



Protection of Industrial Design Law in the Enhancement of Economic Development in Indonesia

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Abstract

Legal protection of Industrial Design in Indonesia through Law Number 31 of 2000, the government's determination to protect the right holders of Industrial Design from various forms of violations such as plagiarism, piracy or imitation. The more comprehensive safeguards are expected to be a driving factor to increase the creativity of designers. This research is legal research in a normative juridical study with the consideration that the starting point of the research analysis of legislation is the rules regarding intellectual property rights. Industrial Design Arrangements within the framework of the Law on Intellectual Property Rights are inseparable from Indonesia's participation in international agreements in the field of trade, by participating in the WTO agreement, Indonesia has ratified the WTO with Law Number 7 of 1994. Indonesia must impose TRIPs as provisions governing Rights Intellectual Property. The existence of industrial design laws provides protection to designers to prevent and resolve disputes in the field of Industrial Design to the right holders of Industrial Design to make designers to be more creative and productive in creating and producing. The legal arrangement of Industrial Design which is most important in filing rights is related to the element of novelty in the creation of works of Industrial Design. The Copyright Approach in Industrial Design is when an Industrial Design is registered, it will immediately get protection. Where the priority is the originality of a Design. The Patent approach used is in terms of new requirements and substantive examination.

Keyword: industrial design, legal protection, Indonesia

INTRODUCTION

The birth of the Industrial Design Law in Indonesia was motivated by the existence of 2 (two) reasons. The first reason is related to the problem of Indonesia's obligation as a member of the World Trade Organization (WTO) which must provide better regulations regarding the protection of Industrial Design. Second, it relates to the government's determination to provide effective protection against various forms of violations of industrial designs such as plagiarism, piracy or imitation. A more comprehensive safeguard is expected to be a driving factor to increase the creativity of designers and as a vehicle for producing productive designers¹

Indonesia's participation policy as a member of the World Trade Organization (WTO) is one proof of the seriousness of the Government in supporting a free / open economic system that indirectly spurs companies to further enhance competitiveness. Ratification of the Agreement Establishing the World Trade Organization includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIP Agreement) through ratification of Law Number 7 Year 1994. This condition has supported the ratification of the Paris Convention for the Protection of Industrial Property with the Presidential Decree Number 15 of 1997 and Indonesia's participation in the Haque Agreement (London Act) concerning the International Deposit of Industrial Designs. The principle of regulation is the recognition of ownership of intellectual work that gives an aesthetic impression and can be produced repeatedly and can produce an item in the form of 2 (two) or 3 (three) dimensions.²

Indonesia responds and takes a smart step with the existence of their respective values and culture in an effort to be able to implement the Industrial Design Law which has a capitalist paradigm in contrast to the

1 Tomi Suryo Utomo, 2009, *Hak Kekayaan Intelektual (HKI) di Era Global (Sebuah Kajian kontemporer)*, hlm. 225.

2 Ditjen HKI, 2007:13; JPO dan JII, 2007:110, *Hak Kekayaan Intelektual (HKI) di Era Global (Sebuah Kajian kontemporer)*, hlm. 229.

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paradigm that has taken root in the State of Indonesia. However, due to the juridical and psychological consequences, Indonesia has agreed on a GATT (General Agreement on Tariff and Trade) and agreed on the GATT / WTO (World Trade Organization) framework, and ratified it through Law No. 7 of 1994, there was great hope in the Industrial Design Law that could be implemented and be beneficial for the Indonesian people in general, including the transfer of technology, despite the fact that until now it was different.

Industrial Design as one of the branches of the legal science of Intellectual Property Rights is regulated in Law Number 31 of 2000 concerning Industrial Design. This Law is the first time specifically made in providing protection for Industrial Design in Indonesia which was ratified by the President of the Republic of Indonesia on December 20, 2000, which came into force on the date it was ratified.

The definition of Industrial Design as regulated in Article 1 number (1) of Law Number 31 of 2000 states:

“A creation about the shape, configuration, or composition of lines or colors, or lines and colors, or a combination of three-dimensional or two-dimensional shapes that give an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a products, goods, industrial commodities, or handicrafts. “

Understanding above can the author conclude that the product or goods is a combination of creativity and technical in the process of designing industrial products with the aim to be used by humans or users as well as the production of a manufacturing system.³ Then the understanding as described above can be compared with the understanding given by the United Nations Industrial Development Organization concerning Industrial Design, namely “as a broad activity in technological innovation and moving encompasses product development processes by considering functions, usability, production processes, and technology, marketing, as well as improving the benefits and aesthetics of industrial products “. While the International Council of Society if Industrial Design (ICSID) defines “Industrial Design as a creative activity to realize the properties of the shape of an object. In this case it includes the characteristics and relationships of harmonious structures or systems from the point of view of producers and consumers. “

