which is in the form of all series related to matching receivables, peace, and even to the settlement. Activities include inventorying, maintaining and maintaining bankruptcy assets not reduced in quantity and value, if it turns out that there is then a cassation or Review decision, then all actions that have been done by the Curator before or on the date the Curator receives notice of the cancellation decision, remain valid and binding for Insolvent debtors.

On the other hand, settlement is one of the duties performed by the Curator on the management of the bankruptcy Debtor's assets, where settlement can only be made after the bankrupt Debtor is really in a state of *insolvency* after the bankruptcy statement decision. With this insolvency, the Curator began to take all actions related to the settlement of all the assets of the bankrupt Debtor.

This management and settlement is closely related to the bankruptcy property, namely the debtor's property. The Debtor's property can be in the form of one of which is Intellectual Property Rights, whose calculations and provisions in Indonesian law are still deemed necessary to be optimized. The unregulated Intellectual Property Rights that can be included in the bankruptcy *boedel* also clearly results in confusion and dissent about the execution procedures and calculations that creditors should pursue. This has an impact on the emergence of several legal problems and disputes related to its execution, procedures or auction mechanisms used, such as the assumption that the mechanism is less transparent and does not produce maximum prices, so it is less profitable for creditors. There is the potential for considerable economic losses considering that currently many economic actors who own Intellectual Property Rights are notorious for experiencing financial problems and can disrupt the wheels of the economy. Despite the unclear arrangement of Intellectual Property Rights and their inclusion in the bankruptcy *boedel*, it has become a generally accepted discourse, that in insolvency proceedings and Intellectual Property Rights must pay attention to various interests, not only the interests on the part of the bankruptcy petitioner, but must also provide protection to the Debtor.

## RESEARCH METHODS

This research is a normative type of research, namely research that examines and examines the quality and application of a rule or legal norm regarding the valuation of bankruptcy property in the form of Intellectual Property. This research is descriptive analytical, where research data is processed and analyzed, and presented with the provision of a complete picture of the management and settlement of bankruptcy assets in the form of Intellectual Property by the Curator. This research was conducted with a document study data collection tool to obtain secondary data sourced from:

**a. Primary legal materials**, namely binding legal materials such as laws and regulations of the Civil Code, Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations, Law Number 19 of 2002 concerning Copyright, Law Number 14 of 2001 concerning Patents, Law Number 15 of 2001 concerning Trademarks, Law Number 30 of 2000 concerning Trade Secrets;

**b. Secondary legal materials**, namely legal materials that provide explanations of primary legal materials as well as the literature listed in the Bibliography;

**c. Tertiary legal materials**, which are legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as legal dictionaries. Furthermore, the research data is analyzed by analyzing general concepts, including concepts about Bankruptcy Property in the form of Intellectual Property.

## DISCUSSION

### 1. Insolvency Overview

#### **Definition of Insolvency**

Etymologically, the term insolvency comes from the word "*bankruptcy*". When searched more fundamentally, the term "*bankruptcy*" is found in the treasury 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 adjective. In French, bankruptcy comes from the word

"*faillite*" which means strike or payment bottleneck, while the person who strikes or stops paying in French is called "*lefailli*". The verb "*faillir*" means to fail. In English it is known the word "*to fail*" with the same meaning, in Latin it is called "*faillure*". In English-speaking countries, the notions of bankruptcy and insolvency are represented by the words "*bankrupt*" and "*bankruptcy*" (Situmorang, 1994).

The definition of Insolvency under Article 1 paragraph (1) of UUK-PKPU is "a general confiscation of all the assets of the insolvent Debtor whose management and settlement is carried out by a Kurator under the supervision of the Supervisory Judge as provided by this Act". In colloquial language, bankruptcy can be interpreted as a Debtor in a state of inability to pay debts. As for the definition of Insolvency according to experts:

#### **a. Explanatory Memorandum**

Insolvency is a legal confiscation of all the assets owed in his interests with the debtor (Surayatin, 1983)

#### **b. R. Subekti**

Insolvency is a joint effort to obtain payments for all those who are owed fairly (Subekti, 1995).

