

The Transition of Lauw Ping Nio's Portrait (Nyonya Meneer) from the Jamu Cap Nyonya Meneer brand to the Minyak Telon brand owned by PT Bhumi Empon Mustiko due to Bankruptcy of PT Perindustrian Nyonya Meneer

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Abstract

The use of a person's portrait in a Trademark can cause polemics, considering that both are in 2 (two) different dimensions, namely Copyright and Trademark Rights. This polemic is increasingly complicated when the Trademark must be transferred due to the bankruptcy of a company. This happened to PT Bumi Empon Mustiko, based on Decision No. 2/Pdt.Sus-HKI/Cipta/2020/PN Niaga Smg, PT Bumi Empon Mustiko was sued for the use of the portrait of Almh Lauw Ping Nio (Nyonya Meneer) on the Trademark that had been purchased as a bankruptcy estate from PT Njonja Meneer Industry. This article aims to analyze Intellectual Property Rights, particularly Trademark Rights, as a form of protection for individuals who create creative works. This research uses a doctrinal approach in the field of law. Data is collected through qualitative analysis. The results of this study conclude that the transfer is legally valid, based on the state of bankruptcy of PT Nyonya Meneer. This research concludes that the portrait of Lauw Ping Nio (Nyonya Meneer) has a significant economic value for PT Industri Nyonya Meneer because it attracts and builds consumer confidence in its products. The small business of Jamu Cap Potret Nyonya Meneer successfully reached the international market. However, PT Perindustrian Nyonya Meneer went bankrupt, causing all brands, including the 72 brands with the portrait, to be sold by auction and eventually owned by PT Aryasatya Bayanaka Nuswapada. The brand was later sold back to PT Bhumi Empon Mustiko after it was declared bankrupt by the Commercial Court.

Keywords: Intellectual Property Rights; Trademark; Potrait; Bankruptcy.

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INTRODUCTION

In the Indonesian legal system, particularly in the realm of commerce, an "emergency exit" has been established for situations where a debtor is unable to repay their debts to creditors, whether due to economic difficulties or necessity. This "emergency exit" takes the form of the Bankruptcy and Payment Delay Institution.

Bankruptcy and Postponement of Payment are regulated by Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU) (hereinafter abbreviated as UUK-PKPU) (Mantili & Dewi, 2021). These regulations are aimed at providing a swift, transparent, and effective mechanism for resolving debts between debtors and creditors. As a result, a specialized judicial body known as the Commercial Court was established under the jurisdiction of the General Court, tasked with handling debt-related cases (Harsono & Prananingtyas, 2019).

Article 1, paragraph (1) of UUK-PKPU explains that bankruptcy involves the comprehensive seizure of all assets belonging to the bankrupt individual. The management and oversight of these assets are carried out by a curator under the supervision of a presiding judge. This comprehensive seizure is intended to safeguard the interests of all parties involved. Its purpose is to prevent the embezzlement or unauthorized transfer of objects or assets that constitute bankruptcy property during the bankruptcy period.

Among the assets falling under the category of bankruptcy property (boedel) is a trademark. Trademarks are classified as Intellectual Property Rights (IPR) and are an integral part of Indonesia's intellectual property landscape. Alongside trademarks, other components of the intellectual property regime include copyrights, patents, circuit layout designs, geographical indications, trade secrets, and industrial designs (Rakhmawati, 2022).

Trademarks can be classified as assets of a company or business entity, with their essence being intangible. The Indonesian Civil Code stipulates that all current and future movable and immovable objects serve as collateral for the bond established by the debtor. Meanwhile, an "object," as referred to here, encompasses every item and right governed by property rights.

A trademark constitutes a property possessing economic value for its owner, despite its intangible nature. Within a company, intellectual property rights fall under the category of intangible movable assets. Trademarks, as intangible movable assets, receive legal protection once their owner or applicant registers them with the Directorate General of Intellectual Property Rights. Ownership of a trademark is denoted by a certificate of property rights. Following registration, the owner of intellectual property in the form of a trademark is granted exclusive and distinctive rights (Lerinsa, 2021).

