

Conceptualizing Intellectual Property Laws as A Bankruptcy Property (Beodel) In Indonesian Laws: A Normative Juridical Approach

Bernard Nainggolan ¹⁾

¹⁾ Universitas Kristen Indonesia

Abstract. *This research examines the ramifications of bankruptcy on Intellectual Property Rights (IPRs) and underscores the necessity of safeguarding asset owners' rights within the bankruptcy process. By utilizing two primary methodologies, namely the normative juridical approach and the conceptual approach, the study evaluates the legal framework governing IPRs in the context of bankruptcy. Employing a normative juridical research methodology, the study draws upon primary, secondary, and tertiary legal literature. The primary focus of this research is on the legal provisions concerning the preservation of Intellectual Property Rights amidst bankruptcy proceedings. The findings underscore the crucial role of coordination among asset owners, creditors, and the judiciary in resolving bankruptcy cases involving IPRs. Protection of these rights is paramount not only within bankruptcy contexts but also amid the broader landscape of globalization and international trade dynamics. Collaborative efforts involving governments, legal institutions, international organizations, and industry stakeholders are essential to foster growth, innovation, and uphold values of environmental sustainability and responsibility within the industry. Adequate protection of IPRs serves as a catalyst for stimulating innovation and creativity, while simultaneously ensuring environmental sustainability and promoting inclusive economic growth.*

Keywords: *Boedel Bankrupt; Intellectual Property Law; Bankruptcy; Intellectual Property Rights*

1. Introduction

Creating an industrial design is a complex process involving many aspects.¹ It's not just about creating something that looks good visually but also about ensuring that the design meets certain technical, practical and aesthetic standards. In this

¹ Dewi Sulistianingsih, and Bagas Bilowo Nurtantyono Satata, "Dilema dan Problematik Desain Industri di Indonesia," *Jurnal Suara Hukum* 1, no. 1 (2019): 2.

process, there needs to be a balance between technical expertise, creativity, and a significant investment of time and money. Every industrial design produced is the result of great intellect and effort. These designs don't just appear out of thin air but go through stages involving critical thinking, research, prototyping, and iteration. Finally, these designs gain legal recognition and value after registration based on the constitutive principles of Industrial Design. The concept of Intellectual Property Rights plays an important role in maintaining incentives for designers.² When designers know that their works will be protected by law and that they have exclusive control over the use and distribution of their designs, this gives them the motivation to continue to innovate and create new things. In many cases, this also provides the financial boost needed to support the creative process.³

In the context of bankruptcy law, the question that often arises is whether Intellectual Property Rights can be considered part of the bankruptcy estate. This is a concern because Article 21 of Law Number 32 of 2007 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) states that bankruptcy covers all of the debtor's assets at the time the decision to declare bankruptcy is pronounced, as well as everything obtained during the bankruptcy process.⁴ However, it is unfortunate that the text of the Law does not explicitly explain what objects are included in the category of bankruptcy assets. The lack of clarity regarding the material criteria for bankruptcy assets is a potential source of multiple interpretations for the parties involved in the bankruptcy process. This lack of clarity not only has the potential to cause confusion, but can also produce differences of opinion among legal actors, such as curators, judges, legal practitioners and other experts. In essence, ambiguity in the definition of bankruptcy assets can have a significant impact on the bankruptcy process, especially when the assets in question play an important role in the debtor's

² Gönenç Gürkaynak, İlay Yılmaz, Burak Yeşilaltay, and Berk Bengi, "Intellectual property law and practice in the blockchain realm," *Computer law & security review* 34, no. 4 (2018): 848.

³ Ana Fauzia, Deva Gama Rizky Octavia, and Fathul Hamdani, "The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt," *Progressive Law Review* 4, no. 01 (2022): 2. See also: Ardiansyah, Erlan, and Rahmia Rachman. "The Duties and Responsibilities of Curators and Supervisory Judges in the Establishment of Bankruptcy Property." *Hang Tuah Law Journal* (2021): 66. See also: Mittal, Akaant. "Issues Under the Insolvency and Bankruptcy Code prior to Admission." *Journal of the Indian Law Institute* 60, no. 2 (2018): 162.

⁴ Devid Feizar Montana, "Due to The Law Overlooking the Pact Principle Sunt Servanda Towards the Settlement of Bankruptcy Disputes in Law Number 37 Of 2004 Concerning Bankruptcy and Obligations of Debt Payment," *Awang Long Law Review* 4, no. 1 (2021): 2. See also: Yuliani, Rizki Amalia, and MH SH, "Legal Certainty of Suspension of Debt Payment Obligations Proceedings During the Covid-19 Pandemic Period," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 372.

overall financial picture.⁵ In the context of Intellectual Property Rights, this ambiguity becomes increasingly relevant considering the economic value and importance of intellectual property rights in today's business environment.⁶

Intellectual Property Rights are a form of intellectual property right that protects the aesthetic aspects or appearance of a product.⁷ This includes visual designs, such as patterns, colors, or shapes, that give a product a unique identity and can influence consumer appeal. In many cases, Intellectual Property Rights are a valuable asset for companies, especially in the creative, fashion and manufacturing industries. However, when companies face financial difficulties that cause them to file for bankruptcy, questions surrounding the status of Intellectual Property Rights arise. The absence of clarification in the Bankruptcy Law regarding the status of Intellectual Property Rights can trigger debate and uncertainty among the parties involved. Some may argue that these rights should be considered relevant assets in bankruptcy proceedings, as they have significant economic value. On the other hand, some may argue that Intellectual Property Rights should receive special protection, because they are unique and cannot be easily replaced by other assets. This uncertainty becomes more complex with ever-changing technological and economic developments. In the digital era, many intellectual assets, including Intellectual Property Rights, have become increasingly valuable, especially in the technology and media industries.⁸ Therefore, clarity regarding the legal treatment of these rights in the bankruptcy context becomes increasingly important. Some countries may have developed more specific legal guidelines or practices regarding Intellectual Property Rights in bankruptcy cases. However, in the context of international law, there is still a need for further harmonization and clarification regarding the status of intellectual property rights in bankruptcy proceedings.⁹

