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Juridical Study of Transfer of Rights to Registered Marks as Objects of General Confidentiality in Bankruptcy Companies

Ramlan[1], Tengku Rizq Frisky Syahbana[2]

Abstract

Because their owners have exclusive moral and financial rights, brands are valuable assets because they are transportable yet intangible. A bankruptcy estate can include trademark rights. Because it has to do with figuring out the economic worth of the brand rights, the sale of the brand rights as assets of the bankruptcy debtor, in this instance, can be cause for concern. The main topic of this study is the legal certainty around the economic value of rights to registered trademarks that are transferred when the controlling company files for bankruptcy. Studying how rights to registered marks are frequently transferred as a means of object confiscation in bankruptcy proceedings is the goal, as is developing the notion of legal certainty on the economic worth arising from the transfer of rights to registered marks.

Keyword: *Transfer of Rights, Registered Marks, General Confiscated Objects, Bankrupt Companies*

Introduction

Brands can be images, names, words, letters, or angklung and are used to trade goods or services. Brands have differentiating power and differentiate goods or services made or traded by a person or group of people or legal entities from those made by others (Saidin, 2013; Gunawan et al., 2021). Brands are signs that differentiate goods or services and are used in trade (Tjiptono, 2005; Katyal & Grinvald, 2017; George, 2006). A picture, word, letter, number, arrangement of colors, or any combination of these elements may be used as this symbol. By Law Number 20 of 2016 concerning Marks and Geographical Indications (hereafter referred to as Law No. 20 of 2016), a brand is defined as a sign that can distinguish goods and services produced by individuals or organizations. This sign can be an image, logo, name, word, letter, number, arrangement, color, sound, hologram, or a combination of these elements.

According to the provisions found in Article 41 paragraph (1) of Law No. 20 of 2016, ownership of a (registered) trademark may be transferred or transferred to another party. This is because rights to trademarks may be transferred by (1) inheritance, (2) wills, (3) waqfs, (4) grants, (5) agreements, or (7) other reasons permitted by statutes. Any rights transfer to a registered mark must be registered with the Minister. Transfer of a registered trademark's rights for purposes permitted by statutes, which may be connected to Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations (hereafter referred to as Law No. 37 of 2004), is based on Article 184 paragraph (1) of Law No. 37 of 2004, which states that the curator must begin settling and selling all bankruptcy assets without the consent or assistance

[1] Faculty of Law, Universitas Muhammadiyah Sumatera Utara
[2] Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Email: ramlan@umsu.ac.id

of the debtor if: (a) the proposal to manage the debtor's company is not submitted within the period as regulated in this law, or the proposal has already been submitted but rejected, or (b) management of the debtor company is terminated. This means that selling it to third parties can be done to pay off the debts of bankrupt debtors (read owners of rights to registered trademarks). Additionally, it is decided that all items must be sold in public using the protocols outlined in the statute regulations. If a public sale is not possible, a private sale may be conducted with the supervising judge's approval.

The debtor's assets are included as bankruptcy assets (bankruptcy model) according to the provisions in Article 21, jo. Article 22 Law no. 37 of 2004 are all of his assets and assets that he will acquire later during bankruptcy, except items, such as animals, that the debtor needs in connection with that. With equipment, beds, and equipment meant for the debtor and his family, as well as food that is available there for the debtor and his family for thirty days, with everything the debtor receives from his employment as payment for a position or service, such as wages, pensions, waiting money, or allowances, to the extent decided by the supervising judge; and money given to the debtor to fulfill an obligation to provide maintenance according to law.

Based on the provisions contained in Law no. 20 of 2016, jo. UU no. 37 of 2004, the right to a brand can be called or included as bankruptcy property (bowel bankruptcy) because, according to Hidayah it is said that the right to a brand is included in the type of intangible movables, and for the business world, it can be called an asset (assets) of the company (Hidayah 2014). Therefore, if a company is declared bankrupt, the rights to the brand belonging to that company are included as bankruptcy assets (bankruptcy model). The idea is that, according to the articles of the Civil Code (hereafter referred to as the Civil Code), objects are defined as anything and any right subject to property rights, including things composed of tangible and intangible goods.

