INTANGIBLE ASSETS AS BANKRUPTCY ESTATES
Valuing and Transferring Intellectual Property Rights within a Bankruptcy Context

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Article History
Received: 19 January 2026
Accepted: 19 July 2026

Keywords:
Intangible Assets;
Intellectual Property;
Bankruptcy Estate;
Valuation;
Transfer of ownership;

ABSTRACT
Through normative-comparative analysis of other jurisdictions, in particular US and Chinese laws, this study reveals no clear IP valuation rules in the Indonesian bankruptcy framework, leading to receiver discretion and undervaluation of intangible assets in insolvency. Observations of this study also find a significant challenge in the transfer mechanism for IP rights in insolvency (e.g. through sale or license) and the attendant legal restrictions (e.g. anti-assignment clauses).

INTRODUCTION

The contemporary economy is defined by a growing dependence on intangible assets. By the turn of the millennium, several converging trends had made intellectual property and other intangible assets the primary drivers of value in the industrial sector. These trends were: intensified market competition, rapid technological advancement, a greater dependence on legal IP protections, more vigorous enforcement of those rights, and stricter liability standards for infringement[1]. In the modern economy, a company's intangible assets are often worth two to three times more than its physical assets. The U.S. alone invests a staggering $1 trillion or more annually into intangible assets, reflecting an economy where a company's non-physical assets can be worth multiples of its physical ones[2]. Intellectual property (IP) frequently represents a firm's most critical asset. Consequently, in bankruptcy proceedings, the fate of a company's IP portfolio shifts from a minor legal matter to a central concern that dictates results for all stakeholders. This integration presents a complex juncture of two legal domains: bankruptcy law, which prioritizes structured liquidation or reorganization, and intellectual property law, which exists to foster creativity. Managing this requires a delicate equilibrium to maintain asset value, uphold legal protections, and ensure a just distribution.

A growing body of literature has examined the uneasy intersection of IP and insolvency. Foundational studies from the United States have dissected how Section 365(n) of the Bankruptcy Code protects licensees of intellectual property when a licensor enters bankruptcy, highlighting the tension between the debtor's power to reject executory

[1] Peter S. Menell, "Bankruptcy Treatment Of Intellectual Property Assets: An Economic Analysis", *Berkeley Technology Law Journal, Vol. 22 (2007)*, p. 735

[2] The Role of Intangibles in Bankruptcy. https://www.abi.org/abi-journal/the-role-of-intangibles-in-bankruptcy, accessed 14 Nov 2025.

contracts and the licensee's need for continuity[3]. Comparative legal scholars have contrasted these protections with the more fragmented approaches in civil law jurisdictions, where the treatment of IP licenses often depends on whether the right is classified as a property right or a contractual obligation. Within the Southeast Asian context, research has acknowledged that intangible assets are generally considered part of the bankruptcy estate, but most analyses have concentrated on fully registered, mature IP rights such as patents and trademarks, treating their valuation as a technical accounting problem. Scholars have also debated whether a creator's moral rights can ever be separated from economic rights in an insolvency, and how that separation affects market value. However, the specific intersection of *in-progress* intellectual property and Indonesian bankruptcy law remains significantly underexplored. Little research addresses how the automatic transfer of management rights to a trustee under the Indonesian Bankruptcy Law conflicts with the creator's indispensable ongoing involvement in developmental IP. Moreover, existing studies do not offer a coherent legal framework for determining whether such unfinished assets should be classified as present assets or excluded as "future assets," nor do they reconcile the foundational IP principle of creator-centric ownership with the bankruptcy objective of maximizing the estate for creditors. This gap leaves legal practitioners and courts without clear guidance when a debtor's most valuable asset is an invention, software, or creative work still under development.

To fill this gap, this study adopts a normative legal research methodology, focusing on the systematic analysis of statutory provisions, legal doctrines, and court decisions. The primary sources examined will include the Indonesian Bankruptcy Law (Law No. 37 of 2004), the Indonesian Civil Code, and the relevant IP laws, interpreted through the lens of the two foundational IP doctrines of creator ownership and originality. A comparative legal analysis will be used as a supplementary approach, drawing on the treatment of developmental IP and executory contracts in jurisdictions with more developed frameworks, such as the United States Bankruptcy Code. By juxtaposing Indonesia's general asset provisions with these comparative models, the study will identify inconsistencies in the current Indonesian legal framework and propose a harmonized interpretation that protects both the intrinsic nature of in-progress creative work and the legitimate expectations of creditors. This methodology is designed to provide a clear, actionable answer to the central question left unanswered by the literature: who holds the rights to, and how should the law value, in-progress intellectual property once a debtor enters bankruptcy in Indonesia?

In Indonesia, intangible assets are not explicitly mentioned as part of the bankruptcy estate. Article 21 of Law No.37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, hereinafter referred to as the Indonesian Bankruptcy Law, states that the bankruptcy shall include the total wealth or assets of the Bankrupt Debtor at the time of the bankruptcy declaration, together with that which he acquires during the bankruptcy. However, Article 499 of the Indonesian Civil Code formulates that the law interprets as assets all goods and rights which can be the subject of property, and at the same Code on Article 503, the Law distinguished assets into tangible and intangible. Furthermore, intangible assets are part of bankruptcy estates as referred to in Article 21 of the Indonesian Bankruptcy Law.

The inclusion of intellectual property rights (IPR) in a bankruptcy estate raises complex questions about their valuation and liquidation. A primary challenge is that an IPR's value is not fixed but is significantly affected by the debtor's status as its owner, as market perception differs for owner-held versus third-party-controlled IP. Additionally, standard liquidation

[3] M P. Ram Mohan and Aditya Gupta, "Treatment of Intellectual Property License in Insolvency: Analysing Indian law in comparison with the U.S. and U K", *IIMA Working Paper, August 2021,* p. 11.

Jurnal Hukum dan Peradilan Vol. 15, no. 2 (2026), pp. 261-288
ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

methods, such as public auction, are often ill-suited for assets like trade secrets, since the public disclosure required can destroy the confidentiality, and thus the core value, of the asset. Because of their volatile nature, intangible assets are highly vulnerable to value loss during bankruptcy proceedings[4]. The valuation of intellectual property is a multifaceted challenge that varies by asset type. It is an interpretive exercise that evaluates the narrative of an innovation, brand, or trade secret, rather than a purely numerical one. Consequently, establishing an IP's worth in a bankruptcy estate demands a holistic view of its legal protections, commercial potential, and strategic utility[5].

The status of in-progress intellectual property, such as unfinished inventions or creative works, presents a unique legal dilemma in bankruptcy. Determining whether such assets fall under the legal definition of "future assets" is contentious. A central conflict arises because the Indonesian Bankruptcy Law mandates that control of the estate's assets transfers to a trustee or receiver, stripping the debtor of management rights. This is particularly problematic for developmental IP, which relies on the debtor's ongoing involvement and expertise. Two foundational doctrines govern intellectual property rights. The first establishes that initial ownership rests with the creator, with rights arising automatically upon the work's fixation, unless contractually assigned to another party. The second doctrine centres on originality and authorial intent, which guide the allocation of rights. Judicial decisions in this area often hinge on proofs of independent creation and correct attribution. Together, these principles form the legal basis for the enforcement and transfer of IP[6]. The bankruptcy framework establishes who holds rights over intellectual property rights in the bankruptcy proceedings, and whether the ownership of the IP is automatically transferred into a trustee.

DISCUSSION

IP Valuation within a Bankruptcy Context

In bankruptcy proceedings, intellectual property (IP) often represents a significant, though complex, source of value. Valuing these assets requires navigating intricate legal and market conditions. The primary types of IP within a bankruptcy estate include[7]:

1. **Patents:** These grant exclusive rights to an invention. Their valuation is highly uncertain, as their worth can range from immense to negligible based on factors like market adoption and remaining patent term.
2. **Trademarks:** As symbols of brand identity and consumer goodwill, a trademark's value is directly tied to the company's reputation. In bankruptcy, its worth depends on whether other companies see value in acquiring the brand.
3. **Copyrights:** Protecting creative works, the value of a copyright in bankruptcy is determined by the work's lasting popularity and its potential to generate future revenue.
4. **Trade Secrets:** These confidential business assets derive value from providing a competitive edge. Appraising them is difficult, as their worth is contingent on the ability to preserve their secrecy after the bankruptcy.

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[4] The Role of Intangibles in Bankruptcy. … accessed 14 Nov 2025.

[5] Bankruptcy estate: Valuing Intellectual Property in Bankruptcy Estate Cases. https://fastercapital.com/content/Bankruptcy-estate--Valuing-Intellectual-Property-in-Bankruptcy-Estate-Cases.html accessed 14 Nov 2025.

[6] FactLineup Editorial Team, "Understanding the Principles of Ownership of Intellectual Property Rights", *factlineup.com* (17 Apr 2024). https://factlineup.com/ownership-of-intellectual-property-rights/ accessed 14 Nov 2025.

[7] FasterCapital. (n.d.). Bankruptcy estate: Valuing intellectual property in bankruptcy estate cases. *Faster Capital* (07 Apr 2025), https://fastercapital.com/content/Bankruptcy-estate--Valuing-Intellectual-Property-in-Bankruptcy-Estate-Cases.html accessed 15 Nov 2025.

5. **Industrial Designs:** Protecting the aesthetic aspect of a product, their value is assessed based on current consumer appeal and the design's stage in the market lifecycle.

Ultimately, IP valuation in bankruptcy is not a simple calculation. It is a strategic interpretation of an asset's legal standing, market potential, future relevance, and in certain contexts, an asset's cost or market price can serve as a reliable proxy for its value[8]. Their valuation is subjective and difficult to calculate[9]. The fundamental value of an intellectual property (IP) asset is rooted in its capacity to provide market exclusivity by excluding competitors. The legal framework grants the right to exclude, which in turn creates economic value by enabling control over the asset's application. A quantifiable valuation for an IP asset is contingent upon its ability to: (1) generate identifiable future economic benefits for its owner, and (2) create synergies that enhance the value of related assets in its portfolio[10].