#### **c. H.M.N. Purwosutjipto**

Insolvency is everything related to the event of bankruptcy, bankruptcy itself is a state of cessation of paying its debts and in this insolvency there is contained the nature of the general confiscation of all assets of the Debtor for the benefit of all creditors concerned (H.M.N. Purwosutjipto, 2004)

#### **d. Munir Fuady**

Bankruptcy is a complete confiscation of all property from the bankrupt. As a certain consequence, the bankrupt is prohibited from continuing his business and taking legal actions, except with the consent of the supervisor or implementation (Munir, 2005).

### ***Insolvency Law Arrangements in the World and Indonesia***

In the United States (US), the general history of insolvency begins with a constitutional debate that wants the US Congress to have the power to form a uniform rule on bankruptcy. This has been debated since the convening of the *Constitutional Convention* in Philadelphia in 1787. In *The Federalist Paper*, a founding father of the United States, James Madison, discusses the so-called *Bankruptcy Clause* as follows: "The authority to create a uniform rule regarding bankruptcy is closely related to the rules regarding the economy (*commerce*) and will be able to prevent the occurrence of so many frauds, where the parties or their property can be improperly hidden or transferred to another state" (Nur, 2015). In its development, the US Congress enacted the first federal law on bankruptcy in 1800, namely *The Bankruptcy Act 1800*. The Bankruptcy Act gives an opportunity to a Debtor to voluntarily file an application for bankruptcy against himself (*voluntary bankruptcy*). The Bankruptcy Act serves as the basic foundation for *The Bankruptcy Code*, which regulates insolvency for debtors in the form of *partnerships*, corporations, and individuals. When applying for *bankruptcy* in the U.S., is the most important way of obtaining assistance by a Debtor. Most of the current insolvency is thanks to the debtor's voluntary declaration to declare himself bankrupt to find a way out of the demands of his Creditors (Nur, 2015).

In Indonesia, insolvency law starts from the enactment of *Verordening op het Faillissement en de Surseance van Betaling voor de Europeanen in Nederlands Indiën* or the regulation of insolvency and postponement of payments for Europeans. The regulations with *Staadblad 1905-217* and *Staadblad 1906-348* were enacted on 01 November 1906, and applied to Europeans also applied to Chinese and Foreign Eastern groups. For the Indigenous Indonesians (Pribumi) can use *Faillissements-verordening* by subduing themselves. After Indonesia's independence, in July 1997 there was monetary turmoil in several countries in Asia, including Indonesia. This causes enormous difficulties for the national economy, especially the ability of the business world to develop its business. So that the national insolvency law emerged, Law Number 4 of 1998 which was later amended into Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations (hereinafter referred to as UUK-PKPU).

Arrangements on insolvency are also not only contained in UUK-PKPU. Other applicable laws and regulations also contain several provisions related to insolvency, including the following:

- a. Undang-Law Number 40 of 2007 concerning Limited Liability Companies;
- b. Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations;
- c. Law Number 4 of 1996 concerning Dependent Rights;
- d. Law Number 42 of 1992 concerning Fiduciary Guarantees;
- e. Civil Code;
- f. Criminal Code; and
- g. The provisions apply in the field of State-Owned Enterprises (BUMN), Capital Market, Banking, Foundations and Cooperatives.

### **Insolvency Assets in Insolvency**

In Article 21 of UUK-PKPU, it is stated that insolvency includes the entire wealth of the Debtor at the time the bankruptcy declaration judgment is pronounced as well (*Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU), Pasal 21.*, 2004). Thus, the insolvent estate also includes everything (property) acquired during the insolvency. *Boedel* pailit can also be referred to as bankruptcy property, is the wealth of a person or organization that has been declared bankrupt. Furthermore, the estate of this insolvency will be cleared by the Curator under the supervision of the Supervising Judge. The execution can only be carried out after the insolvent Debtor is completely unable to pay after the bankruptcy declaration judgment, which results in the Debtor's property entering into the bankruptcy property. As a result of the bankruptcy declaration law, the Debtor by law loses the right to control and manage his property entered into insolvency, starting from the declaration of insolvency judgment. Against the insolvent property there is a general confiscation and the Debtor is no longer authorized to administer and perform any legal acts concerning his property. The Insolvency Institution is a legal institution that has an important function, as a realization of two important Articles in the Civil Code (hereinafter referred to as the Civil Code), namely in P origin 1131 and P origin 1132 concerning the responsibility of debtors for their debts, as follows:

#### **Article 1131 of the Civil Code**

*"All the debtor's treasury, whether movable or immovable, whether existing or new in the future, shall be dependent upon all his individual engagements" (Kitab Undang-Undang Hukum Perdata, Diterjemahkan Oleh 2004, Pasal 1131, 2004)*

#### **Article 1132 of the Civil Code**

*"The treasury becomes a joint guarantee for all those who devote to it, the income from the sale of the objects is divided according to the balance, that is, according to the size of the respective receivables unless among the debtors there are valid reasons taking precedence" (Civil Code, translated by 2004, Article 1132. , 2004)*

Article 1131 of the Civil Code specifies that all property of a person both present and future, both movable and immovable objects, is a guarantee for his entire bond. The wealth in question is not only limited to wealth in the form of immovable goods such as land, but also movable goods such as jewelry, vehicles, machinery, buildings, and including tangible and intangible goods. In order to implement this provision, Article 1132 of the Civil Code orders that all assets of the Debtor be sold at auction in public on the basis of a judge's decision, and the proceeds are distributed to the Creditors in a balanced manner, unless there is a Creditor who takes precedence over the fulfillment of his receivables.

The matters mentioned in the provisions of Article 1131 of the Civil Code and Article 21 of the UUK-PKPU are not without exceptions. Some of the Debtor's assets, both existing and new to exist in the future, are not included in the bankruptcy estate (Sutan Remy Sjahdeini, 2016). Article 184 paragraph (3) of UUK-PKPU provides an exception that there are insolvent assets that will not be sold by the Curator, namely "The bankrupt debtor may be granted only home furnishings and equipment, medical devices used for health or office furniture determined by the Supervising Judge". In addition, if the Debtor is a company that will still continue to carry out

its business after the exemption action by the Curator as stated in Article 184 paragraph (2) of UUK-PKPU, namely "In the event that the company is continued, the sale of objects that include bankruptcy assets can be carried out, which are not necessary to continue the company". Then, the other exceptions are as specified in Article 22 of the UUK-PKPU, yaitu:

a. Objects, including animals that are strictly required by the Debtor in connection with his work, his equipment, medical devices used for health, his bed and equipment used by the Debtor and his family, and groceries for 30 (thirty) days for the Debtor and his family, which are in that place;

b. Everything that the Debtor obtains from his own work as payroll of an office or service, as wages, pensions, waiting money or allowances, to the extent prescribed by the Supervising Judge; or Money given to the Debtor to fulfill an obligation to provide a living under the Act.

In bankruptcy, of course, it will be a problem if in the management of bankruptcy assets it turns out that the Debtor's assets are insufficient to pay receivables to existing Creditors. When referring to Article 1133 of the Civil Code, there are rights that can come first, namely privileges, liens and mortgage rights. There are 3 types of Creditors, namely:

**1. Preferred Creditors:** Creditors who have privileges or priority rights. So that the Creditor Preferral can take precedence over the repayment of his receivables because he has privileges that precede based on the nature of his receivables;

**2. Separatist Creditors:** Creditors who hold the right of treasury guarantees. This is regulated in Article 138 of UUK-PKPU which states that Creditors whose receivables are secured by treasury guarantees can request to be given the rights that Concurrent Creditors have over the portion of the receivables, without prejudice to the right to take precedence over the objects that are collateral for their receivables; and

**3. Concurrent Creditors:** Creditors who do not hold a guarantee of treasury rights, but these Creditors have the right to collect the Debtor under the agreement. However, in repayment of receivables, Concurrent Creditors get the most recent repayment after the Preferred Creditor and the Separatist Creditor are repaid their receivables.