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Government legislation should provide a clear framework for evaluating the price (commercial value) of rights to a registered brand that results from a firm declaring bankruptcy. Still, no regulations explicitly regulate how to determine the price of a registered brand belonging to a company that has been declared bankrupt. Regulations to determine the economic value (price) of registered trademarks' rights are necessary to ensure legal certainty (Chung, 2017). Legal certainty must be based on facts, not on a formulation regarding the assessment that the judge will later make. In contrast, the facts must be formulated clearly to avoid errors in meaning (Achmad, 2009). The absence of these regulations will ultimately give rise to legal uncertainty in determining the economic value of rights to registered trademarks in bankruptcy cases because the economic value of brands is fluctuating, which means that if the debtor (owner of the rights to the trademark) goes bankrupt, the economic value of the trademark will also

decrease (Legal Consultant Shietra & Partners, 2015). Therefore, it is necessary to analyze through a Juridical Study the Transfer of Rights to Trademarks Registered as Objects of General Confiscation in Bankrupt Companies.

Research Method

Data collection in this research used normative methods. The normative research method collects data through various related legal sources (Babüroglu & Ravn, 1992; Christiani, 2016). Data results were obtained through various legal literature related to legal topics. Normative research is used as a data collection method because it wants to find and analyze how the law should play a role in transferring rights to brands registered as objects of general confiscation to bankrupt companies. The research will use various secondary sources originating from journals, books, laws, and other sources deemed relevant to answering the research problem topic. This normative research method is hoped to answer legal views on research problems. So that the research results can explain legal certainty if there is a problem similar to the problem topic.

Results and Discussion

Juridical Status of Rights to Trademarks Registered as Objects of General Confiscation After the Company Holding the Rights is Declared Bankrupt

In a systematic interpretation, repayment of debts with collateral is based on Article 1331 of the Civil Code, which states that all of the debtor's property, whether existing or future, whether movable or immovable, guarantees the repayment of the debt he or she has created. The debtor's assets are shared collateral for all creditors who lend him money, according to Article 1332 of the Civil Code. Patent rights and copyrights are two examples of IPRs that can be employed as fiduciary objects (Blumenfeld, 2018). Trade secrets, trademarks, integrated circuit layout design rights, industrial design rights, plant variety protection (PVP), and geographical indication rights. Other than copyright and patent rights, some other forms of intellectual property do not specifically indicate that they can be utilized as fiduciary objects. Even so, these rights may be passed on through inheritance, a gift, a will, an agreement, a letter, or other means permitted by law; if the IPR item has economic value, it may be utilized as assets in bankruptcy.

Any area of law, including civil law and intellectual property rights law, is relevant to bankruptcy law (Armour & Cumming, 2008; White, 2007). For instance, material matters are governed by Indonesia's current Civil Law, as specified in Article 499 of the Civil Code, which defines an object as anything and any right that is subject to property rights. Objects in the natural or material sense are defined under Article 499 of the Civil Code. Simultaneously, other categories of objects exist, specifically ethereal, immaterial, and invisible objects, which typically manifest as rights. This is accomplished by grouping objects into categories of tangible and immaterial objects by Article 503 of the Civil Code. Most rights are intangible, and intellectual property rights are among them.

Brand rights are one type of object (Naccache et al., 1999; Dev et al., 2010), and it is said that an object in the juridical sense is legal (Simanjuntak, 2015). In contrast, from a civil law perspective (as stated and regulated in the Civil Code, from now on abbreviated to the Civil Code), objects are defined as every item and right that can be controlled with property rights,

consisting of tangible and intangible items, movable and immovable items, as well as items that are used up and cannot be spent. The term intangible goods (such as copyright, patent rights, brand rights, and other intellectual property rights) is not explicitly regulated or explained in the Civil Code but is spread across several separate laws and regulations relating to intellectual property rights, including Law no. 20 of 2016, which regulates explicitly the issue of rights to trademarks and rights to geographical indications, and although the Civil Code does not regulate intellectual property rights, according to the concept of civil law, intellectual property rights are included in the category of objects, so that in addition to being subject to the law - laws regarding intellectual property, also subject to Book II of the Civil Code, especially regarding object law.