The appraisal of intellectual property (IP) during bankruptcy proceedings is a multifaceted problem, combining legal, financial, and strategic difficulties. The non-physical and unique character of IP, along with its sensitivity to market forces, makes valuation particularly challenging. The primary obstacles are:

1. Legal Vulnerabilities: IP rights are not absolute; their value is contingent on legal enforceability, which can be weakened by litigation[11].
2. Economic Sensitivity: An asset's market value is unstable and susceptible to economic downturns and changes in consumer demand[12].
3. Uncertain Revenue Streams: Forecasting future income for unproven IP is highly speculative[13].
4. Short Lifecycles: The utility of technology-based IP can be fleeting due to rapid innovation[14].
5. Ongoing Financial Burdens: Maintenance costs, such as patent renewal fees, reduce the asset's net value[15].
6. Networked Value: IP often derives its value from complementary assets, meaning its worth is not isolated[16].

There are several factors influencing IP Valuation such as premise of value, standard of value, nature, scope and strength/validity of the underlying IP asset. The valuation premise establishes the hypothetical conditions under which an asset's future utility is modeled.

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[8] Tim Smith, "Asset Valuation Explained: Methods, Examples, and Key Insights", *Investopedia* (27 Sept 2025), https://www.investopedia.com/terms/a/assetvaluation.asp, accessed 15 Nov 2025.

[9] Adin Lykken, "Asset Valuation: The process of determining the value of an asset such as stocks, bonds, buildings, machinery, land, etc.", *Wall Street Oasis* (25 Nov 2024), https://www.wallstreetoasis.com/resources/skills/finance/asset-valuation, accessed 15 Nov 2025.

[10] WIPO, "Module 11: Valuation of IP Assets", IP Panorama, https:// www.wipo.int/en/web/business/ip-panorama, accessed 15 Nov 2025.

[11] Mark A. Lemley and Carl Shapiro, "Probabilistic Patents", *Journal of Economic Perspectives*, vol. 19, no. 2 (2005), p.80.

[12] Kevin Lane Keller, "Conceptualizing, Measuring, and Managing Customer-Based Brand Equity", *Journal of Marketing*, vol. 57, no. 1 (1993), p.5.

[13] Damodaran, Aswath. "Valuing Young, Start-Up and Growth Companies: Estimation Issues and Valuation Challenges." *Econometrics: Econometric & Statistical Methods - General eJournal* (2009), p.6, https://pages.stern.nyu.edu/~adamodar/pdfiles/papers/younggrowth.pdf accessed 15 Nov 2025

[14] Joel Westa & Michael Mace, "Browsing as the killer app: Explaining the rapid success of Apple's iPhone", *Telecommunications Policy*, vol. 34 (2010), p.275.

[15] James Bessen, "The value of U.S. patents by owner and patent characteristics", *Research Policy*, vol. 37 (2008), p.934.

[16] International Valuation Standards Council, *International Valuation Standards (IVS)*, p. 30, https://viewpoint.pwc.com/dt/gx/en/ivsc/international_valuat/assets/IVS-effective-31-Jan-2022.pdf, accessed 15 Nov 2025.

Jurnal Hukum dan Peradilan Vol. 15, no. 2 (2026), pp. 261-288
ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

Appraisers must determine if the asset will be valued in its existing state (value in continued use), for a different specific application, or based on its highest and best use to maximize returns[17]. The selection of an appropriate premise is especially critical in insolvency contexts, as the difference between a going-concern value (orderly disposition) and a liquidation value (distressed disposition) can profoundly affect the assessed worth[18]. An asset's appraised worth is contingent upon the specific premise of value. This premise considers whether the asset is valued as part of an operational going concern, a going concern where it is redundant, a forced liquidation, or an orderly liquidation. Each of these four contexts will yield a materially different valuation.

There are different standards of values from varying points such as fair market value from the stand point of the financial investor; acquisition value for the strategic buyer; fair value for the auditor; market value for the competitor; liquidation value for the banker; and the current value for the owner[19]. However, fair market value and fair value are two commonly used standard of values. The fair market value represents the estimated price of an asset under a premise of exchange, where both the buyer and seller are acting rationally, with access to relevant information, and without compulsion. The fair value measurement is the preferred method for post-transaction purchase price allocation. Operating under a "value in use" premise, it reflects the price that would be received for an asset in an orderly transaction between market participants at the measurement date. A fundamental distinction exists between fair market value, which is grounded in a value-in-exchange premise, and fair value, which is generally based on a value-in-use premise. For standard intellectual property valuations, the objective is most frequently to establish a fair market value[20].

Nature, scope and strength/validity of the underlying IP asset are also important factor in determining the IP value. Each type of intellectual property offers distinct strategic value. Trademarks monetize brand equity through extensions and franchising. Patents secure a competitive edge in new tech markets, where they are vital before a technology becomes mainstream. Copyrights create exclusive rights to derivatives, allowing a single core asset—like a popular book series—to generate significant income from adaptations in film, games, and merchandise[21]. The valuation of intellectual assets is complicated by their inherent uniqueness and firm-specific configuration. To extract maximum value, it is often necessary to aggregate these assets into logical, synergistic bundles. Illustratively, a trademark can be bundled with a corresponding domain name and logo to form a unified brand identity asset. In a technological context, a patent may be combined with proprietary know-how and essential trade secrets to create a comprehensive and defensible technology portfolio[22].

The generally accepted triumvirate of valuation approaches—cost, market, and income—retains its full applicability for intellectual property situated within bankruptcy proceedings. The selection of the most appropriate method is guided by the IP's characteristics: the Cost Approach is particularly relevant for contributory assets; the Market

[17] Paul Flignor and David Orozco, "Intangible Asset & Intellectual Property Valuation: A Multidisciplinary Perspective", *Creative Commons Attribution, Non-Commercial, UK.*p.2.

[18] WIPO, "Module 11: Valuation of IP Assets", …, accessed 15 Nov 2025.

[19] APEC Intellectual Expert Groups, "Intellectual Property (IP) Valuation Manual: A Preliminary Guide", *APEC Secretariat* (2018), p.15

[20] WIPO, "Module 11: Valuation of IP Assets", …, accessed 15 Nov 2025.

[21] Paul Flignor and David Orozco, *Intangible Asset & Intellectual Property Valuation…,*pp.3-4.

[22] Weston Anson, "Valuing IP Assets in Bankruptcy", *IPL Newsletter*, vol. 21, no. 2 (Winter 2003), p. 8.

Approach for assets with licensing potential; and the Income Approach for assets that demonstrably contribute to an operating income stream[23].

The cost method of IP valuation determines value by aggregating the historical expenditures invested in the asset's development. This valuation approach equates an IP asset's value with the cumulative costs of its creation[24]. The cost method of valuation is frequently applied to intellectual property such as proprietary trade secrets and copyrights for software used internally. This is because assets like procedure manuals, technical documentation, and confidential customer files often lack comparable market license agreements or clear, isolated revenue streams, making income or market-based approaches impractical[25].

The market approach derives a brand's valuation by benchmarking it against comparable brands involved in recent acquisitions or stock market transactions. This methodology first establishes the total enterprise value using financial performance multiples. The brand's value is then deduced residually by deducting the assessed value of all other tangible and intangible assets from this total. A significant limitation of this approach is the practical difficulty in distinguishing the brand's specific contribution from that of other intangibles, such as an established distribution network. Despite this, it remains a valuable source of credible market-based guidelines for brand valuation[26].

The income approach, frequently called the discounted cash flow (DCF) method, values intellectual property by forecasting and calculating the present value of the future earnings it is expected to generate. Executing an income approach valuation necessitates an in-depth analysis of several components. This includes the technology development plan (encompassing costs and timelines), the technological risks of commercialization, and broader market/commercial risks. Furthermore, the valuer must determine a suitable discount rate that accounts for the cost of capital and probability of success, as well as the IP's remaining useful life. This economic life is not always synonymous with its legal term, as it can be prolonged by complementary assets like trade secrets or shortened by industry disruption[27].

Different jurisdictions apply different approaches when it comes to valuation of intellectual property rights in bankruptcy process. In China, the process is governed by a hierarchy of legal sources, from national laws to professional standards. The Enterprise Bankruptcy Law (2006) (企业破产法 - Qǐyè Pòchǎn Fǎ), hereinafter referred as the EBL 2006, as the foundational law does not detail valuation methodologies, but it establishes the critical principles. Article 25 of EBL 2006 mandates the bankruptcy administrator to take over and manage the debtor's property, which includes all assets, explicitly intellectual property. Furthermore, articles 111 and 112 of EBL 2006 require the administrator to prepare a draft property distribution plan and to realize the value of the bankrupt estate promptly, either through auction, tender, or sale. This is the primary driver for needing a formal valuation. The EBL 2006 also rules valuation on reorganization in Chapter 8 which

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[23] Robert Reilly, "Intellectual Property Valuation for Bankruptcy Purposes", *QuickRead* (18 March 205), https://quickreadbuzz.com/2015/03/18/intellectual-property-valuation-for-bankruptcy-purposes/, accessed 15 Nov 2025.

[24] APEC Intellectual Expert Groups, "Intellectual Property (IP) Valuation Manual: A Preliminary Guide", …, p.17

[25] Robert Reilly, "Intellectual Property Valuation for Bankruptcy Purposes", …, accessed 15 Nov 2025

[26] Dan Lynn, "Brand-Name Valuation in Distressed and Bankrupt Companies,", *Commercial Lending Review* Vol.10, no. 3 (Summer 1995), p.8.

