From Failure to Future Reconstructing Intellectual Property in Bankruptcy Law

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ABSTRACT

In the context of a knowledge-based economy, intellectual property (IP) has emerged as a critical asset for business competitiveness, yet it remains inadequately recognized in Indonesia's bankruptcy law. Trademarks, copyrights, and patents key components of IP are often excluded from the core bankruptcy estate due to legal ambiguity and the absence of standardized valuation and management procedures. This research aims to reconstruct Indonesian bankruptcy law to better integrate IP as a vital economic asset in insolvency proceedings. Utilizing a descriptive-analytical method with a juridical-normative approach, this study draws upon doctrinal sources and empirical data collected through interviews with legal practitioners and bankruptcy receivers. The findings reveal that current legal structures fail to reflect the real economic value of IP, resulting in underutilized assets and prolonged legal disputes, as exemplified by the Nyonya Meneer case. The study concludes that reform is urgently needed to incorporate IP into the bankruptcy framework, not only as an asset with immediate monetary value but also as a tool for post-bankruptcy recovery and sustainability. A revised legal framework would ensure equitable treatment for both creditors and debtors and align national insolvency policies with the evolving dynamics of global commerce and innovation.

1. Introduction

Since its independence in 1945, the Republic of Indonesia has grown into a nation with significant accomplishments. By 2022, Indonesia marked its 77th year of independence, a milestone that can be compared to a mature age in the life of a human being. As a state, Indonesia is expected to have made substantial achievements in nation-building, particularly in the realization of law and the objectives set forth by its founding fathers.[1] However, in the face of the rapid technological advancements of the 21st century, Indonesia has struggled to fully harness the power of innovation within its legal framework. Society today finds

[1] Triyono Adi Saputro and others, 'Enhancing Domestic Product Competitiveness through Electronic Intellectual Property in Indonesia: A Comparison to China, Malaysia, and Thailand', *Wacana Hukum*, 29.2 (2023), 112–29 https://doi.org/10.33061/wh.v29i2.9577

itself immersed in the so-called "disruptive era" or the Fourth Industrial Revolution, which is marked by the rapid pace of technological change and globalization.[2] This era has underscored the importance of intellectual property (IP) as an engine for economic development, as nations across the world utilize IP to drive innovation, entrepreneurship, and economic growth.[3]

Countries such as the United States, Japan, Germany, and South Korea have proven the significant role that intellectual property plays in the economy. These nations have long recognized the value of IP, which is divided into two main categories: Copyright and Industrial Property Rights.[4] The latter encompasses patents, trademarks, industrial designs, trade secrets, and layout designs of integrated circuits. These countries produce thousands of IP rights annually, which contribute greatly to their national economies.[5] IP has thus become an indispensable driver of both material and moral gains for inventors and creators. This aligns with the "benefit theory" of intellectual property, which posits that legal protection for creators is essential as it incentivizes innovation. Indonesia, as a member of various international IP conventions, including those established by the World Intellectual Property Organization (WIPO), is legally bound to align its national IP laws with global standards.[6] However, despite this alignment, challenges remain in fully implementing and utilizing IP rights, particularly in corporate insolvency procedures.

In Indonesia, intellectual property is regarded as an intangible asset and, as such, it has economic value. This is especially true in the context of corporate insolvency. According to the Indonesian Civil Code (*KUHPerdata*), IP is treated as property, which may be used as collateral for corporate debts.[7] The Indonesian legal framework includes seven primary IP laws covering Copyright, Trademarks, Patents, Industrial Designs, Layout Designs of Integrated Circuits, Trade Secrets,

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[2] Tianli Ding and Lin Yang, 'Intellectual Property Protection and Corporate Digital Transformation: An Empirical Analysis from the Perspectives of Intellectual Property Protection and Digital Governance', *International Review of Economics & Finance*, 100 (2025), 104125 https://doi.org/10.1016/j.iref.2025.104125

[3] Yan Li and others, 'Insight into the Nexus between Intellectual Property Pledge Financing and Enterprise Innovation: A Systematic Analysis with Multidimensional Perspectives', *International Review of Economics & Finance*, 93 (2024), 700–719 https://doi.org/10.1016/j.iref.2024.03.050

[4] Qifeng Han, Chunhui Li, and Yulu Jin, 'The Impact of Intellectual Property Protection on the Development of Artificial Intelligence in Enterprises', *International Review of Financial Analysis*, 2025, 104179 https://doi.org/10.1016/j.irfa.2025.104179

[5] Yan Song and others, 'Intellectual Property Protection and Enterprise Innovation: Evidence from China', *Finance Research Letters*, 62 (2024), 105253 https://doi.org/10.1016/j.frl.2024.105253

[6] Fenfen Ma, Xin Li, and Peng Liu, 'Intellectual Property Strategy and Corporate ESG Performance: A Quasi-Natural Experiment from National Intellectual Property Demonstration Cities', *Alexandria Engineering Journal*, 125 (2025), 636–46 https://doi.org/10.1016/j.aej.2025.04.070

[7] Abdul Kadir Jaelani and others, 'Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China', *Legality : Jurnal Ilmiah Hukum*, 31.2 (2023), 202–23 https://doi.org/10.22219/ljih.v31i2.25874

and Plant Varieties, all of which have been aligned with international conventions to ensure proper protection.[8] These IP rights serve as economic assets for individuals, businesses, and the state.[9] However, despite their economic value, IP assets have been underutilized in the context of corporate bankruptcy and Debt Payment Suspension (PKPU) proceedings, which often leads to inefficient use of these assets and financial loss in insolvency cases.[10]

Corporate bankruptcy in Indonesia is governed by Law No. 37 of 2004 on Bankruptcy and PKPU. This law, in its current form, does not specifically address the treatment of intangible assets such as intellectual property in insolvency proceedings. While the Civil Code recognizes IP as property that can be used for collateral, there is a significant gap in legal provisions for its specific treatment during liquidation or restructuring processes. This gap leads to confusion and inefficiencies when curators (bankruptcy trustees) attempt to liquidate the debtor's assets to satisfy creditors.[11] Intangible assets like IP are often undervalued or ignored altogether due to the challenges associated with their valuation and the perceived complexity of managing these assets. Curators, tasked with overseeing the liquidation process, often prioritize tangible assets such as real estate and machinery because these assets can be quickly appraised and sold. IP, on the other hand, requires specialized knowledge to assess its value, making it more difficult to integrate into the liquidation process. As a result, IP assets often fail to reach their full potential value, leaving creditors at a disadvantage and potentially reducing the overall return to the bankrupt estate.[12]

The limited knowledge and expertise of curators further compounds the failure to effectively incorporate IP into bankruptcy and PKPU proceedings. Many curators lack the training or resources needed to evaluate and monetize intellectual property effectively. For example, the value of patents, trademarks, or copyrights can fluctuate based on market demand, legal protections, and the specific use or

[8] Jintao Liu and Yutao Chen, 'Executive Gender Diversity and Corporate Intellectual Property Investment', *Finance Research Letters*, 77 (2025), 106578 https://doi.org/10.1016/j.frl.2024.106578

[9] Li Chen, Liang Gao, and Sibei Sheng, 'Dynamics of Regional Intellectual Property Systems in China: A Spatiotemporal Synergy Analysis', *World Patent Information*, 81 (2025), 102359 https://doi.org/10.1016/j.wpi.2025.102359

[10] Xiaoming Wu and Kai Wu, 'Intellectual Property Protection: How Bankruptcy Courts Shape Corporate Technological Innovation and Patent Quality', *Finance Research Letters*, 79 (2025), 107292 https://doi.org/10.1016/j.frl.2025.107292

[11] Cécile Ayerbe and others, 'Revisiting the Consequences of Loans Secured by Patents on Technological Firms' Intellectual Property and Innovation Strategies', *Research Policy*, 52.8 (2023), 104824 https://doi.org/10.1016/j.respol.2023.104824

[12] Peng Gao and others, 'Double-Edged Sword: Does Strong Creditor Protection in the Bankruptcy Process Affect Firm Productivity', *International Review of Financial Analysis*, 95 (2024), 103352 https://doi.org/10.1016/j.irfa.2024.103352

commercialization of the asset.[13] Without a standardized valuation mechanism or a dedicated process for IP assets, curators may not be able to optimize the use of IP to maximize the recovery of the bankrupt estate's value. This issue is particularly pronounced in PKPU proceedings, which are designed to allow companies to restructure their debt and avoid bankruptcy. While PKPU provides a mechanism for debtors to temporarily halt debt payments and negotiate with creditors, the failure to consider IP assets in this process undermines its potential to assist the debtor in repaying debts through the generation of revenue from intellectual property.[14]

Debt Payment Suspension (PKPU) is a procedure available under Indonesian law that allows a debtor to temporarily suspend debt payments to creditors while attempting to restructure its financial obligations. While PKPU is typically used to assist financially struggling businesses, especially those with strong profitability and solvency ratios, it remains underutilized as a tool for IP monetization. In practice, many companies fail to recognize the value of their IP as a revenue-generating asset.[15] In the absence of clear legal provisions or guidelines, curators and administrators may overlook IP during the restructuring process, failing to explore licensing opportunities, sales, or collaborations that could generate income for creditors. The absence of a clear mandate to include IP in PKPU proceedings has led to a significant gap in the effectiveness of corporate restructuring in Indonesia.[16]

The central legal issue discussed in this research is the underutilization and undervaluation of intellectual property in the context of corporate insolvency and PKPU proceedings in Indonesia. The failure to properly value and incorporate IP into bankruptcy proceedings results in significant economic inefficiencies, which hinder creditors' ability to recover their debts and reduce the debtor's chances of successfully restructuring.[17] As intellectual property continues to grow in

[13] Xin Cui, Chunfeng Wang, and Tingting Ma, 'Bankruptcy Reform and Breakthrough Innovation: Evidence from the Quasi-Experiment in China', *Finance Research Letters*, 71 (2025), 106457 https://doi.org/10.1016/j.frl.2024.106457

[14] Azizjon Alimov, 'Intellectual Property Rights Reform and the Cost of Corporate Debt', *Journal of International Money and Finance*, 91 (2019), 195–211 https://doi.org/10.1016/j.jimonfin.2018.12.004

[15] Ahmad Dwi Nuryanto, Reza Octavia Kusumaningtyas, and Bukhadyrov Habibullo, 'The Imperative of Social Justice on the Insolvency and Workers' Wage', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.3 (2024), 209–32 https://doi.org/10.53955/jsderi.v2i3.48

[16] Frédéric Closset and others, 'Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms', *Journal of Banking & Finance*, 149 (2023), 106756 https://doi.org/10.1016/j.jbankfin.2022.106756

