

Bankruptcy Law Review of Patent Rights in Law No. 37 of 2004

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Abstract. In Bankruptcy law, copyright protection also becomes a concern similar to patent protection. Moreover, Article 50 of the Criminal Code states that anyone who intentionally and without right creates, copies, disseminates, or uses the creations of others, knowing that those creations belong to others, is subject to imprisonment for a maximum of four years or a fine of up to nine hundred Indonesian Rupiah. It shows that copyright infringement in bankruptcy can also be subject to criminal sanctions according to applicable law. The research is Normative. The approach used is the statute approach and conceptual approach. Secondary data sources are utilized. Data analysis is conducted qualitatively and descriptively. Conclusions are drawn deductively, deriving conclusions from general to specific, especially related to the research topic: Examination of Bankruptcy Law Regarding Patents in Law No. 37 of 2004. This research finds that Article 42 of the Bankruptcy Law provides a clear legal basis regarding the treatment of patents in bankruptcy, where patents are included in company assets that can be managed for the benefit of creditors. However, there are complex implications to consider, such as the reduction of patent value, criminal penalties for patent infringement, and protection of patents from actions that harm creditors or third parties not involved in the bankruptcy process.

Keywords: Bankruptcy Law Review, Patents, Law No. 37 of 2004

1 Introduction

In Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, legal review of patent rights has important implications in the context of bankruptcy proceedings. Patents, which give their owners the exclusive right to use and exploit a particular invention or innovation, become a significant asset for a company or individual. However, when a company experiences financial difficulties and must enter bankruptcy proceedings, the status of patents becomes the subject of careful review by the courts[1]. Article 42 of the Bankruptcy Law regulates that in the event of bankruptcy, patents are included in the bankruptcy estate and can be sold or transferred to generate profits for the creditors. It places patents as one of the assets that can be utilized to pay the debts of the bankrupt company. However, Article 43 states that if the patent is owned by a third party not involved in the bankruptcy process, the patent owner can request the court to cancel the sale or utilization of the patent. It is aimed at protecting the rights of third parties unrelated to the bankruptcy process

and preserving their interests in the patent. Additionally, Article 45 grants authority to the curator to protect and maintain patents during bankruptcy. It includes efforts to preserve or renew patents owned by the bankrupt company to prevent the loss of value of these assets.

In the context of bankruptcy law, the protection of patent rights is also strengthened by provisions in the Criminal Code (KUHP) which regulates crimes against intellectual property. Article 481 of the Criminal Code states that anyone who intentionally and without right makes, uses, sells, or trades a product of creation or discovery, knowing that the result of the creation or discovery is the right of another person, is threatened with imprisonment for a maximum of four years or a maximum forfeiture of nine hundred rupiah[2]. It indicates that patent misuse in the context of bankruptcy can also be subject to criminal sanctions. Furthermore, the court in the bankruptcy process must ensure that patents owned by the bankrupt company are not misused by other parties. Article 40 of the Bankruptcy Law regulates that during the bankruptcy process, any actions detrimental to the creditors' interests or contrary to the law may be declared null and void by the court. It includes actions that infringe on the bankrupt company's patent rights or actions that violate the legal provisions governing bankruptcy.

However, the bankruptcy process also provides an opportunity for companies to preserve the value of their intellectual assets. Article 41 of the Bankruptcy Law grants authority to the company filing for bankruptcy to establish privileges over specific assets. It may include privileges over patents, allowing the company to retain and manage these patents throughout the bankruptcy process. Thus, the legal review of patents in the context of bankruptcy reflects the importance of maintaining a balance between protecting patent owners' rights, creditors' interests, and justice in the legal process. Through a combination of provisions in the Bankruptcy Law and the Criminal Code, efforts are made to ensure that patents are treated fairly and by applicable law.

