

LEGAL CONSEQUENCES FOR LICENSEES IN THE EVENT OF INTELLECTUAL PROPERTY RIGHT (IPR) OWNER BANKRUPTCY

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Keywords

bankruptcy, intellectual property rights, licensee

ABSTRACT

This research discusses the legal consequences that arise for licensees when the owner of Intellectual Property Rights (IPR) experiences bankruptcy. The background of this research is the legal uncertainty regarding the fate of licenses granted by an IPR owner declared bankrupt, considering that the assets of the owner, including IPR, become part of the bankruptcy estate. The research method used is normative legal research, with a legislative approach and analysis of relevant court decisions. This research also uses secondary data in the form of related legal literature. The findings indicate that the bankruptcy of the IPR owner can potentially affect the rights and obligations of the licensee, especially concerning the continuity of the granted license. In some cases, the curator handling the bankruptcy estate has the authority to decide to continue or terminate the license agreement. However, legal protection for the licensee depends on the content of the license agreement and applicable legal provisions. Thus, the licensee is at risk of losing their licensing rights if there is no clear provision in the agreement or adequate legal protection from the law. This research recommends clearer regulations to protect licensees in situations where the owner of IPR experiences bankruptcy.

INTRODUCTION

Intellectual Property Rights (IPR) are exclusive rights granted by the state to creators, inventors, or authors over works or inventions that have economic value. IPR can be obtained automatically or through a registration process, aimed at providing legal protection to the rights holders (Abduh & Fajaruddin, 2021; Gürkaynak et al., 2018; Kesowo, 2004; Morcos & Khneisser, 2020; Olubiyi et al., 2022). Moreover, these exclusive rights not only function as proof of protection in legal disputes but can also be regarded as assets of economic value. In the global economic development, IPR is increasingly recognized as collateral for obtaining bank loans. This was acknowledged internationally, including in the UNCITRAL meeting in 2008, which agreed that IPR could be used as collateral in international banking (Hadiaranti, 2009).

In some countries, IPR is already considered a "bankable" asset, which is suitable for being used as bank collateral (Heller et al., 2022; Karim, 2024; Koeswahyono et al., 2022; Mayana & Santika, 2024; Nedopil, 2023; Sapparja et al., 2024; Submitter et al., 2022). Countries such as Singapore, Malaysia, and Thailand have developed credit systems based on intangible assets, including IPR. In Singapore, through the Intellectual Property Office of Singapore (IPOS), infrastructure and services have even been provided to facilitate the use of IPR as bank collateral. Accordingly, IPR is recognized as a commercially valuable asset that can be utilized by businesses to obtain funding from banks (Hariyani, 2017).

In Indonesia, IPR is regulated as an asset that can be used as collateral through various laws, such as Law No. 28 of 2014 concerning Copyright. In this law, copyright is considered an intangible moving

object that can be transferred and served as the object of fiduciary guarantees. This means that works, whether tangible like paintings and sculptures, or intangible like music and films, can be pledged in credit transactions (Jened, 2013). The same also applies to patents, where Law No. 13 of 2016 concerning Patents states that patent rights can be used as fiduciary guarantees. These provisions provide flexibility for patent holders to secure their rights when applying for bank loans, thereby reducing dependence on external funding or foreign parties.

However, despite the existing legal provisions, the practical implementation of IPR as bank collateral in Indonesia still faces various obstacles. One of the hindrances is the limited protection period for IPR and the lack of clear procedures for assessing the value of IPR assets through due diligence mechanisms. Additionally, regulations supporting the concept of IPR as credit collateral, such as Bank Indonesia Regulation (PBI) No. 9/6/PBI/2007 regarding credit collateral, have not fully supported this implementation. Even though the Law on Fiduciary Guarantees accommodates IPR as a banking collateral object, banks in Indonesia remain hesitant to adopt IPR as collateral due to various technical and regulatory constraints that are still inadequate (Muhammad, 2001).

In bankruptcy law, licenses granted by the owner of Intellectual Property Rights (IPR) or licensor can become part of the bankruptcy estate, which refers to all assets belonging to a debtor declared bankrupt and managed for the benefit of creditors (Asikin, 2000). Licenses, as legal agreements granting rights to another party (licensee) to utilize the licensor's IPR, hold significant economic value. When a licensor is declared bankrupt, all assets of the licensor, including rights to IPR that have been licensed, become part of the estate managed by the curator (Asikin, 2000).