In addition, it is also important to consider the moral and ethical implications of dealing with intellectual property rights in a bankruptcy situation. Although the Bankruptcy Law may provide a legal framework for the takeover of debtor assets,

⁵ Yohanes Alexander, Kenting, and Hizkia Dapot Parulian, "Kedudukan Kreditor Separatis Terhadap Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang," *Jurnal Ilmu Hukum: ALETHEA* 5, no. 2 (2022): 92.

⁶ Santi Nur Rakhmawati, "Akibat Hukum Pengalihan Hak Desain Industri Sebagai Harta Benda Tak Berwujud Pada Harta (Boedel) Pailit," *Dinamika* 28, no. 7 (2022): 4195.

⁷ Natalia Arinasari, Nadeak, and Indirani Wauran, "Tumpang-Tindih Pengaturan Bentuk Tiga Dimensi Dalam Undang-Undang Merek Dan Undang-Undang Desain Industri," *Jurnal Hukum Ius Quia Iustum* 26, no. 1 (2019): 22.

⁸ An An, Chandrawulan, Miranda Risang Ayu, and Muhamad Amirulloh, "Urgensi Pengaturan Valuasi Paten Untuk Start Up Dalam Rangka Meningkatkan Perekonomian di Era Industri 4.0," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 85.

⁹ Ratu Alawiyah, Rifani, Fauziah Fauziah, and Muhammad Fahrudin, "Efektifitas Pelaksanaan Penundaan Kewajiban Pembayaran Utang (PKPU) dalam Mencegah Kepailitan (Studi Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat)," *Jurnal Hukum Jurisdictione* 3, no. 2 (2021): 146.

protection of intellectual property rights must also take into account the interests of creators and rights owners. In some cases, the sale or use of Intellectual Property Rights in bankruptcy proceedings can lead to negative impacts, both for the creators and for society as a whole. For example, selling these rights to another party who may not have a commitment to the continuity or integrity of the original work can harm the creator and damage the brand's reputation. Therefore, in dealing with Intellectual Property Rights in a bankruptcy situation, it is important to consider various factors, including economic value, legal protection, as well as moral and ethical considerations. Moreover, cooperation between stakeholders, such as companies, creditors, and the government, can help create balanced and fair solutions for all parties involved.¹⁰

In the context of bankruptcy law, it is important to assess whether Intellectual Property Rights (IPR) can be considered an asset that is worthy of inclusion in a bankruptcy case. This statement arises because bankruptcy regulations must consider various aspects including the owner's rights, economic value and potential future income from the assets owned. IPR is provided to protect the visual aspects of the product, and in many cases, unique and attractive designs have significant economic value. Therefore, in the context of bankruptcy, IPR can be considered an asset that has sufficient economic value to be included in the *boedel*. However, to determine whether IPR meets the material requirements as an object of bankruptcy, several factors need to be taken into account. First of all, the economic value of IPR must be carefully evaluated. This includes assessing the market value of the design, the potential future income that can be generated from utilizing the design, and whether the design provides a competitive advantage that can increase the value of the company. Protection of owner rights is also an important consideration. Even if a design has high economic value, if the owner's rights are not properly protected, the asset may become less valuable in the context of bankruptcy. Therefore, it is important to ensure that the IPR has adequate legal protection, including exclusive rights to use and exploit it.¹¹

¹⁰ Sofyan Wimbo Agung, Pradnyawan, Siti Syahida Nurani, Arief Budiono, and Sasongko Sasongko, "Execution of Fiduciary Collateral Based on the Decision of the Constitutional Court Number 18/PUU-XVII/2019," *Indonesian Journal of Law and Policy Studies* 1, no. 2 (2020): 143. See also: Herdin, Jauza Tsania, and Mohamad Fajri Mekka Putra, "Analysis of The Impact of The Decision of The Constitutional Court Number 2/Puu-Xix/2021 On Fiduciary Guarantee in Batam," *Awang Long Law Review* 5, no. 1 (2022): 89. See also: Hamzah, Rosyidi, and Fadhel Arjuna Adinda, "The Existence of a Norm Regarding the Execution of Fiduciary Guarantees After the Issuance of the Constitutional al Court Decision Number 18/PUU/XVII/2019," *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 82.

¹¹ Santi Nur Rakhmawati, "Akibat Hukum Pengalihan Hak Desain Industri Sebagai Harta Benda Tak Berwujud Pada Harta (Boedel) Pailit," *Dinamika* 28, no. 7 (2022): 4195.