## 2. Intellectual Property Overview

In simple terms, Intellectual Property is property that arises or is born from human intellectual abilities. Works arising or born from human intellectual abilities can be works in the field of technology, science, art and literature. These works are born or produced on the intellectual abilities of man through the outpouring of time, energy, thoughts, inventiveness, taste and taste. It distinguishes intellectual property from other types of property that can also be owned by humans but not generated by human intellectuality. Wealth or assets in the form of works produced from human thought or intelligence have economic value or benefits for human life so that they can also be considered as commercial assets. Works that are born or produced on human intellectual abilities either through the outpouring of energy, mind and copyright, taste and taste are naturally secured by developing a legal protection system for the property known as the Intellectual Property Rights (IPR) system.

Rights are social and legal institutions/institutions. Rights are always related to two aspects, namely the ownership aspect (*owner*) and something *owned* (*something owned*). L.J.Van Veldoorn stated that a right is a law that is connected with a human being or a certain legal subject and is transformed into a right when the law begins to move (CST Kansil, 1989). Wealth is the equivalent of the word ownership. Then wealth can be interpreted as ownership of an object as a consequence of being granted rights to a person by law. While the word Intellectual means intelligence, there are thoughts and brain abilities possessed by a person (Irawan, 2012). That Intellectual Property Rights are essentially a right with special and special characteristics, because these rights are granted by the state. The state, based on the provisions of the law, gives such special rights to the entitled, in accordance with the procedures and conditions that must be met (Hartono, 1993). Intellectual Property is the rights (authority or power) to do something about the intellectual property, which is regulated by applicable norms or laws (Sutedi, 2009).

The emergence of IPR as a topic of discussion at the national, regional and even international levels cannot be separated from the formation of the World Trade Organization (WTO)



(Sembiring, 2002). Indonesia participated in the negotiations on the establishment of the WTO, one of whose components was *Trade Related Intellectual Property Rights* (TRIPs) (Sembiring, 2002). The basic principles listed in TRIPs are (Sembiring, 2002):

- a. *National Treatment* of all citizens;
- b. Preferential treatment for certain countries;
- c. Consent acquires or maintains protection.

TRIPs are not the starting point for the growth of the concept of Intellectual Property. Various international conventions related to IPR have long been born and have been changed several times. The convention that is the main basis of Industrial Property is the Paris Convention for the Protection of *Industrial Property* (Paris Convention), while for Copyright is the Berne Convention *for the Protection of Literary and Artistic Works* (Berne Convention) (Purba, 2005).

### 3. Settlement of Bankruptcy Assets in General

The settlement and management of bankruptcy assets is the most decisive stage in order to fulfill the obligations of debtors who have been declared bankrupt based on a bankruptcy statement decision (Murniati, 2011). Management is announcing insolvency *ikhwal*, sealing bankruptcy assets, recording / registering bankruptcy assets, continuing the debtor's business, opening telegram letters of bankrupt debtors, transferring bankruptcy assets, depositing bankruptcy assets, holding peace to guarantee an ongoing case or preventing the emergence of a case related to insolvency (Hartini, 2007).

In the insolvency stage, there is one institution whose existence is very important, namely the Curator. A curator is an institution held by law to settle bankruptcy property. UUK-PKPU appoints Kurator as the only party that will handle all settlement activities including the management of bankruptcy assets. In general, this is stated in the provisions of Article 24 paragraph (1) of UUK-PKPU which formulates: "*all lawsuits originating from the rights and obligations of the property of the bankrupt debtor, must be filed against or by the Curator*". The curator is appointed by the Commercial Court judge on the proposal of the appointment of Kurator by the Debitur, Kreditur or authorities such as Bapepam, the Minister of Finance, Bank Indonesia and the Prosecutor's Office along with the decision of the bankruptcy statement application. If the Debitur or Kreditur who applied for insolvency does not propose the appointment of another Kurator to the court, then the Heritage Hall (BHP) acts as the Kurator. When talking about the position of a Kurator, which is the basis for carrying out duties and obligations and normative authority is the right to take action in the settlement and management of bankruptcy assets according to UUK-PKPU. A Kurator in carrying out his duties must not commit arbitrary actions that pass through the corridors of his law and authority, thus paying attention to several things, such as (Fuady, 2014):