The bestowal of these exclusive rights to holders of Intellectual Property Rights (IPR) is founded on social, economic, and practical reasons. Social reasons emanate from the notion that creativity, born from a person's thought process, leads to innovative ideas. Economic incentives arise as individuals are motivated to develop their ideas into works that yield benefits for the inventors. Lastly, practicality dictates that intellectual property, apart from providing financial gains to its owner, also benefits the broader community. Furthermore, it serves as a catalyst for the creation of inventions, innovations, and creative works that contribute to the advancement of the national economy.

When a trademark is utilized as part of a bankruptcy estate, several challenges confront the curator responsible for overseeing the bankruptcy proceedings (Tua, 2019). Currently, there are no established regulations governing the procedures for distributing or selling trademarks when they constitute bankruptcy assets (boedel). This lack of guidance is particularly evident in the valuation system. As of now, there exists no legal foundation or benchmark for appraising intellectual property rights in the form of trademarks (Syahbana, 2022).

One instance of a bankruptcy case unfolded within the renowned herbal medicine manufacturing company, Jamu Cap Potret Nyonya Meneer (referred to hereafter as Nyonya Meneer). In 2017, the Semarang Commercial Court declared Nyonya Meneer bankrupt after a period of Postponement of Debt Payment Obligations (PKPU) that commenced in 2015. The company's failure to settle its debts totaling 160 billion with 35 creditors led to this outcome. Within this case, irregularities marred the administration of the bankruptcy asset in the form of a trademark. The Nyonya Meneer company's trademark was sold for a mere 10.25 billion to PT Bumi Emphon through a covert sale and purchase agreement that lacked approval from one of the

curators. Notably, this trademark sale bypassed the auction process normally facilitated by the State Wealth Service Office and Semarang Auction (KPKNL).

Auction (KPKNL) Semarang, but rather personally by the curator and then carried out an underhand sale made by one of the curators to the buyer. The question arises whether this can be said to be valid? Considering that the sale could be detrimental to the bankruptcy estate because it was not possible to pay off all of Nyonya Meneer's debts to its creditors, especially since there had been objection notes from various parties given to the supervisory judge against the sale.

A communication breakdown among the curators emerged, resulting in the sale of Nyonya Meneer Company's trademark by one curator without the knowledge or consent of the others. Despite earlier interest from potential bidders willing to offer 22 billion or even 200 billion, these bids were withdrawn due to the expiration of the trademark's ownership certificate, which needed renewal before any transaction. At the time of the sale, the trademark's ownership certificate was undergoing renewal by the Directorate General of Intellectual Property Rights.

This situation raises another issue concerning the valuation of trademarks within a bankruptcy estate. How can the sale of 72 trademarks of PT Nyonya Meneer fetch only 10.25 billion? Establishing a legal framework for valuing intellectual property rights represented by trademarks is imperative.

Valuation is readily applicable to tangible assets that are easily assessable, such as land, cars, houses, and the like. However, the challenge lies in valuing intangible movable assets like trademarks. While existing theories can be adapted, the process is intricate, particularly due to the absence of standardized rules to govern it.

Managing tangible assets alone poses significant difficulties for curators, often requiring considerable time. The complexities are magnified when dealing with trademarks. In reality, trademarks are not only hard to sell but may even be deemed unsellable. This predicament continues to be a pressing concern within the context of bankruptcy in Indonesia, underscoring the necessity for a solid foundation for trademark valuation.

In Indonesia, intellectual property rights have been integrated into positive law as a result of the country's adherence to international conventions, including the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. These conventions categorize intellectual property into two main divisions: Industrial Property Rights and Copyright (Handoko, 2015). Industrial Property Rights encompass Patents, Trademarks, Industrial Designs, Geographical Indications, Trade Secrets, Plant Variety Protection, and Integrated Circuit Layout Designs. On the other hand, Copyright pertains to diverse creative works in the realm of art, such as photography and portrait works.

Within the realm of commerce, a trademark represents a distinct form of Intellectual Property Rights (IPR) that holds a crucial role in product or service differentiation. According to Suyud Margono, if a portrait forms a component of a registered mark, the application for mark registration may be rejected due to the portrait's specificity. This expert viewpoint pertains to the trademark protection framework in the United States, as outlined in the "Lanham Act 1946," where a trademark encompasses only a name, symbol, word, or a combination thereof. This delineates a sharp contrast with the Indonesian system, which permits marks to incorporate images, logos, in addition to names, words, or symbols. In Indonesia, businesses are mandated to register their trademarks to secure trademark rights for goods and/or services, safeguarding their creations. This necessity arises due to the prevalent issue of trademark infringement, especially concerning renowned and esteemed brands.