As part of the bankruptcy estate, the status of the license granted may be affected. Assets that fall under the bankruptcy estate are generally managed to meet the debtor's obligations to its creditors. In this case, the IPR that is the subject of the license will enter the assets that must be managed by the curator, and this can impact the continuity of the license agreement. For instance, if the IPR holds significant value, the curator may consider selling or utilizing the IPR to obtain funds needed to repay creditors. This situation can create uncertainty for the licensee, particularly concerning their ongoing right to use the licensed IPR.

The curator is the party appointed by the court to manage the bankruptcy estate, including deciding how the debtor's assets will be managed or sold to meet obligations to creditors (Hartono, 2008). In IPR licenses, the curator has the authority to determine the fate of the licensing agreement granted by the bankrupt licensor. The curator may decide to continue the licensing agreement if it is deemed beneficial for the bankruptcy estate, or conversely, may terminate the agreement if it is considered more advantageous to sell the IPR to another party.

Curators must consider various factors before making decisions, including the economic value of the licensing agreement, the licensee's contributions to the potential benefits derived from utilizing the IPR, and the impact on fulfilling obligations to creditors. If the curator decides to terminate the licensing agreement, the licensee may lose the right to use the IPR, which can potentially cause harm to the licensee. Therefore, licensees are usually at risk of facing direct repercussions from the curator's decision related to the continuity of the license, especially if there is no adequate protection or clear provisions in the licensing agreement or the law that safeguards the licensee's rights in bankruptcy situations (Ongko, 1999).

When the holder of Intellectual Property Rights (IPR) experiences bankruptcy, one of the main issues that arises is the legal uncertainty regarding the status of the licenses granted. In many cases, IPR licenses are not explicitly regulated in bankruptcy law, which means the fate of the licensee—the party granted the right to exploit the IPR—often remains uncertain. The assets of the bankrupt debtor, including the licensed IPR, become part of the bankruptcy estate managed by the curator to fulfill obligations to creditors. However, whether the license agreement will continue or be terminated heavily depends on the curator's decision and the content of the agreement itself.

This uncertainty poses a serious problem for the licensee because the licensing rights acquired may be terminated or restricted if the curator decides that continuing the license is not beneficial for the bankruptcy estate. If there are no clear provisions in the license agreement or related laws, the licensee runs the risk of losing their rights to exploit the IPR they have obtained, which can significantly impact business activities or projects conducted based on the license. For example, if the license is used in the production or distribution of a product, the sudden termination of the license can lead to considerable financial losses for the licensee.

Facing this uncertainty, there is an urgent need for clearer legal rules to protect licensees if the IPR owner experiences bankruptcy. Ideally, laws or licensing agreements should include clauses that ensure the licensee's rights remain protected even when the licensor goes bankrupt. One solution that can be applied is the implementation of rules that require the license to remain valid until a final decision regarding the continuity of the license is reached by the curator or the court. Moreover, in the licensing agreement, it is essential for the licensee to include terms that protect their rights in situations of licensor bankruptcy, such as a non-termination clause or clauses that limit the curator's authority to unilaterally terminate the license. Such arrangements can provide the licensee with greater legal certainty and protect them from unanticipated losses due to the IPR owner's bankruptcy. Stronger legal protection through legislation or agreements is crucial for providing security to licensees, especially for those who have heavily invested in exploiting the licensed IPR. Without adequate legal protection, licensees risk losing their rights abruptly, which not only causes financial harm but can also hinder innovation and the development of IPR-based businesses.

This research holds significant urgency, particularly in providing solutions to the legal uncertainties faced by licensees when the owner of Intellectual Property Rights (IPR) or licensor experiences bankruptcy. For licensees, licenses are an important business asset that grant rights to exploit IPR for conducting business operations, developing products, or providing technology- or creatively-based services. When the licensor is declared bankrupt, the fate of the licensing agreement is often shrouded in uncertainty. If the licensing rights are revoked or terminated, licensees may face serious financial losses and impacts on the continuity of their business.

For IPR owners, licenses frequently serve as a primary source of income with significant economic impacts. Licenses also play an important role in expanding the reach of IPR through commercial cooperation. With a clear legal framework in place, IPR owners can be more confident in granting licenses without fearing that those licenses will be jeopardized if they face financial difficulties. This research aims to highlight the necessity for better legal protection for both parties, particularly licensees, so that licenses can continue even if the IPR owner is in a state of bankruptcy.