- a. Whether he has the authority to perform such acts;
- b. A course of action is in accordance with the right circumstances and conditions with due regard to economic and business factors;
- c. In carrying out these actions, it requires the approval / participation of certain parties, such as Supervisory Judges, Commercial Courts, Debtors, Creditor committees and so on; and
- d. Apakah against such actions requires certain procedures, such as holding meetings with certain quorums and must also in hearings attended / presided over by the Supervising Judge and Kurator in carrying out certain actions must also pay attention to the proper means in terms of legal, social and customary aspects of the community.

The settlement of the property of the bankrupt debtor is carried out by the Kurator. As of the date of the bankruptcy declaration judgment, the insolvent debtor loses his right to manage and manage property that includes the *bankruptcy boedel*. This matter must be handed over to the Curator, it is the Curator who manages and settles the insolvency property (Usman, 2004). Based on Article 1 paragraph (5) UUK-PKPU, Kurator is a heritage property hall or individual person appointed by the court to manage and clean up the property of the bankrupt debtor under the supervision of the Supervisory Judge in accordance with the UUK-PKPU. Then based on Article 16 of UUK-PKPU, the Kurator is authorized to carry out the duties of managing and/or settling the bankruptcy property from the date the bankruptcy judgment is pronounced even if the judgment is appealed or reviewed. The curator begins the settlement of the bankruptcy property after the insolvent property is in a state of inability to pay and the debtor's business is terminated. The curator decides how to settle the bankruptcy property by always paying

attention to the best value at the time of settlement. Based on Article 178 paragraph (1) of UUK-PKPU, if in the receivables matching meeting (i.e. debt-receivables verification meeting) there is no peace plan (by Debitur), or the peace plan offered is not accepted by the meeting, or the ratification of the peace is rejected based on the decision of the Commercial Court which has obtained permanent legal force, then for the sake of law the bankruptcy property is in a state of *insolvency* (unable to pay debts Debitur). The next action is to carry out liquidation, that is, by selling the bankruptcy property. Liquidation is literally an act of settlement of assets Debitur yaitu in the form of assets or (assets) and liabilities (pasiva) of a company as a follow-up to the dissolution of the company. The liquidation procedure of this company is carried out in accordance with the provisions of Articles 147 to 152 of Law Number 40 of 2007 concerning Limited Liability Companies.

The insolvency process does require relatively high costs considering that the bankruptcy process involves many parties such as Kurator/administrator, courts, appraisers, accountants and auction offices. However, this high cost pays off considering that insolvency and Postponement of Debt Payment Obligations have shorter procedures and a definite timeframe compared to civil lawsuit proceedings. As specified in Article 191 of the UUK-PKPU, all insolvency costs are charged to any object that is part of the bankruptcy property, unless the object under Article 55 has been sold by the lien holder's creditor himself, Fiduciary Guarantee, Dependent Rights, mortgage or other collateral rights to the treasury. Article 65 of the UUK-PKPU states that the Supervisory Judge oversees the management and settlement of bankruptcy assets, so that it is more optimized to protect the Curator from the actions of Debitur, Kreditur and K epolisian. That in principle, the responsibility of the Supervising Judge is the same as that of other judicial judges, i.e. the Supervising Judge is instructed to supervise the matters that occur over the *bankruptcy boedel* and whether the Curator actually complies with all the provisions of the laws and regulations in carrying out his duties and responsibilities.

#### **4. Intellectual Property as an Object of Insolvency in Insolvency**

##### ***Intellectual Property as Property***

If studied, Intellectual Property is actually a material right that has economic value and therefore Intellectual Property is a property, so Intellectual Property can be viewed as an asset in a company. Objects regulated in Intellectual Property are works that are born due to *intangible human intellectual* abilities.