The debate regarding the protection of portraits within registered trademarks offers an intriguing subject for exploration, particularly in light of a legal dispute arising from the usage of the portrait of Lauw Ping Nio, also known as Nyonya Meneer, on the registered trademark "Nyonya Meneer" owned by PT Bumi Empon Mustiko (PT. BEM), conducted without the heirs' permission. The controversy arose when the plaintiff encountered Telon Oil products on the market bearing a brand that utilized the image of Nyonya Meneer without securing consent from the heirs. Consequently, the plaintiff also implicated the Food and Drug Supervisory Agency (BPOM) as Co-Defendant I, contending that the agency had granted distribution approval for the product without considering the requisite image usage permissions. Charles F. Saerang, one of the heirs, filed a lawsuit against PT BEM for tortious acts and violation of Article 12 of the 2014 Copyright Law. The

plaintiff's contention rests on the premise that employing the portrait on the trademark necessitates written consent from all heirs of Nyonya Meneer. This argument is founded on the distinction between portrait and trademark, each governed by distinct legal frameworks. In 2017, following the bankruptcy declaration of PT Industri Njonja Meneer/PT. Njonja Meneer, 72 of its trademarks became bankruptcy assets, subsequently passing to PT. BEM. Notably, this transfer solely affected the trademarks, leaving the portrait of Nyonya Meneer unaffected.

To date, no research has specifically addressed the protection of portraits incorporated into brands. Nevertheless, for reference, previous studies have explored related cases involving the confluence of copyright and trademarks in Indonesia, albeit with differing subjects of contention, notably logos. The initial study deduced that dual protection for copyright products used as marks is feasible, contingent upon the genuine interests underpinning the plaintiff's claim. If the aim encompasses safeguarding the creation from both moral and economic perspectives, copyright protection is warranted (Shauqi, 2020). Conversely, if the objective is to shield the product (goods or services) from counterfeiting, thereby upholding its reputation, brand protection is the preferred course of action (Dewi et al., 2020).

However, another research perspective posits that although logos are acknowledged as safeguarded creations, Article 65 of the Copyright Law 2014 stipulates that logos used as trademarks in the trade of goods/services cannot be registered as creations, rendering the logo an integral facet of the trademark (Lopulalan et al., 2021).

Despite both logos and portraits qualifying as copyrighted products, Article 1 Point (1) of Law No. 20 of 2016 on Trademarks and Geographical Indications underscores the permissibility of incorporating logo elements within a trademark, whereas portraits are not sanctioned. Law No. 20 of 2016 on Trademarks and Geographical Indications solely references images as a constituent element of a mark. Nonetheless, it does not elucidate whether this image pertains to a portrait or an illustration, as detailed in the elucidation of Article 40 Letter F of the Copyright Law 2014. The researcher's standpoint posits that a portrait, rather than a logo, is more suitable for consideration as a creation object in the context of copyright and trademark matters. This contention derives from the fact that logos affixed to brands are governed by well-defined provisions within the Copyright Law, in contrast to portraits which currently exhibit vague or unclear regulations.

Portrait copyright constitutes one among the protected rights stipulated within Law No. 28 of 2014 concerning Copyright, encompassing a diverse array of safeguarded works. Portraits, specifically photographic works featuring humans, are protected for a span of 50 years following their initial publication. As an intangible property right of significant value, the portrait carries both moral and economic rights attributed to the creator. Consequently, third parties intending to employ or exploit it for commercial purposes must obtain permission from the rights holder, unless the user is the creator.

Turning to the Nyonya Meneer Portrait case, PT Njonja Meneer has utilized the portrait of Nyonya Meneer as a brand since its inception in 1919. Subsequently, in 2017, the company was declared bankrupt. As a consequence, assets including the Nyonya Meneer brand, comprised of a combination of letters, colors, and photographs (poptret), were encompassed within the bankruptcy estate. These assets were subsequently transferred through an asset sale process in accordance with the stipulations of the Bankruptcy Law. PT Bhumi Empon Mustika (BEM) emerged as the purchaser, acquiring 75 brands owned by the insolvent PT Njonja Meneer. Later, PT Njonja Meneer raised objections upon discovering that PT Bhumi Empon Mustika (BEM) employed the portrait of Nyonya Meneer as a brand for its telon oil products.