[27] WIPO, *Valuation Basics for Technology Transfer Professionals*. World Intellectual Property Organization (WIPO) (2024), p. 27

ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

states that if the company is undergoing reorganization instead of liquidation, the value of the IP is crucial for formulating the reorganization plan, attracting investors, or converting debt into equity. China also enforces The Asset Appraisal Law in 2016 providing the general framework for all asset valuation activities in China, including those in bankruptcy[28]. It requires that asset appraisals be conducted by licensed asset appraisal institutions and certified appraisers, and it establishes the legal liability of appraisers and the fundamental principles of independence, objectivity, and fairness. The most specific and practical guidance as the key professional valuation standards comes from the professional standards issued by the China Appraisal Society (CAS, 中国资产评估协会), which are authorized by the Ministry of Finance. Guidelines for Intellectual Property Appraisal (Zhong Ping Xie [2023] No. 31) is the core professional standard outlining the three fundamental approaches to IP valuation, which are universally applied, including in bankruptcy[29]:

1. Income Approach (收益法): The Income Approach is highlighted in the guidelines as the primary method when the IP is expected to generate a measurable and separable stream of future income and when the risks associated with that income can be reasonably estimated. It is the most commonly used approach for valuation related to transactions, financing, and investment analysis.
2. Market Approach (市场法): The guidelines emphasize that the Market Approach can provide a direct and objective indication of value, but only if reliable and sufficient comparable market data is available. The lack of an active, transparent market and the unique nature of many IP assets are the primary limitations of this method in practice.
3. Cost Approach (成本法): The guidelines stipulate that the Cost Approach is most appropriate when the expected future benefits from the IP are difficult to quantify. the IP is still in the early development stage with uncertain commercial prospects, and the purpose is for asset accounting, contribution to a joint venture, or litigation where cost is a relevant factor.

Another standard used in China to valuate Intellectual Property is Code of Asset Appraisal—Basis of Appraisal (Zhong Ping Xie [2017] No. 230) which is critical for defining the Premise of Value. According to the Code of Asset Appraisal—Basis of Appraisal (Zhong Ping Xie [2017] No. 230), the Premise of Value (评估假设) is a fundamental concept that establishes the set of factual or hypothetical circumstances under which an appraisal is conducted. It forms the logical framework and boundary conditions for the valuation. The Code, in line with international standards, primarily distinguishes between two key premises[30]:

1. Going Concern Premise (持续经营假设)

(1) This premise assumes that the business or asset is expected to continue operating in the foreseeable future, at its current scale and purpose, without any intention or necessity to liquidate. The asset is valued as part of an ongoing, income-generating operation.

(2) This is the default and most common premise for valuing a profitable business or a productive asset. It underpins the use of income-based approaches (DCF) and is

[28] The law can be accessed at http://www.npc.gov.cn/zgrdw/huiyi/lfzt/zcpgfca/2016-17/04/content_1993743.htm accessed 18 Nov 2025

[29] https://openstd.samr.gov.cn/bzgk/std/newGbInfo?hcno=15106F6A011AA5F85545A8EF8CB7416F accessed 18 Nov 2025.

[30] The Code can be accessed as an attachment in this link https://www.mof.gov.cn/gp/xxgkml/zcgls/201709/t20170901_2689557.htm

often relevant for the Market Approach when comparing to other going-concern businesses.
(3) Example: Valuing a patent for a successful drug owned by a pharmaceutical company. The value is based on the future cash flows the drug will generate over its remaining patent life, assuming the company continues to manufacture and sell it.

2. Premise of Liquidation (清算假设)
(1) This premise assumes that the business is ceasing operations and its assets will be sold, either individually or as a whole, in a forced or orderly manner. The value is based on the net amount that can be realized from the sale, after deducting all costs associated with the liquidation (e.g., broker fees, legal fees, auction costs).
(2) This premise is applied in bankruptcy proceedings, dissolution of a company, or when a specific asset is deemed redundant and will be sold off.
(3) The Code further distinguishes between two types of liquidation:
a) Orderly Liquidation (有序清算): Assumes a reasonable marketing period to find a buyer, allowing for exposure to the market. The resulting value is Orderly Liquidation Value.
b) Forced Liquidation (强制清算): Assumes an extremely short, "fire-sale" period, as if the assets must be sold immediately. The resulting value is Forced Liquidation Value, which is typically the lowest value an asset can have.

While the Code [2017] No. 230 establishes the core framework, other guidelines and practical applications introduce additional specific premises which are premise of value in use (在用用途假设)[31] used for impairment testing or when valuing assets that are highly specialized and have little value to anyone other than the current owner (e.g., a custom-made factory tooling), and premise of value in exchange (交易假设)[32] which is implicit in almost all valuations, as it sets the basic transactional context, and It is the basis for establishing Fair Market Value.

There are unique Chinese context and challenges in the valuation of IP within bankruptcy context, which are:

a. Technology National Security Review: Transfer of sensitive technologies (e.g., in semiconductors, AI) through bankruptcy may be subject to review under the Catalogue of Technologies Prohibited or Restricted from Export[33].
b. Emphasis on Cost Approach: In practice, Chinese courts and administrators, often being risk-averse, may place significant weight on the Cost Approach as a verifiable floor value, even if it undervalues the IP's potential[34].

[31] This valuation based on Chinese Accounting Standards for Business Enterprises No. 8 - Impairment of Assets.

[32] China has developed a comprehensive and hierarchical system of standards that rigorously regulate the application of the Value in Exchange premise, primarily under the concept of Market Value (市场价值). Among those standards are GB/T 50291-2015 房地产估价规范 (Real Estate Appraisal Standard), 资产评估基本准则 (Basic Standards for Asset Appraisal), 资产评估执业准则-企业价值(Business Valuation), 资产评估执业准则-机器设备 (Machinery & Equipment), and 企业国有资产交易监督管理办法 (Measures for the Supervision of State-owned Enterprise Asset Transactions);

[33] Cheng, W., & Liu, J. (2022). National Security Review in Cross-Border Insolvency: A New Challenge for China. *Journal of Corporate Law Studies*, 22(1), 215-241.

[34] Li, S., & Zhang, G. (2020). Judicial Conservatism in the Valuation of Bankruptcy Assets in China. *China Economic Review*, 60, 101418

ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

c. Regional Disparities: The sophistication of IP valuation can vary significantly between advanced commercial courts (like Shanghai or Shenzhen) and courts in less developed regions[35].

In the United States, IP assets such as patents, trademarks, copyrights, and trade secrets are considered valuable assets that can be sold, licensed, or used to secure loans. When a company files for bankruptcy, its IP assets become part of the bankruptcy estate, which is subject to the jurisdiction of the bankruptcy court[36]. The valuation of these assets is critical in determining the distribution of assets among creditors and stakeholders. The valuation determines the amount creditors can recover, influences the feasibility of reorganization, and guides the sale or licensing of the IP. A critical and complex area is the treatment of IP licenses. The debtor can be either the licensor or the licensee. If the debtor as licensor, the license agreement is an asset of the estate. The trustee or debtor-in-possession (DIP) can assume, assign (sell), or reject it under § 365 of the Bankruptcy Code. But if the debtor as license, § 365(n) of the Bankruptcy Code said If the trustee rejects an executory IP license (e.g., a technology license), the licensee (the non-debtor party) has a critical choice: treat the license as terminated or retain its rights (including exclusivity) for the remainder of the license term.

In the intricate landscape of bankruptcy proceedings within the United States, courts and legal practitioners have historically relied upon a triad of established valuation methodologies. These approaches, namely going-concern value, liquidation value, and fair market value, are not applied in a vacuum but are meticulously adapted to the sui generis circumstances inherent to bankruptcy, such as the pressures of a forced sale or the unique operational framework of a debtor-in-possession status[37]. The foundational directive for these valuations originates from Section 506(a) of the U.S. Bankruptcy Code, which mandates that the determination of value must be intrinsically linked to the "purpose of the valuation and of the proposed disposition or use of such property" (11 U.S.C. § 506(a)). This statutory provision underscores a crucial principle: the selection of an appropriate valuation standard, be it the value of an enterprise as a continuing operation or the net realizable amount from an orderly or forced liquidation, is contingent upon the specific objectives of the bankruptcy case. Whether the goal is a successful plan of reorganization that allows the debtor to continue operations, or the expeditious sale of assets to satisfy creditors, the chosen valuation metric must align with these overarching aims.

The inherent flexibility stipulated by § 506(a) allows for a nuanced application of valuation principles, moving beyond a one-size-fits-all approach. For instance, in a Chapter 11 reorganization, where the intent is to rehabilitate the business and enable it to emerge from bankruptcy as a viable entity, a going-concern valuation is typically paramount. This approach considers the business's future earning capacity, intangible assets like goodwill, and the overall operational synergy of its assets[38]. Conversely, if a reorganization proves unfeasible, and the primary objective shifts towards an orderly wind-down and sale of assets, a liquidation value standard becomes more pertinent. This valuation focuses on the net proceeds expected from selling assets individually or in smaller packages, after accounting

[35] Liu, H., & Wang, Z. (2021). The Divergent Paths of Commercial Justice: Evidence from Bankruptcy Courts in China. *Law & Society Review*, 55(3), 452-478.

[36] Bankruptcy Code § 541(a)(1)

[37] Fortgang, C. J., & Mayer, Thomas Moers. (1985). Valuation in bankruptcy. *UCLA Law Review*, 32(6), 1063-1064.

[38] Jay Westbrook. (2004). The Control of Wealth in Bankruptcy. *Texas LR* 82(4) 795, 811.

for the costs associated with the sale and the time value of money[39]. The distinction is critical, as different valuation standards can yield substantially different outcomes, directly impacting creditor recovery and the overall success of the bankruptcy resolution.

However, the practical implementation of these valuation approaches in the demanding environment of bankruptcy is fraught with challenges. The exigencies of bankruptcy proceedings frequently mandate accelerated asset disposition timelines. This imperative is driven by the dual objectives of maximizing value preservation and addressing the immediate liquidity demands of secured creditors. Consequently, the procedural and temporal pressures inherent to this environment can fundamentally undermine the foundational assumptions of traditional valuation methodologies. These methodologies typically presuppose a willing buyer and seller, reasonable market exposure, and the absence of compulsion, conditions that are systematically compromised in the context of a distressed, court-supervised sale. For instance, a going-concern valuation requires forecasting future performance, a task made exceptionally difficult when the debtor's operational stability is uncertain. Similarly, even a liquidation value can be influenced by the urgency of the sale, potentially leading to distress pricing that deviates from a truly orderly liquidation scenario. This tension between the theoretical underpinnings of valuation and the exigencies of bankruptcy administration creates a complex environment where professional judgment and adherence to statutory guidance are paramount.