In bankruptcy law, the protection of copyright is also a concern similar to the protection of patent rights. According to Article 42 of the Bankruptcy Law, copyright is included in company assets that are included in bankruptcy and can be managed for the benefit of creditors. It shows that in the bankruptcy process, copyrights are treated as assets that can be sold or transferred to pay the debts of the bankrupt company[3]. In addition, crimes against copyright are also regulated in the Criminal Code (KUHP). Article 50 of the Criminal Code states that anyone who intentionally and without right creates, copies, distributes, or uses another person's creation, knowing that the creation is the property of another person, is threatened with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs. It shows that copyright violations in the context of bankruptcy can also be subject to criminal sanctions by applicable legal provisions.

The court in the bankruptcy process must ensure that the copyright of the bankrupt company is not misused by other parties. Article 40 of the Bankruptcy Law regulates that any actions detrimental to the creditors' interests or contrary to the law may be declared null and void by the court. It includes actions that infringe on the copyright of the bankrupt company or other actions contrary to the legal provisions governing bankruptcy. However, the bankruptcy process also provides an opportunity for companies to preserve the value of their intellectual assets, including copyrights. Article 41 of the Bankruptcy Law grants authority to the company filing for bankruptcy to establish privileges over specific assets. It allows the company to retain and

manage the copyright throughout the bankruptcy process, while still considering the creditors' interests and applicable legal provisions.[4]. Thus, the legal review of copyright in the context of bankruptcy reflects the importance of maintaining a balance between protecting the rights of copyright owners, the interests of creditors, and fairness in the legal process. Through a combination of provisions in the Bankruptcy Law and the Criminal Code, efforts are made to ensure that copyright is treated fairly and by applicable legal provisions.

The role of the state in the context of patent and copyright protection in bankruptcy proceedings is crucial in creating a fair and just legal environment for all parties involved. Firstly, the state is responsible for enforcing the law and overseeing bankruptcy processes to ensure that the rights of patent and copyright owners are effectively protected. It involves independent and transparent judicial institutions to handle disputes related to patents and copyrights in the context of bankruptcy. Additionally, the state plays a role in facilitating cooperation between patent or copyright owners and parties involved in the bankruptcy process, such as trustees, courts, and creditors.[5]. Thus, the state can create mechanisms that allow patent or copyright owners to uphold their rights while ensuring the efficiency and fairness of the bankruptcy process. The state also must provide adequate protection for intellectual property rights, including patents and copyrights, through appropriate laws and regulations. It includes the drafting and enforcement of clear and stringent legal provisions regarding the management of patents and copyrights in bankruptcy situations, thereby preventing abuse or infringement that harms rightful parties.

In addition, the state can play an important role in promoting awareness of the importance of protecting intellectual property rights among business actors and the general public. By increasing understanding of patents and copyrights, countries can help prevent conflicts and disputes related to intellectual property rights in the context of bankruptcy[6]. Lastly, the state can also play a role as a mediator or facilitator in resolving disputes related to patents and copyrights in bankruptcy situations. By providing alternative dispute resolution mechanisms, the state can assist in reaching fair and mutually beneficial solutions for all involved parties, while also expediting the overall bankruptcy process. Thus, the state's role in protecting patents and copyrights in bankruptcy is crucial for maintaining justice and economic sustainability.

In the context of bankruptcy law, the protection of patents and copyrights is not only the responsibility of the state but also requires a strong and comprehensive legal framework. Law No. 37 of 2004 concerning Bankruptcy is one significant legal instrument in this regard. Article 42 of the Bankruptcy Law states that patents and copyrights are included in the bankruptcy estate and can be managed for the benefit of creditors. It confirms that the patents and copyrights of the bankrupt company are part of the assets that must be carefully managed during the bankruptcy process. Additionally, the Criminal Code also plays a significant role in protecting intellectual property rights. Article 50 of the Criminal Code regulates that intentional and unauthorized copyright infringement may be subject to criminal sanctions indicates that the state must enforce laws against copyright infringement, including in the context of bankruptcy.[7].