RESEARCH METHOD

To address the research problem, a specific research method is necessary for data collection. This research is primarily a legal research categorized as a doctrinal research. It falls under the prescriptive research category, as it explores legal objectives, justice values, the validity of legal rules, legal concepts, and legal norms. The research relies on secondary data, which includes existing materials such as books, official documents, and other relevant sources. The sources or materials for legal research are generally classified into three categories, as explained by Soerjono



Soekanto and Sri Mamudji: (i) Primary Legal Materials, (ii) Secondary Legal Materials, and (iii) Non-Legal Materials (Soekanto & Mamudji, 2013).

In addressing the first problem formulation, the author will utilize literature techniques, drawing from books and online literary sources, to determine the status of Nyonya Meneer's portrait as bankruptcy property owned by PT Industri Nyonya Meneer. Additionally, literature studies will be employed to address the second problem formulation, aiming to ascertain whether PT Bhumi Empon Mustiko, as the owner of the Minyak Telon brand, can legally utilize the portrait of Lauw Ping Nio (Nyonya Meneer) in the Minyak Telon brand due to the bankruptcy of PT Industri Nyonya Meneer.

Literature study encompasses several processes, including systematically identifying relevant theories, locating appropriate literature, and analyzing documents containing information pertinent to the research topic. Data collection in a literature study involves the examination and review of secondary data (Suteki & Taufani, 2018). Subsequently, the gathered data will be qualitatively analyzed and presented in a well-structured manner, offering clear and reader-friendly descriptions of the research findings. Qualitative research analysis, in this context, refers to an analysis approach that does not rely on calculations.

RESULT AND DISCUSSION

Position of Nyonya Meneer's Portrait as Bankruptcy Estate of PT Nyonya Meneer

PT Perindustrian Nyonya Meneer or PT Nyonya Meneer is a company based in Semarang, Central Java, that specializes in producing traditional herbal medicine (jamu), particularly the Jamu Cap Potret Nyonya Meneer product. Starting as a small business in 1919, Jamu Cap Potret Nyonya Meneer achieved international recognition, reaching markets in Asia, Europe, and America. To meet the increasing demand for herbal products, Lauw Ping Nio (Nyonya Meneer) began attaching her own portrait to the packaging of Jamu Cap Potret Nyonya Meneer (Harahap, 2023).

Over time, PT Nyonya Meneer faced operational challenges and legal disputes. In 1984, the company, owned by Lauw Ping Nio, encountered a prolonged operational crisis, including a strike by workers due to issues related to holiday allowance payments. Eventually, Lauw Ping Nio's grandchild, Charles Saerang, took control of the company by purchasing the inheritances of Lauw Ping Nio's other grandchildren. This resolved the disputes arising from power struggles among Lauw Ping Nio's grandchildren, leading to gradual improvements in the company's condition.

However, PT Nyonya Meneer faced further legal issues. In 2015, PT Citra Sastra Grafika and PT Nata Meridian Investara filed a request for a Postponement of Debt Payment Obligations to the Commercial Court at the Semarang District Court, registered under case registration number No. 01/Pdt.Sus-PKPU/2015/PN.Niaga.Smg. PT Nyonya Meneer, represented by Charles Saerang as the President Director, submitted a peace proposal on March 5, 2015. The proposal was approved in a peace decision (homologation), which stipulated that debts amounting from over Rp5,000,000,000 (five billion rupiah) to Rp35,000,000,000 (thirty-five billion rupiah) would be paid in installments over five years, from July 2015 to June 2020. However, PT Nyonya Meneer failed to fulfill the installment payments as agreed in the peace proposal and homologation decision.

For this reason, since PT Industri Nyonya Meneer was unable to fulfill its obligations as stated in the peace agreement, the consequence, during the payment period from July 2015 until the filing of the current case in July 2017, is the cancellation of the ratified peace agreement. As a result, PT Industri Nyonya Meneer must be declared bankrupt based on the bankruptcy decision number 11/Pdt.Sus-Bankruptcy/2017/PN Niaga Smg jo. decision number 01/Pdt.Sus-PKPU/2015/PN. Niaga.Smg. To settle the bankruptcy estate, PT Industri Nyonya Meneer eventually sold the company's assets, including 72 registered trademarks owned by PT Industri Nyonya Meneer, through an auction. PT Aryasatya Bayanaka Nuswapada ("PT ABN") emerged as the winning bidder for the trademarks owned by PT Industri Nyonya Meneer.

