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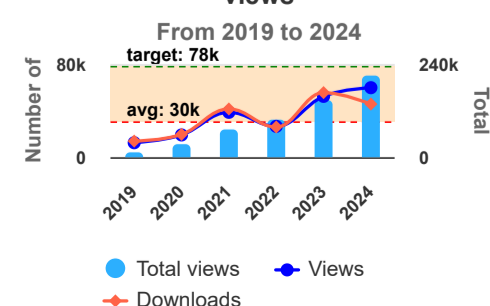
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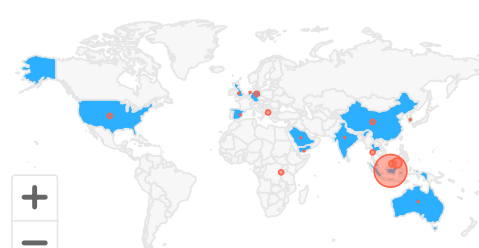
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TRANSFER OF INTELLECTUAL PROPERTY RIGHT AS A COMPANY ASSET IN BANKRUPTCY IN INDONESIA

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Abstract

The transfer of intellectual property rights (IPR) as a company asset during bankruptcy proceedings in Indonesia presents a complex legal landscape. This study examines the gap between existing legal frameworks and the practical realities faced by companies undergoing bankruptcy. Specifically, the research addresses the lack of clear guidelines on the valuation, transfer, and protection of IP rights, which are critical assets in the modern economy. This study utilizes the three research methods, which are Normative Approach and Conceptual Approach. Findings indicate significant inconsistencies and ambiguities in the legal treatment of IPR in bankruptcy cases. The aim of this research is to provide an understanding of how IPR can be included in the bankruptcy estate and distributed to entitled creditors based on an assessment by the curator. In conclusion, this research found that recommendations for legal amendments and policy interventions to bridge the identified gaps, thereby enhancing the protection and transferability of IP rights in bankruptcy contexts in Indonesia.

Keywords: Trade Mark Right; Bankruptcy; Corporation

1. Introduction

The rights arising from human intellectual efforts that provide financial gains are known as intellectual property rights. The concept of intellectual property rights underpins the notion that human intellectual pursuit necessitates time, effort, and resources. The labor has economic worth as a result of this sacrifice. This results in the requirement for incentives for successful outcomes as well as legal defense.¹ The term "intellectual property rights" refers to the right to property based on human intellectual abilities, which is connected to an individual's personal rights (human rights), and is regulated by Law No. 7 of 1994 concerning the ratification of the WTO (Agreement Establishing the World Trade Organization). This is defined by the World Intellectual Property Organization (WIPO) as the product of human intellect, which includes innovations, literary and artistic creations, names, symbols, pictures, and designs that are utilized in commerce.²

Several experts also provide the meaning of IPR, one of which is Muhammad Djumhana & R. Djubaedillah³ explained that IPR is defined as rights derived from human creative efforts that

¹ Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2013).

² Tomi Suryo Utomo, *Hak Kekayaan Intelektual (HKI) Di Era Globalisasi, Sebuah Kajian Kontemporer* (Yogyakarta: Graha Ilmu, 2010).

³ Muhammad Djumhana and R. Djubaedillah, *Hak Milik Intelektual: Sejarah, Teori Dan Prakteknya Di Indonesia* (Bandung: Citra Aditya Bakti, 2003).

ONE-PERSON LIMITED LIABILITY COMPANY: CONSIDERING COMPANY'S ORGAN GOVERNANCE OF THE INDONESIAN LEGAL ENTITIES FOR MICRO AND SMALL ENTERPRISES

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Abstract

The government continues to strive to improve the ease of doing business, one of which is legitimizing the existence of a new entity intended for micro and small enterprises (MSEs). The entity is a One-Person Limited Liability Company, which is familiar for particular countries with higher ease of doing business than Indonesia. However, this new business form for MSEs is unique and has different characteristics from other countries. The new regulation restricts the founder and shareholders, who can only be natural persons and cannot be more than one. The problem is that the law obscurity of the company's organ emerges not following previous regulations because there is no obligation to have supervisory bodies on it. Being the only different entity can be an advantage, but it can also be a rash act. This normative legal research uses the comparative law method to identify problems in statutory regulation. The result shows a legal vacuum in the new regulation of Indonesian one-person companies' organs, whether they should implement the one-tier board or have the option to adopt the two-tier board system. The thing to consider is supervisory bodies should remain within an entity with limited liability regardless of its system.

Keywords: *Legal Entity; One-Person Company; Governance; Board Structure*

1. Introduction

Changes have been made to the regulation on Limited Liability Companies when Law no. 40 of 2007 on Limited Liability Companies (Hereafter LLC Law) is amended by Law no. 11 of 2020 on Job Creation (Hereafter Job Creation Law). Job Creation Law is also dubbed UU Sapu Jagat (equal to one-size-fits-all law) because it uses an omnibus approach, where one new law can amend stipulations in several laws. In this context, Job creation law amends some articles in LLC Law, among other stipulations. Changes and norms added to LLC Law through Job creation law could be found in the ease-of-doing-business cluster. Almost all amendments related to ease of business are directed at small and medium-scale enterprises.

Data from the Ministry of Cooperative and Micro, Small, and Medium-scale Enterprises (MSMEs) show that 99% of businesses in Indonesia belong to the MSMEs category, absorbing approximately 97% of labor in the country.¹ Responding to this condition, the government

¹ "Naskah Akademis Rancangan Undang-Undang Tentang Cipta Kerja," *Badan Pembinaan Hukum Nasional*, last modified 2020, accessed September 29, 2021, https://bphn.go.id/data/documents/na_cipta_kerja.pdf.