The urgency of this research also lies in the need to recommend regulations that are clearer and more specific regarding the status of licenses in bankruptcy situations. Currently, regulations in several countries, including Indonesia, do not provide sufficient certainty about whether the licensee's rights will remain protected if the licensor is declared bankrupt. This poses risks for licensees who may lose their rights without adequate compensation, as well as for curators who have to make decisions without clear legal guidelines. More specific regulations, both in bankruptcy law and in the rules governing IPR licenses, are essential to provide solid legal protection for licensees. This research emphasizes the importance of incorporating protective provisions for licensees within the license agreements themselves, such as clauses that stipulate the license rights remain valid even if the IPR owner goes bankrupt. Additionally, regulations binding on curators regarding the management of licensing agreements are also needed to prevent unilateral terminations that are detrimental to licensees.

METHODS

The research method used in this study is normative legal research, aimed at analyzing legal issues by referring to norms and principles found in regulations and related legal documents. This method focuses on a theoretical study of the applicable legal rules within the context of bankruptcy and intellectual property rights (IPR), especially in relation to licensing agreements. Normative legal research typically employs secondary data, such as legislation, court rulings, doctrines, and relevant legal literature. This research utilizes two main approaches: the statutory approach and the conceptual approach. The statutory approach is conducted by analyzing the relevant legal rules pertaining to bankruptcy and IPR licensing, such as the Bankruptcy Law and IPR Laws in Indonesia. In this context, the researcher examines how these regulations address the status of licenses when the IPR owner experiences bankruptcy and the authority of curators in managing the bankruptcy estate. The conceptual approach is utilized to understand relevant legal concepts, such as the concept of a bankruptcy estate, licensing as an asset, and the role of the curator. This approach helps explain the theoretical understanding underlying legal protection for licensees in bankruptcy scenarios.

The techniques for data collection used in this study include interviews and document studies. Interviews were conducted with legal experts, practitioners, and relevant parties who possess knowledge and experience in the fields of bankruptcy and IPR. The data obtained from these interviews are used to gain deeper insights into the legal practices regarding licenses and bankruptcy. Also,

document studies were conducted by collecting and analyzing various legal literature, legislation, court rulings, and relevant scientific articles. This document study provides a strong legal framework for understanding licensing issues in the context of bankruptcy and how the applicable law offers protection for licensees. The data analysis technique employed in this research is deductive reasoning, which focuses on drawing conclusions from general rules to specific cases. In this instance, the researcher uses existing norms in the legislation and relevant legal theories to analyze how the bankruptcy of an IPR owner can affect the licenses granted. This deductive approach assists in outlining solutions that can be implemented to provide better legal protection for licensees in the context of the bankruptcy of the IPR owner.

RESULTS

Legal Status of Licenses Granted by the Owner of Intellectual Property Rights (IPR) When the Owner Is Declared Bankrupt

Licenses in the context of Intellectual Property Rights (IPR) are contractual agreements granting rights to third parties, known as licensees, to use certain IPR owned by the owner or licensor for a specified period and under certain agreed conditions. Licenses can encompass various types of IPR, including copyrights, patents, trademarks, and industrial designs. This license agreement allows the licensee to exploit the IPR with specified limitations without transferring ownership of the IPR to the licensee. The legal relationship between the licensor and licensee in this licensing agreement is contractual, where the rights and obligations of both parties are governed by the agreement. The licensor is obligated to grant the licensing rights to the licensee as agreed, while the licensee must pay royalties or other compensation for the use of the IPR. The license agreement may also include provisions regarding the duration of the license, the jurisdiction of use, and the types of permissible use of the IPR.

In Indonesia, licensing agreements are regulated by various laws related to respective types of IPR, such as Law No. 28 of 2014 concerning Copyright, Law No. 13 of 2016 concerning Patents, and Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Legal protection for licensees in licensing agreements is provided through these regulations, which stipulate that licensing agreements must be made in writing and can be registered at the Directorate General of Intellectual Property. This registration offers further protection for licensees by providing legal certainty concerning their rights to use the IPR. Intellectual Property Rights (IPR) are considered assets within the context of property law, albeit different from tangible assets like property or money. IPR is classified as intangible movable property in the Indonesian legal system, as indicated in Articles 499 and 503 of the Civil Code (KUHPerdata). The IPR held by an individual or company has economic value because it can be utilized or licensed to others for financial gain.