In bankruptcy law, Intellectual Property Rights are very important as assets in bankruptcy cases.¹² However, to determine its status as bankruptcy property, the process must be in accordance with the law and protect the rights of all parties involved. It is important to clearly understand the criteria that determine whether an industrial design right can be considered a bankruptcy estate, as well as how this affects other exclusive rights and intellectual property.¹³ By paying attention to this, we can avoid uncertainty and disputes in bankruptcy resolution and protect the rights of asset owners. Intellectual Property Rights give their owners exclusive rights to use a particular design on a product. In the case of bankruptcy, these rights are considered valuable assets that can be sold to pay financial obligations. However, not all Intellectual Property Rights are automatically included in bankruptcy regulations. There are certain criteria that must be met. One important criterion is whether the right has been legally registered. This registration is important to establish the existence and validity of rights. Unregistered Intellectual Property Rights may not be included in the bankruptcy case or may be of lower value. Other aspects such as use and commercial value are also considered.

The impact of bankruptcy on Intellectual Property Rights must also be considered. When a company goes bankrupt, these rights may pass to other parties, such as creditors or buyers of the company's assets. This could impact the original owner of those rights, who may lose control over their use. Therefore, it is important to ensure that the rights of asset owners are fairly considered in insolvency proceedings.¹⁴ Protection of asset owners' rights is also important in bankruptcy. The parties involved must ensure that exclusive rights to industrial designs are maintained as best as possible, in accordance with applicable law. This includes ensuring the sale or transfer of rights is carried out fairly and transparently. Insolvency resolution involving Intellectual Property Rights is often complex and requires coordination between the asset owner, creditors and the court. By understanding the criteria for rights status in bankruptcy and their impact, resolution can be carried out more efficiently, reducing the risk of uncertainty and disputes in the future.

¹² Mieke Yustia Ayu Ratna, Sari, and Riza Yudha Patria, "Tantangan Pemanfaatan Hak Kekayaan Intelektual Sebagai Solusi Permodalan," *Law Review* 20 (2020): 112.

¹³ Pahala Sirait, "Novelty Principle: Paradoks Proteksi Hak Desain Industri Di Indonesia," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 7, no. 2 (2021): 247.

¹⁴ Marcus, Holgersson, and Sarah van Santen, "The business of intellectual property: a literature review of IP management research," *Stockholm Intellectual Property Law Review* 1, no. 1 (2018): 45. See also: Ayotte, Kenneth, and Edward R. Morrison, "Valuation disputes in corporate bankruptcy," *University of Pennsylvania Law Review* (2018): 1820.

2. Methods

This research uses two main approach methods: Normative juridical Approach and Conceptual Approach. The Normative juridical Approach is for analyzing legal texts relevant to the research topic, while the Conceptual Approach is for understanding the basic principles. The research method used is normative juridical, which focuses on analyzing legal texts through primary, secondary and tertiary legal literature studies if necessary. Literature references include normative juridical regulations, court decisions, legal literature, and expert opinions in the field of Intellectual Property Rights and Bankruptcy. This research examines how Intellectual Property Rights interact with bankruptcy provisions. The normative juridical approach helps in finding the relationships and implications between the two legal domains. A review of the secondary and tertiary literature provides additional insights from relevant practitioners and applied research. The analysis technique used is qualitative analysis, enabling a holistic and contextual understanding of the legal framework for Intellectual Property Rights in the context of bankruptcy. The focus of the research is on the legal provisions governing the transfer of Intellectual Property Rights in bankruptcy situations.

3. Analysis or Results

3.1. Intellectual Property Rights in Bankruptcy Decisions

The transfer of Intellectual Property Rights in the context of bankruptcy is a process that must be clearly regulated and carefully documented. These steps are necessary to ensure that rights related to industrial design, both economic and moral, are properly protected and to prevent future legal disputes. According to Law Number 31 of 2000 concerning Industrial Designs, the transfer of Intellectual Property Rights in the context of bankruptcy must be documented through a deed before a Notary. This aims to provide strong evidence in resolving legal disputes.¹⁵ However, it is important to note that in the process of interpreting Article 32 of the Law, the transfer of rights only includes economic rights, and does not include moral rights. This means that, although economic rights to industrial designs can be transferred, moral rights remain with the designer and cannot be transferred. When the curator begins the process of settling the bankruptcy estate, they have the responsibility to settle the debtor's debts by considering the best value at the time of settlement. This settlement method can be carried out through a public auction or privately, in accordance with the provisions regulated in Article 185 of Law Number 32 of 2004 concerning Bankruptcy and Postponement of Debt

¹⁵ Muhammad Faizal Akbar Laksmana, "Perlindungan Hukum Bagi Pemegang Hak Desain Industri Sepatu Terhadap Imitasi (Studi Perbandingan dengan Amerika Serikat)," *Legal Standing: Jurnal Ilmu Hukum* 5, no. 2 (2021): 22.

Payment Obligations (PKPU). However, all sales processes must comply with the procedures stipulated in the applicable laws and regulations.¹⁶

If a public sale does not produce sufficient results, a private sale may be conducted with permission from the Supervising Judge. The curator also has the authority to take action on items that cannot be handled immediately or at all, as long as they obtain prior permission from the Supervising Judge.¹⁷ Bankruptcy has the nature of public law because the decisions taken have an impact on the public interest and the parties involved. Therefore, information regarding the debtor's bankruptcy must be announced openly and transparently. After the bankruptcy decision is pronounced, the debtor loses the right to manage his assets, although he still has the right to take legal action in the civil realm.¹⁸ Article 21 of Law Number 32 of 2004 concerning Bankruptcy and PKPU confirms that all of the debtor's assets, whether tangible or not, must be confiscated in public. This also includes debts owned by the debtor. Bankruptcy can be the basis for executing the debtor's assets in accordance with Article 31 of Law Number 31 of 2000 concerning Industrial Design. The execution process is carried out on assets that have been registered with the bankruptcy court and have been approved by the supervising judge. The sales proceeds from the execution of these assets are used transparently to pay the debtor's receivables to creditors. Intellectual Property Rights are exclusive rights granted by the Republic of Indonesia to designers for their work for a certain period of time, as regulated in Article 1 paragraph (5) of Law Number 31 of 2000 concerning Industrial Design. These rights consist of two aspects, namely economic rights and moral rights. Economic rights allow designers to obtain economic benefits from their work, such as royalty payments and the right to mass produce. Meanwhile, moral rights provide protection for the designer's name in the Intellectual Property Rights Certificate, which reflects personal and eternal rights to his work.¹⁹