Assets are resources owned by a company, which have economic or financial value. *Intangible assets* are assets of a non-monetary nature that can be identified without physical form to be utilized in producing or delivering goods or services, leased to other parties, or for administrative purposes. These assets can be in the form of rights attached to intellectual products whose facilities are likely to be used by other parties, such rights include: Copyright, Patent Rights, Trademark Rights, And Exclusive Rights. Brauch Lev said there are two peculiarities of Intellectual Property as an intangible asset, namely (Rahmatullah, 2015):

##### **a. Partial excludability**

The period of ownership of tangible assets can continue to be enjoyed as long as it is still the right of the owner, but in the case of Intellectual Property which is another type of intangible asset has a limited *duration*; and

##### **b. Non-Pemasaran (Non-marketability)**

Tangible assets and financial assets are traded in competitive markets such as stock exchanges, car *dealerships* and others, but intangible assets are not traded in places that appear to be places.

As an intellectual work resulting from the efforts of human thought, the state is then present to provide protection and appreciate such efforts from the interference of others. The award is in the form of granting moral rights and economic rights to the owner of the work. Moral rights are the right for the name of the copyright to be included in the Copyright, the name of the inventor in the Patent and so on. In addition to moral rights, actors producing intellectual works are also valued by the state with guaranteed economic rights from the works they produce. This economic right means that actors can benefit materially from their work, both due to duplication, use of licenses with third parties and other means justified by law. As a form of rights, of course, this Intellectual Property Right can be transferred to another party, either in part or in full. The

transferable right is an economic right, while the moral right is attached to the Creator or inventor as long as the person concerned is alive.

Works produced by man are further recognized as wealth, this means that there is a concept of ownership and materiality contained in it. That the right to the results of human labor, including the results of intellectual labor, is the property of the producer of the intellectual work. Man has exclusive natural rights over his body, just as man has exclusive rights to what his body produces. Based on this, it can be said that what the human body produces, including what is produced by the intellect of his mind as an intellectual work. Therefore, it can logically be stated that based on the laws of nature, intellectual work as a result of the human body contains the exclusivity possessed by the producing human being.

### ***Intellectual Property as a Right to The Treasury and Guarantee of Debt Repayment***

Intellectual Property as property must certainly be fully understood its material status. Treasury law in Indonesia is generally regulated in Article 499 of the Civil Code which outlines that objects (*Zaken*) are any goods (*geodern*) or rights (*rechten*) that can be controlled by property rights. The right attached to an object is referred to as a material right (*zakenlijkrecht*) which is a right that gives direct power over an object, which can be maintained against each orang (Subekti, 1984). An object is something useful to the subject of law or anything that is the subject matter and interest of the subjects of law or anything that can be the object of property rights. The object of law is in the form of objects or goods or rights that can be owned and of economic value. Thus, the law of the treasury relates to the relation of the owner of the thing to the thing which also gives birth to material rights. Intellectual property itself means the right of a material or right to an object derived from the work of the brain or the work of a ratio that includes inventions, literary and artistic works, symbols, names, and designs.

The recognition of ownership logically also implies the recognition that intellectual property is an object. Therefore, intellectual property is attached a right called a treasury right (Ginting, 2004). Intellectual Property Rights are in principle material rights that have economic value. From a commercial perspective, economic value means that it can be transferred, traded or leased. In the civil context, economic value is the property of the inventor who holds the Intellectual Property. The creative industry and business actors have shifted in interpreting Intellectual Property, nowadays it is not only seen conventionally as a form of moral recognition or as an economic incentive for a work. The current paradigm sees Intellectual Property as optimization as working capital, meaning that Intellectual Property is a collateral instrument used to guarantee debt. This shows that today Intellectual Property is not only a form of moral appreciation or incentive for a work, but as a capital for future works.