Trademark rights are associated with two distinct kinds of rights: moral and economic rights. The rights above are linked to an individual's creative brand, which is a property right that warrants legal safeguarding (Abduh & Fajaruddin, 2021; Hanifah & Purba, 2021). These economic rights are expressed as profits, which are the sums of money made from using intellectual property rights or those rights by third parties under the terms of a license. A brand grants its owner exclusive or special rights to the brand, enabling them to protect it from third parties. The person with the right to a brand is bestowed with the ability to utilize it for goods and services and with good intentions. Article 1 point 1 of Law Number 20 of 2016 Concerning Trademarks and Geographical Indications defines rights to a brand. Brands are perceived in relation to their place within intellectual property rights, which will hereafter be referred to as IP rights. Copyrights, patents, trade secrets, industrial designs, integrated circuit layout designs, and geographical indications are among the rights that coexist alongside brands. A brand (trademark) as a property is a sign to identify the origin of a company's goods and services (an indication of origin) with another company's goods and services.

The assessment of a brand, an intangible asset, usually uses market value as the basis for the assessment by applying the Indonesian Valuation Standard 101. This is done so that the appraisers assess intangible assets more consistently and with higher quality (Morgese, 2014; Heymann, 2012). So, it is helpful for users of appraisal services. The Indonesian Appraisal Standard (SPI) 320 serves as a guide for the appraisal of intangible assets.

Transfer of Rights to Registered Marks as Objects of General Confiscation in Settlement of Bankruptcy Cases

A brand cannot be transferred verbally but notarially by making an authentic deed before a notary. Considering that brand rights are part of intangible movable property rights, the transfer must be carried out by the provisions stipulated in Article 613 of the Civil Code, which is to carry out the notarial transfer to realize legal protection for parties receiving trademark rights. The Notary transfers a deed of rights to the trademark after completing all the paperwork, and at least two (two) witnesses are present. After signing the deed, the Notary makes 3 (three) copies of the Deed of Transfer of Brand Rights, 1 () for the prospective brand owner, 1 () for the previous brand owner, and 1 () to transfer the intended brand rights. Registered with the Director General of Intellectual Property Rights.

By the Decree of the Director General of Intellectual Property Rights Number: HKI-02.HI.06.01 of 2017 concerning Trademark Application Forms, applications for transferring rights to trademarks must be accompanied by supporting documents. There is a registration of the transfer of rights to trademarks to facilitate supervision and create legal certainty for third

parties. In contrast to the transfer of rights to a trademark not registered in the General Register of Trademarks and not announced in the Official Brand Gazette, material rights to a trademark never arise; only individual rights arise and can only be maintained against certain people. This applies to unregistered marks. The government still charges a fee for the transfer of trademark rights, and the provisions regarding the fees charged will be stipulated in a ministerial regulation. As a result of an application for registration of the transfer of brand rights, the new owner of the rights to the brand has the right to use the mark by its designation.

The assets of the bankrupt corporation, often known as the debtor, are subject to loss of control and management. Syahbana (2021) argues that this differs from those who lose their ability to manage and transfer their assets but are not legally competent to carry out legal actions (volkomen handelingsbevoegd). The debtor is not placed under guardianship and retains his capacity to pursue any litigation, except actions about the administration and disposition of his current assets.

The curator is in charge of management and transfer activities. Regarding the assets to be acquired, the debtor in bankruptcy may still pursue legal action to get the assets, but those assets will then be included in the bankruptcy assets (Sutan Remy Sjahdeini, 2002; Ghosh, 2002). Additionally, according to Zainal Asikin, a court's declaration of bankruptcy does not prevent a bankrupt from pursuing legal action in the area of assets, provided that the action protects the bankrupt's assets or causes harm to them. The bankrupt's assets, then these losses do not bind the assets.