To obtain exclusive rights to industrial design works, designers must fulfill the requirements regulated by the Law. These requirements include the novelty of the work, as regulated in Article 2 paragraph (1) of Law Number 31 of 2000 concerning Industrial Design. The registration process is also a step that must be carried out

¹⁶ Muhammad Rusydianta, "Reformulating Fraud Crimes Under Article 378 Of the Criminal Code Based on Restorative Justice Values," *Prophetic Law Review* 3, no. 2 (2021): 221. See also: Watters, Casey, "SPVs as a barrier to cross-border insolvency proceedings: Lessons from Indonesia," *Australian Journal of Corporate Law* 32, no. 2 (2017): 242.

¹⁷ Adhia, Rahmawati Yurist, Siti Mahmudah, and Edy Sismarwoto, "Tanggung Jawab Kurator Dalam Sita Boedel Pailit Oleh Negara (Kejaksaan) (Kasus Pt Aliga International Pratama Nomor 156K/PDT. SUS-PAILIT/2015)," *Diponegoro Law Journal* 10, no. 1 (2021): 219.

¹⁸ Maheswari, Ni Komang Monica Dewi, I. Nyoman Putu Budiatha, and Ni Made Puspasutari Ujianti, "Perlindungan hukum terhadap pemegang desain industri yang sama dengan merek yang berbeda," *Jurnal Preferensi Hukum* 2, no. 1 (2021): 40.

¹⁹ Christoph Antons, "Intangible cultural heritage, intellectual property, and the politics of development in Southeast Asia," *Transboundary Heritage and Intellectual Property Law* (2022): 22.

in accordance with Article 10 of the Law. Without registration and novelty, an industrial design work will not receive legal protection. Exclusive rights in industrial designs provide state recognition of the design work, which gives the designer the authority to control its use within a certain period of time or grant permission to other parties.²⁰ The granting of exclusive rights can also be considered as a form of appreciation for the designer's efforts who have sacrificed time, money and thoughts to create the work. Apart from functioning as legal protection, exclusive rights can also be an incentive for designers to continue creating new works. Exclusive rights to industrial design works give the holder the power to prohibit the use, sale, import, export and distribution of goods without permission, in accordance with Article 9 of Law Number 31 of 2000 concerning Industrial Designs. However, restrictions on use in research and education must be respected so as not to harm rights holders. However, the scope of fulfilling the designer's rights in the law still has limitations, especially in bankruptcy situations where Intellectual Property Rights can be transferred in their entirety, contrary to the concept of moral and economic rights that are integrated in national and international law. The transfer of Intellectual Property Rights can be considered a risk for the creation of intellectual works due to the protection of rights.²¹

3.2. Intellectual Property Rights as Bankruptcy Assets

In the context of bankruptcy law, the concept of assets or bankruptcy property has important significance. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU) in Indonesia is the main legal basis that regulates this issue.²² However, there is a lack of clarity in the law regarding the detailed definition of what is included in bankruptcy assets. Basically, the Bankruptcy Law states that bankruptcy covers all of the debtor's assets at the time the bankruptcy decision is pronounced, as well as everything obtained during the bankruptcy process. This indicates that any assets owned by the debtor at the time the court declared bankruptcy, as well as those acquired during the bankruptcy process, can be considered part of the bankruptcy *boedel*. However, the types of assets in question are not specifically explained in the law. Article 22 of the Bankruptcy Law states several assets that are excluded from bankruptcy proceedings, such as animals that the debtor really needs for his work,

²⁰ Lieselot, Bisschop, Yogi Hendlin, and Jelle Jaspers, "Designed to break: planned obsolescence as corporate environmental crime," *Crime, Law and Social Change* 78, no. 3 (2022): 272.

²¹ Dija Hedistira, "Kepemilikan Dan Penguasaan Objek Jaminan Fidusia Apabila Terjadi Sengketa Wanprestasi Dalam Perjanjian Kredit," *Jurnal Privat Law* 8, no. 1 (2020): 79.