[17] Ahmad Dwi Nuryanto and Abdul Kadir Jaelani, 'The Role of State Official Wealth Report in Realizing the Principles of Maqashid Sharia' *Legality : Jurnal Ilmiah Hukum*, 32.1 (2024), 155–81 https://doi.org/10.22219/ljih.v32i1.32879

importance, both globally and locally, Indonesia must reform its legal framework to address the challenges associated with managing IP in insolvency.[18]

The legal framework governing bankruptcy and PKPU proceedings in Indonesia needs to be reformed to ensure that IP is treated as a valuable asset in insolvency cases. This could be achieved through several key reforms, including clearer legal provisions for the valuation and treatment of IP in insolvency proceedings, the establishment of standardized valuation methods for IP assets, and the provision of specialized training for curators and administrators. These reforms would enable curators to better understand the value of IP and to explore ways of monetizing these assets to maximize recovery for creditors. Furthermore, financial incentives could be provided to encourage curators to prioritize the monetization of IP, thereby ensuring that IP is not neglected or undervalued.[19]

Additionally, collaboration between curators, intellectual property professionals, and financial appraisers could be promoted to ensure that IP assets are accurately valued and properly managed throughout the bankruptcy and PKPU processes.[20] By involving IP experts, curators can gain the necessary insights into the valuation of IP and the potential for IP to contribute to the recovery of the bankrupt estate. This collaboration could also facilitate the development of more efficient processes for licensing or selling IP assets, which would benefit both creditors and the debtor in the long term.[21]

Another critical reform would involve the integration of IP into the PKPU process. IP assets should be treated as key components of the debtor's restructuring plan, and creditors, debtors, and judges should be encouraged to consider IP as a source of revenue when determining the feasibility of the debtor's reorganization.[22] If IP is treated as a valuable asset, companies may be able to leverage their IP to generate income, allowing them to avoid bankruptcy and successfully restructure their financial obligations. The current legal framework in Indonesia does not fully recognize the value of intellectual property in corporate insolvency proceedings,

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[18] Yanan Wang and Shanshan Cui, 'Deepening Digital Intellectual Property Rules and Digital International Patenting', *Economics Letters*, 251 (2025), 112312 https://doi.org/10.1016/j.econlet.2025.112312

[19] Saqib Aziz and others, 'Does Corporate Environmentalism Affect Corporate Insolvency Risk? The Role of Market Power and Competitive Intensity', *Ecological Economics*, 189 (2021), 107182 https://doi.org/10.1016/j.ecolecon.2021.107182

[20] Nicolae Stef and Jean-Joachim Bissieux, 'Resolution of Corporate Insolvency during COVID-19 Pandemic. Evidence from France', *International Review of Law and Economics*, 70 (2022), 106063 https://doi.org/10.1016/j.irle.2022.106063

[21] Searat Ali, Nazim Hussain, and Jamshed Iqbal, 'Corporate Governance and the Insolvency Risk of Financial Institutions', *The North American Journal of Economics and Finance*, 55 (2021), 11 https://doi.org/10.1016/j.najef.2020.101311

[22] Hero Wonida and Sekar Utami Setiastuti, 'The Effect of Monetary, Macroprudential Policy, and Their Interaction on Bank Risk-Taking in Indonesia', *Journal of Asian Economics*, 96 (2025), 101863 https://doi.org/10.1016/j.asieco.2024.101863

resulting in significant inefficiencies in asset liquidation and creditor recovery.[23] To address these issues, Indonesia must reform its bankruptcy and PKPU laws to incorporate clearer provisions on the treatment and valuation of IP. By implementing these reforms, Indonesia can unlock the full economic potential of IP, which will ultimately contribute to the efficiency and fairness of its corporate insolvency processes. These changes will also foster an environment in which innovation and IP creation are better supported, leading to stronger economic growth and a more robust legal framework for managing corporate financial distress.[24]

Previous research on reconstructing intellectual property (IP) within bankruptcy law highlights an urgent need for legal reform that aligns with the strategic value of IP in the modern economy.[25] Lubben (2012) emphasizes the importance of establishing a federal forum to address inconsistencies in the treatment of IP across jurisdictions in the United States. Rosenberg (2000) criticizes the Lubrizol decision, which allowed debtors to reject IP licenses in bankruptcy, leading to the enactment of Section 365(n) of the U.S. Bankruptcy Code to protect licensees' rights. On a global scale, Westbrook (2001) underscores the necessity for legal harmonization in cross-border insolvencies involving IP, advocating for frameworks like the UNCITRAL Model Law.[26] Picker (1998) addresses the conflict among creditors over intangible assets such as IP, calling for balanced mechanisms to avoid harmful competition. Baird (2006) argues for a paradigm shift in Chapter 11 proceedings from asset liquidation to the strategic use of IP as a tool for business recovery. Collectively, these five studies affirm that reconstructing the role of IP in bankruptcy requires legal frameworks that safeguard third-party rights, recognize economic value, and support sustainable post-failure restructuring.[27]

This research aims to identify the legal theory that can serve as the foundation for recognizing intellectual property (IP) rights as part of the bankrupt estate in insolvency proceedings. The study will also explore the appropriate legal concept for managing IP rights in bankruptcy, including the valuation and monetization of intangible IP assets. By understanding the role of IP as valuable assets in debt

[23] Dian Agustia, Nur Pratama Abdi Muhammad, and Yani Permatasari, 'Earnings Management, Business Strategy, and Bankruptcy Risk: Evidence from Indonesia', *Heliyon*, 6.2 (2020), e03317 https://doi.org/10.1016/j.heliyon.2020.e03317

[24] Gbenga Adamolekun, 'Firm Biodiversity Risk, Climate Vulnerabilities, and Bankruptcy Risk', *Journal of International Financial Markets, Institutions and Money*, 97 (2024), 102075 https://doi.org/10.1016/j.intfin.2024.102075

[25] Ruiqi Yang and Junjie Cai, 'Research on the Dual Driving Effects of Intellectual Property Protection and Government Subsidies on Total Factor Productivity Growth', *Finance Research Letters*, 73 (2025), 106591 https://doi.org/10.1016/j.frl.2024.106591

[26] Beiqi Lin and others, 'CEO Turnover and Bankrupt Firms' Emergence', *Journal of Business Finance & Accounting*, 47.9–10 (2020), 1238–67 https://doi.org/10.1111/jbfa.12482

[27] Budi Budi and others, 'Implementation of Social Forestry Policy: A Review of Community Access', *Forest and Society*, 2021, 60–74 https://doi.org/10.24259/fs.v5i1.9859

settlement, this research focuses on the application of bankruptcy principles in Indonesia and proposes legal solutions to optimize the utilization of IP assets in liquidation.

2. Research Method

The method used in this research is a descriptive-analytical method with a primary juridical-normative approach, supported by juridical-empirical (doctrinal) interviews.[28] The study examines legal rules and norms within positive law and seeks to formulate legal doctrines by analyzing existing legal regulations. Descriptive-analytical means to describe and critically portray the subject of study through qualitative analysis. Since the focus is on the field of law, the normative approach encompasses legal principles, synchronization of regulations, and efforts in discovering law in concreto.[29] The research conducted by the author, titled "Valuation of Bankruptcy Assets in the Form of Intellectual Property," is a normative juridical study, based on regulations, norms, principles, and laws related to the management and settlement of bankruptcy assets in the form of intellectual property.[30] The object of this study is legal norms, both in statutory regulations and court decisions concerning related issues. The researcher also uses secondary legal materials, which support and provide explanations for primary legal sources obtained from various literature, books, or articles in scholarly journals written by experts.[31] Other legal sources, such as electronic documents from the internet, will complement and enrich the data. The data needed for this research is secondary data, obtained from library research or third-party sources. Secondary data refers to information obtained from existing materials or data already collected by others. Relevant laws such as Law No. 14 of 2001 on Patents and Law No. 15 of 2001 on Trademarks will be integrated into the study.[32]

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[28] Rian Saputra and Resti Dian Luthviati, 'Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts', *Journal of Morality and Legal Culture*, 1.2 (2020), 93–102 https://doi.org/10.20961/jmail.17i1.41087

[29] Sapriani Sapriani, Reza Octavia Kusumaningtyas, and Khalid Eltayeb Elfaki, 'Strengthening Blue Economy Policy to Achieve Sustainable Fisheries', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.1 (2024), 1–19 https://doi.org/10.53955/jsderi.v2i1.23

[30] Orin Gusta Andini and Muhammad Riyan Kachfi Boer, 'Indonesia's Safeguarding of Human Rights to Achieve Sustainable Development Goals: Insights from Australia's Experience', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.1 (2025), 1–28 https://doi.org/10.53955/jsderi.v3i1.53

[31] Paul Atagamen Aidonojie and others, 'Examining Human Rights Abuses on Religious, Cultural, and Political Intolerance in Nigeria', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.1 (2025), 78–94 https://doi.org/10.53955/jsderi.v3i1.55

[32] Habil Csongor Herke and Barbara Szabó, 'Self-Driving Vehicles and Their Impact on the European Convention on Human Rights', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 872–900 https://doi.org/10.53955/jhcls.v4i3.376

3. Results and Discussion

Challenges in Protecting Intellectual Property in Bankruptcy in Indonesia

In Article 15, paragraph (1) of the Bankruptcy Law (UUK), it is stipulated that in a bankruptcy ruling, both a Trustee and a Supervisory Judge must be appointed from among the judges of the Court. This provision highlights the critical role of the Trustee in the bankruptcy process, alongside the Supervisory Judge, emphasizing the importance of the Trustee in managing the debtor's assets and resolving the bankruptcy effectively.[33] One of the primary objectives of bankruptcy law is to protect the interests of creditors by ensuring their right to recover debts through the application of legal principles of collateral. All assets of the debtor, whether movable or immovable, whether currently in existence or to be acquired within two days, serve as collateral for the debtor's obligations. Additionally, the law aims to safeguard the good faith interests of the debtor from the creditors by providing a legal mechanism for debt discharge. In this regard, the Trustee plays a pivotal role in executing these provisions.[34]

Bankruptcy, as a legal concept, involves a wide range of issues. A bankrupt debtor not only faces debts or obligations quantified in monetary terms (toward preferential or unsecured creditors), but may also have obligations with third parties, such as leases, donations, and other contractual relationships.[35] Furthermore, the debtor may have pending legal disputes, may own a business with ongoing operations, and may employ workers whose rights are protected by law. All of these issues fall under the Trustee's responsibilities.[36] While, in many cases, the Trustee must seek the approval of the Supervisory Judge for certain actions, there are instances where the Trustee is authorized to act independently without prior approval. According to Article 78, paragraph (1) of the UUK, the lack of authorization or approval from the Supervisory Judge for actions requiring such approval does not invalidate the Trustee's actions with third parties. However, paragraph (2) clarifies that the Trustee is personally liable to both the debtor and creditors for such actions.[37]