Furthermore, the evolving economic landscape and the increasing complexity of business assets necessitate continuous adaptation of these traditional valuation methods. The rise of intangible assets, intellectual property, and digital assets presents new challenges for appraisers, as established frameworks may not adequately capture the value of such non-physical components[40]. While bankruptcy law provides the overarching framework, the specific techniques and assumptions employed within each valuation approach require sophisticated analysis to reflect the current market realities and the unique characteristics of the assets being valued. This ongoing adaptation is essential to ensure that valuations serve their intended purpose: providing a fair and accurate basis for decision-making within the bankruptcy process, thereby promoting efficient and equitable resolutions for all stakeholders involved.

The traditional methods of valuation, whether in a going concern valuation or liquidation, include the cost, market, income and relief-from-royalty approach is still used today in USA[41]. However, in a bankruptcy context, the premise of value shifts from a going concern to a distressed or liquidation scenario, necessitating significant adjustments to each methodology[42]. In the Income Approach, which includes Discounted Cash Flow (DCF) analysis, it values an asset based on the present value of its expected future cash flows. In bankruptcy, this requires substantial modification. Forecasts must reflect the reality of financial distress, including reduced revenues, operational disruptions, and constrained

[39] Travis W. Harms & Sujan Rajbhandary, "Valuation Expertise: Necessary Chapter 11 Process Navigation", *Mercer Capital* (October 2014), https://mercercapital.com/article/valuation-expertise-necessary-chapter-11-process-navigation/#:~:text=Reorganization%20value%20is%20generally%20understood,going%20concern%20premise%20of%20value., accessed 15 Nov 2025

[40] Odonkor, Theodore Narku, Adewale, Titilope Tosin & Olorunyomi, Titilayo Deborah. (2023). Valuing intangible assets in the digital economy: A conceptual advancement in financial analysis models. *International Journal of Frontline Research in Multidisciplinary Studies,* 02(01), 29.

[41] Wes Anson & Donna Suchy, *Fundamentals of Intellectual Property Valuation: A Primer for Identifying and Determining Value* (Washington: American Bar Association, 2005), p. 32

[42] Shannon P. Pratt & Roger J. Grabowski, *Cost of Capital: Applications and Examples (5th Edition)* (New Jersey: Wiley, 2014), p. 505

capital[43]. The discount rate, or weighted average cost of capital (WACC), must be significantly elevated to account for the extreme illiquidity and risk of a distressed entity, often incorporating a "distress premium"[44]. Furthermore, professionals often forgo a single DCF in favor of liquidation scenario modelling, which estimates cash flows from an orderly or forced sale of assets, or a fresh-start accounting valuation, which establishes a new balance sheet for the emerging entity[45].

While market approach which is seeking comparables in distress, it values an asset based on comparable market transactions. In bankruptcy, finding true comparables is challenging, as most market data reflects healthy, going-concern entities[46]. Appraisers must therefore seek out transactions of distressed companies or distressed assets. This includes analyzing precedent transactions of distressed assets as it is regulated in sales of similar assets or entire companies under § 363 of the Bankruptcy Code, and guideline public companies that applying hefty discounts to the multiples of healthy peers to reflect the debtor's distressed state[47]. The lack of perfect comparables often makes this a secondary method, used to provide a reality check on values derived from other approaches.

The Cost Approach, which values an asset based on its replacement cost, is often reinterpreted within the bankruptcy term in the US as a measure of liquidation value[48] (Smith & Parr, 2000). This does not mean the cost to recreate the business, but rather the net orderly liquidation value (NOLV) or forced liquidation value (FLV) of the tangible assets. For intangible assets like intellectual property, this approach is particularly difficult. The value is not based on development cost, which is often a sunk cost, but on the price those assets would fetch in a quick sale, which may be minimal if they are not easily separable from the failed business[49].

Similarly to China and the USA, under UK insolvency practice, three primary methodological frameworks, which are the Cost Approach, the Market Approach, and the the Income Approach, are deployed by specialist valuers, each severely impacted by the pressure of corporate collapse. The intersection of IP valuation and insolvency law has given rise to profound judicial debates in the UK courts and parallel international jurisdictions that heavily influence English common law reasoning. The jurisprudence demonstrates that the judiciary views IP valuation not as a precise mathematical science, but as a holistic, context-dependent evaluation of economic reality and legal structural rights[50].

A seminal dispute concerning the valuation and allocation of IP assets in a global insolvency context arose in the multi-jurisdictional collapse of the Nortel group. The English High Court, in tandem with the US Bankruptcy Court for the District of Delaware, had to

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[43] Stuart C. Gilson, "Coming Through in a Crisis: How Chapter 11 and the Debt Restructuring Industry Are Helping to Revive the U.S. Economy", *Journal of Applied Corporate Finance*, vol. 24, no. 4 (2012), pp. 23-24.

[44] A. Damodaran, "Valuing Distressed Companies", *SSRN Electronic Journal* (2019), p10.

[45] Edward I. Altman & Edith Hotchkiss, *Corporate Financial Distress and Bankruptcy: Predict and Avoid Bankruptcy, Analyze and Invest in Distressed Debt. (3rd ed.)* (New Jersey: John Wiley & Sons, 2006), pp. 206-208.

[46] Jing Liu, "Valuation and Distress Prediction", in *Handbook of Finance, Volume II: Investment Management and Financial Management*, ed. by Frank J. Fabozzi (New Jersey: John Wiley & Sons, 2008), p. 557.

[47] Shannon P. Pratt & Alina V. Niculita, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies. 5th Edition* (Chicago: McGraw Hill, 2008), p.946.

[48] Gordon V. Smith & Russell L. Parr, *Valuation of Intellectual Property and Intangible Assets. 2nd Edition* (New Jersey: John Wiley & Sons, 2000), p.35

[49] Michael D. Moberly, and Patrick E. de la Cruz, "Navigating the Perfect Storm: Valuing Intellectual Property in Bankruptcy", *ABI Journal*, vol. XXXVIII, No. 5 (2019), pp. 28-29.

[50] Peter Brownlow and Mark Hilton. "Peter Brownlow and Mark Hilton look at the advantages of the English Courts as a forum for deciding International IP disputes". 12 July 2021, https://www.twobirds.com/en/insights/2021/uk/peter-brownlow-and-mark-hilton-look-at-the-advantages-of-the-english-courts accessed 15 July 2026.

address the allocation of approximately $7.3 billion in proceeds derived from the blockbuster sale of Nortel's global patent portfolio (which included foundational patents in 4G LTE technology)[51]. The landmark litigation, *In re Nortel Networks Inc.*, required the courts to determine how to distribute a single, massive lump-sum realization among dozens of insolvent national subsidiaries, including the English and European arms (*Nortel Networks UK Limited* and its affiliates in administration under the *Insolvency Act 1986*). The primary legal challenge was determining the exact method to evaluate the contribution of each entity to the IP asset value. The US and UK courts rejected traditional, narrow transfer-pricing or strict legal-title approaches to valuation. Had the court relied solely on strict legal title, the bulk of the proceeds would have flown exclusively to the Canadian parent entity (*Nortel Networks Corporation*), which held the registered titles. Instead, the courts adopted a joint-allocation approach based on the "contribution" to the creation of the global IP value[52].

The courts ruled that the value of the IP was a collective asset generated by a highly integrated global R&D structure[53]. The English administrators successfully argued that the European subsidiaries contributed crucial engineering expertise that directly generated the commercial utility of the patents. This case firmly established that when valuing IP within concurrent insolvency proceedings, courts will look past superficial legal registration to evaluate the substantive economic realities of development, funding, and operational deployment. It highlights that the value of a patent portfolio is fundamentally intertwined with the global operational network that supported it, and its valuation must reflect this systemic integration rather than isolated regional registrations.

Valuing intellectual property within a German judicial insolvency framework diverges fundamentally from standard open-market corporate assessments. Standard valuations, typically governed by the IDW S 5 standard issued by the Institute of Public Auditors in Germany (*Institut der Wirtschaftsprüfer – IDW*), assume an orderly transaction between a willing buyer and a willing seller operating at arm's length, with access to comprehensive information and adequate time to complete technical, financial, and legal due diligence. This corresponds to the standard of "Fair Market Value" or "Objective Asset Value" (*Objektivierter Unternehmenswert*)[54]. In contrast, insolvency valuations are highly compressed and must often adhere to a "Liquidation Value" (*Liquidationswert*) or "Forced Sale Value" (*Zerschlagungswert*) paradigm. The IDW S 5 standard explicitly recognizes that the structural context of a valuation modifies its underlying baseline assumptions. Valuers in Germany deploy three established methodological frameworks, each severely altered by insolvency pressures.

For many years, the primary risk haunting IP valuation in German insolvency was the threat that an outbound license could be dissolved under Section 103 of the German Insolvency Code (*Insolvenzordnung* or *InsO*). This legal tension led to a landmark dispute before the BGH, popularly known as the *Reise-Insolvenz* (Travel Insolvency) case. In this dispute, a debtor company had granted a long-term, exclusive license to a third party to use its proprietary database and reservation software. Upon the opening of insolvency proceedings,

[51] Charlene D. Davis. "Judge Gross Issues Decision on Allocation of $7.3 Billion in Sale Proceeds Among Nortel Network Debtors Worldwide". *Bayard Legal Updates (15 May 2015),* https://www.bayardlaw.com/insights/judge-gross-issues-decision-on-allocation-of-7-3-billion-in-sale-proceeds-among-nortel-network-debtors-worldwide, accessed 15 July 2026.

[52] LexisNexis. "Global dispute over allocation of Nortel assets". *Restructuring and Insolvency (20 May 2015)*, https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/global-dispute-over-allocation-of-nortel-assets accessed 15 July 2026.

[53] In re Nortel Networks Inc., 737 F.3d 265 (3d Cir. 2013); *Nortel Networks UK Ltd (In Administration) and others v. Board of the Pension Protection Fund*, [2013] UKSC 52, 114–119.

[54] Institut der Wirtschaftsprüfer in Deutschland (IDW), *IDW Standard: Grundsätze zur Bewertung immaterieller Vermögenswerte (IDW S 5)* (Düsseldorf: IDW Verlag, 2022), p.18.

ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

the insolvency administrator invoked Section 103 of the InsO, refusing performance under the license agreement to try to reclaim the database unencumbered and maximize its resale value.