Essentially, a bankruptcy verdict can be regarded as a "general confiscation" of the bankrupt debtor's property, encompassing all of the debtor's assets at the time the bankruptcy verdict is pronounced and any future bankruptcy assets that may arise as long as the debtor remains declared bankrupt (Ginting, 2019). This aligns with the provisions of Article 21 of Law Number 37



of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Law 37/2004"), which states the following: "Bankruptcy covers all assets of the Debtor at the time the bankruptcy declaration decision is pronounced as well as everything obtained during bankruptcy."

Furthermore, the phrase "all assets of the Debtor" refers to the concept of property rights over legally owned assets as stated in Article 570 of the Civil Code (Ginting, 2019). Article 570 of the Civil Code establishes that property rights entail the freedom to enjoy an item and the unrestricted ability to act upon it, as long as it complies with statutory regulations and does not infringe upon the rights of others. Property rights can be considered the most comprehensive rights, granting the holder the authority to exercise full control over their property and defend it against any infringement (Suwarno & Arofa, 2019).

In principle, Law 37/2004 does not provide detailed qualifications regarding the assets of bankrupt debtors that can be classified as bankruptcy assets (Ginting, 2019). According to Huizink, the concept of wealth in bankruptcy pertains to assets and should not be broadly understood as a combination of property and debt. However, in practice, bankruptcy assets are generally deemed to possess economic value and can be utilized as collateral in financial institutions (Ginting, 2019). Based on this understanding, bankruptcy assets can include: (Ginting, 2019) Securities, bonds, and shares; Warehouse receipts encumbered by collateral rights; Land, buildings, and residential properties; Liens financed by creditors or banks; Machinery that is an integral part of the land; Inventory goods; Manufactured goods; and Intellectual Property Rights that generate royalties, such as trademarks, patents, industrial designs, copyrights, plant variety rights, trade secrets, and others.

If we refer to the provisions of Article 22 of Law 37/2004, it emphasizes that there are assets owned by the debtor that are not considered as bankruptcy assets. These assets include: a) Objects, including animals, that are necessary for the debtor's work, as well as equipment and medical devices used for health, bedding, and other necessary items used by the debtor and their family, as well as food supplies for 30 days for the debtor and their family, which are present in that location; b) Any income obtained by the debtor through their employment, such as salary, wages, pensions, retainers, or allowances, to the extent determined by the Supervisory Judge; and c) Money received by the debtor to fulfill a legal support obligation.

Based on the descriptions above and in connection with the provisions of Article 22 of Law 37/2004, there are no exceptions for intellectual property rights to be considered as bankruptcy assets.

Furthermore, if we refer to the provisions issued by the International Accounting Standards Board No. 38 on Intangible Assets (IAS 38), Paragraph 9 regulates that intellectual property, including but not limited to patents, copyrights, and trademarks, can be considered as intangible assets. Paragraph 9 of IAS 38 states that "Entities frequently expend resources, or incur liabilities, on the acquisition, development, maintenance or enhancement of intangible resources such as scientific or technical knowledge, design and implementation of new processes or systems, licenses, intellectual property, market knowledge, and trademarks (including brand names and publishing titles). Common examples of items encompassed by these broad headings are computer software, patents, copyrights, motion picture films, customer lists, mortgage servicing rights, fishing licenses, import quotas, franchises, customer or supplier relationships, customer loyalty, market share, and marketing rights."

However, it should be noted that not all items mentioned in Paragraph 9 of IAS 38 meet the definition of intangible assets, as stated in Paragraph 10 of IAS 38. According to Paragraph 21 of IAS 38, intangible assets are recognized if two conditions are met: (i) it is probable that future economic benefits will be attributable to the asset for a specific entity, and (ii) the cost of the asset can be reliably measured. Paragraph 21 of IAS 38 states, "An intangible asset shall be recognized if, and only if: (a) it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and (b) the cost of the asset can be measured reliably."