²² Ismail, Rumadan, Pri Pambudi Teguh, and Chandra Yusuf, "Government Policy in Settlement of Bankruptcy Applications and Postponement of Debt Payment Obligations in the Covid-19 Pandemic Crisis in Indonesia," In *2nd International Conference on Law Reform (INCLAR 2021)*, pp. 19. Atlantis Press, 2021.

medical equipment, a bed and food for 30 days.²³ However, this does not provide a complete picture of what is or is not included in bankruptcy regulations. General confiscations in bankruptcy decisions relate to assets that are considered as part of the bankruptcy filing. Filing for bankruptcy can be categorized as property or *boedel* which is regulated in book II of the Civil Code (KUHPerdara), which states that objects consist of goods and rights. Therefore, bankruptcy can cover various types of assets, both in the form of goods and property rights.²⁴

Settlement of bankruptcy cases is carried out by the curator with permission from the supervising judge.²⁵ The curator is responsible for managing and allocating assets in the bankruptcy estate in accordance with applicable regulations. During the bankruptcy process, the *boedel* assets can be acquired or sold to fulfill obligations to creditors. One of the assets that a person can own and has major implications for a company's business activities is Intellectual Property Rights. Intellectual Property Rights are a legal product that provides protection for the design of a product created by a designer. Law Number 31 of 2000 concerning Industrial Design in Indonesia is the legal basis that regulates this matter.²⁶ According to the Industrial Design Law, Industrial Design includes various forms and can be realized in three-dimensional or two-dimensional products. It is important to note that production aspects are also an important consideration in this right. The design must be mass-producible with consistency of results to meet the rights requirements. Intellectual Property Rights provide protection for 10 years without the possibility of extension. This has a big impact, especially in the creative and manufacturing industries, because the aesthetic appeal of a product's design can influence consumer purchasing decisions and increase the selling value of the product.²⁷

²³ Sonhaji Sonhaji, "The Position of The Workers' or Laborers' severance Pay and Other Rights in The Bankruptcy of a Company," *Diponegoro Law Review* 3, no. 2: 166.

²⁴ Japansen, Sinaga, and Dona Bella Faustine Law, "Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit: Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit," *Law Pro Justitia* 5, no. 2 (2020): 2.

²⁵ Maya Tryandari, "Legal protection for bankruptcy curators in the resolution of bankruptcy cases," *Journal of Law and Legal Reform* 2, no. 3 (2021): 422. See also: Sukardi, Didi, "The Legal Responsibility of Debtor to Payment Curators in Bankruptcy Situation," *Jurnal Pembaharuan Hukum* 8, no. 2 (2021). See also: Sukardi, Didi, "The Legal Responsibility of Debtor to Payment Curators in Bankruptcy Situation," *Jurnal Pembaharuan Hukum* 8, no. 2 (2021).

²⁶ Yati, Nurhayati, Ifrani Ifrani, Abdul Halim Barkatullah, and M. Yasir Said, "The Issue of Copyright Infringement in 4.0 Industrial Revolution: Indonesian Case," *Jurnal Media Hukum* 26, no. 2 (2019): 123. See also: Santoso, Edy. "Opportunities and challenges: e-commerce in Indonesia from a legal perspective." *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 396.

²⁷ Ari Murti, Susanto, Erwin Malonda, Imron Rosadi, and Muhammad Rizki, "Perlindungan Hukum Bagi Bank atas Upaya PKPU (Penundaan Kewajiban Pembayaran Utang) dari Pihak Ke-3 (Tiga)," *Justitia Jurnal Hukum* 3, no. 1 (2019).

In the context of civil law, Intellectual Property Rights are considered absolute property rights attached to the designer. This is stated in Article 570 of the Civil Code which states that absolute property rights are the right to obtain and do something freely, as long as it does not conflict with applicable laws or regulations. However, when a debtor is declared bankrupt, all of his assets, including Intellectual Property Rights, become part of the bankruptcy estate which is managed by a curator under the supervision of a supervising judge. Law Number 37 of 2004 concerning Bankruptcy and PKPU states that bankruptcy is the takeover of all assets of a bankrupt debtor by a curator under the supervision of a supervisory judge.²⁸ In practice, the resolution of assets such as Intellectual Property Rights in bankruptcy proceedings can be complex. This is because legal protection of intellectual rights such as Intellectual Property Rights often requires special handling and specific expertise. The curator and court must ensure that these assets are managed properly and sold or allocated in accordance with applicable regulations, while taking into account the rights of other interest holders. Thus, in the context of bankruptcy law in Indonesia, the concept of bankruptcy law covers all assets of debtors who are declared bankrupt by the court.²⁹ This includes various types of assets, including Intellectual Property Rights, which are then managed by a receiver for the benefit of creditors. However, legal protection for assets such as Intellectual Property Rights also remains in effect, and resolution in the bankruptcy process must take into account applicable provisions and the rights of relevant interest holders.

Curators have a very significant role in managing bankruptcy assets in accordance with Law Number 32 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU). In this context, it is important to consider the implications of Intellectual Property Rights, bearing in mind that an interpretation that allows Intellectual Property Rights, especially Intellectual Property Rights, to become part of the bankruptcy estate has a major impact on the bankruptcy process. Intellectual Property Rights, as a form of intangible intellectual property rights, must be considered as valid assets in bankruptcy law. This process requires certain steps, starting from verifying industrial design application data to issuing a certificate after registration. Next, it is important to verify the sale, transfer or licensing of Intellectual Property Rights to prevent dual ownership. In addition, Appraisal Institutions have an important role in assessing the economic value of

²⁸ Papang, Sapari, "Pretrial by Curator in Bankruptcy Process (A Review of The Case of Decision No. 89/Pid. Prap/2016/Pn. Jaksel)," *JILPR Journal Indonesia Law and Policy Review* 2, no. 2 (2021): 118. See also: Ariffani, Ariffani, Rilawadi Sahputra, and Syaiful Azmi, "Analysis of Consideration of The Judge's Decision the Process of Management and Settlement of The Debtor's Property After the Bankruptcy of The Debtor in Bankruptcy (Case Study No. 1/Pdt. Sus-Renvoi Prosedur/2022/PN. Niaga. Mdn)," *International Asia Of Law and Money Laundering (IAML)* 2, no. 4 (2023): 143.