Licenses granted by IPR owners to third parties represent a form of exploitation of those assets. Therefore, licenses are considered part of the intangible assets of the IPR owner, where the right to grant such licenses has commercial value and can affect the profitability of a company. In many cases, licenses become one of the primary assets held by IPR-based companies, particularly in the technology, media, and manufacturing industries. However, when the IPR owner is declared bankrupt, all of their assets, including the right to control the licenses, can enter the bankruptcy estate. This refers to the understanding that all property owned by the debtor (the IPR owner) declared bankrupt, both tangible and intangible, including licensing rights, becomes part of the estate that is managed by the curator. As a result, bankruptcy can affect the status of existing licensing agreements. Licensees may face uncertainty regarding the continuation of their licensing rights because the curator has the authority to decide whether to continue or terminate the licensing agreement, depending on the interests of the bankruptcy estate and the creditors.

The bankruptcy estate refers to all assets or property owned by the debtor declared bankrupt, both tangible and intangible. These assets fall under the curator's management, who is responsible for administering them for the benefit of settling debts to creditors. The scope of the bankruptcy estate includes everything owned by the debtor at the time the bankruptcy ruling is issued, as well as property acquired by the debtor during the bankruptcy process. In the context of IPR licenses, a question arises as to whether the licenses granted by the IPR owner are included in the bankruptcy estate. Based on the principles of bankruptcy law, the intellectual property rights (IPR) owned by the debtor are considered part of the bankruptcy estate because IPR has commercial value. However, the status of licenses granted to third parties (licensees) becomes more complex. Although the licenses represent agreements

between the licensor (IPR owner) and the licensee, the curator has the authority to determine whether the license should remain in effect or should be terminated as part of the liquidation of the estate.

If the IPR owner is declared bankrupt, the status of the licenses granted to third parties does not automatically terminate, but hinges on the curator's decision. The licensee may have a right to continue using the IPR in accordance with the license agreement, but this right may be threatened if the curator decides to terminate the agreement in order to protect the interests of creditors. Therefore, the licenses already granted could potentially become part of the bankruptcy estate, depending on the agreement made between the licensor and licensee and the curator's interpretation of the economic value of the license to the estate.

In bankruptcy situations, the curator plays a crucial role in managing and selling the assets included in the bankruptcy estate. The curator is responsible for inventorying all wealth owned by the debtor, including intangible assets such as intellectual property rights (IPR), and using them to repay the debtor's debts to creditors. The curator also has the authority to take legal actions regarding the continuation of existing contracts, including licensing agreements involving IPR.

One of the curators' authorities is to decide whether the licensing agreements made by the IPR owner before bankruptcy will be continued or terminated. Curators must consider whether the continuation of the licensing agreement is beneficial for the bankruptcy estate and for the creditors. If the license generates income for the estate, the curator may decide to continue the agreement. However, if it is deemed to be disadvantageous or insignificant, the curator can terminate the licensing agreement, even if the licensee has paid royalties or has rights based on the contract.

The legal consequences for licensees if the licensing agreement is terminated by the curator are significant. The licensee may lose their rights to use the previously licensed IPR. This can lead to financial and operational losses for the licensee, particularly if the license is a critical part of their business. Consequently, licensees must have strong legal protection in place within their licensing agreements or through existing laws to ensure that their rights are preserved in cases where the licensor goes bankrupt.

Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) serves as the legal foundation governing how the assets of a debtor declared bankrupt are managed by the curator for the purpose of settling debts with creditors. In the context of the bankruptcy of an IPR owner, it is essential to understand how intangible assets such as copyrights, patents, and trademarks are treated within the bankruptcy estate. The Bankruptcy Law grants full authority to the curator to manage all assets owned by the debtor, including IPR, and the associated licensing agreements. However, this regulation does not specifically address protections for licensees when the IPR owner goes bankrupt. This leads to legal uncertainty for licensees, particularly regarding the continuity of licensing agreements. In practice, curators have discretion to continue or terminate licensing agreements based on the interests of the bankruptcy estate. Consequently, licensees are in a vulnerable position if the agreement is considered unbeneficial by the curator.