Law Number 31 of 2000 concerning Industrial Design provides limitations on the limits of Industrial Design for which protection can be requested. The limit is about the novelty that is owned in an Industrial Design. Article 2 paragraph 1 of Law Number 31 of 2000 concerning Industrial Design explains that an industrial design is considered new if on the date of receipt, the industrial design is not the same as the pre-existing disclosure. Interpretation of the word “not the same” with pre-existing disclosures. The interpretation of the word “not the same” in practice so far has not been interpreted significantly differently, which means, although it differs slightly, it is considered not the same so that it can be considered a new design. A design is said to be the same if the two designs that are compared are truly 100% (one hundred percent) the same. If there are only a few different elements, either the shape, configuration, or composition of the color, it can still be said to be new. Although similar, it is still considered not the same. The explanation above, the renewal criteria in Law Number 31 of 2000 concerning Industrial Design allow for many conflicts because many products circulating in the market have similarities or similarities, but industrial design certificate holders find it difficult to sue other parties who are considered to be violating because of being able to considered violating, the other party’s design must be the same.

RESEARCH METHOD

This research is legal research in normative / doctrinal studies. The type of research conducted in this study is normative juridical with the consideration that the starting point of the research analysis of the legislation is the rules regarding intellectual property rights. Some approaches will be used in this study that are useful for getting information from various aspects of the problem being tried to find answers. The approach taken is the regulatory approach (statue approach), conceptual approach (conceptual approach), comparative approach (comparative approach). This study uses materials as a source of research to be sought for processing and will then be analyzed to find answers to the research problems that the authors propose. The technique of gathering research resources in this study was carried out by literature. The processing and analyzing stage is a step after collecting legal materials. All existing legal materials that have been obtained from the results of research are needed to answer the existing problems.

3 Muhamad Djumhana, *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*, PT Citra Aditya Bakti, Bandung, 2006, hlm. 113

RESULT AND DISCUSSION

Every Indonesian citizen has the right to get protection from the Indonesian government, including protection of industrial design rights. Protection of industrial designs, both protection of economic rights and moral rights, if given adequately, will have a close correlation with the increase in enlightenment creations which will ultimately provide a large economic contribution, both for designers and for the country. For designers, the existence of adequate protection will foster enthusiasm to create better, while for the country, with adequate protection will grow and trigger the country's economic development because protection of industrial design has a very important value in the world of investment and trade.

Legal protection of Industrial Design in Indonesia through Law Number 31 of 2000, is the government's determination to protect the right holders of Industrial Design from various forms of violations such as plagiarism, piracy or imitation. A more comprehensive safeguard is expected to be a driving factor to increase the creativity of designers and as a place to produce productive designers. Based on the provisions of Article 1 paragraph (5) of Law No. 31 of 2000 concerning Industrial Design, it can be concluded that the right to Industrial Design is the special right of the owner of a registered design obtained from the state, in other words, means that ownership rights to Industrial Design are as a consequence of the registration of the Industrial Design at the Design office, in this case the Directorate General of Intellectual Property Rights.

According to Paul Torremans and Jon Holyoak, the Right to Industrial Design is "a property right that guarantees the owner has a special right to reproduce the design for commercial purposes. The real step to implementing it is to make designs, but the owner also makes a document or design note and allows the design to be made by a third party".⁴ Then Trevor Black expressed his opinion that "The Right of Design is a right to the ownership of a new Intellectual property and is an individual property that is engaged in original or original design. The word "original" or the word "original" means that the design is an unusual design in a special field of design ". Design means design of all aspects or configurations, both whole and part of an object, including internal and external parts of a form or configuration. The design must be original or original and must meet the requirements that an object has been made based on a design.⁵

Protection of a new Industrial Design is obtained if a Design has been registered. Without registration, there will be no protection. Muhammad Djumhana stated "that the importance of design registration is the legal interest of the owner of the industrial design right to facilitate his proof and protection", although in principle the protection will be given since the industrial design right arises, while the birth of the right is at the same time manifest from a designer. However, the protection of the new design is concrete if it has been registered with the authorized agency.⁶ Bambang Kesowo stated "that the essence of the object of regulating legal protection in the field of design is works in the form of products which are basically patents used to produce goods repeatedly". This last element actually characterizes and even becomes a key because if these characteristics are lost, the conception of legal protection will be more appropriate to qualify as a copyright.⁷ Protection of industrial design in industrial life is a driving force for a healthy industrial climate because the provisions in the design field contain the main elements of the existence of fair and fair incentives for research and development activities, in the form of guaranteeing the right not to be contested over a new design work from a designer, accompanied by economic value rewards if the design is utilized in life.