Concept of Legal Certainty Economic Value of Rights to Registered Trademarks Transferred Due to the Company Holding the Rights Being Declared Bankrupt

A brand is said to have a differentiating function when it can distinguish itself from identical goods or services supplied by other businesses, according to definitions of brands (Guo et al., 2011; Bivainienė, 2011). According to the Directorate General of Intellectual Property Rights' website, using a brand serves as :

a. Identification mark to set one person's or group of people's or legal entity's output outcomes apart from those of another person or other legal organization.
b. Some promotional tools so that promoting their production results is enough to mention the brand.
c. As a guarantee of the quality of the goods.
d. Shows the origin of goods/services produced

The discussion regarding the definition, types, and functions of trademarks above can be related to the position of trademark rights in material law in Indonesia. If explored further, IPR is part of intangible objects (immaterial objects) (Tang, 2012; Ginsburg, 2002). A civil law framework allows classifying items into multiple categories, including distinguishing tangible and intangible objects. Article 499 of the Civil Code (hereafter referred to as the Civil Code) specifies the bounds of objects in this regard. As per legal interpretation, an object encompasses all things and all rights subject to property rights. Prof. Mahadi suggested that, if preferred, this article may also be formulated in the following way: Objects are what can be the subject of property rights, and objects are made up of rights and products. (Hanifah and colleagues, 2023; Mahadi, 2008).

A brand's owner obtains legally protected rights to the brand through registration. According to Article 3 of Trademark Law No. 20 of 2016 concerning Trademarks, the owner of a

trademark registered in the General Register of Trademarks has the exclusive right to use the trademark for an extended period, either by themselves or by granting permission to another party. The State grants this right. Article 4 of Law No. 20 of 2016 about Trademarks stipulates that an application filed by an applicant with malicious intent is ineligible for trademark registration. Thus, the right to a trademark gives the owner special rights to use or utilize the registered trademark for specific goods or services within a certain period.

This right to use a brand functions like a monopoly, only valid for specific goods or services. Because a brand gives the person concerned special rights or absolute rights, these rights can be defended against anyone (Bomsel, 2013; Jankowska & Sorokowska, 2023). Of course, the rights to this brand are only given to owners with good intentions. Brand owners who have bad intentions cannot register their brand. The registered mark can be used for goods or services. With this exclusive right or special right, other people are prohibited from using the registered mark for similar goods or services unless they first obtain permission from the owner of the registered mark.

The construction of the ideal concept for regulating brand rights in the fiduciary legal system from the aspects of legal culture, legal structure, and legal substance philosophically originates from the legal ideals (reconsider) of Pancasila. The concept of a brand as a fiduciary guarantee philosophically contains the values of Pancasila (especially the 2nd principle of just and civilized humanity and the 5th principle of social justice), which is imbued with other principles, because in lending activities, the brand is the object. Fiduciary guarantees in banking practices contain fundamental human values or human rights.

As a form of industrial property rights, brands are part of a company's assets that need to be maintained, defended, and protected like other company assets. A person who has a brand on his product contributes to the nation's economic growth, which in essence has utilized "alternative" resources as regulated in Article 33 paragraph (4) of the 1945 Republic of Indonesia Constitution as a result of the 4th amendment, Which declares that the economic democracy that underpins the organization of the country's economy is based on the values of solidarity, justice, efficiency, sustainability, environmental awareness, independence, and preserving the equilibrium between the country's economic growth and unity.

A product that has a brand and is registered as an intangible company asset that contributes to the country's interests with the products it produces and advances the national economy (Van der Lans et al., 2016; Fetscherin, 2010). This is an embodiment of the values of Pancasila, especially the second principle. Implementing the 5th principle of Social Justice from Pancasila also underlies the brand concept in the fiduciary legal system. Social justice aims to create a balanced and orderly society where all citizens can build a decent life, and those in a weaker position receive the necessary assistance (Bell, 2016; Fleetwood, 2020). As the state's leader, the government is tasked with advancing general welfare. From an economic perspective, social justice is proportional justice (Duff et al., 2013; Hazard, 1968). The concept of proportional justice is that each party has rights and obligations by the proportions stated in a contract.