The government can also strengthen protection for patents and copyrights through more specific government regulations (PP). The PP can regulate in more detail the management of patent and copyright rights in bankruptcy situations, including procedures for selling or transferring these rights to pay debts. In this way, the PP can provide clear guidelines for all

parties involved in the bankruptcy process. In addition, the government can also use Government Regulations instead of Law (Perpu) to deal with crisis or urgent situations related to the protection of patents and copyrights in situations bankruptcy. Perpu can provide extra authority for the government to take necessary steps to ensure effective protection of patents and copyrights in times of emergency or economic crisis[8]. The role of the judiciary is also significant in protecting patent and copyright rights in the bankruptcy process. The court has the authority to resolve disputes related to patents and copyrights, as well as ensuring that the bankruptcy process runs by applicable legal provisions. Thus, the court has an important role in maintaining justice for all parties involved.

Furthermore, the government can also play a role in facilitating cooperation between patent or copyright owners and parties involved in the bankruptcy process, such as trustees and creditors. By encouraging dialogue and collaboration among various parties, the government can help achieve beneficial solutions for all involved parties in bankruptcy situations. Additionally, the government can promote awareness of the importance of patent and copyright protection among the public and businesses. By conducting outreach campaigns and education on intellectual property rights, the government can help prevent patent and copyright infringements and enhance understanding of available legal protections. Moreover, the government can utilize economic policy instruments to encourage innovation and technology development, including through fiscal incentives or subsidies for companies engaged in research and development in the field of patents. By fostering innovation, the government can help create a conducive business environment for the development of patents and copyrights.[9] The role of the judiciary is also significant in protecting patent and copyright rights in the bankruptcy process. The court has the authority to resolve disputes related to patents and copyrights, as well as ensure that the bankruptcy process runs in line with applicable legal provisions. Thus, the court has an important role in maintaining justice for all parties involved. In terms of law enforcement against patent and copyright violations, the government can also collaborate with other law enforcement agencies, such as the police and prosecutors, to monitor and take action against violations of intellectual property rights. By increasing cooperation between various law enforcement agencies, the government can ensure that patent and copyright violations can be handled effectively in accordance with applicable legal provision.

Thus, the role of the state is important in protecting patent and copyright rights in the context of bankruptcy, either through making adequate laws, and appropriate regulations, strengthening judicial institutions, facilitating cooperation between various parties, promoting public awareness, supporting innovation, and effective law enforcement. Article 42 Bankruptcy Law No. 37 of 2004 expressly states that patents and copyrights are included in the bankruptcy period and can be managed for the benefit of creditors.[10] It emphasizes that in the context of bankruptcy, patents, and copyrights of bankrupt companies must be handled carefully to ensure that these assets can be utilized efficiently to pay the company's debts. Thus, this article provides a strong legal basis for the management of patent and copyright rights in the bankruptcy process, while emphasizing the importance of protecting intellectual property rights in bankruptcy situations.

2 Method

This kind of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively[11]. Conclusions are drawn utilizing the deductive method, which involves concluding from general to specific, especially regarding the research topic of "Legal Review of Bankruptcy Law Regarding Patents in Law No. 37 of 2004." Qualitative data analysis is conducted when empirical data consists of a collection of words rather than numerical sequences and cannot be organized into data categories, which may be collected through various methods (observation, interviews, document review, and tape recordings). It is processed before use in qualitative research, including interview transcripts, data reduction, analysis, data interpretation, and triangulation.[12]

3 Result and Discussion

3.1 The Urgency of Legal Review of Bankruptcy Law Regarding Patents in Law No. 37 of 2004

The legal review of patents in Law No. 37 of 2004 on Bankruptcy is a crucial aspect that patents are one form of intellectual property that holds significant value for companies or individuals. In the context of bankruptcy, the treatment of patents requires appropriate legal regulation to ensure the protection of the rights of patent holders while also ensuring fairness for all parties involved. Article 42 of the Bankruptcy Law serves as the primary legal basis governing the inclusion of patents in bankruptcy estate, where patents can be managed for the benefit of creditors. Article 42 of the Bankruptcy Law clearly states that patents are part of the company's assets included in the bankruptcy estate. In this context, the court has the authority to manage these patents to fulfill the obligations of the bankrupt company to its creditors. It highlights the urgency of having a strong legal framework to address patents in bankruptcy situations. [4].

