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## **Trademark Sales Study as Boedel Bankrupt by the Curator**

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**Abstract:** Trademarks are included in the Intellectual Property Rights (IPR) regime in Indonesia because trademark rights are always attached to economic rights. This study uses a normative method by collecting secondary data. Qualitative analysis was carried out on secondary data to obtain conclusions about the Nyonya Meneer brand as an intangible asset owned by PT Nyonya Meneer which is bankrupt based on the Commercial Court Decision. As a result of the law of PT Nyonya Meneer being bankrupt, the Curator carried out the settlement and management of the bankrupt estate including the Nyonya Meneer brand by auction through private sales with an appraisal value of Rp. 200 billion to Rp. 10.25 billion. It is hoped that the government will make a regulation related to the valuation regulations for IPR as well as regulations related to the transfer of IPR as bankrupt assets and create a special appraisal institution to provide legal certainty for the curator in carrying out his duties and authorities.

**Keyword:** Boedel Goes Bankrupt, Intellectual Property Rights (IPR), Curator, Trademark.

### **INTRODUCTION**

Trademarks are intellectual property rights of a company that can generate profits for limited liability companies. As is known, the greater the share value or historical investment of a company, the more valuable its trademark is. Apart from that, if a company has difficulty paying debts and is then declared bankrupt through a court decision, then one of the debtor's assets can be distributed to each creditor, namely its trademark.

One of the objects of bankruptcy assets (boedel) is trademarks. Trademarks are included in the Intellectual Property Rights (HaKI) regime. Indonesia is a country rich in intellectual property, where apart from brands, what is included in the intellectual property regime are copyrights, patents, circuit layout designs, geographical indications, trade secrets and industrial designs. Trademark rights can be included as boedel or bankruptcy assets, because trademark rights always attach economic rights. Thus, trademark rights that have been registered in the name of the bankrupt debtor are objects owned by the bankrupt debtor which constitute the bankrupt debtor's assets and can be subject to general confiscation to pay off debts in the context of settling the bankrupt assets.

The curator will manage and settle the bankruptcy estate as well as resolve the legal relationship between the debtor and his creditors with the main aim of using the proceeds from the sale of assets to pay all debts of the bankruptcy debtor proportionally (*prorata parte*) and in accordance with the creditor structure. The sale (clearance) of trademarks carried out by the curator is still carried out through an auction or public sale mechanism. The auction, which is open to the public, is regulated by the provisions of Article 185 paragraph (1) of the Bankruptcy and PKPU Law, which states, "all objects must be sold in public in accordance with the procedures specified in statutory regulations". Paragraph (2) states, "in the event that public sales as intended in paragraph (1) are not achieved, private sales can be carried out with the permission of the Supervising Judge."

PT. Nyonya Meneer Indonesia, a company that produces traditional Javanese herbal medicine, was declared bankrupt by the Semarang Commercial District Court based on Decision Number 11/Pdt.SusPailit/2017 PN Niaga Smg jo. Number 01/Pdt.Sus-PKPU/2015/PN Niaga Smg on August 3 2017. Details of the debt are known, starting from arrears in BPJS employment payments since November 2011 worth IDR 12.5 billion, salary arrears worth IDR 35.3 billion, claim arrears health of 54 workers worth IDR 75 million. The total active employees of PT Nyonya Meneer are 921 people. They have not received wages from November 2015, January 2016 and July 2017. Apart from active employees, there are still arrears in wages for retired workers reaching IDR 41.4 billion. PT Nyonya Meneer was also assessed as having not paid severance pay for 183 workers affected by Termination of Employment (PHK) amounting to IDR 8.7 billion.

The debtor curator of PT Nyonya Meneer carried out the settlement of bankruptcy assets, one of which was 72 items of the Nyonya Meneer trademark to cover debt payment obligations to thousands of creditors (employees). It is known that the estimated value of the auction bid at KPKNL Semarang was IDR 200 billion, in fact it was only able to reach the highest auction value of IDR 10.25 billion through notarized private sales.

There was a miscommunication from the curator where the trademark from the Nyonya Meneer Company was sold by one of the curators without the knowledge and consent of the other curator. Even though previously there were those who wanted to bid 22 billion, even 200 billion, they withdrew because the trademark rights certificate had expired and should have been renewed first, and at the time of the sale and purchase transaction the trademark ownership certificate was in the process of being renewed by the Directorate General of Rights. Intellectual Property.

In the event that a trademark is used as a bankruptcy case, there are several obstacles that must be faced by the curator who is carrying out the settlement of the bankruptcy case. There are no regulations that accommodate procedures for the distribution or sale of trademarks when they are used as bankrupt property (*boedel*), especially in the valuation system, which currently has no legal basis or benchmarks for assessing forms of intellectual property rights in the form of trademarks.