²⁹ Jonathan M Seymour, "Against Bankruptcy Exceptionalism." *The University of Chicago Law Review* 89, no. 8 (2022): 1926. See also: Eidenmüller, Horst, "Contracting for a European insolvency regime." *European Business Organization Law Review* 18 (2017): 274.

Intellectual Property Rights, especially in the context of debt repayment. It is also important to check the period of protection for Intellectual Property Rights regulated in Law Number 31 of 2000.³⁰ This law provides protection for 10 years from the time the application is received, in accordance with the provisions of TRIP (Trade-Related Aspects of Intellectual Property Rights). This process is important to understand, protect and maximize the legal and economic value of Intellectual Property Rights. When the protection period ends, the Industrial Design will become public property, so extending protection must be carefully considered to prevent monopolies and ensure innovation continues to occur.³¹

Managing bankruptcy assets is a complex process and requires a lot of time, but it is very important to do it carefully. The curator is responsible for assessing whether the debtor's assets meet the requirements to be included in the bankruptcy estate. They must consider all possibilities that might occur, as well as ensure that the assets are not currently in legal dispute which could slow down the settlement process. In some cases, the Curator can ask the supervising judge not to include the debtor's intellectual property in the bankruptcy estate list. If this application is granted, it will strengthen legal protection for designers to protect their Industrial Design innovations. When managing a bankruptcy estate involving Intellectual Property Rights, it is important to understand that these assets have significant value and need to be treated with care. Proper management can optimize the value of these assets, both in the context of bankruptcy and beyond. Therefore, Curators must have a deep understanding of bankruptcy law and Intellectual Property Rights to carry out their duties effectively. Additionally, it is important to look at the legal protections available for Intellectual Property Rights outside of the bankruptcy context. Efforts to protect these rights can be made through various mechanisms, including patents, trademarks and industrial designs. By having strong legal protection, designers can be more confident in developing and marketing their works.

In the context of globalization and international trade, legal protection for Intellectual Property Rights is also becoming increasingly important. Countries must work together to ensure that these rights are recognized and respected throughout the world. This not only protects the interests of designers, but also promotes innovation and creativity across the industry. Additionally, it is important to consider the impact of technology and digitalization on Intellectual Property Rights. Technological developments have changed the way we make, distribute and use industrial design products. Therefore, the law must continue to

³⁰ Jane C Ginsburg, "Copyright and control over new technologies of dissemination," In *Law and Society Approaches to Cyberspace*, pp. 386. Routledge, 2017.

³¹ Abdus Salam, "Retracted: Optimalisasi Aset Hak Kekayaan Intelektual Milik Perseroan Terbatas dalam Hukum Kepailitan di Indonesia," *Jurnal Suara Hukum* 1, no. 1 (2019): 16.

evolve to accommodate these changes and protect the rights of industry players.³² In managing these rights, the role of governments, legal institutions and international organizations is very important. They have the responsibility to create and enforce regulations that support the protection of Intellectual Property Rights, as well as to resolve disputes that may arise. Apart from that, industrial players also have an important role in ensuring the protection of Intellectual Property Rights. They must take proactive steps to protect their rights, including by registering their designs and monitoring unauthorized use.³³

In a broader context, protection of Intellectual Property Rights also has significant social and economic impacts. Through appropriate legal protection, we can encourage innovation and creativity, which in turn will support economic growth and create jobs. Additionally, Intellectual Property Rights can also have a positive impact in promoting sustainability and environmental responsibility. By encouraging eco-friendly design, we can reduce our carbon footprint and minimize negative impacts on the environment. Thus, it is important to understand the value of Intellectual Property Rights in a broader context, including legal, economic, social and environmental contexts. With the right safeguards, we can support growth and innovation in the industry, while ensuring that values such as sustainability and environmental responsibility are maintained.

4. Conclusion

Highlights the importance of considering the impact of bankruptcy on Intellectual Property Rights and the need for appropriate protection of these rights in the context of bankruptcy law. When a company goes bankrupt, the Intellectual Property Rights it owns can change hands to other parties, such as creditors or buyers of company assets. This may impact the original owner of those rights, who may lose control over their use. Therefore, it is important to ensure that the rights of asset owners are fairly considered in insolvency proceedings. Protection of asset owners' rights, including Intellectual Property Rights, is crucial in the bankruptcy context. The bankruptcy resolution process must pay attention to exclusive rights to industrial designs by ensuring that the sale or transfer of rights is carried out fairly and transparently. The bankruptcy resolution process involving Intellectual Property Rights is often complex and requires coordination between the asset owner, creditors and the court.

In Indonesian bankruptcy law, the concept of bankruptcy law covers all assets of a debtor declared bankrupt by the court, including Intellectual Property Rights. However, legal protection for assets such as Intellectual Property Rights remains

³² Christine, Parker, and Fiona Haines., "An ecological approach to regulatory studies," *Journal of Law and Society* 45, no. 1 (2018): 137.