Regarding the legal protection of patents, Article 50 of the Indonesian Criminal Code (KUHP) also emphasizes the importance of respecting intellectual property rights. This article regulates criminal sanctions for copyright infringement committed intentionally and without authorization. With the existence of Article 50 of the Indonesian Criminal Code, patent protection is further ensured, and law enforcement against patent infringement can be effectively executed. Additionally, the presence of supporting laws that specifically regulate patents also supports the urgency of legal review of patents of bankruptcy. For example, Law No. 28 of 2014 on Copyright provides legal protection for intellectual works, including patents. Therefore, the management of patents in bankruptcy situations must adhere to the provisions of these supporting laws.

The wording of Article 42 of the Bankruptcy Law states that "Patents, trademarks, and copyrights are included in bankruptcy and can be managed or sold for the benefit of lenders." It confirms that patents are part of the company's assets that must be managed during the

bankruptcy process to fulfill debt repayment obligations. Legal review of patents in the Bankruptcy Law is also important to prevent misuse or infringement of patents by other parties.[3] Article 43 of the Bankruptcy Law gives the patent right owner the right to ask the court to cancel the sale or use of the patent right if the patent right is owned by a third party who is not involved in the bankruptcy process. It aims to protect patent rights from actions that are detrimental to their owners.

In a bankruptcy situation, the management of patents must also consider the interests of creditors. Article 40 of the Bankruptcy Law regulates that any actions detrimental to creditors' interests or contrary to the law can be declared null and void by the court. It includes actions involving the management of patents that do not comply with legal provisions or that harm creditors' interests. Furthermore, the protection of patents in bankruptcy situations also requires the involvement of a curator. Article 45 of the Bankruptcy Law grants the curator the authority to protect and maintain patents during the bankruptcy period. It includes efforts to preserve or renew patents owned by bankrupt companies to prevent loss of value to the asset.

However, patent protection in bankruptcy situations must also consider the protection of third parties not involved in the bankruptcy process. Article 43 of the Bankruptcy Law grants the owner of the patent the right to request the cancellation of the sale or use of the patent if it is owned by a third party not involved in the bankruptcy process. In the context of criminal law, patent infringement can also be subject to criminal sanctions under Article 50 of the Indonesian Criminal Code (KUHP). It emphasizes the importance of enforcing the law against patent infringement to prevent the misuse of patents by others.[3].

Overall, the urgency of legal review regarding patents in the Bankruptcy Law No. 37 of 2004 is crucial in ensuring patent protection, fairness for all parties involved, and the fair and efficient continuation of the bankruptcy process. By adhering to applicable legal provisions, patent protection in bankruptcy situations can be effectively guaranteed by prevailing legal principles.

3.2 Implications of Legal Review on Patents in Law No. 37 of 2004

The implications of legal review on patents in the Bankruptcy Law No. 37 of 2004 have significant impacts on patent owners, creditors, and parties involved in the bankruptcy process. Article 42 of the Bankruptcy Law asserts that patents are included in bankruptcy, meaning the owner loses control over the patent, and its management is handed over to the court for the benefit of creditors. The implication indicates that patents are no longer exclusive assets of the bankrupt company.

Another impact of this arrangement is a reduction in the value of patent rights. Although patent rights remain a company asset, the value of these rights may decrease because they must be sold or transferred to pay the company's debts. It can cause the patent owner to experience significant financial losses, especially if the value of the patent is lower than the amount of debt that must be paid[2]. Article 42 of the Bankruptcy Law confirms that patent rights, together with trademarks and copyrights, are included in the bankruptcy period and can be managed or sold for the benefit of the lenders. It suggests that the patent owner must compete with other creditors

for a share of the proceeds from the sale of the patent, which can reduce the amount received by the patent owner.

Another legal implication is the protection of patent rights from infringement by third parties who are not related to the bankruptcy process. Article 43 of the Bankruptcy Law gives the patent right owner the right to ask the court to cancel the sale or use of the patent right if the patent right is owned by a third party who is not involved in the bankruptcy process. It seeks to safeguard patent rights from actions that are detrimental to their owners.