The licensee challenged the administrator's action, arguing that its right to use the software was an absolute right analogous to a proprietary right, which should withstand the administrator's rejection powers. The BGH was forced to rule on whether a standard IP license agreement creates an insolvency-proof, real property interest (*dingliches Recht*) or a mere contractual obligation (*schuldrechtlicher Anspruch*). The BGH ruled that under a strict interpretation of Section 103 of the InsO, an intellectual property license does not constitute a real property right that can automatically resist the administrator's statutory rejection powers[55]. Unlike German real estate law, where Section 108(1) of the InsO explicitly protects tenant leases from immediate termination upon the landlord's insolvency, the InsO contains no parallel statutory safe harbor protecting intellectual property licensees. The court held that if the contract remains executory at the time of insolvency, the administrator retains the right to refuse performance.

The *Reise-Insolvenz* judgment had an immediate, chilling effect on IP valuation. Because an outbound license could be extinguished by an administrator, the predictable stability of the asset's cash flows was compromised. Valuers were forced to apply an aggressive risk discount to any IP portfolio encumbered by outbound licenses, significantly lowering its baseline value. This judicial reality triggered a massive legislative debate in Germany, culminating in the 2021 restructuring reforms (*SanInsFoG*), which introduced greater nuances, but the core principle that IP licenses are highly vulnerable under Section 103 remains a foundational consideration in distressed asset appraisals[56].

While valuing intellectual property within a Japanese judicial insolvency framework differs fundamentally from conducting valuations in a standard corporate transaction. Standard open-market assessments assume a transaction between a willing buyer and a willing seller operating at arm's length, with access to perfect information and adequate time to complete technical and financial due diligence. This corresponds to the standard of "Fair Market Value" (*Kosei-shika*)[57]. In contrast, insolvency valuations are highly compressed and must often adhere to a "Liquidation Value" (*Seisan-ka*) or "Forced Sale" paradigm. The Ministry of Economy, Trade and Industry (METI) and the Japan Patent Office (JPO) have published extensive guidelines on intellectual property valuation, yet these frameworks recognize that distress significantly distorts core financial models[58].

Crucial judicial pillar governing IP valuation in insolvency under the Japanese Law is the law of avoidance (*fukoinokoshi*), governed by Sections 160 to 176 of the Bankruptcy Act. Similar provisions exist under Sections 127 to 134 of the Civil Rehabilitation Act. These statutes empower a trustee to claw back assets that were transferred out of the company prior to the insolvency filing if the transfer prejudiced creditors or was executed at an undervalue. In the prominent litigation *Amano Corporation v. Trustee of KK Kyoto Seisakusho*, the Osaka High Court had to evaluate a transaction where an engineering company, facing imminent financial collapse, transferred a valuable portfolio of manufacturing patents and related technical drawings to a major creditor and business partner for a price that the

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[55] Bundesgerichtshof [BGH] [Federal Court of Justice], Judgment in the *Reise-Insolvenz* Case, *Neue Juristische Wochenschrift (NJW)* 2010, 607.

[56] Wilhelm Uhlenbruck, *Insolvenzordnung: Kommentar*, 15th ed. (Munich: C.H. Beck, 2019), § 134, rn. 45.

[57] Gordon V. Smith and Russell L. Parr, *Valuation of Intellectual Property and Intangible Assets*, 5th ed. (Hoboken: John Wiley & Sons, 2018), p. 314.

[58] Ministry of Economy, Trade and Industry (METI), *Guidelines for Intellectual Property Valuation* (Tokyo: METI Publishing, 2017), p.38.

subsequent bankruptcy trustee claimed was grossly inadequate. The trustee filed an avoidance action under Section 160, asserting the transfer was a fraudulent transaction conducted at an undervalue. The court was required to retrospectively determine the "proper market value" of the patents at the precise moment the transfer occurred. The defendant creditor argued that the patents were unproven, high-risk, and lacked commercial traction, thereby justifying the low purchase price.

The Osaka High Court[59] ruled that while an insolvency valuation must account for the company's financial distress, the parties cannot arbitrarily invent a nominal price to strip an estate of its core assets. The court held that a proper retrospective valuation must analyze whether an independent, objective third party, fully aware of the technology's technical parameters and market applications, would have paid a significantly higher price. The court emphasized that directors cannot escape avoidance liability by claiming subjective good faith or pointing to a self-serving internal memo. Because the parties failed to obtain an independent appraisal from a certified patent attorney (*benrishi*) or a recognized financial valuer prior to the transfer, the court set the transaction aside, forcing the return of the patents to the bankruptcy estate. This case stands as a stark warning in Japanese corporate governance: any pre-insolvency IP transfer must be supported by an objective, contemporary valuation report to withstand subsequent judicial clawback actions.

In the Indonesian context, the valuation of intellectual property (IP) transcends a mere technical accounting exercise, instead constituting a procedurally-dependent estimation that is significantly influenced by the Receiver's discretion[60], the Commercial Court judges' understanding of IP valuation[61], and the paucity of robust legal safeguards for IP-specific interests[62], such as licenses. This confluence of factors generates a high degree of uncertainty, which is subsequently incorporated into the valuation through the application of aggressive risk premiums and a reliance on conservative, often outdated, cost-based metrics. The inherent subjectivity and lack of standardized methodologies contribute to a fractured landscape where IP valuation outcomes can vary substantially depending on the individuals involved and the specific legal interpretations applied during proceedings[63].

The procedural dependence of Intellectual Property (IP) valuation, as highlighted, underscores a critical challenge within the Indonesian legal and economic landscape. It implies that the methodologies and processes employed in assessing IP value often exert a more significant influence on the final monetary outcome than the inherent, intrinsic worth of the asset itself. This phenomenon is particularly pronounced given the limited judicial experience and specialized training of Commercial Court judges in navigating the complexities of intangible assets such as patents, trademarks, and copyrights. Such a

[59] Osaka High Court, Judgment in *Amano Corporation v. Trustee of KK Kyoto Seisakusho*, Kakunshu 56, no. 2, 208.

[60] Tri Reni Novita, M.Husma and Halimatul Maryani, "The Curator's Authority in The Management & Settlement of Bankruptcy Property", *Jurnal Akta*, vol. 12, No. 2 (2025), p. 570.

[61] Joko Sulistyono, Hartiwiningsih, I Gusti Ayu Ketut Rachmi Handayani, and Kazuaki Katagiri (2025). Strengthening Commercial Court Judges' Knowledge in Handling Patent Claim Disputes: A Comparison Between Japan and Indonesia.. *Substantive Justice International Journal of Law*. Vol. 8, No.1 (2025), p.9.

[62] The USA International Trade Administration. "Indonesia Country Commercial Guide: Protecting Intellectual Property", *Country Commercial Guides* (17 November 2025), https://www.trade.gov/country-commercial-guides/indonesia-protecting-intellectual-property#:~:text=Protecting%20intellectual%20property%20(IP)%20remains,traditional%20knowledge%20or%20genetic%20resources accessed 15 December 2025.

[63] Melissa Crouch. "The Judicial Reform Landscape in Indonesia: Innovation, Specialisation and the Legacy of Dan S. Lev." Chapter. In *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, edited by Melissa Crouch,. (Cambridge: Cambridge University Press, 2019), p.8.

deficiency necessitates a deeper examination of how judicial interpretation and procedural execution can inadvertently steer valuation outcomes away from objective economic principles towards subjective assessments. In this situation, the true value of IP is obscured by the valuation process itself, creating potential for both undervaluation and overvaluation depending on the specific procedural path taken.

The reliance on familiar, albeit less accurate, valuation approaches by judges, or the significant dependence on expert testimony, further entrenches this issue. Expert witnesses, while ostensibly providing objective insights, may themselves be susceptible to the aforementioned discretionary factors or biases. This inherent subjectivity in expert reports can be amplified by the lack of standardized, judicially accepted methodologies for IP valuation in Indonesia. Consequently, the outcomes of IP valuation disputes or transactions may not accurately reflect the economic potential or market desirability of the IP, impacting investment decisions and fair compensation. In jurisdictions lacking established IP valuation frameworks, reliance on expert opinion can become a proxy for rigorous analysis, potentially masking systemic procedural weaknesses[64]. This underscores the need for a more robust, evidence-based approach to IP valuation that transcends procedural idiosyncrasies.

This reliance on discretion, coupled with insufficient legal protection for IP rights holders, particularly concerning licensing agreements, significantly impedes effective IP monetization[65]. Licensing agreements are indeed the bedrock upon which much of IP value is realized, transforming intangible assets into tangible revenue streams. When the contractual terms of these agreements, or the valuation of the IP within them, are subject to unpredictable judicial interpretation or procedural arbitrariness, the incentive for IP holders to invest further in innovation and commercialization diminishes. The uncertainty surrounding the potential monetary returns, as influenced by discretionary valuation processes, creates a high-risk environment for businesses. This risk exposure can deter foreign investment and hinder the growth of domestic innovation-driven industries, as potential partners and investors may perceive Indonesian IP markets as inherently volatile and unpredictable.

The absence of clear legislative guidance or established case law precedents for IP valuation further amplifies this unpredictability. Unlike tangible assets where valuation methodologies are relatively standardized and widely understood, IP valuation remains a frontier domain. Without legislative frameworks that outline acceptable valuation methods, the role of discretion becomes paramount. This vacuum creates a challenging environment for parties involved in IP disputes or transactions, who are left with significant exposure to unpredictable outcomes. The lack of established precedents means that each case may set a new, potentially inconsistent, standard, leading to a fragmented and unreliable basis for future valuations. This situation can be seen in the ruling of the Indonesia Supreme Court No. 1397 K/Pdt.Sus-Pailit/2017 dated 4 December 2017 in the case of *PT Perindustrian Njonja Meneer* (*PT Njonja Meneer*).

In the case of *PT Njonja Meneer*, the company was unable to fulfill its debt repayment obligations to its creditors. Based on the Supreme Court of the Republic of Indonesia's Judgment Number 1397 K/Pdt.Sus-Pailit/2017, PT. Nyonya Meneer could not pay its debt

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[64] Anna Vadeike, "Challenges of IP Valuation Across Different Jurisdictions", *Royalty Range* (16 January 2025), https://www.royaltyrange.com/news/challenges-of-ip-valuation-across-different-jurisdictions/, accessed 15 Nov 2025.