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[33] Maya Tryandari, 'Legal Protection for Bankruptcy Curators in the Resolution of Bankruptcy Cases', *Journal of Law and Legal Reform*, 2.3 (2021), 421–38 https://doi.org/10.15294/jllr.v2i2.46621

[34] Recca Ayu Hapsari Hapsari and others, 'Bankruptcy Indicator Frameworks Used In Cross-Country Reviews (Indonesia – Russia Bankruptcy Law)', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 24.1 (2024), 63–76 https://doi.org/10.19109/nurani.v24i1.22023

[35] Herlina Basri and others, 'Bankruptcy Legal System Reform in Settlement of Debtors' Debt According to the Bankruptcy Law', *Nagari Law Review*, 7.3 (2024), 567 https://doi.org/10.25077/nalrev.v.7.i.3.p.567-577.2024

[36] Lis Julianti and Artit Pinpak, 'The Digitalization of Investment Impact on Developing Tourism Industry', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 655–81 https://doi.org/10.53955/jhcls.v4i3.289

[37] Kendry Tan, Yudhi Priyo Amboro, and Elza Syarief, 'Strategies for Preventing Bankruptcy: Adopting Insolvency Tests from the United States Perspective to Indonesia', *Journal of Judicial Review*, 25.1 (2023), 139 https://doi.org/10.37253/jjr.v25i1.7765

Moreover, while the Trustee is required to seek the approval of the Creditors' Committee for certain actions and may receive advice from them, the Trustee is not bound by the Committee's recommendations. Article 84, paragraphs (1) to (4) further outlines the following key provisions. The Trustee is not bound by the comments of the Creditors' Committee, and if the Trustee disagrees with the Committee's comments, they must notify the Committee within three (3) days. If the Creditors' Committee disagrees with the Trustee's decision, the Committee can request a ruling from the Supervisory Judge within three (3) days of receiving the notification. If the Committee requests a ruling, the Trustee must suspend the planned action for three (3) days.[38]

The importance of the Trustee's role is further demonstrated in corporate bankruptcy cases, where the Trustee assumes the duties of the company's board of directors once the company is declared bankrupt. However, the Trustee is not granted unrestricted power, as the UUK regulates the Trustee's duties and authority. If the Trustee exceeds their authority, acts improperly, or causes harm to the interests of creditors or the debtor, the Trustee may be held personally accountable. The Trustee can be dismissed by the Supervisory Judge and may also be sued in court. Furthermore, the Trustee is subject to oversight by a professional organization in accordance with a Trustee Code of Ethics.[39]

In the Indonesian Dictionary (KBBI), "authority" is defined as the right and power to act, the power to make decisions, the delegation of responsibility to others, and a function that may not be carried out. According to Salmon, authority can be understood as a form of "right," which is defined in several ways: as a narrow interpretation of rights, as freedom, as power, and as immunity.[40] The authority of a Trustee constitutes a right, in the sense of the power granted by law to fulfill assigned duties and obligations. The authority of a Trustee is considerable, as the Trustee is entrusted with managing and/or liquidating the bankrupt estate. In carrying out these tasks, the Trustee must act independently, without any conflict of interest between the debtor and creditors. Nevertheless, the Trustee is not free to exercise their authority arbitrarily.[41] The Trustee must

[38] R Benny Riyanto and others, 'Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law', *Jambura Law Review*, 7.1 (2024), 88–104 https://doi.org/10.33756/jlr.v7i1.27327

[39] Firoz Gaffar, Amad Sudiro, and Ariawan Gunadi, 'Pattern of Care for the Bankruptcy Trustee: Is Transplantation to Indonesian Law Possible for SDGs?', *Journal of Lifestyle and SDGs Review*, 4.1 (2024), e01631 https://doi.org/10.47172/2965-730X.SDGsReview.v4.n00.pe01631

[40] Cintya Sekar Ayu Permatasari and Octa Nadia Mellynda, 'Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic', *Lex Scientia Law Review*, 5.2 (2021), 19–40 https://doi.org/10.15294/lesrev.v5i2.50600

[41] Yuhelson Yuhelson, 'The Influence Of Bankruptcy Law In The Settlement Of Problem Debt Loans Related To Investment Development In Indonesia', *PENA LAW: International Journal of Law*, 2.3 (2025) https://doi.org/10.56107/penalaw.v2i3.203

consider whether they have the authority to take the proposed action, whether the timing is appropriate, particularly from an economic and business perspective, and whether the action requires prior approval or participation from relevant parties, such as the Supervisory Judge, Commercial Court, Creditors' Committee, or the debtor. Additionally, the Trustee must ensure that the action complies with legal, customary, and social norms, such as determining whether the sale of assets should proceed through court proceedings, an auction, or a private transaction.[42]

Article 70, paragraph (1) of the UUK clarifies that the Trustee, as defined in Article 69, is a Public Trust (*Balai Harta Peninggalan*) or another qualified Trustee. "Other Trustees" refers to individuals who meet the qualifications to be appointed as Trustees, possessing specialized expertise necessary to manage and/or liquidate the bankrupt estate and are registered with the Ministry of Justice as Trustees. The primary duty of a Trustee (*Kurator*) is to manage and liquidate the bankrupt estate. The Trustee is obligated to perform the management and/or liquidation tasks of the bankrupt estate. According to Jerry Hoff, the purpose of bankruptcy is to pay the creditors the amounts they are entitled to receive, in accordance with the hierarchy of claims.[43]

The Trustee's role is not only to act in the best interests of the creditors, but also to consider the interests of the bankrupt debtor. These interests should not be disregarded. The Trustee must ensure that all actions are undertaken in the best interests of the bankrupt estate. The Trustee holds authority over the debtor's assets but is not an organ of the debtor's corporation. The Trustee is not subject to the Indonesian Limited Liability Company Law. However, if the Trustee continues the debtor's business operations, they are required to prepare, maintain, and publish annual financial statements. To perform their duties and exercise their powers, a Trustee must follow the provisions of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment (UU No. 37 Tahun 2004). The powers that can be exercised by the Trustee without prior notification or approval from the debtor or any debtor's organ are those that do not require such consent or notification in non-bankruptcy situations. However, for certain actions, the Trustee must obtain the approval of the Supervisory Judge, such as when the Trustee seeks to obtain a loan from a third party by encumbering the bankrupt estate with collateral, a mortgage, or other types of security.[44]

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[42] Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021) https://doi.org/10.53955/jhcls.v1i1.5

[43] Bashar Malkawi and Bashayer Almajed, 'Treatment of Intellectual Property in the Bankruptcy Legal Framework of the GCC States', *Queen Mary Journal of Intellectual Property*, 14.1 (2024), 87–100 https://doi.org/10.4337/qmjip.2024.01.05

[44] Andrian Andrian and Gunardi Lie, 'The Cross-Border Insolvency Provision as Ius Contituendum of Bankruptcy Act of Indonesia', *Law Development Journal*, 6.2 (2024), 180 https://doi.org/10.30659/ldj.6.2.180-199

In general, the Trustee's duties are divided into two phases: the management of the bankrupt estate and the liquidation of the estate. The Trustee is a key organ in the bankruptcy process. Their main responsibility is to manage and/or liquidate the bankrupt estate. The significance of the Trustee's role is underscored by the fact that the bankruptcy judgment immediately appoints both a Trustee and a Supervisory Judge, as stated in Article 15, paragraph (1) of Law No. 37 of 2004. To carry out these tasks, the Trustee must operate based on the provisions set forth in Law No. 37 of 2004, which contains specific articles governing the Trustee's duties and powers. The Trustee's critical role in bankruptcy proceedings must be supported by adequate legal provisions. These provisions grant the Trustee specific powers to efficiently and effectively manage and liquidate the bankrupt estate.[45]

Article 15, paragraph (1) of the law stipulates that the Trustee's powers commence immediately after the bankruptcy judgment is issued. This law provides the legal framework within which the Trustee operates, ensuring that the Trustee can act effectively and efficiently to settle the management and/or liquidation of the bankrupt estate.[46] Furthermore, the law supports the Trustee's authority by stating that appeals or other legal challenges to the bankruptcy judgment do not limit the Trustee's ability to perform their duties. In cases where a bankruptcy judgment is overturned as a result of an appeal or review, Article 16, paragraph (2) confirms that any actions taken by the Trustee prior to or at the time of receiving notice of the cancellation remain valid and binding on the debtor. Additionally, the Trustee is authorized to take over a legal case and request the court to annul any legal actions taken by the bankrupt debtor. If legal proceedings initiated by the debtor are ongoing during the bankruptcy, the Trustee may request a suspension of the case to allow for the Trustee's intervention, as per Article 28, paragraph (1) of the law. According to Article 28, paragraph (4), the Trustee is entitled to take over the case without the need for prior notice and can do so at any time during the bankruptcy proceedings.[47]

The Trustee also has the authority to make decisions regarding reciprocal agreements that have not yet been fully fulfilled by the bankrupt debtor, as outlined in Article 36 and Article 41, paragraph (1) of Law No. 37 of 2004. If such actions taken by the debtor prior to the bankruptcy judgment are found to harm the interests of the creditors, the Trustee can request their annulment. Moreover, the Trustee can obtain loans from third parties, as specified in Article 69, paragraph (2) of Law No. 37 of 2004. Such loans require approval from the

[45] Andrian and Lie.

[46] Nurul Hikmah, 'Legal Implications of the Territorial Principle on Cross-Border Insolvency in Indonesian Bankruptcy Law', *Justice Voice*, 3.2 (2024), 87–96 https://doi.org/10.37893/jv.v3i2.1136

[47] Suryati Suryati, Layang Sardana, and Ramanata Disurya, 'Legal Analysis of Limited Company Which Was Submitted to Bankruptcy', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 22.1 (2022), 109–20 https://doi.org/10.19109/nurani.v22i1.10801

Supervisory Judge, particularly if the loan is secured by collateral, such as a mortgage or pledge. The Trustee is authorized to obtain loans from third parties only if the estate's assets are not already encumbered. Furthermore, Article 55, paragraph (1) ensures that creditors holding security interests can execute their rights on the debtor's assets, unless specifically delayed for up to 90 days after the bankruptcy judgment, as indicated in Article 56, paragraph (2).