³³ Santi Nur Rakhmawati, "Akibat Hukum Pengalihan Hak Desain Industri Sebagai Harta Benda Tak Berwujud Pada Harta (Boedel) Pailit," *Dinamika* 28, no. 7 (2022): 4195.

in effect, and resolution in the bankruptcy process must take into account applicable provisions and the rights of relevant interest holders. Managing rights such as Intellectual Property Rights in a bankruptcy context requires a deep understanding of bankruptcy law and Intellectual Property Rights. The curator and court must ensure that these assets are managed properly and in accordance with applicable regulations, while paying attention to the rights of other interest holders. Protection of Intellectual Property Rights is not only important in the context of bankruptcy, but also in the context of globalization and international trade. Countries need to work together to ensure that these rights are recognized and respected throughout the world, which in turn will support economic growth and innovation across a wide range of industries. In order to understand and protect Intellectual Property Rights, both in the context of bankruptcy and beyond, the role of government, legal institutions, international organizations and industrial players is very important. This collective effort will support growth, innovation, and values such as sustainability and environmental responsibility in the industry. With the right safeguards, we can encourage innovation and creativity, while ensuring environmental sustainability and inclusive economic growth.

5. References

- Adhia, Rahmawati Yurist, Siti Mahmudah, and Edy Sismarwoto. "Tanggung Jawab Kurator Dalam Sita *Boedel* Pailit Oleh Negara (Kejaksaan)(Kasus Pt Aliga International Pratama Nomor 156K/PDT. SUS-PAILIT/2015)." *Diponegoro Law Journal* 10, no. 1 (2021): 218-234.
- Antons, Christoph. "Intangible cultural heritage, intellectual property, and the politics of development in Southeast Asia." *Transboundary Heritage and Intellectual Property Law* (2022): 21-40.
- Ardiansyah, Erlan, and Rahmia Rachman. "The Duties and Responsibilities of Curators and Supervisory Judges in the Establishment of Bankruptcy Property." *Hang Tuah Law Journal* (2021): 65-75.
- Ariffani, Ariffani, Rilawadi Sahputra, and Syaiful Azmi. "Analysis of Consideration of The Judge's Decision the Process of Management and Settlement Of The Debtor's Property After The Bankruptcy Of The Debtor In Bankruptcy (Case Study No. 1/Pdt. Sus-Renvoi Prosedur/2022/PN. Niaga. Mdn)." *International Asia Of Law and Money Laundering (IAML)* 2, no. 4 (2023): 142-152.
- Ayotte, Kenneth, and Edward R. Morrison. "Valuation disputes in corporate bankruptcy." *University of Pennsylvania Law Review* (2018): 1819-1851.
- Bisschop, Lieselot, Yogi Hendlin, and Jelle Jaspers. "Designed to break: planned obsolescence as corporate environmental crime." *Crime, Law and Social Change* 78, no. 3 (2022): 271-293.
- Chandrawulan, An An, Miranda Risang Ayu, and Muhamad Amirulloh. "Urgensi Pengaturan Valuasi Paten Untuk Start Up Dalam Rangka Meningkatkan

- Perekonomian di Era Industri 4.0." *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 84-102.
- Eidenmüller, Horst. "Contracting for a European insolvency regime." *European Business Organization Law Review* 18 (2017): 273-304.
- Fauzia, Ana, Deva Gama Rizky Octavia, and Fathul Hamdani. "The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt." *Progressive Law Review* 4, no. 01 (2022): 1-9.
- Ginsburg, Jane C. "Copyright and control over new technologies of dissemination." In *Law and Society Approaches to Cyberspace*, pp. 385-419. Routledge, 2017.
- Gürkaynak, Gönenç, İlay Yılmaz, Burak Yeşilaltay, and Berk Bengi. "Intellectual property law and practice in the blockchain realm." *Computer law & security review* 34, no. 4 (2018): 847-862.
- Hamzah, Rosyidi, and Fadhel Arjuna Adinda. "The Existence of a Norm Regarding the Execution of Fiduciary Guarantees After the Issuance of the Constitutional al Court Decision Number 18/PUU/XVII/2019." *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 81-92.
- Hedistira, Dija. "Kepemilikan Dan Penguasaan Objek Jaminan Fidusia Apabila Terjadi Sengketa Wanprestasi Dalam Perjanjian Kredit." *Jurnal Privat Law* 8, no. 1 (2020): 78-83.
- Herdin, Jauza Tsania, and Mohamad Fajri Mekka Putra. "Analysis of The Impact of The Decision of The Constitutional Court Number 2/Puu-Xix/2021 On Fiduciary Guarantee in Batam." *Awang Long Law Review* 5, no. 1 (2022): 88-93.
- Holgersson, Marcus, and Sarah van Santen. "The business of intellectual property: a literature review of IP management research." *Stockholm Intellectual Property Law Review* 1, no. 1 (2018): 44-63.
- Kenting, Yohanes Alexander, and Hizkia Dapot Parulian. "Kedudukan Kreditor Separatis Terhadap Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang." *Jurnal Ilmu Hukum: Alethea* 5, no. 2 (2022): 91-110.
- Laksmiana, Muhammad Faizal Akbar. "Perlindungan Hukum Bagi Pemegang Hak Desain Industri Sepatu Terhadap Imitasi (Studi Perbandingan dengan Amerika Serikat)." *Legal Standing: Jurnal Ilmu Hukum* 5, no. 2 (2021): 21-37.
- Maheswari, Ni Komang Monica Dewi, I. Nyoman Putu Budiatha, and Ni Made Puspasutari Ujianti. "Perlindungan hukum terhadap pemegang desain industri yang sama dengan merek yang berbeda." *Jurnal Preferensi Hukum* 2, no. 1 (2021): 39-44.
- Mittal, Akaant. "Issues Under the Insolvency and Bankruptcy Code prior to Admission." *Journal of the Indian Law Institute* 60, no. 2 (2018): 161-188.