Further problems based on the theory of the effectiveness of law in society as stated by Friedman are matters relating to the problem of legal substance. The legal substance according to Friedman is as follows:

*Another aspect of legal system is its substance. By this is meant the actual rules, norms, and behavior patterns of people inside the system. This is, first of all, "the law" in the populer sense of the term- the fact that the speed limit is fifty-five miles an hour, that burglars can be sent to prison, that "by law" a pickle maker has to list his ingredient on the label of the jar.*⁸

From the description above, it can be interpreted that the legal substance as another aspect of the legal system is how the actual rules, norms, patterns, attitudes of society towards the system itself. When connected with the substance contained in the Industrial Design Law, in practice there are still articles that contain weaknesses

4 Paul Torremans dan Jon Holyoak, *Intellectual Property Law, Butterworths*, London, 1998, hlm. 324

5 Lindati Dwiatin, *Deskripsi Perlindungan Hukum Desain Industri Berdasarkan Undang-Undang Nomor 31 Tahun 2000*, Fiat Justisia Jurnal Ilmu Hukum Volume 1 No. 2 Mei – Agustus 2007.

6 Muhamad Djumhana, *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*, PT Citra Aditya Bakti, Bandung, 2006, hlm. 46

7 Bambang Kesowo, *Perlindungan Hukum Serta Langkah-Langkah pembinaan oleh pemerintah dalam Bidang Hak Milik Intellektual*, Jakarta, 1990, hlm 7-8

8 Friedman, Lawrence M. 1984. *American Law*, New York-London: WW. Norton & Company

in their implementation. In addition, other weaknesses from the implementation of the Industrial Design Law are due to the fact that there are still many implementing regulations from the Industrial Design Law that have not been resolved by the government.⁹

According to Mochtar Kusumaatmadja, making an ideal law in order to be effective in its implementation is not easy. Sometimes making a law is only intuitively based. That is, the making of the law has not been based on experiences when implemented in the community, but only based on speculative efforts in accordance with the prevailing habits in society.¹⁰ Therefore, if it is related to Mochtar Kusumaatmadja's opinion, the loading of substantive articles in the Industrial Design Law can also occur because it is only based on speculative arguments insofar as it does not conflict with TRIPs, so Indonesia is obliged to enact Law -Industry Design in accordance with the guidelines contained in TRIPs.

The problem of industrial design protection, in TRIPs regulated in Articles 25 and 26, will be described as follows:

Article 25 (1) TRIPs read as follows.

Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that design are not new or original if they do not significantly differ from known design or combinations of known design features. Members may provide that such protection shall not extend to design dictated essentially by technical or functional considerations.

Article 25 (1) states that the requirement to be granted industrial design rights is if the design is new. An industrial design is considered not new if the design does not differ significantly from the pre-existing design,

Article 26 (1) TRIPs, regulates the provisions concerning exclusive rights of holders of industrial design rights as well as in Article 9 of the Industrial Design Law namely prohibiting other parties without the permission of industrial design holders to make, use, sell, import and export, and / or distribute goods given industrial design rights. The sound of Article 26 (1) TRIPs are as follows “

The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 26 (2) TRIPs regulate the problem of restrictions and exceptions from the protection of industrial design insofar as they do not harm the holders of industrial design rights, which read as follows:

“2. members may provide limited exceptions to the protection of industrial design, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interest of third parties”

Law Number 31 of 2000 concerning Industrial Design, the provision of Article 26 (2) has been implemented based on Article 9 paragraph (2) which states that it is not considered a violation if the use of industrial design is carried out for research and educational purposes insofar as it does not harm reasonable interests from industrial design rights holders.

The provisions of Article 26 (3) of TRIPs are intended to provide guidance for the period of industrial design protection for 10 (ten) years in Article 5 paragraph (1) of Law Number 31 of 2000 concerning Industrial Design also regulated for the protection of design industrial design industry for 10 (ten) years from the date of receipt of the application and cannot be extended.

Differences in industrial design and copyright are often witnessed that there are advertisements published by various Patent Attorneys for owners of 1 (one) particular design who request protection through copyright and consider this right to be against trademarks of their opposing parties who have use their “pirated” creation. So the author considers that there is a similarity between copyright and industrial design, but the difference will be more visible when the design in its form is closer to the patent.¹¹

When compared with the patent system, the main objective is to protect the development of inventions, and the aesthetic problem in terms of aesthetics is indeed seen as an important element to

9 Ansori Sinungan, 2011, *Perlindungan Desain Industri Tantangan dan Hambatan Dalam Praktiknya Di Indonesia*, Bandung; PT ALUMNI Hal 324

10 Mochtar Kusumaatmadja, 2006. *Konsep-konsep Hukum dalam Pembangunan Kumpulan Karya Tulis*. Bandung: Penerbit PT. Alumni. Halm 83-106