Given the extensive powers granted to the Trustee under Law No. 37 of 2004, there is a potential for abuse of power, where the Trustee may act in ways that benefit themselves or a particular creditor. To prevent such misuse, a Supervisory Judge is appointed to oversee the management and liquidation of the bankrupt estate. This oversight ensures that the process is conducted fairly and in accordance with the law. Article 69, paragraph (1) of Law No. 37 of 2004 stipulates that the task of managing and liquidating the debtor's bankrupt estate is not monopolized by the *Balai Harta Peninggalan*, but also opens the possibility for other individuals to serve as Trustees. These individuals must meet the criteria outlined in Article 70, paragraph (2), which states that they must be domiciled in Indonesia, possess the necessary expertise, and be registered with the Ministry of Law and Human Rights.[48]

Before the enactment of Government Regulation in Lieu of Law (*Perpu*) No. 1 of 1998 concerning the Amendment to the Bankruptcy Law, which was subsequently ratified by the People's Representative Council (DPR) into Law No. 4 of 1998, the only institution authorized to act as a bankruptcy trustee (curator) was the *Balai Harta Peninggalan*.[49] However, under the Bankruptcy and Suspension of Debt Payment Obligations Law (UU No. 37 of 2004), individuals can now be appointed by the court to act as curators in addition to the *Balai Harta Peninggalan*, thus expanding the scope of who may manage and resolve the assets of bankrupt debtors. The *Balai Harta Peninggalan* serves as the legal executor for the management of inheritance, guardianship, and bankruptcy matters within the Ministry of Justice, operating under the Director General of Legal and Legislation, through the Directorate of Civil Law. The primary duty of the *Balai Harta Peninggalan* is to represent and manage the interests of those who, due to legal restrictions or court decisions, are unable to manage their affairs in accordance with applicable laws.[50]

According to Article 67 of the Bankruptcy Law (UUK), the fundamental task of a curator is to manage and/or settle the bankrupt estate. The principle of majority creditor approval mandates that a bankruptcy declaration should be issued with

[48] Aidonojie and others.
[49] Geeta Singh, 'Dividend Policy Adjustments under Bankruptcy Law: Insights from Distressed Firms', *Finance Research Letters*, 70 (2024), 106253 https://doi.org/10.1016/j.frl.2024.106253
[50] Satish Kumar, 'Bankruptcy Law and the Leverage Speed of Adjustment', *Finance Research Letters*, 66 (2024), 105673 https://doi.org/10.1016/j.frl.2024.105673

the approval of the majority of creditors. However, the UUK 2004 does not adopt this principle, as meetings of all creditors are only held after the bankruptcy declaration has been made. Another significant principle, the solvency principle for bankruptcy, dictates that a bankruptcy petition can only be filed against a debtor who is insolvent—meaning the debtor cannot meet the majority of their financial obligations. The UUK 2004 does not impose any specific solvency requirement for declaring bankruptcy; thus, a debtor may be declared bankrupt even if their debts are considerably lower than their assets.[51]

Additionally, the stay of proceedings principle, which is aimed at protecting creditors' interests, prevents the debtor from managing their assets freely once a bankruptcy petition has been filed. This ensures that creditors' rights are safeguarded while the bankruptcy process unfolds. The presence of law in society is crucial to integrating and coordinating the conflicting interests that may arise. As such, the law must function to minimize these conflicts as much as possible. Satjipto Rahardjo defines this concept as the abstract understanding of individual, concrete goods, while Bruggink refers to the concept of definition as the idea generated by a specific term referring to an object or individual. In the legal perspective, defining terms is vital because laws must clearly communicate to society the expected behaviors they intend to regulate. Therefore, many legal provisions precede the detailed regulation (articles) by first providing definitions of terms to be used in those regulations.[52]

Legal concepts within regulations are not always fixed, and their structuring must adapt over time. This adaptability is necessary since applying concepts consistently throughout time can be difficult. John Chipman Gray highlights that the problem of defining a legal concept often depends on the specific time and context, influenced by the state's laws or the regulations within organized bodies. In the Indonesian Dictionary (KBBI), the term "protection" originates from the word *"lindung,"* meaning to guard, defend, or shield. "Protection" refers to conservation, care, and safeguarding. Linguistically, protection encompasses three essential elements: (1) the action of protecting; (2) the parties responsible for providing protection; and (3) the methods of protection employed. In the context of law, protection refers to safeguarding interests from potential harm or infringement, which can involve protecting either material goods or individuals.[53]

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[51] Ali Sadeghi and Ewald Kibler, 'Do Bankruptcy Laws Matter for Entrepreneurship? A Synthetic Control Method Analysis of a Bankruptcy Reform in Finland', *Journal of Business Venturing Insights*, 18 (2022), e00346 https://doi.org/10.1016/j.jbvi.2022.e00346

[52] Erlan Nopri, Hartiwiningsih Hartiwiningsih, and Budi Agus Riswandi, 'Problems of Settling Intellectual Property Bankruptcy Estate', 2024, pp. 462–66 https://doi.org/10.2991/978-2-38476-218-7_77

[53] Li Gan, Manuel A. Hernandez, and Shuoxun Zhang, 'Insurance or Deliberate Use of the Bankruptcy Law for Financial Gain? Testing for Heterogeneous Filing Behaviors in the United States', *Economic Modelling*, 105 (2021), 105673 https://doi.org/10.1016/j.econmod.2021.105673

Legal protection, therefore, involves efforts undertaken by individuals, governmental bodies, or private entities to ensure the security, ownership, and fulfillment of human rights as stipulated in the Human Rights Law No. 39 of 1999. This form of protection is essential for ensuring that rights are respected and enforced, particularly in legal contexts such as bankruptcy, where the assets and interests of debtors and creditors must be properly managed and protected. Intellectual Property (IP) refers to rights that arise from human intellectual capabilities.[54] The term "Intellectual Property" is used to distinguish it from other rights that humans may possess, which are derived from nature as a gift from God Almighty.[55] Not every individual has the ability to produce intellectual works. The economic benefits derived from such intellectual works create the concept of property rights over these works. In the business world, these works can be categorized as corporate assets. Intellectual Property is defined as the wealth generated from a person's intellectual output, such as technology, knowledge, arts, literature, musical compositions, written works, cartoons, and others. IP refers to the rights to act upon these intellectual creations, which are regulated by prevailing norms or laws.[56]

Jill McKeough and Andrew Stewart broadly define Intellectual Property as a collection of rights granted by the law to protect the economic investments made in creative endeavors. This definition is closely aligned with the explanation provided by the United Nations Conference on Trade and Development (UNCTAD) and the International Centre for Trade and Sustainable Development, which states that Intellectual Property Rights (IPR) are the results of human creative efforts that are protected by law. The Directorate General of Intellectual Property defines Intellectual Property as "rights that arise from human intellectual activities that result in products or processes beneficial to humanity." From these various definitions, it can be concluded that Intellectual Property is the right to economically benefit from the intellectual creativity of individuals or groups, with the subject matter of IP being a collection of works resulting from human intellectual abilities.[57]

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[54] Nemiraja Jadiyappa and Santosh Shrivastav, 'Bankruptcy Law, Creditors' Rights, and Cash Holdings: Evidence from a Quasi-Natural Experiment in India', *Finance Research Letters*, 46 (2022), 102261 https://doi.org/10.1016/j.frl.2021.102261

[55] Ram Mohan M. P. and Aditya Gupta, 'Treatment of Intellectual Property License in Insolvency: Analysing Indian Law in Comparison with the U.S. and U K', *SSRN Electronic Journal*, 2021 https://doi.org/10.2139/ssrn.3903011

[56] Federico S. Mandelman and Andrea Waddle, 'Intellectual Property, Tariffs, and International Trade Dynamics', *Journal of Monetary Economics*, 109 (2020), 86–103 https://doi.org/10.1016/j.jmoneco.2019.10.013

[57] Udichibarna Bose, Stefano Filomeni, and Sushanta Mallick, 'Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels', *Journal of Corporate Finance*, 68 (2021), 101836 https://doi.org/10.1016/j.jcorpfin.2020.101836

The National Long-Term Development Plan (RPJPN) serves as a detailed implementation of the goals outlined in the preamble of the 1945 Constitution of the Republic of Indonesia. These goals include protecting the entire nation and all its citizens, advancing public welfare, educating the nation, and promoting world order based on freedom, perpetual peace, and social justice, all of which are expressed in the vision, mission, and direction of national development (Law No. 17 of 2007 on the National Long-Term Development Plan). The role of Intellectual Property in economic development is undeniable. Many countries that possess non-physical assets (intellectual capital) or assets based on science and technology have contributed wealth far surpassing that derived from physical resources (natural resources).[58] As such, IP, as both a moral right and an economic right, requires legal protection. Legal protection of IP offers various benefits, including: providing legal protection as an incentive for creators, inventors, and designers by granting them exclusive rights to commercialize their creative works, creating a conducive environment for investors, encouraging research and development to generate new discoveries in various fields of technology, accelerating industrial growth, creating new job opportunities, boosting economic growth, improving the quality of life by fulfilling societal needs, stimulating public creativity, and enhancing productivity, quality, and the competitiveness of a nation's economic products.[59]

Indicators of a nation's progress and intellectual sophistication can be gauged by the number of discoveries in science and technology. Such discoveries not only bring prestige to the inventor and their country but also offer significant economic advantages. The exploitation of science and technology through a series of research processes, leading to beneficial discoveries, holds great value, particularly in developed countries. To support the growth of public interest in creativity and innovation, the state must facilitate this through legal means. One of these facilitative actions is ensuring legal recognition. As a developing country, we must proactively educate the public on the importance of Intellectual Property.[60]

According to the Anglo-Saxon legal system, Intellectual Property (IP) is classified into Copyrights and Industrial Property Rights. Copyrights can further be subdivided into Neighboring Rights, which include, for example, a television series based on a novel, a drama adapted for television, or a song. In these cases,

[58] Nozomi Nakajima and others, 'Investing in School Readiness: A Comparison of Different Early Childhood Education Pathways in Rural Indonesia', *International Journal of Educational Development*, 69 (2019), 22–38 https://doi.org/10.1016/j.ijedudev.2019.05.009

[59] Felizia Arni Rudiawarni, Dedhy Sulistiawan, and Bruno S. Sergi, 'The Role of the Net Purchase of Stocks by Foreign Investors in Boosting Stock Returns: Evidence from the Indonesian Stock Market', *Economic Modelling*, 135 (2024), 106730 https://doi.org/10.1016/j.econmod.2024.106730

[60] Hongwei Fan and others, 'Intellectual Property Protection and Total Factor Productivity of Enterprises: A Quasi-Natural Experiment of Intellectual Property Courts', *Finance Research Letters*, 70 (2024), 106236 https://doi.org/10.1016/j.frl.2024.106236

the novel, the television drama, and the song are classified as Neighboring Rights. According to the Convention Establishing the World Intellectual Property Organization (WIPO), Industrial Property Rights are classified into: Patents, Utility Models, Industrial Designs, Trade Marks, Trade Names, and Indications of Source or Appellations of Origin.[61]