- Montana, Devid Feizar. "Due to The Law Overlooking the Pact Principle Sunt Servanda Towards the Settlement of Bankruptcy Disputes in Law Number 37 Of 2004 Concerning Bankruptcy And Obligations Of Debt Payment." *Awang Long Law Review* 4, no. 1 (2021): 1-10.
- Nadeak, Natalia Arinasari, and Indirani Wauran. "Tumpang-Tindih Pengaturan Bentuk Tiga Dimensi Dalam Undang-Undang Merek Dan Undang-Undang Desain Industri." *Jurnal Hukum Ius Quia Iustum* 26, no. 1 (2019): 21-43.
- Nurhayati, Yati, Ifrani Ifrani, Abdul Halim Barkatullah, and M. Yasir Said. "The Issue of Copyright Infringement in 4.0 Industrial Revolution: Indonesian Case." *Jurnal Media Hukum* 26, no. 2 (2019): 122-130.
- Parker, Christine, and Fiona Haines. "An ecological approach to regulatory studies." *Journal of Law and Society* 45, no. 1 (2018): 136-155.
- Pradnyawan, Sofyan Wimbo Agung, Siti Syahida Nurani, Arief Budiono, and Sasongko Sasongko. "Execution of Fiduciary Collateral Based on the Decision of the Constitutional Court Number 18/PUU-XVII/2019." *Indonesian Journal of Law and Policy Studies* 1, no. 2 (2020): 142-151.
- Rakhmawati, Santi Nur. "Akibat Hukum Pengalihan Hak Desain Industri Sebagai Harta Benda Tak Berwujud Pada Harta (Boedel) Pailit." *Dinamika* 28, no. 7 (2022): 4194-4211.
- Rifani, Ratu Alawiyah, Fauziah Fauziah, and Muhammad Fahrudin. "Efektifitas Pelaksanaan Penundaan Kewajiban Pembayaran Utang (PKPU) dalam Mencegah Kepailitan (Studi Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat)." *Jurnal Hukum Jurisdictie* 3, no. 2 (2021): 145-160.
- Rumadan, Ismail, Pri Pambudi Teguh, and Chandra Yusuf. "Government Policy in Settlement of Bankruptcy Applications and Postponement of Debt Payment Obligations in the Covid-19 Pandemic Crisis in Indonesia." In *2nd International Conference on Law Reform (INCLAR 2021)*, pp. 18-23. Atlantis Press, 2021.
- Salam, Abdus. "Retracted: Optimalisasi Aset Hak Kekayaan Intelektual Milik Perseroan Terbatas dalam Hukum Kepailitan di Indonesia." *Jurnal Suara Hukum* 1, no. 1 (2019): 15-50.
- Santoso, Edy. "Opportunities and challenges: e-commerce in Indonesia from a legal perspective." *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 395-410.
- Sapari, Papang. "Pretrial by Curator in Bankruptcy Process (A Review Of The Case Of Decision No. 89/Pid. Prap/2016/Pn. Jaksel)." *JILPR Journal Indonesia Law and Policy Review* 2, no. 2 (2021): 117-130.
- Sari, Mieke Yustia Ayu Ratna, and Riza Yudha Patria. "Tantangan Pemanfaatan Hak Kekayaan Intelektual Sebagai Solusi Permodalan." *Law Review* 20 (2020): 111-137.
- Seymour, Jonathan M. "Against Bankruptcy Exceptionalism." *The University of Chicago Law Review* 89, no. 8 (2022): 1925-2012.

- Sinaga, Japansen, and Dona Bella Faustine Law. "Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam *Boedel* Pailit: Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam *Boedel* Pailit." *Law Pro Justitia* 5, no. 2 (2020): 1-24.
- Singadimeja, Holyness, Rai Mantili, and Ema Rahmawati. "The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 3 (2018): 506-526.
- Sirait, Pahala. "Novelty Principle: Paradoks Proteksi Hak Desain Industri Di Indonesia." *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 7, no. 2 (2021): 246-266.
- Sonhaji, Sonhaji. "The Position of The Workers'or Laborers'severance Pay and Other Rights in The Bankruptcy of a Company." *Diponegoro Law Review* 3, no. 2: 165-181.
- Sukardi, Didi. "The Legal Responsibility of Debtor to Payment Curators in Bankruptcy Situation." *Jurnal Pembaharuan Hukum* 8, no. 2 (2021).
- Sulistianingsih, Dewi, and Bagas Bilowo Nurtantyono Satata. "Dilema dan Problematik Desain Industri di Indonesia." *Jurnal Suara Hukum* 1, no. 1 (2019): 1-14.
- Susanto, Ari Murti, Erwin Malonda, Imron Rosadi, and Muhammad Rizki. "Perlindungan Hukum Bagi Bank atas Upaya PKPU (Penundaan Kewajiban Pembayaran Utang) dari Pihak Ke-3 (Tiga)." *Justitia Jurnal Hukum* 3, no. 1 (2019).
- Tryandari, Maya. "Legal protection for bankruptcy curators in the resolution of bankruptcy cases." *Journal of Law and Legal Reform* 2, no. 3 (2021): 421-438.
- Watters, Casey. "SPVs as a barrier to cross-border insolvency proceedings: Lessons from Indonesia." *Australian Journal of Corporate Law* 32, no. 2 (2017): 241-259.
- Yuliani, Rizki Amalia, and MH SH. "Legal Certainty of Suspension of Debt Payment Obligations Proceedings During the Covid-19 Pandemic Period." *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 371-386.