There are several laws in Indonesia governing various types of IPR, including Law No. 28 of 2014 concerning Copyright (Copyright Law), Law No. 13 of 2016 concerning Patents (Patent Law), and Law No. 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). Each of these laws acknowledges IPR as an intangible asset that can be transferred or be the subject of licensing agreements. However, there are no explicit provisions in these laws that directly address how licenses are treated when the IPR owner experiences bankruptcy. For example, in the Copyright Law, Article 16 states that copyrights can be used as objects of fiduciary guarantees. Still, this law does not clearly regulate how the status of licenses is impacted if the copyright owner (licensor) goes bankrupt. The same applies to the Patent Law and Trademark Law, which, while recognizing IPR as assets, do not provide detailed guidance on how licenses interact with bankruptcy law.

After analyzing these regulations, it can be concluded that legal protection for licensees in the context of the bankruptcy of the IPR owner is not yet fully accommodated in Indonesian positive law. The Bankruptcy Law grants curators the authority to manage all estate assets, including the licenses related to IPR, without specific regulations that protect licensees. This creates uncertainty for licensees regarding the continuity of their licensing rights after the IPR owner goes bankrupt. On the other hand, existing IPR laws do not comprehensively address the legal implications for licensing agreements in bankruptcy. Licensees risk losing their rights if the curator decides to terminate the license in favor of the bankruptcy estate. Strong legal protection is needed, whether through amendments to bankruptcy

law or IPR laws, or through emphasized protections in license agreements to strengthen the position of licensees in the event of the bankruptcy of the IPR owner.

When the owner of Intellectual Property Rights (IPR) is declared bankrupt, licensees often face uncertainty regarding the continuity of the licenses they have acquired. This occurs because in bankruptcy law, all assets of the debtor, including IPR, become part of the bankruptcy estate, meaning that existing licensing agreements may be impacted by the bankruptcy process. However, current legislation does not specifically regulate the status of licensing agreements when the IPR owner experiences bankruptcy, creating risks for licensees who may lose their licensing rights. This uncertainty is exacerbated by the authority granted to curators by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). Curators have the authority to decide whether a licensing agreement will be continued or terminated based on whether the license is beneficial or not for the bankruptcy estate. Licensees often lack control over this decision, and in many instances, the license can be terminated if deemed unbeneficial or if it can be sold to settle the debts of the bankrupt debtor.

There are several court rulings that may provide insight into how licenses are treated in the bankruptcy of an IPR owner. However, the number of such cases in Indonesia remains limited, and the existing rulings tend to grant significant authority to curators to manage IPR assets, including licensing rights. For instance, in several cases involving IPR as bankruptcy assets, the courts have ruled that previously granted licenses to third parties can be considered part of the bankruptcy estate. In this context, the curator may take over the management of the IPR, including deciding to sell the licenses or terminate the licensing agreements. These rulings emphasize that licensee rights can be easily overlooked if there are no clear provisions that provide protection for them, whether in legislation or in previously established licensing agreements.

Without adequate legal protection, licensees are in a vulnerable position. In the absence of clear regulations in the law or explicit licensing agreements that protect the licensee's rights in bankruptcy situations, license agreements can be easily terminated. The curator, as the administrator of the bankruptcy estate, has the authority to decide whether the license should be continued or terminated, and if the licensee's rights are not guaranteed in the agreements or legislation, the license may be terminated unilaterally by the curator. This legal consequence not only affects the survival of the licensee's business but can also cause significant financial loss. For example, if the licensee has invested heavily in developing and marketing products based on the licensed IPR, the sudden termination of the license could halt production, distribution, and sales of those products. This scenario undoubtedly harms the licensee economically and operationally.

Thus, adequate legal protection is essential to maintain the certainty of the licensee's rights. Strengthening such protection can be achieved through revisions to legislative provisions that are more specific or through drafting licensing agreements that are more comprehensive and include clauses that protect the licensee in the event of the bankruptcy of the IPR owner. Without clear protections, licensees will continue to face legal uncertainties whenever the IPR owner granting licenses experiences bankruptcy.