The Government of Indonesia recognizes that the implementation of an Intellectual Property system is a major task, especially with Indonesia's membership in the World Trade Organization (WTO), which entails adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as stipulated in Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization.[62] Based on past experiences, the involvement of various institutions and agencies, both governmental and private, as well as effective coordination among all parties, is essential to achieving the successful implementation of an effective Intellectual Property system. Proper implementation of the IP system requires not only appropriate IP laws but also must be supported by efficient administration, law enforcement, and optimal public outreach programs regarding intellectual property rights.[63] In national law, intellectual property is regulated by several legal instruments, including Law No. 14 of 2001 on Patents, Law No. 15 of 2001 on Trademarks, Law No. 28 of 2014 on Copyrights, among others. The legal interests protected by intellectual property regulations are aimed at safeguarding reputation, encouraging and rewarding innovation and creativity through an incentive system, and preventing duplication.[64]

The implementation of the Intellectual Property system in Indonesia can be considered insufficient in some respects. This is partly due to the public's limited understanding of the IP system, which is still relatively new in Indonesia. IP is not only vital for industry but also plays a significant role in universities and research and development (R&D) institutions, as it can serve as a source of income generation. Universities and R&D institutions have the potential to generate valuable IP. Therefore, optimal management of IP arising from the activities of universities and R&D institutions can be a key source of income and contribute to the sustainability of high-competitiveness research and development. Advances in information technology and transportation have driven economic globalization,

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[61] Chen He, Yinliang Zhang, and Na Wang, 'Intellectual Property Financing and Enterprise Growth', *Finance Research Letters*, 77 (2025), 107076 https://doi.org/10.1016/j.frl.2025.107076

[62] Brigitte Tenni and others, 'Lessons from India and Thailand for Cambodia's Future Implementation of the TRIPS Agreement for Pharmaceutical Patents', *The Journal of World Intellectual Property*, 26.2 (2023), 166–94 https://doi.org/10.1111/jwip.12267

[63] Tasya S. Ramli and others, 'Artificial Intelligence as Object of Intellectual Property in Indonesian Law', *The Journal of World Intellectual Property*, 26.2 (2023), 142–54 https://doi.org/10.1111/jwip.12264

[64] Sherin Priyan and Gouri Gargate, 'Patent Pools and Innovation-based Approach in Global Healthcare Crisis', *The Journal of World Intellectual Property*, 26.2 (2023), 117–41 https://doi.org/10.1111/jwip.12262

where the scale of investment in industry and product marketing is no longer limited to the national market but has expanded beyond national borders.[65]

The changes in international markets are accompanied by the use of IP in product creation and marketing. Consequently, the protected interests now include not just the product but also the IP itself. Intellectual Property represents creativity derived from human thought processes to meet human needs and enhance quality of life. Human creativity, expressed as an intellectual asset, has long had a significant influence on human civilization through inventions and works in the fields of arts and literature. Initially, Intellectual Property, or Intellectual Property Rights, referred to rights arising from human intellectual creativity expressed publicly in various forms, benefiting human life and possessing economic value. The tangible expressions of human intellectual work can be in the form of technology, science, art, or literature. In Anglo-Saxon legal literature, the term "intellectual property rights" is recognized. This legal term is translated into Indonesian as two different terms*: "Hak Milik Intelektual"* (Intellectual Property Rights) and "KI" (Intellectual Property). The difference in translation lies in the word "property," which can be interpreted as both wealth and ownership. When discussing wealth, it is inevitably tied to ownership, and conversely, when discussing ownership, wealth is implied.[66]

From a legal perspective, it is important to understand that what is protected by law is the intellectual property itself, not the material object representing the intellectual creation. The reason for this is that IP is an exclusive right that exists only with its owner or holder. Therefore, anyone wishing to use or exploit this right to create or produce a material object must obtain a license from the owner or holder. In essence, Intellectual Property is the right of ownership, and the legal system must ensure its protection. According to prevailing legal doctrines, IP is considered intangible property that originates from an individual's intellectual effort. Every form of property, including IP, must have a rightful owner, thus requiring legal protection. Every individual must respect the IP of others. Intellectual Property cannot be used by others without the owner's consent unless stipulated otherwise by applicable customary law. To ensure the effective protection of IP, national law has incorporated it into statutory regulations (rule of law), which are binding for everyone. These legal provisions require IP owners to register their rights, and registration is validated through a certificate of

[65] Fitri Rini Ariyesti and others, 'The Systematic Review of the Functionality of Intellectual Property Rights in Indonesia', *Journal of Public Affairs*, 2020 https://doi.org/10.1002/pa.2482
[66] Dewi Sulistianingsih and Raden Muhammad Arvy Ilyasa, 'The Impact Of The Trips Agreement On The Development Of Intellectual Property Laws In Indonesia', *Indonesia Private Law Review*, 3.2 (2022), 77–88 https://doi.org/10.25041/iplr.v3i2.2579

registration. Simultaneously, legal protection of IP is part of a legal system composed of several elements.[67]

The subjects of protection in IP include the rights holders, law enforcement agencies, registration officials, and violators. The objects of legal protection include all types of IP regulated by law, such as Copyright, Trademarks, Patents, Industrial Designs, Trade Secrets, Integrated Circuit Layouts, and Plant Variety Protection.[68] Legal actions for protection apply only to registered IP, which is evidenced by a registration certificate unless otherwise specified by law. IP is protected for a specified period, and violations of IP rights result in sanctions, which may be criminal, civil, or administrative. In essence, the legal protection system for Intellectual Property is a cohesive entity, consisting of three subsystems (substance, structure, and legal culture) that work in harmony to provide recognition and respect, both morally and economically, to every IP owner who has produced intangible objects through intellectual thought. On the other hand, the IP protection system also reflects the state's will and aspirations to recognize, respect, and protect its citizens who contribute to the nation through intellectual works.[69]

A country with an effective IP protection system will likely experience good economic growth. Therefore, the state must play a role and develop strategies to achieve this. The national intellectual property strategy comprises a series of policy steps aimed at promoting and facilitating the creation, protection, management, and utilization of intellectual property as a strategic tool to support economic, social, cultural, and technological development. Legal protection of IP as a unified system is ultimately the state's will and vision to recognize, respect, and protect its citizens who have contributed through intellectual works, whether in terms of moral rights or economic rights. A well-structured protection system will encourage creativity, ultimately enhancing the welfare of society. At its core, every individual is entitled to legal protection. Nearly all legal relationships must be safeguarded by the law. Therefore, there are various forms of legal protection, all of which aim to protect human interests, as law is made by and for humans or

[67] Adnan Jashari and Stefani Stojchevska, 'Intellectual Property Rights in Outer Space: How Can Pharmaceutical Companies Protect COVID-19 Vaccine and Immunotherapy Developments Aboard the ISS US National Laboratory?', *The Journal of World Intellectual Property*, 26.2 (2023), 227–58 https://doi.org/10.1111/jwip.12270

[68] Fenny Wulandari and others, 'Sui Generis System: GI Protection for the Herbal Product in Indonesia as Communal Property Right', *Cogent Social Sciences*, 9.1 (2023) https://doi.org/10.1080/23311886.2023.2176989

[69] Miranda Risang Ayu Palar, Laina Rafianti, and Helitha Novianty Muchtar, 'Inclusive Rights to Protect Communal Intellectual Property: Indonesian Perspective on Its New Government Regulation', *Cogent Social Sciences*, 9.2 (2023) https://doi.org/10.1080/23311886.2023.2274431

society. Legal protection is intrinsically linked to the function and purpose of law.[70]

Legal protection of Intellectual Property (IP) is obtained through two systems: the constitutive system and the declarative system. The constitutive registration system (first to file system) stipulates that registration is a form of legal protection that provides legal certainty. This constitutive system applies to Patents, Trademarks, Industrial Designs, and Integrated Circuit Layouts. On the other hand, the declarative registration system (first to use system) is a protection system that does not require registration (voluntary registration) to obtain legal protection, as the first creator/owner/inventor is already legally guaranteed protection under the law. The declarative system applies to Copyrights and Trade Secrets.[71]

IP protection concerns two main aspects: first, it relates to the products of human ideas, thoughts, and creativity, and second, it pertains to the desire of individuals to protect these ideas, thoughts, and creative works. Therefore, the general purpose of the IP system is to protect the creator and also establish rules for external parties to access these creations.[72] IP is a legal instrument that provides protection for the rights of individuals over the outcomes of creativity and intellectual works and grants the owner the right to enjoy the economic benefits of owning those rights. Intellectual works, in practice, can take the form of creations in the fields of art and literature, trademarks, inventions in specific technological fields, and more.[73]

IP generally concerns the protection of ideas and information that have commercial value. It is personal property that can be owned and treated like other forms of wealth. As an asset, IP deserves legal recognition and protection. Adequate legal protection of IP is necessary to prevent unfair competition, although this protection grants certain monopoly rights to the creator or inventor (creators in the field of copyright, inventors in the field of patents). Legally, the state is responsible for providing protection and recognition to creative subjects

[70] Kamrul Hossain and Rosa Maria Ballardini, 'Protecting Indigenous Traditional Knowledge Through a Holistic Principle-Based Approach', *Nordic Journal of Human Rights*, 39.1 (2021), 51–72 https://doi.org/10.1080/18918131.2021.1947449

[71] Yazid Fatoni, Adi Sulistiyono, and Lego Karjoko, 'The Comparative Study About Intellectual Property Rights And The Transfer Of Land Rights For The Development Of Indonesia Land Law', *Unram Law Review*, 7.1 (2023) https://doi.org/10.29303/ulrev.v7i1.263

[72] Ritawati Ritawati and others, 'Copyright in the Digital Age in the Protection of Intellectual Property Rights in Indonesia', 2023, pp. 1358–67 https://doi.org/10.2991/978-2-38476-180-7_138

[73] Lorraine V. Aragon, 'Pluralities of Power in Indonesia's Intellectual Property Law, Regional Arts and Religious Freedom Debates', *Anthropological Forum*, 32.1 (2022), 20–40 https://doi.org/10.1080/00664677.2022.2042793

who generate intellectual works through their efforts, time, thought, and expense.[74]

The issues related to Intellectual Property will touch on various aspects, such as technology, industry, society, culture, and others. However, the most important aspect related to IP protection is the legal aspect. The law is expected to address various problems arising in connection with Intellectual Property. It must provide protection for intellectual works, thereby fostering the creative potential of society, which ultimately leads to the successful protection of Intellectual Property. The protection of IP in Indonesia, as a consequence of the country's ratification of WTO provisions through Law No. 7 of 1994, aims to encourage innovation, the transfer and dissemination of technology, and mutual benefits between the production and use of technological knowledge, with the goal of creating social and economic welfare while balancing rights and obligations. Legal protection can provide security to the owner, allowing them to utilize their intellectual works for economic benefit. This also serves as a preventive measure against harm caused by others, especially once the product has entered the market. With guaranteed legal protection, any other parties wishing to utilize this IP must obtain a license from the owner. Such licenses require the other party to pay royalties to the owner in accordance with the agreement. These royalties represent the economic benefits that the owner can derive from their IP.[75]