Additionally, according to Paragraph 5 of the Attachment to the Regulation of the Minister of Finance of the Republic of Indonesia Number 90/PMK.05/2019 concerning Accrual-Based Government Accounting Standards Statement Number 14 on Accounting for Intangible Assets ("PMK 90/2019"), intangible assets are defined as non-financial assets that can be identified and

do not have a physical form. This includes intellectual property rights, which are owned to be used in producing goods or services or for other purposes.

Furthermore, Paragraph 6 to Paragraph 9 of PMK 90/2019 states that intangible assets are recognized if the following conditions are met: a) They can be identified; b) They are controlled, controlled, or owned by the entity; c) It is probable that future economic and social benefits or potential services will flow to or be enjoyed by the entity; and d) The acquisition cost or fair value can be reliably measured.

Furthermore, in Paragraph 11 of PMK 90/2019, it explains that intangible assets can be identified if (i) they can be separated, meaning that these assets can be clearly distinguished from other assets within an entity; or (ii) they arise from a binding agreement, such as contractual rights or other legal rights, regardless of whether these rights can be transferred or separated from the entity or from other rights and obligations.

Regarding the Nyonya Meneer Portrait, in essence, the concept of an image in a trademark can be interpreted as a painting (drawing), a technical drawing (mechanical drawing), whether produced by hand, machine, or electronic device. It can include natural landscapes, wood drawings, birds, leaves, fruits, buildings, and other objects that can be legally used as trademarks. The Potret Nyonya Meneer has become a distinctive and inherent feature in every product released by PT Nyonya Meneer. For example, this can be seen in the company's products, including but not limited to: a) "Jamu Jawa Nyonya Meneer" trademark, registered under registration number D00199400077; b) "Sari Juara Cap Potret Meneer" trademark, registered under registration number D00199701616; c) "Jamu Cap Nyonya Meneer" trademark, registered under registration number D00199702746; d) "Bedak Tjap Portret Nyonya Meneer" trademark, registered under registration number D00200500771; and e) "Minyak Telon Nyonya Meneer" trademark, registered under registration number R00200300281.

Therefore, it can be said that the portrait of Lauw Ping Nio (Nyonya Meneer) holds economic value as it serves as an attraction and instills confidence in the products for potential buyers of PT Nyonya Meneer. This is further supported by the presence of Lauw Ping Nio's portrait in herbal products, which propelled a small business named Jamu Cap Potret Nyonya Meneer to experience its peak by reaching international markets across Asia, Europe, and America, eventually transforming into PT Nyonya Meneer. Based on these descriptions, it is appropriate to consider all the brands owned by PT Nyonya Meneer that feature Lauw Ping Nio's portrait as part of the bankruptcy assets of the company. These assets should be included in the bankruptcy estate list and sold through auction. In August 2017, the auction was won by PT Aryasatya Bayanaka Nuswapada.

The use of Lauw Ping Nio's portrait (Nyonya Meneer) in the Minyak Telon Trademark owned by PT Bhumi Empon Mustiko is due to the bankruptcy of PT Nyonya Meneer

As previously described, the concept of a drawing in a trademark can be understood as a painting (drawing) or a technical drawing (mechanical drawing), whether created by hand, machine, or electronic device (Harwanto, 2022). Such drawings can depict various objects such as nature, wood, birds, leaves, fruits, buildings, and more, as long as they fall within the scope of objects that can be legally used as trademarks. Furthermore, according to the provisions in Article 1, Number 1 of Law 28/2014, copyright is defined as the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form, subject to the restrictions set forth in legislation.

According to the expert viewpoint of Robert M. Sherwood, the recognition and safeguarding of creativity and intellectual property held by individuals should adhere to a set of fundamental principles (Zoelva, 2013). These principles encompass various aspects:

Firstly, the Reward Theory dictates that individuals who successfully conceive or generate intellectual works ought to be duly acknowledged and safeguarded as a form of recompense for their innovative endeavors. Secondly, the Recovery Theory emphasizes that inventors or creators who have invested their time, financial resources, and energy into producing their intellectual creations should be afforded the opportunity to recuperate their investments. Thirdly, the Incentive Theory underscores the necessity for inventors and creators to be provided with incentives, thus fostering the encouragement of valuable innovations and research. Furthermore,

the Risk Theory posits that intellectual property inherently entails risks, given that others might potentially uncover or enhance the method. Consequently, it is reasonable to extend legal protection to endeavors or undertakings involving such inherent risks. Lastly, the Economic Growth Stimulus Theory underscores how the protection of intellectual property rights (IPR) serves as a potent tool for stimulating economic advancement, aligning with the overarching objective of establishing an efficacious IPR protection framework.