Referring to Article 499 of the Civil Code which defines Intellectual Property as an intangible movable object, it is more appropriate to formulate it as a guarantee in the form of a fiduciary. Wealth Intelektual as a guarantee of a fiduciary object is possible by referring to Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely that fiduciary is the transfer of ownership rights of an object on the basis of trust. Furthermore, in paragraph (2) it is affirmed that the Fiduciary Guarantee can be both tangible and intangible objects that have economic value. Thus by legal construction it is possible for Intellectual Property to be a guarantee of financing through a Fiduciary Guarantee institution. This concept is seen as being able to provide legal certainty and legal protection for Bank as a K reditur in financing and provide legal certainty for inventors to be able to continue to work productively with access to capital from Bank. Systematically Intellectual Property as an intangible asset / asset that has economic value because it can contribute to profits. Intellectual Property can also be collateral in addition to ensuring security for creditors by taking over all the Debtor's assets to sell and paying off debts, as well as adding a line of financial resources for debt recovery (Mulyani, 2012)

### ***Intellectual Property as Insolvent Property***

One of the protections for Kreditor provided by law if Debitur is negligent and unable to pay off his debts is by guarantee. K ethics Debitur neglected to pay off the debt, then the effort that can be made by the K reditur is to sell the object of the treasury guarantee, either by auction or in other means regulated according to the laws and regulations, and then take the proceeds of the sale as payment of the debt. The provisions in Article 1131 of the Civil Code state that all existing and future treasury both movable and immovable is a guarantee against the repayment of debts made by him. Article 1132 of the Civil Code states that the debtor's property becomes



a joint guarantee for all creditors who give debts to him. The revenue from the sale of the objects is divided proportionally according to the size of the respective receivables unless among the debtors there are legitimate reasons for precedence.

Collateral is the need of the Prosecutor to minimize the risk if D ebitur is unable to complete all obligations related to the credit that has been disbursed. With the guarantee that if D ebitur is unable to pay, D ebitur can force payment on the credit he has given (Badriyah Harun, 2010). In practice, it is stated in the general guarantee agreement subject to Article 1131 of the Civil Code, the content: "*All the treasury rights of the debtor, both movable and immovable, both existing and future, are dependent on all his agreements*". The goods of the object of guarantee are goods that can be valued and can be traded. The system of treasury guarantees subject to Article 1131 of the Civil Code is termed the General Guarantee. Thus, all of D's estate automatically becomes collateral when the person enters into a debt agreement even if it is not expressly stated as collateral. In this case, objects that can be used as repayment of general guarantees if they meet the requirements include (Simangunsong, 2008):

- a. The object is economical (it can be valued with money);
- b. The object is transferable to the other party.

If you want to establish Intellectual Property as bankruptcy property, it requires a legal study of the treasury, as stated in Book II of the Civil Code. In Article 499 of the Civil Code which reads as follows: "*According to the understanding of the Law called treasury is each item and each right that can be controlled by property rights*". In general, what is defined by objects, be it tangible objects, parts of property, or in the form of rights is everything that can be controlled by humans and can be used as an object of law. So to be able to become an object of law, in this case bankruptcy property, there are conditions that must be met, namely human control and have economic value. As for whether all objects can be used as collateral for debt repayment, it depends on what objects are used to guarantee the objects.

In general, Intellectual Property can be classified into two main categories, namely Industrial Property Rights and Copyrights. The scope of Property Rights Industri consists of Patents, Brands, Industrial Designs, Integrated Circuit Layouts, Trade Secrets, and Geographical Indications. While the scope of Copyright is copyrighted works in the fields of science, art and literature. After Debitur is declared bankrupt, the insolvency process will then be carried out. Insolvency law is a legal product created to provide a way out for a Debitur who is experiencing *financial distress* so as not to be continuously charged by his K rediturist. The main purpose of insolvency is to divide D's estate to his K reducers conducted by Kurator after the pailit judgment (Kartoningrat & Andayani, 2018), (Kartoningrat & Andayani, 2018)