IP plays a crucial role in stimulating the global economy, ultimately contributing to the welfare of humanity. Legal protection of IP, leading to economic benefits for the owner and society, is therefore considered a positive development. When IP law is effectively enforced, it allows creators, inventors, or IP owners to receive compensation for the works they produce. This aligns with the utilitarian theory of law, which emphasizes maximizing welfare for the greatest number of people, and evaluates law based on the outcomes resulting from its application. From this perspective, the essence of the law is to regulate the creation of national welfare. The goal of legal protection of IP is not only to protect the owner's IP but also to regulate how the owner can derive economic benefits from their IP. On the international level, the protection of Trademarks began with the creation of the Paris Convention for the Protection of Industrial Property in 1883. As international trade evolved, the protection of Trademarks had to be extended beyond national borders, ensuring that it could also be protected against imitation or misuse in other countries. As a result, in 1883, the first convention on

[74] Ampuan Situmeang, Ninne Zahara Silviani, and David Tan, 'The Solving Indonesian Intellectual Property Rights Transfer Issue', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 23.1 (2023), 59–74 https://doi.org/10.30631/alrisalah.v23i1.1341

[75] Srie Nuning Mulatsih, 'Green Intellectual Capital and Eco-Innovation in Shaping Sustainable Financial Performance: Evidence from Indonesia', *Social Sciences & Humanities Open*, 11 (2025), 101345 https://doi.org/10.1016/j.ssaho.2025.101345

Industrial Property Rights was established in Paris, where international protection of Trademarks began to be regulated.[76]

The Paris Convention is a crucial international agreement in the field of Industrial Property Rights because it laid the foundation for IP protection and provided guidelines for countries around the world regarding IP issues. One of the objectives of the Paris Convention was to unify trademark laws with the hope of creating a single body of law governing trademarks globally. Revisions to the Paris Convention took place in The Hague in 1925, London in 1934, Lisbon in 1985, and Stockholm in 1967. Efforts to enhance protection for well-known Trademarks during the Paris Convention revision in The Hague in 1925 were proposed by the conference to prevent the rejection or cancellation of well-known Trademarks in international trade, particularly in countries where such rejection or cancellation was requested. However, this proposal was rejected by several delegations. Consequently, an agreement was reached to provide protection only for Trademarks known within a country, even if they were not registered, against third-party applications or registrations. This resulted in a specific exception in Article 6bis of the Paris Convention aimed at preventing unfair competition, which was introduced during the 1925 revision.[77]

The Paris Convention's objective is to facilitate trade relations among Member States by promoting international protection of Industrial Property Rights. As the most fundamental international regulation in the field of Industrial Property Rights, the Paris Convention, signed in 1883, covers Patents, Utility Models, Industrial Designs, Trademarks, Service Marks, Trade Names, Indications of Source or Appellations of Origin, and the repression of unfair competition. Many countries have signed this agreement to protect Trademarks within their jurisdictions. The Paris Convention introduces the concept of well-known marks, though it does not provide a specific definition. Protection for well-known Trademarks is generally higher in developed countries compared to developing countries, particularly with the existence of dilution criteria for well-known marks. In 1925, Member States of the Paris Convention revised the convention to provide protection for famous marks. The Paris Convention introduced the concept of a well-known Trademark in international law.[78]

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[76] Novianty Helitha Muchtar, Miranda Risang Ayu Palar, and Muhamad Amirulloh, 'Development of a Valuation System of Technology for the Enhancement of Innovation in Indonesia', *Heliyon*, 9.2 (2023), e13124 https://doi.org/10.1016/j.heliyon.2023.e13124

[77] Qingfeng Luo and Xi Zhao, 'Intellectual Property Protection Intensity and Regional Technological Innovation Structure: Based on the Perspective of Economic Complexity Theory', *Heliyon*, 10.21 (2024), e39964 https://doi.org/10.1016/j.heliyon.2024.e39964

[78] Chen Zhou, 'Can Intellectual Property Rights within Climate Technology Transfer Work for the UNFCCC and the Paris Agreement?', *International Environmental Agreements: Politics, Law and Economics*, 19.1 (2019), 107–22 https://doi.org/10.1007/s10784-018-09427-2

Member States of the Paris Convention, ex officio (if permitted by their laws) or at the request of an interested party, must refuse or cancel the registration and prohibit the use of a Trademark that is a reproduction, imitation, or translation of a well-known mark that is likely to cause confusion. This applies when the well-known mark is recognized in the country of registration or use, even if the mark is not registered in that jurisdiction. International treaties require governments to offer broader protection for well-known Trademarks. Member countries may offer different levels of protection, with some opting to register famous marks. Trademark rights are defined on a country-by-country basis, and the principle of territoriality governs well-known and famous Trademarks. This is reflected in Article 6(3) of the Paris Convention, which states: "A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union."[79]

Furthermore, according to the explanation of Article 9 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, the term "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property of 1883, along with any subsequent agreements that amend or supplement it. This law includes the following provisions the period for filing a Trademark application under the Priority Right is 6 (six) months, the 6-month period begins from the date of the first application in the country of origin, the filing date is not counted as part of the 6-month period and if the last day of the period falls on a holiday, the period is extended to the next working day.[80]

Protecting Intellectual Property in Bankruptcy in Several Countries

The practices of different countries in addressing compulsory licensing and government use of intellectual property (IP) rights show considerable variance. These differences stem from each country's unique historical, cultural, and political background, as well as their respective motivations for either implementing or resisting such measures. This research highlights the clear divide between developing and developed nations in the international IP arena, especially concerning compulsory licensing practices.[81]

In developed countries such as the United States, Canada, and the European Union, the approach to IP laws has evolved with considerable complexity. The

[79] Rémi Saidane, 'Balancing Obligations to Develop Climate Change Technologies with IP and Trade Objectives: An Evaluation of the Systemic Integration of the Paris Agreement into TRIPS', *IIC - International Review of Intellectual Property and Competition Law*, 55.7 (2024), 1055–96 https://doi.org/10.1007/s40319-024-01492-2

[80] Damien Dussaux, Antoine Dechezleprêtre, and Matthieu Glachant, 'The Impact of Intellectual Property Rights Protection on Low-Carbon Trade and Foreign Direct Investments', *Energy Policy*, 171 (2022), 113269 https://doi.org/10.1016/j.enpol.2022.113269

[81] Krishna Ravi Srinivas, 'SDG 13 and Intellectual Property Rights: A Complex Conundrum', in *The Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar Publishing, 2024), pp. 415–37 https://doi.org/10.4337/9781803925233.00025

United States, for instance, has a long history of IP development, beginning with its Constitution, which grants Congress the authority to promote the progress of science and useful arts by securing exclusive rights to authors and inventors. This foundation is deeply embedded in the U.S. legal framework. However, despite the robust development of IP regulations, particularly in the field of patents, the U.S. has historically not embraced the concept of compulsory licensing.[82] The absence of compulsory licensing in U.S. patent law is due, in part, to the absence of clear guidelines for determining when patents are being abused or misused. While many experts support compulsory licensing as a mechanism to prevent patent misuse and to strike a balance between patent holders' rights and public welfare, the legal system in the U.S. has not introduced such measures. As a result, justifying compulsory licensing on the basis of abuse is extremely challenging due to the lack of objective criteria or parameters to assess misuse.[83]

Moreover, the United States, with its substantial influence in international forums such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), is in a position to shape global IP norms. Despite this, the U.S. continues to view compulsory licensing as inconsistent with the fundamental objectives of its IP system, which prioritize the protection of intellectual property rights to foster innovation. In fact, the concept of compulsory licensing has been largely relegated to the periphery of U.S. IP discussions, as it is seen as incompatible with the system's goal of incentivizing creators and inventors.[84]

Interestingly, while the U.S. does not recognize compulsory licensing domestically, it actively resists its implementation in other countries, particularly when it concerns IP owned by U.S. citizens or corporations. A notable example occurred in 2002 when South Korea was considering the implementation of compulsory licensing for the cancer drug Glivec. The U.S. government intervened and warned that such a move would result in a serious trade dispute. As a result of this intervention, South Korea ultimately withdrew its proposal for the compulsory licensing of Glivec. This dual stance reflects a kind of "double standard" in U.S. policy on compulsory licensing. Domestically, compulsory licensing is not recognized, but internationally, the U.S. uses its position in trade

[82] Lego Karjoko, Iswantoro, and Makhabbat Ramazanova, '"Good Faith" in Land Transaction: A Comparative Analysis of the USA and Netherlands Law', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.3 (2024), 185–208 https://doi.org/10.53955/jsderi.v2i3.49

[83] Omar Mahmoud Al-Makhzoumi, Naif Abdullah Al-Imadi, and Ahmad Abdulkadir Ibrahim, 'The International Framework for the Protection of Intellectual Property Rights', 2024, pp. 279–88 https://doi.org/10.1007/978-3-031-57242-5_23

[84] Felicity Deane and Chelsea Bodimeade, 'Renewable Energy Technology and Intellectual Property Rights: Global Public Goods', in *The Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar Publishing, 2024), pp. 243–61 https://doi.org/10.4337/9781803925233.00017

negotiations to prevent its adoption, particularly when it perceives that its interests are at risk. This is evident in the trade-related actions the U.S. has taken against countries like Brazil and India, where compulsory licensing measures have been proposed in the context of public health crises.[85] The U.S. has leveraged its trade agreements and influence to press for the protection of its IP rights, further demonstrating the inconsistency in its approach to compulsory licensing.[86]

In contrast, the U.S. legal system provides for government use of patents, specifically in relation to national defense and other public interests. Under Chapter 27, Section 266 of Title 35 of the U.S. Code, the government can utilize patents or inventions related to national defense needs, including weapons and military technologies. This provision allows for government use or even compulsory acquisition of patents in areas deemed vital to the nation's security. This contrasts with the concept of compulsory licensing, as it is tied specifically to government action in areas critical to national defense, not necessarily for public health or welfare purposes.[87]

This distinction underscores the divergence in U.S. policy: while compulsory licensing is seen as a tool for mitigating the abuse of patent rights, it is not part of the U.S. patent law system. However, the government's ability to seize patents for defense purposes reveals a more interventionist aspect of IP law, albeit under specific, narrowly defined circumstances. The U.S. demonstrates a complex and, at times, contradictory approach to compulsory licensing and government use of patents. Domestically, the country does not recognize compulsory licensing in its patent laws, citing philosophical concerns that it is incompatible with the goals of the IP system.[88] However, in international trade relations, the U.S. actively opposes the use of compulsory licensing in other countries, leveraging its influence to prevent its adoption. Meanwhile, the concept of government use of patents for defense purposes remains a key aspect of U.S. IP policy, further highlighting the nuanced approach the country takes to intellectual property rights.[89]