[65] Justine Delfino, "Blockchain and Smart Contracts: The Future of Transparent Licensing Agreements", *IP Service World* (15 October 2024), https://www.ipserviceworld.com/blog/blockchain-smart-contracts.html#:~:text=Licensing%20agreements%20are%20a%20crucial%20component%20of,their%20intellectual%20property%20while%20safeguarding%20their%20rights, accessed 15 Nov 2025.

amounting to IDR 7,040,970,500.00 (seven billion forty million nine hundred seventy thousand five hundred rupiah). Throughout the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) process, on March 5, 2015, PT. Nyonya Meneer submitted a composition plan, which was agreed upon by the creditors and subsequently received homologation (confirmation) by the panel of judges at the Semarang Commercial Court on June 1, 2015[66]. As stipulated in the homologated composition agreement, however, *PT Njonja Meneer* committed a breach of contract or was negligent in fulfilling the terms of said agreement. The company violated the agreed-upon terms, including failing to make installment payments to the creditors as stipulated. Based on Article 170 paragraph (1) of Law No.37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Law No.37/2004), it states that a creditor may demand the annulment of a homologated composition if the debtor is negligent in fulfilling its terms. Subsequently, Article 291 paragraph (2) of the same law stipulates that a court decision annulling the composition must declare the debtor bankrupt. Consequently, the Semarang Commercial Court declared *PT Njonja Meneer* insolvent in its ruling number 11/Pdt.Sus-Pailit/2017/PN Niaga Semarang jo. Number 01/Pdt.Sus-PKPU/2015/PN Niaga Semarang, during a hearing on August 3, 2017, following the PKPU period that began in 2015.

Since *PT Njonja Meneer* was declared bankrupt, its company assets began to be managed by a receiver. The receiver collaborated with a Public Appraisal Services Office (*Kantor Jasa Penilai Publik* or KJPP) to value the *PT Njonja Meneer* brand, based on the financial reports obtained by the receiver and also on a market survey[67]. In this case, the receiver was also tasked, in accordance with its mandate, to manage the process from investigation to auctioning off assets to pay debts to creditors. This involves administering and/or liquidating the bankruptcy estate, as regulated in Article 69 of Indonesian Bankruptcy Law. This bankruptcy ruling is seen as an appropriate solution, as it is considered capable of providing legal protection for all involved parties[68].

The receiver of *PT. Njonja Meneer* auctioned 72 (seventy-two) herbal medicine trademarks that were part of the bankruptcy estate, with an appraisal value for the auction offering at the State Assets and Auctions Service Office (KPKNL) Semarang of IDR 200,000,000,000.00 (two hundred billion rupiah). However, one of the receivers of *PT. Njonja Meneer* conducted an off-market (private) notarial sale transaction, selling all the intangible assets in the form of these trademarks, achieving only IDR 10,250,000,000.00 (ten billion two hundred fifty million rupiah) from *PT. Bumi Emphon*. Consequently, these trademark assets were sold below the appraisal value from the KPKNL Semarang. In the implementation of auctions based on Minister of Finance Regulation No. 213/PMK.06/2020 concerning Auction Implementation Guidelines, bankruptcy assets to be auctioned must first be appraised so that the value of the goods to be sold publicly is known. *PT. Njonja Meneer* auctioned 72 (seventy-two) herbal medicine trademarks with an appraisal value from KPKNL Semarang of IDR 200,000,000,000.00 (two hundred billion rupiah). The auction was conducted to achieve the highest possible price; however, a sale via auction was not achieved. Consequently, all these trademarks were sold through an off-

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66 Agustina Melani, "Kronologi Putusan Pailit Produsen Jamu Legendaris Nyonya Meneer", *Liputan 6* (7 August 2017), https://www.liputan6.com/bisnis/read/3049608/kronologi-putusan-pailit-produsen-jamu-legendaris-nyonya-meneer?page=4, accessed 15 Nov 2025.

67 Dharmadipraja, Ida Bagus Ivan, "*Analisis Penilaian dan Pengalihan Asset HKI Berupa Merek Pada Debitur Pailit (Studi Kasus Nyonya Meneer)*", Master Thesis, Indonesia: Universitas Indonesia, 2018, p. 72.

68 Siti Hanna Kusumawati, "Perlindungan Hukum Bagi Pihak Debitor dan Pihak Kreditur Dalam Kasus Kepailitan PT. Nyonya Meneer Indonesia", *Jurnal Magistra Law Review*, vol. 02, No. 02 (2021), p. 104.

Jurnal Hukum dan Peradilan Vol. 15, no. 2 (2026), pp. 261-288
ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

market (private) sale by one of *PT. Njonja Meneer* 's receivers. This action is in accordance with Article 185 paragraph (2) of Indonesian Bankruptcy Law, which states "In the event that a public sale as referred to in paragraph (1) is not achieved, an off-market sale may be conducted with the permission of the Supervising Judge". The sale of the trademarks conducted by the receiver was executed at a value below the standard, approximately IDR 10,250,000,000.00 (ten billion two hundred fifty million rupiah) instead of the historical background of the trademark. This demonstrates that the absence of clear legislative guidance or established case law precedents for IP valuation in Indonesia makes the authority to rely on discretion, and it depress the estimated value of the IP.

Transfer of ownership

In the context of bankruptcy and insolvency, one thing that should be paid attention to is the critical procedural and substantive hurdles in the transfer mechanisms for IP rights (e.g., through sale, license, or as part of a going-concern reorganization) and the attendant legal restrictions (such as anti-assignment clauses and regulatory approvals)[69]. This observation underscores a significant challenge in the administration of estates where intellectual property assets are involved. The complexity arises not only from the nature of IP rights themselves, which are intangible and can be difficult to value and control, but also from the specific legal framework governing insolvency proceedings[70]. These proceedings are designed to ensure an orderly distribution of assets to creditors, and the integration of IP rights transfer within this framework often encounters friction points that can impede or invalidate such transfers.

The procedural hurdles are particularly acute. The need for court approval or oversight in many insolvency jurisdictions can introduce significant delays, which are often detrimental to the value of IP rights, especially those tied to rapidly evolving technologies or market trends. For instance, the sale of a patent or a trademark portfolio might require extensive due diligence, valuation processes, and negotiation periods, all of which must be conducted under the strict timelines and procedural requirements of bankruptcy court[71]. Moreover, the insolvency trustee or administrator faces the dual responsibility of maximizing the value of the estate for creditors while also navigating these complex legal requirements[72]. Failure to adhere to specific procedural steps can lead to challenges from creditors or even nullification of the transfer, thereby diminishing the estate's value and potentially leading to protracted litigation.

Substantively, the legal restrictions on IP transfers in insolvency are multifaceted. Anti-assignment clauses, often found in licensing agreements, can present a formidable barrier. These clauses typically prohibit the assignment of rights or obligations under a contract without the consent of the counterparty. While the enforceability of such clauses in bankruptcy is a subject of considerable legal debate and varies significantly by jurisdiction, they often create uncertainty and can necessitate costly legal battles to overcome[73]. Furthermore, regulatory approvals are frequently required for the transfer of certain types of IP rights, especially in highly regulated industries. For example, the transfer of pharmaceutical patents or broadcasting licenses may necessitate approval from specific

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[69] S. Giliker and J. L. L. Gant, eds., *Intellectual Property and Insolvency Law* (Cheltenham, UK: Edward Elgar Publishing, 2022), pp.21-22.

[70] Smith and Parr, *Valuation of Intellectual Property* ….., p.7.

[71] Mark Bartholomew and John J. T. Krasity, "Bankruptcy's IP Commons," *California Law Review* Vol.107, No. 5 (October 2019): p.1650.

[72] Sir Roy Goode, *Principles of Corporate Insolvency Law*, 5th ed. (London: Sweet & Maxwell, 2018), p.205.

[73] *Collier on Bankruptcy*, 17th ed., ed. Alan N. Resnick and Henry J. Sommer (New York: Matthew Bender & Company, 2022), vol. 4, p. 365-24.

governmental or regulatory bodies, adding another layer of complexity and potential delay to the transfer process[74].

The specific mechanisms of transfer, such as outright sale, licensing, or inclusion in a going-concern reorganization, each bring their own set of challenges. An outright sale, while seemingly straightforward, requires a willing buyer and a clear valuation, which can be elusive for unique or nascent IP[75]. Licensing, on the other hand, involves ongoing obligations and revenue streams, necessitating careful consideration of the licensee's ability to perform and the administrator's ability to monitor and enforce the license terms post-transfer. A going-concern reorganization, where the business continues to operate, presents the most complex scenario, as IP rights are often intertwined with the operational assets and contractual relationships of the business, requiring a holistic and integrated approach to their transfer and continued exploitation[76]. The attendant legal restrictions, including but not limited to, the potential for clawback provisions under insolvency law or the need to obtain consent from third parties whose rights are impacted by the transfer, further complicate these mechanisms.

Consequently, the successful transfer of IP rights within an insolvency context often hinges on a proactive and informed legal strategy that anticipates these procedural and substantive hurdles. This involves thorough due diligence, expert valuation, strategic negotiation with creditors and licensors, and careful consideration of the most appropriate transfer mechanism[77]. The interplay between insolvency law and IP law creates a unique legal landscape where standard insolvency procedures may not adequately address the specific characteristics and value drivers of intellectual property[78]. Therefore, practitioners must possess a deep understanding of both legal regimes to effectively manage and realize the value of IP assets in distressed situations, thereby maximizing recovery for creditors and potentially preserving the going-concern value of businesses built around these intangible assets.