Legal Protection for Licensees in Licensing Agreements When the IPR Owner Experiences Bankruptcy

The Bankruptcy Law and the Suspension of Debt Payment Obligations (PKPU) in Indonesia, namely Law No. 37 of 2004, generally regulate bankruptcy and the procedures for managing bankrupt assets, including intangible assets such as intellectual property rights (IPR) licenses. In this context, licenses granted by IPR owners (licensors) can be deemed part of the bankruptcy estate or the bankrupt property managed by the curator. As part of the bankrupt assets, the licenses must be managed to pay the creditors of the IPR owner, which often creates uncertainties for licensees. Article 21 of the Bankruptcy Law states that all actions related to bankrupt property must receive the curator's consent, including the continuation or termination of licensing agreements. However, there are no specific provisions regulating the continuity of licensing agreements when the IPR owner is declared bankrupt, creating risks for licensees who may lose their rights.

Several laws related to IPR, such as Law No. 28 of 2014 concerning Copyright, Law No. 13 of 2016 concerning Patents, and Law No. 20 of 2016 concerning Trademarks and Geographical Indications, govern the rights of IPR owners and the licenses that can be granted to third parties (licensees). For example, Article 45 of the Copyright Law states that copyrights can be licensed to others, while Article

108 of the Patent Law states that patent rights can be used as objects of fiduciary guarantees. However, these IPR laws do not explicitly regulate the status of licenses when the IPR owner experiences bankruptcy. This creates a gap in legal protection for licensees who have received licenses from IPR owners. In bankruptcy situations, IPR laws do not provide clear guidance on how licenses should be handled by the curator, further exacerbating legal uncertainty for licensees.

Licenses can be regarded as part of intangible assets recognized in the fiduciary guarantee system, as provided under Law No. 42 of 1999 concerning Fiduciary Guarantees. Licenses can serve as fiduciary guarantees if they possess reliable commercial value for economic benefit. In other words, IPR owners can use their licenses as collateral to obtain credit. However, when the IPR owner experiences bankruptcy, the licensee's rights on that license can be affected by the curator's decisions, as the licenses are included in the bankruptcy estate. If a license is pledged through fiduciary means, the licensee might find themselves entangled in a conflict between creditors holding fiduciary guarantees and their rights as license recipients. Therefore, there is a need for further regulations concerning the status of licenses within the fiduciary context to protect the rights of licensees, especially in situations where the IPR owner goes bankrupt.

Protective clauses within licensing agreements are crucial to ensuring that licensee rights remain safeguarded if the IPR owner (licensor) is declared bankrupt. Legal uncertainty in the context of the bankruptcy of the IPR owner often creates risks for licensees, as licenses can be viewed as part of the bankruptcy estate. Therefore, in the licensing agreement, provisions should be included that explicitly protect the licensee from the negative impacts of the IPR owner's bankruptcy. These provisions may include stipulations stating that the license will remain valid and that the licensee has the right to continue using the IPR even if the IPR owner goes bankrupt. Such protection provides assurance to the licensee that they will not lose the rights granted by the license, even in light of changes in the legal status of the IPR owner.

An aspect that may be included in licensing agreements is a non-termination clause, allowing the licensee to continue using the IPR even if the licensor experiences bankruptcy. This clause serves as reassurance that the licensing agreement will not automatically terminate when the licensor is declared bankrupt. Furthermore, the licensee may be granted the right to renew or assign the license to third parties without requiring further approval from the IPR owner or the curator. This arrangement provides the licensee with flexibility to maintain access to the IPR and ensures business continuity based on the use of the IPR. Such clauses will reduce the licensee's dependence on the bankruptcy process managed by the curator and provide better legal certainty.

The IPR owner, as the party granting a license, has the responsibility to ensure that the licensee's rights are acknowledged, even when facing bankruptcy situations. Within the licensing agreement, the IPR owner can be mandated to include clauses requiring them or a third party taking over the bankrupt assets (curator or buyer) to honor existing licensing agreements. This obligation includes protecting the licensee's right to continue using the IPR throughout the agreed licensing term. Consequently, the licensee will not need to fear loss of rights due to the licensor's bankruptcy and can continue their business activities uninterrupted. This clause may also stipulate that if the curator or third party attempts to terminate the licensing agreement, the licensee is entitled to compensation or may take legal action to protect their interests.

In the context of bankruptcy, the curator holds a vital role as the manager of the bankruptcy estate, including the intellectual property rights (IPR) that have been granted in the form of licenses. The curator's authority encompasses managing, assessing, and utilizing the assets within the bankruptcy estate, including determining the fate of licensing agreements. The curator can choose to continue or terminate licensing agreements in accordance with the interests of the bankruptcy estate. This decision is often made considering the economic value that can be obtained from the license. In this case, the curator should have a goal to maximize the value of the bankruptcy estate while still respecting the rights of licensees, particularly if the licensing agreement contributes significantly to the overall value of the IPR being managed.