In the context of the meaning of IPR (Brand) as an object (right) that has economic value, it can be transferred due to a fiduciary guarantee agreement to clarify the interpretation. So it is essential to amend the Fiduciary Guarantee regulations, Law No. 15 of 2001 concerning Trademarks, to realize the ideals of national law, namely legal certainty, and justice for interested parties in economic activities, in particular the development of the ideal concept of regulating IPR (brands) as fiduciary guarantees.

Paying attention to the trends occurring in various countries on the one hand and the breakthroughs made by national banking on the other hand, in the author's opinion, to build the legal substance of intellectual property rights in the field of brands as an intangible asset in the fiduciary legal system in the future, value is needed. In society, it is about brands (Bankov, 2023; Wantu et al., 2021). Connected with Posner's economic approach to Law (2014), the role of Law must be seen in terms of value, in this case, brand value. However, brands tend to decrease in value over time and eventually lose all their value, which means the brand has uncertainty. However, if the brand is managed well, as shown in the financial or annual profit and loss statements, the brand value will be eternal. Second, Utility. Business actors and brand owners recognize the intrinsic worth of intellectual property rights (IPR) (brand), an intangible asset that serves as a fiduciary assurance. They require funds to grow their firm, and by managing the "intangible" assets of the organization well, interested parties (banks and investors) can track advancements. The brand is an intangible asset as a source of income, which is applied in the company's financial statements. Third, efficiency. The Fiduciary Guarantee presents several legal issues as a national statute, including more excellent legal protection and clarity. Implementing this Law in Indonesian banking practices needs to be more effective due to the inconsistency in the structure and content of fiduciary institutions that oppose commercial entities.

The brand concept used as collateral cannot be separated from an accounting perspective (Petty, 2011; Cobbold, 2007). According to research findings, PSAK 19, which specifies that brand value can be included in financial reports based on the cost approach method, serves as a guide for public accountants when evaluating brands (intangible assets) in accounting practice. In Indonesia, the cost approach is acknowledged as the guiding framework for brand appraisal from an accounting standpoint. There are two types of brand value acquisition using a cost approach, namely based on history in the sense of having a brand because of building one's brand or based on transactions (sale and purchase agreements) to own a brand.

Conclusion

By the problem analysis, several conclusions were obtained regarding the problem topic, including

1. According to research findings, PSAK 19, which specifies that brand value can be included in financial reports based on the cost approach method, serves as a guide for public accountants when evaluating brands (intangible assets) in accounting practice. In Indonesia, the cost approach is acknowledged as the guiding framework for brand appraisal from an accounting standpoint.
2. Suppose a limited liability company is declared bankrupt. In that case, there are two (2) ways to execute trademark rights based on the implementation of a court decision: through public auctions and private sales conducted by an agreement between the trademark rights owner and the potential buyer of the trademark rights. Suppose a trademark is registered under the name of the limited liability company. In that case, the rights to the mark can be found among the company assets in bankruptcy. Evaluation services play a crucial role in determining the brand's fair worth and preventing harm to the brand owner and prospective buyers.
3. Bankruptcy assets must be used to pay off the debt owed to creditors, provided that the curator controls their sales price or value. To pay creditors, debtors who own assets in commercially valuable intellectual property rights will have these assets administered by a

curator. According to Article 499 of the Civil Code, you must research material law to identify IPR as bankruptcy property. Depending on what items are used to guarantee the thing, not all objects may be used as collateral to pay off debts. A curator needs an appraisal to settle bankruptcy assets (appraisal of an asset). The appraisal is based on recommendations from the Public Appraisal Services Office (KJPP) as the Indonesian standard for assessing an asset.

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