The acquisition of intellectual property (IP) rights through licensing agreements inherently carries significant risks in the context of insolvency. An insolvent licensor can fundamentally jeopardise the continued validity and enforceability of the licence agreement, thereby creating a precarious situation for the licensee. The precise impact of licensor insolvency on an ongoing IP licence is not uniform and is heavily contingent upon the specific insolvency laws of the jurisdiction where the licensor is domiciled. Jurisdictional approaches to insolvency and the treatment of executory contracts, including IP licences, vary considerably across different legal systems[79]. For instance, some legal frameworks may automatically terminate or allow for the rejection of licences upon a finding of insolvency, treating them as executory contracts that the insolvency administrator can choose to affirm or disaffirm. In contrast, other jurisdictions might offer greater protection to licensees, particularly if the licence is deemed to confer essential rights or has been relied upon extensively by the licensee. Understanding these variations is crucial for licensees to assess their exposure and to implement appropriate risk mitigation strategies, such as seeking

[74] Andrew Walters. "The Fate of IP Licenses in Cross-Border Insolvencies: A Comparative Analysis of Anti-Assignment Clauses." *International Insolvency Review* Vol.28 No. 3 (Winter 2019), p.360.

[75] Gordon V. Smith and Russell L. Parr, *Valuation of Intellectual Property and Intangible Assets*, 3rd ed. (Hoboken, NJ: John Wiley & Sons, 2009), p.175

[76] Ian M. Malleson. *Corporate Recovery and Insolvency*. 12th ed. (London: Sweet & Maxwell, 2021), p.285.

[77] Malleson, *Corporate Recovery and Insolvency*, …, p.117.

[78] Mark Bartholomew and John J. T. Krasity. "Bankruptcy's IP Commons." *California Law Review* Vol.107, No. 5 (October 2019), p. 1621.

[79] Stéphane Giliker and Jennifer L. L. Gant, eds., *Intellectual Property and Insolvency Law* (Cheltenham, UK: Edward Elgar Publishing, 2022), pp 141-200.

specific contractual clauses that provide for continued access to IP in the event of licensor insolvency or exploring options for the assignment or sublicensing of the IP.

The legal status of an IP licence during licensor insolvency proceedings can be complex, often falling under the purview of bankruptcy or insolvency law rather than intellectual property law alone. For example, in common law jurisdictions, the question of whether an IP licence constitutes a "chose in action" or a proprietary right can influence its treatment. If the licence is viewed merely as a contractual right, it may be subject to rejection by an insolvency trustee. However, if it is deemed to create a proprietary interest in the IP, the licensee might have stronger grounds to assert their rights and seek an order for specific performance or the continued enjoyment of the licensed rights, though this often leads to protracted legal battles[80]. The specific nature of the IP being licensed, be it patents, trademarks, copyrights, or trade secrets, can also play a role, as the legal regimes governing each type of IP may interact differently with insolvency principles.

A cornerstone issue within this domain revolves around the impact of insolvency proceedings on the rights of intellectual property licensees and licensors. In essence, when a party to an IP license agreement files for bankruptcy, the crucial question arises: what happens to the license? Bankruptcy law, particularly in jurisdictions like the United States under Title 11 of the U.S. Code, provides specific mechanisms for dealing with executory contracts and unexpired leases, which often encompass IP licenses. The ability of a bankruptcy trustee or debtor-in-possession to assume or reject such contracts can have profound consequences for the non-bankrupt party, potentially altering the landscape of IP rights considerably.

The rights of IP licensees are particularly vulnerable when a licensor enters bankruptcy. Under Section 365 of the U.S. Bankruptcy Code, a debtor can reject executory contracts, which could include IP licenses. If a license is rejected, the licensee may lose its right to use the licensed IP, leading to significant business disruption and potential loss of market share[81]. However, if a debtor in bankruptcy chooses to assume, rather than reject, a contract, the situation for intellectual property (IP) licenses presents a unique legal challenge. While a key purpose of the Bankruptcy Code is to allow debtors to assume and subsequently assign contracts to third parties, a common feature of asset sales in bankruptcy, IP licenses are a notable exception. The Code includes specific provisions designed to prevent a debtor-licensee from forcing an assignment of a license to an unwanted third party, thereby protecting the licensor's control over their IP. In fact, some U.S. federal court circuits prohibit debtors from even assuming an IP license without the licensor's consent. This restriction is grounded in Section 365(c) of the Bankruptcy Code, which prohibits the assumption or assignment of any contract if non-bankruptcy ("applicable") law forbids such a transfer without the counterparty's approval[82]. Since patent law and most state contract laws governing licenses expressly prohibit assignment without the licensor's consent, this "applicable law" barrier generally blocks a debtor from assuming or assigning an IP license against the licensor's will.

Conversely, the situation for licensors facing bankruptcy also presents unique challenges. If a debtor is an IP licensor, the trustee's decision to assume or reject the license

[80] Luca Enriques and Daniel Wolfenzon, "Bankruptcy Law and Asset Prices," *The Review of Financial Studies* Vol.33, No. 7 (July 2020), p.3016.

[81] Jānis Zarins, "The Intersection of Intellectual Property and Bankruptcy," *American Bankruptcy Institute Law Review* Vol.23, No. 2 (Summer 2015), p.318.

[82] Brooks Kusman PC, "The Impact of Bankruptcy on IP Licensor and Licensee Rights", *Lexology* (13 January 2023), https://www.lexology.com/library/detail.aspx?g=aaecdf04-67ad-4765-85b5-04d935349751, accessed 15 Nov 2025.

agreement will dictate whether the licensee continues to enjoy the rights granted. historically, if a debtor-licensor rejected an intellectual property (IP) license, the licensee lost all rights to the IP. In response, Congress enacted Section 365(n) of the Bankruptcy Code in 1988 to protect non-debtor licensees. This provision allows a licensee, upon rejection of the agreement, to choose between treating the license as terminated or retaining its rights to the IP for the remainder of the contract term. However, Section 365(n) of the Bankruptcy Code applies only to specific IP types listed in the Bankruptcy Code, including (i) trade secrets, (ii) an invention, process, design or plant protected under Title 35, (iii) a patent application, (iv) a plant variety, (v) a work of authorship protected under Title 17, and (vi) a mask work protected under Chapter 9 of Title 17. Notably, trademarks were excluded from this definition. Licensees who elect to retain their rights are limited to those existing prior to the bankruptcy filing and must continue to pay any required royalties. The exclusion of trademarks created uncertainty until the 2019 U.S. Supreme Court decision in *Mission Product Holdings Inc. v. Tempnology, LLC*[83]. The Court ruled that a trademark licensee retains its rights even after the licensor's rejection, effectively extending protections similar to those under Section 365(n) of the Bankruptcy Code to trademark licenses.

The UK's approach to IP in bankruptcy stands in stark contrast to the US. UK law does not provide specialized protection for IP license contracts comparable to Section 365(n) of the US Bankruptcy Code. When a licensor enters insolvency proceedings, the insolvency practitioner may sell, disclaim, or even abandon the IP license, leaving the licensee at risk of losing critical rights[84]. UK law treats IP license contracts as executory contracts, with insolvency practitioners having the right under Section 178 of the Insolvency Act 1986 to choose whether to continue performance[85]. If the practitioner chooses to disclaim the contract, the licensee can only file a claim as an unsecured creditor for damages, with actual recovery rates typically being very low.

UK courts have developed an important protective principle through case law, the Deprivation Principle. In *Butters and others v BBC Worldwide Ltd and others* (2009), the court held that where a provision in a joint venture agreement terminating an IP license upon a party's insolvency was combined with another provision allowing for the acquisition of equity, the combined effect was to deprive creditors of access to assets upon insolvency, thereby violating public policy and being void[86]. Justice Peter Smith stated: "There cannot be a valid contract which says that a person's property belongs to him before bankruptcy and on bankruptcy passes to someone else and is thus taken away from the creditors"[87]. This judgment established the important principle that while general bankruptcy termination clauses are acceptable, when multiple clauses are interconnected and produce the effect of depriving creditors of assets upon bankruptcy, courts will declare them invalid[88]. It is also important to highlight that under UK law, unregistered IP licenses face special risks. If a license is not registered, the licensor's insolvency practitioner may sell the trademark to a

[83] The Judgement can be accessed at https://www.supremecourt.gov/opinions/18pdf/17-1657_4f15.pdf

[84] Mike Knapper, et.al., "IP versus IP: How does the appointment of a UK Insolvency Practitioner affect a licensee's Intellectual Property rights?" *International Restructuring Newswire* Q3 (2025), p.12

[85] Insolvency Act 1986, c. 45, § 178 (UK)

[86] Butters and others v BBC Worldwide Ltd and others, [2009] EWHC 1954 (Ch), at [45]-[50] (Smart Summary can be accessed at https://www.casemine.com/judgement/uk/5a8ff75c60d03e7f57eabb94).

[87] Butters v BBC Worldwide, at [48].

[88] Joel Smith and Laura Deacon. "IP licences and insolvency - deprivation principle held to apply to provisions relating to the termination of an IP licence on insolvency". *Lexology* (18 September 2009), https://www.lexology.com/library/detail.aspx?g=2ae5a506-85dc-49aa-aa57-25410495fdcf accessed 15 July 2026.

ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

third party unaware of the existence of the license, and the licensee's rights may be extinguished[89].

German law similarly lacks specialized protection for IP licensees. Under Section 103 of the German Insolvency Code (*Insolvenzordnung*, InsO), IP license contracts are treated as mutual contracts (*gegenseitiger Vertrag*), and the insolvency administrator has the right to choose whether to continue or reject the license[90]. A core principle of German law is that IP licenses share similarities with lease agreements and are therefore subject to Sections 103 and 112, granting the administrator specific rights to accept or reject contracts[91]. If the administrator chooses to reject, the licensee loses the right to use the licensed IP, and their claim for damages is treated only as an unsecured claim, with actual value typically being very low[92]. When the licensor becomes insolvent, the license contract does not automatically continue. The insolvency administrator will decide under Section 103 whether continuing the license is economically viable[93]. If the administrator chooses to terminate the license, the licensee no longer has the right to use the licensed rights, and the administrator may freely exploit the IP in other ways, such as granting other licenses or selling the rights to the highest bidder[94].

While in Japan, Under Article 53, paragraph 1 of the Japanese Bankruptcy Act, if at the commencement of bankruptcy proceedings both the bankrupt party and the counterparty have not fully performed their respective obligations under a bilateral contract, the bankruptcy administrator may choose to rescind the contract or perform its obligations[95]. This framework is similar to other major jurisdictions, granting the administrator broad discretion. In 2011, Japan significantly amended its Patent Act (the "2011 Amendment") to strengthen licensee protection. Previously, industrial property rights licenses could only be asserted against third parties if registered with the Japan Patent Office (JPO)[96]. However, in practice, the number of registered licenses was extremely limited.