Licensees possess rights that need to be protected in the bankruptcy process, and they can take several steps to ensure their rights remain intact. One of the first actions may be to seek written clarification from the curator regarding the status of their licenses. Licensees are also advised to proactively communicate with the curator to discuss their rights and explore options for continuing the licensing agreement. If a curator intends to terminate a license, the licensee may register their objections and even approach the court for protection of their rights. Furthermore, licensees may consider directly

negotiating with the curator or the party taking over to reach more favorable agreements, such as purchasing the license or appropriately transferring rights.

Conflicts between curators and licensees within the sphere of bankruptcy are often unavoidable. Curators are motivated to sell or terminate licenses for the benefit of the bankruptcy estate, aiming to maximize assets and repay the debts of the IPR owner. On the other side, licensees have an interest in preserving their licensing rights and continuing their use of the IPR that is foundational for their business activities. This mismatch can create a complex situation where the curator may make decisions detrimental to the licensee, particularly if the licensing is viewed as financially undesirable. To address potential conflicts, clear provisions within licensing agreements are required concerning the procedures to follow if the IPR owner experiences bankruptcy, as well as adequate legal protections for licensees to safeguard their interests in such situations.

Legal protection for licensees in the event of the bankruptcy of the intellectual property rights (IPR) owner in Indonesia remains insufficient. Therefore, revisions to legislative provisions are necessary to provide clearer legal certainty. One recommendation is to add specific provisions in the Bankruptcy Law relating to the status of licensing agreements within bankruptcy scenarios. This regulation should encompass provisions that guarantee the licensee's right to continue utilizing the IPR, even should the IPR owner go bankrupt, provided that the licensee has fulfilled their obligations under the agreement. Furthermore, it is vital to consider protections for licensees in the form of guarantees concerning the maintenance of intangible assets, ensuring that licenses are not merely regarded as assets that can be seized without considering the licensee's interests.

In addition to regulatory improvements, strengthening legal protections can also be achieved by enhancing provisions in licensing agreements. More robust contractual clauses need to be integrated to protect licensee rights in bankruptcy situations. For instance, licensing agreements should ideally include non-termination clauses that ensure the licenses remain valid even if the licensor is declared bankrupt, as well as clear dispute resolution provisions to avoid conflicts between the licensee and the curator. Additionally, the agreements may contain compensation mechanisms for the licensee should termination of agreements occur due to bankruptcy, thereby providing financial security for licensees during difficult situations. By drafting clearer and more comprehensive clauses, licensees can achieve better protection and operate with greater assurance.

Empowering licensees is also a crucial aspect of enhancing legal protection. Licensees need better education regarding their rights in bankruptcy situations, including actions they can undertake to safeguard their licenses. One proposal is to establish forums or organizations that may facilitate cooperation among licensees to share information and strategies on dealing with bankruptcy situations. In this case, legal education concerning licensee rights and available legal mechanisms will be very important. Licensees also should be encouraged to take preventive measures, such as conducting due diligence before entering licensing agreements and assessing the financial stability of the IPR owner. Furthermore, they might negotiate for additional guarantees or restrictions concerning asset sales by the curator, ensuring their rights are preserved even in the event of bankruptcy.

CONCLUSION

In the context of bankruptcy involving the owner of intellectual property rights (IPR), there exists a significant legal gap regarding the protection of licensee rights, leading to uncertainties about the status of licensing agreements. This ambiguity poses risks for licensees, potentially resulting in the loss of access to the IPR they have used and developed. Although there are regulations governing bankruptcy and IPR, conflicts may arise between licensee rights and the authority of curators managing the bankruptcy estate, highlighting the need for legal reforms to enhance clarity and certainty. Strong legal protections for licensees are crucial for fostering a stable business environment, particularly in the creative industries. Future research should aim to develop a comprehensive framework for protecting licensee rights during bankruptcy, analyzing existing regulations to identify ambiguities, exploring best practices from other jurisdictions, and engaging stakeholders to gather insights on their needs. By proposing specific legislative reforms and educational initiatives, this research could significantly support a more secure and innovative environment in the national economy.

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