11 Usman, Rachmadi, *Hukum Hak Atas Kekayaan Intelektual; Perlindungan & Dimensi Hukumnya Di Indonesia*, (Bandung : Alumni, 2003), hal. 416

protect the rights of aesthetic works. So, both the Patent and copyright systems that want to protect aesthetic works can grow separately and separate one from another. In this connection, it can be said that there is a field in the field of Intellectual Property Rights which is considered a “no mans land”. This is where moving what is seen as industrial design and exploitation by industrial products¹²

If the industrial design was originally realized in the form of paintings, caricatures or images or graphics, one dimension that could be claimed as copyright, then in the next stage it was arranged in two or three-dimensional forms and could be realized in a pattern that gave birth to material and applicable products in industrial activities. In that form he is then called industrial design. The description and views as above are not excessive to see from the essence of the object of legal protection arrangements in the field of design, namely works in the form of products which are basically “patterns” used to make or produce goods repeatedly. This last element actually characterizes and even becomes a key. If these traits are lost, then the concept of legal protection will be more appropriately qualified as a copyright.¹³

Copyright and Industrial Design are 2 (two) Intellectual Property regimes that are difficult to separate from each other. Especially for Industrial Design, this regime can be protected through Copyright. Critics say there is no compelling reason to expand intellectual property protection for industrial design and that it will limit competition and the availability of products for consumers. Industrial design is located at the intersection of art, technology, and the entire industry dedicated to attracting consumers’ attention. Ansori Sinungan stated that the protection of Industrial Design in Indonesia consisted of at least 2 (two) approaches, namely the patent approach and the copyright approach. The Copyright Approach in Industrial Design is when an Industrial Design is registered, it will immediately get protection. Where the priority is the originality of a Design. The Patent approach used is in terms of novelty requirements and the existence of a substantive examination. Please note, Law Number 31 of 2000 concerning Industrial Design also implies substantive examination. But this examination is only exceptional, which means that only exists when in the stages of publication of an Industrial Design there are other parties who feel objected to the design. Protection of Industrial Design through Copyright is still a question mark. International agreements stipulate that a design can be protected through Copyright, in Indonesia the Copyright is protected through Law No. 28 of 2014, while Industrial Design is protected through Law No. 31 of 2000. The problem is that both laws do not have a clear relationship, both from the Copyright Law and the Industrial Design Law. The Industrial Design Law does not explain the provision that Industrial Design can be protected through Copyright, and the Copyright Law also does not explain what Industrial Design can be protected through the Law. Please note that the protection side between Industrial Designs is different, Industrial Design protects through the appearance of a product / design. While copyright protects from aspects of art, literature, and science.¹⁴

CONCLUSION

Industrial Design Arrangements within the framework of the Law on Intellectual Property Rights are inseparable from Indonesia’s participation in international agreements in the field of trade. By participating in the WTO agreement, Indonesia has ratified the WTO with Law No. 7 of 1994. Thus Indonesia must impose TRIPs as a provision governing Intellectual Property Rights, where in the TRIPs law there are 7 (seven) fields of IPR, one of which is Industrial Design or Design Industry. In Indonesia Industrial Design is regulated in Law Number 31 of 2000 concerning Industrial Design.

Legal protection of Industrial Design based on Law Number 31 of 2000, is based on the concept of the rule of law. State law regulates that all aspects of social life, statehood and government must be based on law. One element of the rule of law is the protection of human rights as the basis for legal protection of the Right to Industrial Design. Legal protection includes preventive protection and repressive protection. The existence of

12 Gautama, Sudargo dan Winata . R, *Hak Atas Kekayaan Intelektual; Peraturan Baru Desain Industri*, (Bandung : Citra Aditya Bakti,2004), hal. 67

13 Muhamad Djumhana, *Aspek-aspek Desain Industri Di Indonesia*, (Bandung : Citra Aditya Bakti, 1999), hal. 41

14 Dewi Sulistianingsih, Bagas Bilowo Nurtyanto Satata, *Dilema dan Problematik Desain Industri di Indonesia*, *Jurnal Suara Hukum*, *Jurnal Suara Hukum*, Volume 1 Nomor 1, Maret 2019, Hlm 8-9

industrial design laws provides protection for designers to prevent and resolve disputes in the field of Industrial Design and the protection of rights holders of Industrial Design makes designers to be more creative and productive in creating and producing industrial design works, and in legal arrangements The industrial design that is most important in filing rights is related to the element of novelty in the creation of industrial design works. Provisions for novelty in Industrial Design in Indonesia should adopt the new provisions contained in Article 25 TRIP's Agreement. The article states that industrial designs are considered new if they have significant differences (significantly differ) from existing industrial designs in general.

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