The 2011 Amendment introduced an exception in Article 53. Under Article 56, paragraph 1 of the Bankruptcy Act, if a contract grants a leasehold right or any other right of use or exploitation, and the counterparty has registration or meets other requirements enabling them to legally assert and enforce such rights against any third party, then Article 53, paragraph 1 does not apply[97]. This amendment means that even if the bankruptcy administrator chooses to rescind the contract, registered licenses remain effective. In 2020, Japan amended its Copyright Act, extending licensee protection to the copyright

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[89] Taylor Wessing. "A Quick Guide to… Retrieving IP Rights from Dissolved Companies in England and Wales". (23 March 2026), https://www.taylorwessing.com/de/insights-and-events/insights/2026/03/bu-a-quick-guide-to-retrieving-ip-rights-from-dissolved-companies-in-england-and-wales accessed 15 July 2026.

[90] Insolvenzordnung (InsO), § 103 (Ger.).

[91] Tom H. Braegelmann. "Intellectual property rights under German insolvency law". *Lexology (7 April 2015).* https://www.lexology.com/library/detail.aspx?g=f335a8bd-81c3-4e55-92b9-dd30a7c92adb accessed 15 July 2026.

[92] Taylor Wessing. "Intellectual Property Licences under German Insolvency Law". (2 July 2020), https://www.taylorwessing.com/en/interface/2020/ip-and-insolvency/intellectual-property-licences-under-german-insolvency-law accessed 15 July 2026.

[93] Insolvenzordnung (InsO), § 103 (Ger.).

[94] Taylor Wessing. "Intellectual Property Licences….".

[95] Bankruptcy Act, Act No. 75 of 2004, art. 53(1) (Japan).

[96] Atsushi Yamaguchi. "IP Licensing and Insolvency – Recent Developments on the Protection of Licensees and Remaining Issues under Japanese Law". *NO&T Japan Legal Update, No.47 (September 2024),* p.2.

[97] Bankruptcy Act, Act No. 75 of 2004, art. 56(1) (Japan).

field. Similar to patent law, copyright licenses meeting certain registration requirements are exempt from the bankruptcy administrator's rescission right[98].

In Indonesia, the transfer of Intellectual Property (IP) rights during bankruptcy or insolvency is governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) and the Indonesian Civil Code. While IP is recognized as a valuable intangible asset, practical challenges in valuation and execution remain. Unlike jurisdictions with tailored IP-in-bankruptcy rules, Indonesia applies general contract and insolvency principles, which often fail to address the unique nature of IP rights. This leads to unpredictable outcomes for both licensors and licensees. IP licenses in Indonesian legal system are classified as executory contracts, giving the court-appointed receiver broad discretion to assume or reject them based on the estate's best interest[99]. If a licensor becomes insolvent, the Receiver may terminate the license, jeopardizing the licensee's business operations. Indonesian law lacks explicit protections, such as the U.S.'s §365(n), that allow licensees to retain IP rights post-rejection. Even if the Receiver chooses to continue the license, there can be uncertainty regarding ongoing support, updates, or maintenance from an insolvent licensor. An insolvent licensee may cease royalty payments. While the Receiver can assume the contract to continue using the IP, this can trap the licensor in a relationship with a bankrupt entity, complicating enforcement or relicensing.

Under the Indonesian Civil Code (ICC), Intellectual Property (IP) rights are classified as intangible movable objects. The transfer of such rights is governed by Article 613 of the ICC, which establishes the mechanism of *Cessie*. This article mandates that the transfer of "claims in the name of" (*piutang atas nama*) and other intangible goods must be executed through a deed, either an authentic deed (drawn up before a Notary) or a private/secret deed (*akta di bawah tangan*). Unlike the transfer of tangible movable goods, which requires physical delivery (*levering*), the legal delivery of IP is the execution of the deed itself. Mandatory formalism in bankruptcy proceedings' requirement creates a rigorous procedural framework when IP assets enter the bankrupt estate. Under Indonesian Bankruptcy Law, the Receiver is tasked with the settlement and liquidation of the debtor's assets. However, the Receiver's power to sell assets does not exempt the transaction from the formal requirements of the ICC. Whether the IP is being sold to a third party in a liquidation sale or transferred to a creditor as part of a composition plan, the Receiver must execute a formal Deed of Transfer of Rights. Without this specific instrument, the transfer is legally incomplete under Indonesian law.

The significance of Article 613 of the ICC extends to the administrative requirements of the Directorate General of Intellectual Property (DGIP). For a transfer of a Trademark[100], Patent[101], or Copyright[102] to be enforceable against third parties, it must be recorded in the General Register of the DGIP. The DGIP strictly requires the submission of a transfer deed as a prerequisite for recordation. In this context, the formalistic approach mentioned in Article 613 of the ICC serves a dual purpose: it provides legal certainty regarding the chain of title and acts as a public notice mechanism. In insolvency, where multiple creditors may have competing interests, a clear, recorded paper trail is the only way to shield the buyer from future claims or claw-back actions (*Actio Pauliana*).

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98 Atsushi Yamaguchi. "IP Licensing and Insolvency….", p.2.

99 Art.36 par (1) of Law No.37 of 2004 on Bankruptcy and Suspension of Debt Payment

100 Article 39 Par (1) Regulation of the Ministry of Law and Human Rights No.67 of 2016 on the Registration of Trademark.

101 Article 13 Government Regulation No. 46 of 2020 on Requirements and Procedures for Patent Transfer Registration.

102 Article 16 Law No.28 of 2014 on Copyrights.

An IP transfer that lacks a proper deed may be deemed legally flawed or voidable, meaning the IP remains legally tied to the bankrupt debtor despite any payment made by a buyer. For the insolvency process, this creates a limbo state that complicates the final distribution of proceeds. Furthermore, intangible assets derive their value from the exclusivity of their use, if a buyer cannot prove ownership at the DGIP due to a lack of a proper *Cessie* deed, the market value of that IP diminishes significantly. Ultimately, strict adherence to Article 613 of the ICC is not merely a bureaucratic hurdle but a critical safeguard to maximize the recovery value of the estate for the benefit of all creditors.

The status of in-progress intellectual property (IP), such as unfinished inventions, pending patent applications, or incomplete creative manuscripts, represents one of the most complex gray areas in Indonesian insolvency law. This complexity arises from the intersection of the proprietary nature of bankruptcy and the personal nature of intellectual creation. Under Article 1131 of the ICC, all of a debtor's property, both present and future, serves as collateral for their obligations. This is mirrored in Article 1 point 1 of Indonesian Bankruptcy Law, which defines the bankrupt estate as the entirety of the debtor's assets at the time of the bankruptcy declaration plus anything acquired during the proceedings. The contention arises when determining if an unfinished work constitutes a current asset with value or a future asset that has not yet come into legal existence. If an invention is not yet reduced to practice or a work not yet fixed, it may lack the legal status of IP. However, if the Receiver views the *potential* of this work as part of the estate, a conflict emerges: the law seeks to seize the value, but the law of IP requires a completed creation or expression to grant protection.

The resolution of this tension is informed by Indonesia's foundational doctrines governing intellectual property creation and ownership. The first principle establishes that initial ownership vests automatically in the creator or inventor (*asas perlindungan berdasarkan kreasi*), with rights crystallizing upon the work's fixation in a tangible medium, barring any prior contractual assignment to another party, such as an employer under a work-for-hire agreement. The second, complementary doctrine centers on originality and authorial intent, which guide the substantive allocation and scope of these rights. In litigation, judicial decisions often hinge on factual proofs of independent creation and correct attribution. Together, these principles form the legal bedrock for determining not only the initial enforceability and transferability of IP but also its very existence as a property right at the moment of bankruptcy.

Consequently, the bankruptcy framework does not operate in a vacuum but must interface with these IP doctrines to establish a coherent hierarchy of rights. The pivotal questions become: who holds the underlying ownership of the IP rights during the proceedings, and does the receiver automatically acquire the right to develop and decide the fate of in-progress works? The receiver typically administers the IP as an asset of the estate; however, ownership itself is not automatically transferred unless sold. For in-progress IP, this creates a practical impasse: the receiver owns the right to sell the incomplete asset, but often lacks the capacity to finish it, while the debtor-owner possesses the necessary skill but has lost the legal authority to act. Unlike a factory or a bank account, developmental IP is often inextricably linked to the debtor's specific expertise, intuition, and ongoing labor (*intuitu personae*). A Receiver can manage a company's finances, but they cannot finish a scientific invention or complete a musical composition. This dichotomy underscores the need for courts to exercise discretion, potentially authorizing specific management agreements or sales that oblige the purchaser to engage the debtor's expertise, thereby balancing creditor interests with the practical realities of preserving and maximizing the value of innovative and creative assets. The in-progress status remains a risk for creditors. Without a clear mechanism to compel the debtor's continued cooperation or to value unfinished genius, these assets often fail to provide the redress creditors expect, highlighting a significant gap between the rigid bankruptcy code and the fluid nature of intellectual innovation.

CONCLUSION

The valuation and transfer of intellectual property in bankruptcy estates represent one of the most challenging frontier issues in bankruptcy law. The United States has established a relatively comprehensive protection system through sophisticated legislative design and continuous case law development. The United Kingdom has developed innovative protective mechanisms such as the Deprivation Principle through case law. Germany and Japan are clarifying the IP valuation methods through case laws and strengthening licensee protection through legislative reform. China, despite facing practical challenges, is rapidly building professional norms and exploring innovative paths. Indonesia, by contrast, faces a systemic triple dilemma: absence of a legal framework, inadequate valuation capacity, and a vacuum of protection mechanisms. The experience of major jurisdictions demonstrates that the key to resolving this issue lies in building a comprehensive system that includes clear legal rules, professional valuation standards, effective licensee protection mechanisms, and a cross-border cooperation framework.

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DOI: https://doi.org/10.25216/jhp.15.2.2026.261-288

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