Therefore, a regulation is needed regarding the valuation regulations for intellectual property rights as well as regulations regarding the transfer of intellectual property rights as a bankrupt company in order to provide legal certainty in payments to the creditors of the bankrupt company. The proceeds are used to pay off the debtor's debt to his creditors.

However, it should be noted that in the auction process (public sales) and/or private sales, the validity period of the trademark will still be paid attention to. This is because it will affect the value of the trademark when it is assessed by an independent Appraisal Institution appointed by the Supervising Judge. Based on the background description above, the problem in this research concerns the legal certainty of brand selling prices in the context of settling bankruptcy assets by the Curator and the legal consequences of buying and selling the Nyonya Meneer

trademark in the case of Decision Number 11/Pdt.Sus-Pailit/2017/PN Niaga Thank you Jo. Number 01/Pdt.Sus-PKPU/2015/PN Niaga Smg.

## METHOD

The research in this legal research is normative or doctrinal legal research. According to Terry Hutchinson, as quoted by Peter Mahmud Marzuki, he defines doctrinal legal research as "doctrinal research: research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and, perhaps, predicts future development." (Doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzing the relationships between the rules explaining areas of difficulty and perhaps predicting future development). ).

The type of data used in this thesis research is secondary data taken by means of literature study and documentation study. Secondary data used in this research consists of primary legal materials, secondary legal materials and tertiary legal materials. Data analysis in this research was carried out qualitatively, where the discussion and research results were described in words based on the data obtained. The data collected will be analyzed by searching for and determining the relationship between the data obtained from the research and the problems raised in this research regarding the selling price of trademarks for debt repayment in the context of settling bankruptcy assets by the Curator.

## RESULTS AND DISCUSSION

### Trademark Rules As Boedel Bankrupts

Brands are one part of the intellectual property regime. In general, in Law No. 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter referred to as the Law on Trademarks and Geographical Indications) itself, it is explained that a brand is a sign in the form of a name, image, word, letter, number, color arrangement in both two and three dimensions. dimensions, sound, holograms and/or a combination of two or more of these elements used in a good or service by the owner. Meanwhile, the right to a trademark is an exclusive right granted to the owner of a registered trademark for a certain period of time, either for personal use or the right to use the trademark is granted to another person with permission from the trademark owner.

Based on Article 1 paragraph (5) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications ("Trademark Law"), the right to a trademark is an exclusive right granted by the state to the owner of a registered trademark for a certain period of time by using the trademark himself. or give permission to other parties to use it.

Article 499 of the Civil Code (Civil Code) defines "Goods" as every object and every right that can become the object of property rights. By paying attention to the definitions of Goods and Brand Rights above, it can be concluded that Brand Rights are categorized as objects.

Furthermore, the Civil Code regulates that objects consist of tangible and intangible objects. Considering that the Right to a Trademark is an exclusive right given to the owner of the Trademark, and can be transferred due to inheritance, will, endowment, gift, agreement or other reasons justified by statutory regulations, the Right to a Trademark can be classified as movable property without a body/ tangible (intangible assets).

To reiterate that material rights are attached to intellectual property rights, Article 9 of Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy recognizes Intellectual Property as an object of debt collateral, with the limitation that, intellectual property has been registered or registered with the ministry that handles government affairs in the legal sector; and intellectual

property that has been managed either independently and/or the rights have been transferred to another party.

Bankruptcy is something that is not expected for every business actor. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy and PKPU Law) defines bankruptcy as a general confiscation of all assets of a Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge. Simply put, bankruptcy is a condition where the debtor is unable to pay back his debts which are due and payable.

In the event that the Debtor is declared bankrupt, all movable and immovable assets belonging to the debtor, both existing and future, constitute bankruptcy assets, with exceptions as regulated in Article 22 of the Bankruptcy Law and PKPU, namely:

1. objects, including animals that are really needed by the Debtor in connection with his work, equipment, medical equipment used for health, beds and equipment used by the Debtor and his family, and food for 30 (thirty) days for The debtor and his family, who are in that place;
2. everything that the Debtor obtains from his own work as remuneration for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the Supervising Judge; or

3. money given to the Debtor to fulfill an obligation to provide maintenance according to law.

The basic principles related to bankruptcy can be found in Article 1131 of the Civil Code which states that "all movable and immovable property belonging to the debtor, whether existing or future, shall be collateral for the debtor's individual obligations." As well as Article 1132 of the Civil Code which states that "The goods become joint collateral for all creditors against whom the proceeds from the sale of the goods are divided according to the ratio of their respective receivables unless there are valid reasons for priority among the creditors."