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[85] Patria Bayu Murdi and Rahimah Embong, 'Legal Issues of Health Frontier in Two Countries: Challenges from Indonesia and Singapore', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.3 (2024), 264–86 https://doi.org/10.53955/jsderi.v2i3.51

[86] Bernadette Power and Gavin C Reid, 'The Impact of Intellectual Property Types on the Performance of Business Start-Ups in the United States', *International Small Business Journal: Researching Entrepreneurship*, 39.4 (2021), 372–400 https://doi.org/10.1177/0266242620967009

[87] Ronald V. Bettig, *Copyrighting Culture* (Routledge, 2018) https://doi.org/10.4324/9780429501302

[88] Brian Leung, 'Internet Memes and Copyright: Facilitating the Memetic Remix Discourse by Viewing Joint Authorship Flexibly?', *The Journal of World Intellectual Property*, 27.3 (2024), 463–87 https://doi.org/10.1111/jwip.12311

[89] Tamar Khuchua, 'The Future Perspectives of the European Unified Patent Court in the Light of the Existing Intellectual Property Courts in the United States and Japan', *The Journal of World Intellectual Property*, 27.3 (2024), 488–514 https://doi.org/10.1111/jwip.12314

A notable example of a government's decision to utilize patents occurred in the United States in 2001. In response to heightened concerns over bioterrorism after the September 11 attacks, the U.S. Secretary of Health, following a senator's request, invoked the use of patents to facilitate the production of ciprofloxacin (Cipro) to address the threat of anthrax, a pathogen that was feared to be used in a terror attack. This right can be exercised directly by the government or granted to licensed entities authorized to produce the patented products. In such instances, a specialized body is established to assess each case and determine the appropriate compensation for the patent holder.[90]

In contrast to the United States, Canada politically abandoned the concept of compulsory licensing in 1992 with an amendment to its Patent Act. This process began in 1987, following pressure from U.S. President Ronald Reagan. The formal removal of compulsory licensing provisions occurred with the passage of the 1992 Patent Act, which amended the 1987 version. However, rather than abandoning the concept entirely, the legislative changes replaced compulsory licensing with a new section focused on the regulation of patented medicines, rather than patents in the pharmaceutical industry at large. This new provision introduced mechanisms for the approval and price control of medicines sold within Canada.[91]

This raises several key questions. First, did Canada truly abandon the concept of compulsory licensing within its Patent Act? Second, how do legislative techniques elucidate the inclusion of trade and price control mechanisms within the Patent Act? Third, does the introduction of price control mechanisms, which are typically opposed by proponents of free-market principles, result in market distortions.[92] The third question lies outside the scope of this analysis. However, concerning the first question, the facts suggest that, despite the political intent to eliminate compulsory licensing, practices akin to compulsory licensing persist. Both academics at the University of Ottawa's Faculty of Law and legal professionals in Ottawa acknowledge that, although the term "compulsory licensing" is no longer in use, the provisions of Article 66(1)(e) remain substantively similar to compulsory licensing. The political goal of eliminating compulsory licensing was largely motivated by the need to ease tensions or reduce pressure from Canada's primary trading partner, the United States. Over time,

[90] Lina Ma, Yan Liu, and Congjing Ran, 'Framework for Intellectual Property Information Services in Academic Libraries: Example from the United States and China', *The Journal of Academic Librarianship*, 50.1 (2024), 102830 https://doi.org/10.1016/j.acalib.2023.102830
[91] Stuart J. Smyth and others, 'Impacts of Changes to Canada's Plant Breeders' Rights Act', *The Journal of World Intellectual Property*, 27.3 (2024), 397–409 https://doi.org/10.1111/jwip.12303
[92] Nihaya Khalaf, 'Patenting of Agriculture Biotechnology in Iraq: Widening the Gap between the Country's Development Needs and Food Security', *The Journal of World Intellectual Property*, 27.3 (2024), 366–78 https://doi.org/10.1111/jwip.12306

requests for compulsory licensing have been rare, and as of March 2005, none had been granted.[93]

In 2004, this relatively weak political resolve was again tested. Responding to calls from Trade Ministers during the 2001 WTO Doha meeting, which were later supported by the World Health Organization (WHO), Canadian Prime Minister Jean Chrétien's initiative led to the enactment of Statutes of Canada 2004, Chapter 23, which amended the Patent Act to facilitate compulsory licensing. This new legislation, effective from May 15, 2005, was a direct response to the WTO Ministers' Declaration from 2001. During this summit, ministers recognized that the TRIPS Agreement should not hinder actions by WTO member countries aimed at protecting public health. The concern centered on the ability of developing countries to access essential medicines for diseases such as HIV/AIDS, tuberculosis, and malaria. The new legal framework allowed developing countries to notify the WTO of their needs and request medicines from developed countries or pharmaceutical companies. If such requests were approved, the Canadian government could grant compulsory licenses to Canadian companies to produce and export the required medicines.[94]

Interestingly, the introduction of a "waiver" for compulsory licensing, intended for humanitarian purposes, ultimately benefitted developed countries. Countries like Brazil and South Korea, which could implement compulsory licensing independently, faced trade and political pressures from their bilateral relationships, particularly with the United States. Regarding the second question, which concerns how patent regulation techniques (such as drug price control mechanisms) fit into the broader legal framework, it can be argued that these provisions, though unconventional, were politically motivated. In fact, many legal scholars in Canada contend that political rather than legal motivations were primarily responsible for the inclusion of price control mechanisms in the Patent Act.[95]

Despite the effectiveness of Canada's price control mechanisms, which resulted in drug prices being approximately 40% lower than in the United States, these provisions created significant trade tensions with the U.S., particularly concerning the practice of "parallel importation," in which Americans purchased cheaper drugs in Canada. This led to significant friction in international trade negotiations.

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[93] Claudio Novelli and others, 'Generative AI in EU Law: Liability, Privacy, Intellectual Property, and Cybersecurity', *Computer Law & Security Review*, 55 (2024), 106066 https://doi.org/10.1016/j.clsr.2024.106066

[94] Musibau Lasisi and Ushaseer Tembe, 'Digitization and Intellectual Property Right', in *Encyclopedia of Libraries, Librarianship, and Information Science* (Elsevier, 2025), pp. 140–46 https://doi.org/10.1016/B978-0-323-95689-5.00237-6

[95] Theora W. Tiffney, Robert Cook-Deegan, and Heather M. Ross, 'Breathing Fresh Air into the Debate: Ventilators and the United States' Intellectual Property Problem', *Health Policy OPEN*, 3 (2022), 100069 https://doi.org/10.1016/j.hpopen.2022.100069

In contrast to Canada's relatively clear stance on "Government Use," the United Kingdom and European Union member states have maintained a more cautious position on compulsory licensing and government use in patent law.[96] While the EU initially played a limited role in compulsory licensing, its involvement has expanded, particularly with developments in biotechnology and genetic engineering, fields critical to the EU's economic interests.[97]

In 1998, the EU issued Directive 98/44/EC to address these concerns, particularly in biotechnology. Article 12 of this directive allowed for "Compulsory Cross-Licensing" to ensure technological advancement. This directive acknowledged that compulsory cross-licensing might be necessary to prevent patent conflicts in certain fields, thereby facilitating technological progress. As the EU expanded its role in regulating patent disputes and antitrust issues, the European Court of Justice became involved in resolving such conflicts, as seen in the 2001 ruling requiring the German company IMS Health GmbH to grant licenses to competitors for its "1860 brick structure." While the EU's approach permits member states to decide whether to apply compulsory licensing or government use, it reflects a broader trend across European countries, as well as in nations such as Russia, Australia, and Japan. However, similar to the U.S. and Canada, there remains a general reluctance to invoke compulsory licensing, with such measures rarely being requested or granted.[98]

Future Trends in Intellectual Property and Bankruptcy Policy

The regulation of trademarks, a key aspect of Intellectual Property (IP), continues to evolve within the multilateral trade system, particularly through the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement. This agreement, a fundamental element of the World Trade Organization (WTO), has established a comprehensive framework for IP law that influences national laws in member countries. The implementation of the TRIPs Agreement was formally cemented by Law No. 7 of 1994, which ratified the Agreement Establishing the WTO.[99] This agreement governs various aspects of IP, including copyrights,

[96] Atipol Bhanich Supapol and Fredric William Swierczek, 'The Role of Intellectual Property Rights in Stimulating Commercialization in ASEAN: Lessons from Canada', *Technovation*, 14.3 (1994), 181–95 https://doi.org/10.1016/0166-4972(94)90055-8

[97] Joseph Mai and Andrey Stoyanov, 'Anti-Foreign Bias in the Court: Welfare Explanation and Evidence from Canadian Intellectual Property Litigations.', *Journal of International Economics*, 117 (2019), 21–36 https://doi.org/10.1016/j.jinteco.2018.11.008

[98] D. Solovyova, 'The Role of Intellectual Property in the Development of Trade and Economic Cooperation between Russia and Germany', *Mezhdunarodnaja Jekonomika (The World Economics)*, 6, 2020, 67–77 https://doi.org/10.33920/vne-04-2006-07

[99] A. S. Zolotar, 'Using The Globalization Experience Of The World's Leading Countries In The Field Of Intellectual Property Protection In Ukraine', *National Technical University of Ukraine Journal. Political Science. Sociology. Law*, 1(57), 2023, 197–204 https://doi.org/10.20535/2308-5053.2023.1(57).280830

trademarks, industrial designs, patents, and geographical indications, alongside protections for undisclosed information and anti-competitive practices in contractual licenses.[100]

In the future, the principles of National Treatment (NT), Most-Favored-Nation (MFN) Treatment, and Non-Discrimination (ND)—which are central to the TRIPs Agreement—will continue to shape the landscape of IP law. These principles ensure that member states treat foreign and domestic IP holders equally, thereby promoting a fair and level playing field. As IP rights become increasingly integral to international trade policy, the MFN principle (Article 4 of TRIPs) will remain crucial for ensuring that all WTO members are granted equal rights and protections in their dealings with other countries. Likewise, the NT principle, which mandates that domestic and foreign IP holders be treated equally, will drive future reforms aimed at enhancing international fairness in IP protection.[101]

A significant trend on the horizon is the growing emphasis on the protection of famous trademarks. As global marketing and branding expand, the concept of "famous trademarks" will likely evolve to accommodate the realities of a globalized marketplace. The protection of such trademarks will be less reliant on territorial registration or actual use within a specific country and more on the brand's global reputation.[102] The TRIPs Agreement, with its provisions for the protection of famous service marks, reflects this shift. This trend will likely intensify as companies increasingly invest in building global brand recognition through digital and online platforms, making the need for stronger protection of internationally recognized trademarks even more critical.[103]