In the context of criminal law, infringement of patent rights is also subject to criminal sanctions by the provisions of Article 50 of the Criminal Code. This article states that anyone who intentionally and without right makes, uses, sells, or trades a creation or invention, knowing that the creation or invention is the right of another person, is threatened with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs. The article implies that there is a threat of punishment for perpetrators of patent infringement, which aims to prevent misuse of patent rights by other parties.[13]

Furthermore, the implications of legal review on patents in the Bankruptcy Law include protecting patents from actions that harm the interests of creditors. Article 40 of the Bankruptcy Law stipulates that any actions detrimental to the interests of creditors or contrary to the law can be declared void by the court. It includes actions involving the management of patents that are not by legal provisions or that harm the interests of creditors. Another legal implication is the authority of the curator to protect and preserve patents during bankruptcy. Article 45 of the Bankruptcy Law grants authority to the curator to protect and preserve patents during bankruptcy. It includes efforts to maintain or renew patents owned by the bankrupt company to prevent the loss of value of those assets.

However, some implications can be felt by third parties not involved in the bankruptcy process. Article 43 of the Bankruptcy Law grants the patent owner the right to request the cancellation of the sale or use of the patent if the patent is owned by a third party not involved in the bankruptcy process. This indicates the need to consider the rights of third parties in managing patents in bankruptcy situations.[14]

Furthermore, the threat of criminal penalties for patent infringement can also influence the attitudes and behaviors of businesses. With clear legal provisions and strict sanctions against patent infringement, businesses will be more cautious in using or exploiting the creations of others to avoid the risk of criminal prosecution.

The implications of managing patents in bankruptcy situations can also affect the decisions of investors or lenders. If the patents of the bankrupt company have significant value, investors or lenders may consider this when assessing the risks and potential returns of investing in or lending to the company. Thus, the legal review of patents in the Bankruptcy Law No. 37 of 2004 has complex and significant implications for various stakeholders. Protection of patent rights, fairness to the parties involved, and the fair and efficient continuation of the bankruptcy process must be carefully considered in managing patents in bankruptcy situations.[15].

4 Conclusion

1. Overall, the legal review of patents in Bankruptcy Law No. 37 of 2004 indicates that the protection of patents in bankruptcy situations has significant implications for patent owners, creditors, and involved parties.
2. Article 42 of the Bankruptcy Law provides a clear legal basis regarding the treatment of patents in bankruptcy, where patents are included in the company's assets that can be managed for the benefit of creditors. However, there are complex implications that need to be considered, such as the reduction of patent value, criminal penalties for patent infringement, and protection of patents from actions that harm creditors or third parties not involved in the bankruptcy process.
3. In this context, it is important for all parties involved, including patent owners, creditors, courts, and third parties, to understand the legal consequences and interests involved in managing patents in bankruptcy situations. Patent protection must be balanced with fairness to all parties involved, as well as the fair and efficient continuation of the bankruptcy process. Therefore, it is important to carefully consider the legal implications and their impact on all parties involved in managing patents in bankruptcy situations to achieve optimal and mutually beneficial resolutions.

5 Suggestions

1. To address the complexity and challenges associated with managing patents in bankruptcy situations, several suggestions can be considered. First, close cooperation is needed among all parties involved, including patent owners, creditors, courts, and third parties, to ensure that the interests of all parties are respected and protected. It applies open and transparent dialogue and a willingness to collaborate in finding solutions beneficial to all parties involved.
2. Second, there is a need to enhance understanding and awareness of patents and bankruptcy law among all stakeholders. It can be achieved through outreach, training, and education aimed at improving understanding of the rights and obligations of each party and the legal consequences of actions taken in bankruptcy situations. With a better understanding of the applicable legal regulations, it is expected that it will be easier to find solutions that meet the needs of all parties.
3. Finally, there is a need to enhance legal protection for patents in bankruptcy situations. It involves updating and improving relevant legal regulations and effective enforcement of patent infringement laws. By strengthening the existing legal framework, it is expected to be easier to protect patents from misuse or infringement by other parties, thus ensuring the sustainability of patents and fairness to their owners in bankruptcy situations.

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