Protection of copyright is primarily an automatic right that arises upon the creation of the work by the creator. This principle is implicitly stated in Article 64, paragraph (2) of Law 28/2014, which states that registration of creations and related rights is not a requirement for obtaining copyright and related rights. However, although copyright registration does not establish copyright protection per se, registering rights can facilitate the process of proving one's status as the rightful holder of the creation. Copyright, in essence, is a legal framework designed to protect creators and enable them to derive economic benefits from their copyrighted works.

Additionally, Article 12 of Law 28/2014 states that any person is prohibited from engaging in commercial use, duplication, announcement, distribution, and/or communication of portraits created for commercial billboards or advertising without the written consent of the person photographed or their heirs. Commercial use of a portrait, including its reproduction, announcement, distribution, and/or communication as mentioned in paragraph (1), that features two or more individuals, requires consent from the persons depicted or their heirs.

These provisions served as the basis for Charles Saerang, the legal heir of Lauw Ping Nio (Nyonya Meneer), to file a lawsuit against PT Bumi Empon Mustiko regarding the use of Lauw Ping Nio's portrait (Nyonya Meneer) in the Minyak Telon trademark owned by PT Bumi Empon Mustiko. Charles Saerang argued that in March 2020, he became aware of the use of his grandfather's portrait, Lauw Ping Nio (Nyonya Meneer), in the "Minyak Telon" trademark owned by PT Bumi Empon Mustiko. Charles Saerang contended that the use of Lauw Ping Nio's portrait (Nyonya Meneer) required written approval from him and all heirs of Lauw Ping Nio.

Moreover, the portrait of Lauw Ping Nio (Nyonya Meneer) has been registered as copyright with the following details:

1. Title of Creation : Art Creation of Logo/Image of "Nyonya Meneer"
Date of Acceptance : 04/07/1992
Registration Date : 25/08/1992
Registration Number : C00199201278
Copyright Holder : PT Nyonya Meneer
Creator : PT Nyonya Meneer
2. Title of Creation : LOGO of "NYONYA MENEER"
Date of Acceptance : 13/02/1993
Registration Date : 13/04/1993
Registration Number : C00199300291
Copyright Holder : PT Nyonya Meneer
Creator : PT Nyonya Meneer
3. Title of Creation : "NYONYA MENEER"
Date of Acceptance : 27/01/2003
Registration Date : 12/07/2004
Registration Number : C00200300073
Copyright Holder : PT Nyonya Meneer
Creator : PT Nyonya Meneer

It is important to note that in 2017, PT Industri Nyonya Meneer, the original owner of the "Nyonya Meneer" trademark featuring the portrait of Lauw Ping Nio (Nyonya Meneer), was declared bankrupt based on the decision of the Commercial Court at the Semarang District Court, with the case number Bankruptcy Decision Number 11/Pdt.Sus-Bankruptcy/2017/PN Niaga Smg Jo. Number 01/Pdt.Sus-PKPU/2015/PN. Niaga.Smg. Following the bankruptcy declaration, the curator team of PT Nyonya Meneer (In Bankruptcy) administered the bankruptcy assets, including



conducting an auction of assets owned by PT Industri Nyonya Meneer, which encompassed 72 registered brands.

During the asset sale, PT ABN emerged as the winning bidder in the auction for the 72 registered trademarks owned by PT Nyonya Meneer. This was executed through Deed No. 804, executed before Notary LEKSAMANA WISNU HARTONO, S.KOM., S.H., M.KN., dated April 15, 2019. Subsequently, PT Aryasatya Bayanaka Nuswapada resold the seventy-two Nyonya Meneer trademarks it had acquired to PT Bumi Emphon Mustiko, based on the Deed of Agreement on Sale and Purchase and Release of Intangible Assets in the form of Trademarks of PT Industri Njonja Meneer (in bankruptcy), made before Notary LEKSAMANA WISNU HARTONO, S.KOM., S.H., M.KN., dated May 13, 2019, No. 1118.