By paying attention to what matters are included in bankruptcy assets and material provisions, Mark Rights are in principle included in bankruptcy assets. However, not all brands have the same economic value depending on their level of fame in society.

In the event that a trademark is used as a bankruptcy entity, there are several obstacles that must be faced by the curator carrying out the settlement of the bankruptcy corporation. There are no regulations that accommodate procedures for the distribution or sale of trademarks when they are used as bankrupt property (boedel), especially in the valuation system, where up to now there is no legal basis or benchmark for assessing forms of intellectual property rights in the form of trademarks.

### **Transfer of the Nyonya Meneer Brand as Boedel Bankrupt through Underhand Sales by the Curator**

Trademarks can be categorized as property of a company or business entity whose substance is intangible. The Indonesian Civil Code states that all movable and immovable objects, existing or future, become collateral for obligations made by the debtor. Meanwhile, what is called an object is every item and right that is controlled by property rights.

Trademarks that have been registered have exclusive rights which are specifically given to IPR holders based on social, economic and useful reasons. 4 Social reasons are based on an idea that arises from creativity resulting from someone's thinking. The economic reason is because someone is motivated to find a work that originates from their idea, which then results in a profit for the inventor.

Legal facts based on the bankruptcy of the Nyonya Meneer company, which is the legendary herbal medicine factory, Jamu Stamp Portrait Nyonya Meneer, by the Semarang Commercial Court in 2017 after undergoing a period of Postponement of Debt Payment Obligations (PKPU) from 2015 due to being unable to pay its debts to 35 creditors with debts reaching 160 billion

In this case, it turns out that many assets in the form of trademarks were pledged to banks and had gone through PKPU. Not only that, the bankruptcy curator of PT Nyonya Meneer extended the Nyonya Meneer trademark to then be auctioned off to potential investors as repayment of debts owned by PT Nyonya Meneer.

The curator's authority as regulated in Article 69 of the Bankruptcy Law and PKPU is to manage and dispose of bankruptcy assets. This task can be carried out after the decision to declare bankruptcy, so that the debtor does not have the right to manage and dispose of his assets which are included in the bankruptcy assets. In carrying out management duties, the curator is also authorized to act as the debtor's attorney in extending trademarks whose protection period has expired as bankruptcy assets.

You need to know about selling goods through auctions using public auctions and private sales as described below:

#### 1. Public Auction

An auction is a buying and selling transaction carried out by means of written and/or verbal price offers which increase or decrease to reach the highest price. Auctions must be conducted in the presence of an Auction Officer, unless otherwise determined by Law or Government Regulation

#### 2. Sales below general

Private sale is the sale of land rights which are used as collateral and are encumbered with mortgage rights by the creditor himself directly to another person or party. Private sales can be carried out if it is carried out on the basis of an agreement between the creditor and the owner of the collateral.

It was further explained that sales by auction must be carried out with the approval of the supervising judge and an appraisal must be carried out. The Bankruptcy Law opens up the widest possible provisions for auctions, it does not have to go through the State Property and Auction Services Office (KPKNL), so that when an auction is held outside of the KPKNL it is legal to do so, as long as the auction procedures are regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Instructions for Auction Implementation has been implemented properly.

Article 185 paragraph (2) of the Bankruptcy and PKPU Law explains that: "In the event that public sales as intended in paragraph (1) are not achieved, private sales can be carried out with permission from the supervising judge."

From the article above, it can be said that the sale of private bankrupt boedel assets is legally carried out by the curator with the approval of the supervising judge, provided that several auctions have gone through but the assets have not been sold. When the first auction has been carried out but an agreement has not been reached, a second auction must be carried out at a reduced price, and every change in price must always be subject to appraisal, the purpose of which is for the security of the curator and on the basis of public interest. In the case of underhand, you can use negotiation methods, both free and limited tenders, advertisements in newspapers, and so on.

The sales stage of the PT Nyonya Meneer trademark is based on assessments carried out by public appraisers and market mechanisms. The initial valuation of the Nyonya Meneer brand from the appraiser was valued at Rp. 200 billion, and when it was handed over to the market the valuation of the Nyonya Meneer brand decreased from Rp. 200 billion to Rp. 10.25 billion is due to market mechanisms that influence the selling value of the Nyonya Meneer brand.

In the transfer of brands, there are 55 Nyonya Meneer trademarks that have expired, and there are 17 brands that are dead and are in the process of extending brand protection at the Director General of Intellectual Property Rights. Apart from that, the sale of the Nyonya Meneer brand was carried out through private sales where one of the curators did not approve of the sale.



1. There are two valuation mechanisms for the Nyonya Meneer brand, namely based on public appraisal and market mechanisms, this creates uncertainty in the bankruptcy process.
2. The 72 Nyonya Meneer trademarks that were transferred consisted of 55 trademarks that had expired and 17 trademarks that were dead but could still be extended protection.