The digital era will undoubtedly play a major role in the future of IP law. As e-commerce and digital platforms redefine global trade, IP law will need to adapt to the new dynamics of virtual commerce. The distinction between physical and digital trade is increasingly blurred, and with this, the need for effective IP protection in the digital world is paramount. The TRIPs Agreement will need to evolve to address the growing challenges related to digital piracy, counterfeit goods, and online infringement. As industries such as entertainment, technology, and digital marketing expand in the digital space, the protection of copyrights and

[100] Olena Valchuk, 'Intellectual Property Rights in Higher Education Institutions: Possibilities of Implementation and Peculiarities of Protection', *Theory and Practice of Intellectual Property*, 1–2, 2025, 105–12 https://doi.org/10.33731/1-22023.277344

[101] Simson Lasi, 'Legal Analysis Of The Regulation Of Intellectual Property Rights In The Creative Industry Review From An International Legal Perspective', *International Journal of Law and Society*, 1.3 (2024), 184–96 https://doi.org/10.62951/ijls.v1i3.87

[102] Nikita Vorob'ev, 'Intellectual Property in the Digital Age: Issues of International Legal and National Regulation', *Journal of Russian Law*, 26.7 (2023), 1–1 https://doi.org/10.12737/jrl.2022.078

[103] Alexander Kennedy, Sophia Al Hikmah, and Syilfia Regita Mustika, 'The Role of Intellectual Property Law in International Trade and Economic Development: TRIPS', *Pakistan Journal of Life and Social Sciences (PJLSS)*, 22.2 (2024) https://doi.org/10.57239/PJLSS-2024-22.2.001321

trademarks in this new environment will present unique legal challenges and opportunities.[104]

Moreover, the growing recognition of IP assets as valuable and tradable in their own right is expected to impact bankruptcy proceedings in the future. As IP assets gain importance in corporate valuations, bankruptcy policies will need to adapt to incorporate these intangible assets effectively. Currently, IP rights are increasingly seen as assets in insolvency cases, with their value and management becoming critical aspects of the bankruptcy process. The future of bankruptcy law may involve more sophisticated mechanisms for managing IP assets during liquidation or reorganization, which could potentially help preserve the value of these assets and maximize returns for creditors.[105]

In this context, the integration of IP into bankruptcy proceedings raises important questions regarding the valuation and distribution of IP assets. The protection of IP, particularly well-known trademarks, will become a key area of focus in the bankruptcy process. The TRIPs Agreement's enhanced protection for famous trademarks, including service marks, will play a significant role in this regard, ensuring that these valuable assets are adequately safeguarded in insolvency situations. In the coming years, legal systems will likely face increased pressure to develop new frameworks that enable businesses in distress to effectively manage their IP assets while protecting the interests of creditors.[106]

The intersection of IP law and bankruptcy law presents a unique challenge for policymakers, as the value of intangible assets, such as trademarks, patents, and copyrights, continues to rise. In the past, these assets were often overlooked or undervalued in bankruptcy cases. However, as companies increasingly rely on their IP for economic stability, the future of bankruptcy law will need to account for the growing significance of these intangible assets.[107] This evolution could lead to new legal approaches that treat IP rights with the same level of importance as physical assets in bankruptcy proceedings. Future trends in bankruptcy policy will likely include more detailed mechanisms for the valuation, sale, and protection of IP assets. The inclusion of these assets in the bankruptcy process is

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[104] Marta Malets, 'International Legal Standards for the Legal Regulation of Intellectual Property: Foreign Experience', *Visnik Nacional'nogo Universitetu «Lvivska Politehnika». Seria: Uridicni Nauki*, 11.43 (2024), 137–43 https://doi.org/10.23939/law2024.43.137

[105] Mykola Haliantych and Oleksandr Garmash, 'Правове Регулювання Відносин, Пов'язаних Із Індивідуалізацією Фізичної Особи, Як Особистого Немайнового Права', *Law Review of Kyiv University of Law*, 1, 2023, 37–43 https://doi.org/10.36695/2219-5521.1.2023.07

[106] I. KAPITSA, 'Protection of Trade Secrets and Know-How in Ukraine in the Framework of the Implementation of Directive (EC) 2016/943 and the Enforcement Practice', *INFORMATION AND LAW*, 4(39), 2021, 70–79 https://doi.org/10.37750/2616-6798.2021.4(39).248788

[107] О. Ю. Коротун, 'Захист Прав Інтелектуальної Власності: Сучасний Стан Розвитку Процесуального Законодавства', *Прикарпатський Юридичний Вісник*, 1.3 (2019), 101–5 https://doi.org/10.32837/pyuv.v1i3(28).329

crucial, particularly in light of the increasing reliance on intangible assets for business success. By recognizing the importance of IP in corporate insolvency, future legal frameworks can help businesses maximize the value of their IP assets and provide a more equitable distribution of assets among creditors.[108]

In the coming years, both IP law and bankruptcy policy will need to adapt to the growing digital economy, ensuring that legal protections keep pace with the rapid evolution of global trade. The digitalization of business and commerce presents new challenges in terms of IP protection and enforcement, particularly in areas such as online piracy, counterfeit goods, and infringement. The legal community will need to be proactive in addressing these issues by developing new standards and frameworks for the protection of IP rights in the digital space.[109]

Furthermore, the intersection of IP and bankruptcy will continue to be a critical area of focus for policymakers. As IP assets become more central to business valuation, the treatment of these assets in insolvency cases will be of increasing importance. Future trends will likely see a greater emphasis on preserving and maximizing the value of IP during bankruptcy proceedings, ensuring that both creditors and IP holders benefit from these valuable assets. As global markets become more interconnected, the role of IP in the bankruptcy process will only continue to grow, making it essential for legal systems to evolve accordingly.[110]

The future of intellectual property law and bankruptcy policy is poised to undergo significant transformations. As global trade and digital economies continue to shape the business landscape, the protection and management of IP assets will become even more critical. Legal systems around the world will need to evolve to ensure that IP rights are adequately protected, particularly in the context of bankruptcy proceedings. The future of IP law will require a balanced approach that addresses both the opportunities and challenges presented by the digital age, ensuring that businesses and creditors can effectively navigate this increasingly complex legal environment.[111]

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[108] Dhea Yulia Maharani and Herman Bakir, 'Legal Consequences For Licensees In The Event Of Intellectual Property Right (Ipr) Owner Bankruptcy', *International Journal of Social Service and Research*, 4.12 (2024) https://doi.org/10.46799/ijssr.v4i12.1127

[109] Anna Ubaydullayeva, 'Artificial Intelligence and Intellectual Property: Navigating the Complexities of Cyber Law', *International Journal of Law and Policy*, 1.4 (2023) https://doi.org/10.59022/ijlp.57

[110] Avv. Gino Fontana, 'Intellectual Property Protection in the Era of Artificial Intelligence and the Problem of Generative Platforms', *The Journal of World Intellectual Property*, 2025 https://doi.org/10.1111/jwip.12355

[111] Moh. Asadullah Hasan Al Asy'arie, Bagus Rahmanda, and Khanza Anindita Prasetyo, 'Transfer Of Intellectual Property Right As A Company Asset In Bankruptcy In Indonesia', *Diponegoro Law Review*, 9.1 (2024), 53–69 https://doi.org/10.14710/dilrev.9.1.2024.53-69

This reconstruction involves recognizing the full value of IP assets, not only in terms of their direct monetary worth but also as assets that contribute to the future potential of a business. For instance, trademarks could be seen as tools for business recovery, allowing companies to retain brand identity and customer loyalty even while undergoing financial restructuring. By incorporating IP more effectively into bankruptcy proceedings, the law can offer a more balanced approach, providing creditors with fair compensation while giving debtors the opportunity to protect and preserve valuable intellectual capital.[112] This will not only benefit the immediate stakeholders involved but also foster a more sustainable approach to handling business failure. Looking ahead, the future of IP within bankruptcy law lies in creating a legal framework that is responsive to the changing nature of business and intellectual property. As IP continues to play a pivotal role in the global economy, it is imperative that bankruptcy law adapts to ensure that IP is treated with the same level of importance as tangible assets. [113]

This includes developing specific provisions for managing trademarks, patents, and other forms of IP during bankruptcy proceedings, ensuring that these assets are not undervalued or overlooked. By doing so, bankruptcy law can better protect IP holders, provide fairer outcomes for creditors, and create a legal environment where business recovery is not hindered by outdated legal structures. The reconstructing intellectual property within bankruptcy law is both a legal necessity and a strategic imperative for the future of businesses in today's economy. As IP continues to serve as a cornerstone of modern business models, its proper integration into bankruptcy proceedings will ensure more equitable outcomes for all parties involved. With a forward-thinking approach, bankruptcy law can be restructured to preserve the value of IP, contributing to more efficient and fair resolutions of bankruptcy cases while safeguarding the future viability of businesses facing financial distress.[114]

4. Conclusion

The reconstruction of Intellectual Property (IP) within bankruptcy law is a necessary step in addressing the growing complexities of modern business practices. In today's increasingly knowledge-based economy, intellectual property assets such as trademarks, patents, copyrights, and trade secrets hold significant value. However, the failure to properly integrate these assets into bankruptcy proceedings can result in substantial financial loss for creditors and an unfair disadvantage for debtors. This underscores the need for a comprehensive reform in

[112] O.V. Sushkova, 'The Influence of the Fact of Inheritance of Property Rights of the Author under a License Agreement on the Peculiarities of Initiating Insolvency (Bankruptcy) Procedures', *Uchenye Zapiski Kazanskogo Universiteta. Seriya Gumanitarnye Nauki*, 162.2 (2020), 124–39 https://doi.org/10.26907/2541-7738.2020.2.124-139

[113] Aldy Wicaksono, 'Legal Protection of Intellectual Property of Insolvent Debtors in Bankruptcy Perspective', *International Journal of Social Service and Research*, 3.8 (2023), 1860–68 https://doi.org/10.46799/ijssr.v3i8.479

[114] Malkawi and Almajed.

bankruptcy law that fully acknowledges the role and value of IP, ensuring that it is protected and effectively managed within the bankruptcy estate. One of the primary issues in the current legal framework is the failure to adequately account for IP as part of the bankruptcy estate. Intellectual property, especially trademarks, plays an integral role in a company's market presence, customer loyalty, and potential future earnings. For example, trademarks represent not just a brand's image but also its goodwill and competitive advantage. In cases like Nyonya Meneer, the dispute over trademark ownership following bankruptcy highlighted the critical importance of properly recognizing and managing IP assets in the bankruptcy process. Without this recognition, businesses risk losing valuable assets that could help them recover from financial distress or even provide opportunities for restructuring. Therefore, bankruptcy law must evolve to provide adequate protection for these intangible assets, ensuring that their value is preserved rather than diminished in times of financial crisis. To address this gap, bankruptcy law needs to be reconstructed with a clear emphasis on intellectual property.

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40 https://doi.org/10.1080/00664677.2022.2042793

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