From this perspective, a trademark can be defined as a sign that can be visually represented through images, logos, names, words, letters, numbers, color arrangements, in two or three dimensions, sound, holograms, or a combination of two or more of these elements. Trademarks serve to distinguish goods and/or services produced by individuals or legal entities engaged in trade activities involving goods and/or services. Among the seventy-two trademarks owned by PT Nyonya Meneer (in Bankruptcy), the portrait of Lauw Ping Nio is included and registered as an inseparable unit.

If we refer to the provisions in Article 41 of Law 20/2016, it states that trademark rights can be transferred or switched due to various reasons, including: Inheritance; Testament; Waqf; Grant (Hibah); Agreement; and Other reasons justified by laws and regulations.

Moreover, when we look at Article 24 of Law 37/2004, it states that upon the declaration of bankruptcy, the debtor loses their right to control and manage their assets that are included in the bankruptcy estate. This aligns with paragraph 7 of the general explanation of Law 37/2004, which essentially states that the declaration of bankruptcy changes the legal status of a person, rendering them incapable of performing legal actions, controlling, and managing their assets from the moment the bankruptcy declaration decision is announced. Additionally, bankruptcy also restricts the party in bankruptcy from undertaking legal actions that bind the bankruptcy estate (Ginting, 2019).

CONCLUSION

Based on the aforementioned descriptions, it can be concluded that the Portrait of Lauw Ping Nio (Nyonya Meneer) holds economic value as it serves as an attraction and instills confidence in the product for potential buyers of PT Nyonya Meneer. This is further supported by the presence of Lauw Ping Nio's portrait in herbal products (jamu), which propelled a small business named Jamu Cap Potret Nyonya Meneer to experience its peak by reaching international markets across Asia, Europe, and America, eventually transforming into PT Industri Nyonya Meneer. Therefore, it can be considered that all brands owned by PT Industri Nyonya Meneer that feature Lauw Ping Nio's portrait are part of the company's bankruptcy assets. These assets should be included in the bankruptcy estate list and sold through auction. In August 2017, the auction was won by PT Aryasatya Bayanaka Nuswapada.

Furthermore, the use of Lauw Ping Nio's portrait in the Minyak Telon Trademark owned by PT Bumi Emphon Mustiko is based on the bankruptcy of PT Industri Nyonya Meneer, as determined by the Commercial Court at the Semarang District Court in Bankruptcy Decision Number 11/Pdt.Sus-Bankruptcy/2017/PN Niaga Smg Jo. Number 01/Pdt.Sus-PKPU/2015/PN. Niaga.Smg. Following the declaration of bankruptcy, the curator team of PT Industri Nyonya Meneer (In Bankruptcy) administered the bankruptcy assets by conducting auctions, including the assets comprising 72 registered brands owned by PT Industri Nyonya Meneer. PT ABN won the auction for the 72 registered trademarks of PT Nyonya Meneer, as evidenced by Deed No. 804 executed before Notary LEKSAMANA WISNU HARTONO, S.KOM., S.H., M.KN., dated April 15, 2019. Subsequently, PT Aryasatya Bayanaka Nuswapada resold the 72 Nyonya Meneer trademarks it had purchased to PT Bumi Emphon Mustiko, as documented in the Deed of Agreement on Sale and Purchase and Release of Intangible Assets in the form of Trademarks of PT Industri Njonja Meneer (in bankruptcy), executed before Notary LEKSAMANA WISNU HARTONO, S.KOM., S.H., M.KN., dated May 13, 2019, No. 1118.

The objective of this study is to offer guidance to the government, particularly in the sphere of data collection administration for Copyright and Trademark matters. This guidance aims to establish legal certainty for both creators and proprietors of interests associated with Copyright and Trademark. The author proposes that the Ministry of Law and Human Rights of the Republic of Indonesia, specifically the Directorate General of Intellectual Property, create a dedicated institution tasked with regulating and overseeing the transfer of copyright and trademark rights. Furthermore, this institution should be responsible for formulating laws and regulations that ensure the requisite legal assurance throughout the rights transfer process.

Additionally, it is recommended that the Ministry of Law and Human Rights institute a robust administrative system for collecting data pertaining to the transfer of copyright and trademark rights. This system should be designed to be easily accessible to the public while adhering to necessary prerequisites. By implementing these measures, the government can contribute to fostering an environment of clarity and security within the realm of transferring these rights, benefiting both the general populace and those directly involved in the creative and ownership aspects of Copyright and Trademark matters.

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