When a curator sells private assets, they still have to use an appraisal. When one of the curators sells a bankrupt asset below the appraisal price, ideally it must be approved by other curators and also the supervising judge for clear reasons. One of the factors for curators to sell assets below the appraisal price is because these assets are difficult to sell and/or do not sell at auction or in private bidding. When one of the curators does not agree, it is returned to Article 73 paragraph (2) of the UUK-PKPU mentioned above so that the supervising judge has the right to make a decision.

If the supervising judge approves the sale of private assets at a price below the appraisal due to several considerations, then the sale is valid even without the approval of one of the other curators. This applies the other way around, if the supervising judge does not agree, then the matter is invalid.

The consequences that arise for the curator who sells assets below the appraisal price privately without the approval of the other curators (if in this case there are more than one curator) and the supervising judge so that this action is detrimental to the bankrupt entity, then the loss becomes the personal responsibility of the curator, and cannot be charged to the bankruptcy estate.

The development of the sale of the PT Nyonya Meneer brand is still subject to legal proceedings. It is known that representatives of the Nyonya Meneer family reported the company that won the auction to the Central Java Regional Police. The case has entered the investigation stage. In the asset sale and purchase process, the Semarang Commercial Court determined PT Aryasatya Bayanaka Nuswapada as the winner of the auction. Auctions are conducted hand-to-hand or based on the highest price.

However, after the auction process was underway, the curators involved and familiar with the auction process said that PT Asyasatya Bayanaka Nuswapada did not meet the requirements to take part in the process and win the auction. Apart from that, there is a discrepancy between the company's location and the address of PT Aryasatya Bayanaka Nuswapada listed in the Ministry of Law and Human Rights (Kemenkumham) documents. This is an alleged manipulation that is detrimental to the owner and legal heirs of Mrs. Meneer.

## CONCLUSION

The conclusion in this research is that the Nyonya Meneer brand is an intangible asset (intangible asset) owned by PT Nyonya Meneer which is in bankruptcy based on the Commercial Court Decision. As a legal consequence of PT Nyonya Meneer being in bankruptcy, the Curator carried out the settlement and management of the bankrupt property including the Nyonya Meneer brand by auctioning it through private sales with an appraisal value of Rp. 200 billion rupiah to Rp. 10.25 billion rupiah.

## REFERENCE

- Zainal Asikin, *Hukum Kepailitan dan Penundaan Pembayaran Utang di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2001), hal. 25.
- Andhika Mopeng, "Hak-Hak Kebendaan Yang Bersifat Jaminan Ditinjau Dari Aspek Hukum Perdata", *Jurnal Lex Crimen*, Vol. VI No. 10, 2017, hal. 168.
- Okias Supriyanti, "Analisis Yuridis Proses Pengalihan Hak Atas Merek Nyonya Meneer Sebagai Objek Harta Yang Diperoleh Melalui Pelelangan Harta Perusahaan Yang Dinyatakan Pailit", Under Graduates thesis, Universitas Negeri Semarang, 2023.

- Mohammad Khabib Zamzami, 72 Merek Dagang Nyonya Meneer Dijual Rp. 10 Miliar, terdapat dalam <https://www.suaramerdeka.com/news/baca/185825/72-merek-dagang-nyonya-meneerdijual-rp-10-miliar>, diakses pada Jum'at, 24 Juni 2024, pukul 20.25 WIB
- Peter Mahmud Marzuki, Penelitian Hukum, (Jakarta: Kencana Prenada Media Group, 2011), hal. 32.
- R. Subekti, dan R. Tjitrosudiro, 2004, Kitab Undang-Undang Hukum Perdata, Jakarta, Pradnya Paramitha, hal. 291 .
- Emmy Yuhassarie dkk, 2005, Hak Kekayaan Intelektual dan Perkembangannya, Pusat Pengkajian Hukum, Jakarta Selatan, hal. 5.
- Moch. Zulkarnain Al Mufti, 2016, “Tanggung Jawab Kurator dalam Penjualan Harta Pailit di Bawah Tangan”, Jurnal Lex Renaissance, Volume 1, Nomor 1, hal. 92-108.
- Imran Nating, 2004, Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit, Jakarta: PT. Raja Grafindo Persada, hal. 116-117.
- Kitab Undang-Undang Hukum Perdata, (KUHPerdata).
- Indonesia, Undang-Undang Republik Indonesia tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, UU No. 37 Tahun 2004.
- Indonesia, Undang-Undang Republik Indonesia tentang Merek dan Indikasi Geografis, UU No. 24 Tahun 2016.