## **5. Settlement of Bankruptcy Property in the form of Intellectual Property**

So far, Kurator has not been easy in doing his job in utilizing Debitur's property, especially Intellectual Property Rights, especially as a type of intangible asset. This kind of asset must be assessed first by a recognized/certified *Appraisal* (Penilai), so that later it will be known the true value of the asset by considering its usefulness for the company and market value. Some of the problems faced by curators in maximizing Intellectual Property are:

- a. First, the Intellectual Property Rights owned** by D ebitur have not been registered so it cannot be said that D ebitur is the rightful owner of the Intellectual Property Rights. The action to maximize Intellectual Property Rights is only carried out on Intellectual Property Rights that are registered and still have value when the company goes bankrupt, by continuing the previously existing Intellectual Property Rights licensing agreement and liquidating IPR assets;
- b. Secondly,** the Intellectual Property Rights owned by Debitur are in dispute with third parties. Because all cases filed against Debitur bankruptcy since the bankruptcy was imposed were declared void by law (*Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU), Pasal 21., 2004*), then it is not clear who is the so-called legally rightful owner of the Intellectual Property Rights in question. And Intellectual Property Rights which under these conditions certainly cannot be declared solely as part of the *boedel* belonging to Debitur bankruptcy. The exception is that when Dis acting as a plaintiff, the case will continue to be carried out pending the outcome of the court's decision; and
- c. Third,** Intellectual Property Rights do not sell well. It should be that all of D's property must be sold at the time of settlement and distributed to the Claimants without exception, but there are types of Intellectual Property Rights that are difficult to sell because the protection is

attached entirely to the Recreator Copyright holder, the nature of the protection is for life. The legal action taken by the Curator regarding Intellectual Property Rights is very limited, namely seeking to get Debitor to get royalties that should be obtained according to the license contract that has been made, or to sell IPR assets if that is possible.

One of the Curator's obstacles in maximizing Intellectual Property as above, is Intellectual Property that does not sell well. This can be due to the nature of Intellectual Property which is an asset with a *special purpose*, the most dominant or beneficial when the company is running normally. Therefore, these *special purpose* assets are not assets that are generally traded in the market and their value is within the business entity where the assets are located (Salam, 2014)(Salam, 2014) For example, Brand Rights held by a company for the products it sells. If the company ceases operations and the product is no longer sold, then the Trademark Rights it holds also decrease in value because of the products attached to the Brand Rights it's not produced anymore. Thus, the value of Intellectual Property falls when the company it relates to ceases to operate, and its value gets lower during liquidation (Salam, 2014).(Salam, 2014)

Taking into account the foregoing, it is necessary to remember that the duties of the Curator in insolvency are management and settlement. In this case, before reaching the stage of settlement and liquidation of the Debtor's assets, there is first a management phase that can be the focus of the Curator, especially seeking peace and continuing the debtor's business (*going concern*). Thus, the main thing that the Curator can do to optimize Intellectual Property in insolvency is to restructure the company and continue the company's business on behalf of Debtors, so that Intellectual Property as a dominant *special purpose* asset in company operations, can increase its ability through better capital and management (Salam, 2014).

## CONCLUSIONS AND SUGGESTIONS

### 1. Conclusion

Based on the above explanation, it can be concluded that Intellectual Property is a material right with economic value, which can therefore be said to be property. As a company's property, Intellectual Property can be included as a *boedel* of insolvent property in the event that the company is terminated insolvent based on a court decision. The curator then manages and settles bankruptcy assets, including those in the form of Intellectual Property. Because Intellectual Property is an asset with a *special purpose*, so often curators face a number of difficulties, especially that Intellectual Property is dominant and useful at the time of the company is still in operation and its value greatly decreases during liquidation, making it difficult to optimize the settlement of Intellectual Property in insolvency.

### 2. Suggestion

So that before liquidation, the Curator first focuses on carrying out the management process in the form of efforts to optimize the value of Intellectual Property by representing the Debtor to negotiate payments and additions business capital, as well as corporate restructuring actions so that the value of Intellectual Property can be maintained.

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