

## Legal Protection Registered Industrial Design Under The Act Number 31 Of 2000 On Industrial Design

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**Abstract.** In recent years, in some cases frequent abuse, which mimics the design industries of some of the industrial design is registered and Industrial Design Rights, causing economic losses to the owner of Right to Industrial Design. This study aims to find out about the legal protection of industrial designs by Act Number 31 of 2000 on Industrial Designs. This study uses normative juridical approach, namely legal research conducted by coating researching library materials or secondary data by means of a search against regulations and literatures relating to studied problem.

Result and discussion and analysis that the Legal Protection of Industrial Design by Act Number 31 of 2000 on design has a term of 10 years in accordance with Article 5 (1) Number 31 of 2000 on Industrial Designs.

Keywords: Legal Protection; Industrial Designs and Legal Protection.

### 1. Introduction

Broadly speaking, intellectual property rights can be divided into two parts, namely copyright (copyright) and industrial property rights which includes a patent (patent), industrial design, brand (trademerk), overcoming the practice of unfair competition (repression of unfair competition) layout designs of integrated circuits and trade secrets.<sup>3</sup>

Industrial Design (Industrial Design) is an applied art in aesthetic and usability an item that has been perfected.<sup>4</sup> International Industrial Design protection is regulated in Article 25 and Article 26 of the TRIPs Agreement.<sup>5</sup> Post-independence, intellectual property rights protection system in Indonesia is growing rapidly, which is marked by the emergence of various legislation and ratification in the field of intellectual property rights.

Act Number 31 of 2000 on Industrial Designs became effective on December 20, 2000.<sup>6</sup> Design Act - Act Number 31 of 2000 These rights associated with the international obligations of our interconnectedness with the signing of various conventions berpokokpada WTO Convention (Convention Establishing the World

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<sup>4</sup> Sukarmi, *Desain Industri Studi Perlindungan Hukum Berbasis Nilai Keadilan Sosial*, (Yogyakarta: Genta Publisher, 2015), p. 1.

<sup>5</sup> Ranti Fauza Mayana, *Perlindungan Desain Industri Di Indonesia Dalam Era Perdagangan Bebas*, (Jakarta: PT. Gramedia Widiasarana Indonesia, 2004), p. 20.

<sup>6</sup> *General Directorate Intellectual Property Rights*, *op.cit*, p. 38.

Trade Organization) which has been signed and ratified in 1994.<sup>7</sup>

Regarding the violation using designs other people who are already registered for similar goods and services shall be punishable by criminal penalties and fines payment of a sum of money that has been determined. Invite OF Number 31 Year 2000 regarding Industrial Design says not all of the industrial design can be protected by Act. Industrial design recently by the state can be given to the designer. Industrial design protection is given to the design of a new industry. The industrial design is considered new if on the date of receipt of the industrial design is not the same with previous disclosures.<sup>8</sup>

The system of legal protection for industrial designs to apply for registration. Registration system used is constitutive known: FirstToFile system is first registrar (which meets the requirements determined) that will get the Certificate of Industrial Design; No substantive examination will only be done when there is denial of the community (the opponent must pay a fee of Rp.150 .000) during the period of announcement or publication (3 months). The second point can be interpreted that the parties concerned (eg industri food) should terus watching the announcement of the industrial design industrial design office in Tangerang, so that when there are designs belong to those registered by parties who are not eligible, could soon be refuted; Because only a new industrial design that can be given Certificate of Industrial Design, the product of the design being applied for registration, shall not be published, used, and sold in Indonesia or outside the State, before the application is granted (granted).<sup>9</sup>

The legal basis for the protection granted for 10 (ten) years from the date of receipt, and after 10 years should be extended in accordance with that specified in (Article 5 of Act Number 31 of 2000 on Industrial Designs).

Holders of Rights of Industrial Design has exclusive rights to exploit his industrial design and to prohibit others who without his consent make, use, sell, import, export and / or distribute the products by Right to Industrial Design. Industrial Design Rights arise when Rightsholders Industrial Design executive who has the right to exploit his industrial design, but used or imitated by others.

## Research Methodology

This research method using normative juridical approach, the juridical approach for the study starts at the main data which is used preformance Industrial Design Regulations legal protection of industrial designs by Act Number 31 of 2000 on industrial design.

## 2. Discussion

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<sup>7</sup> Sudargo Gautamadan Rizawanto Winata, *Hak Atas Kekayaan Intelektual, Peraturan Baru Desain Industri*, (Bandung: PT Citra Aditya Bakti, 2000), p. 1.

<sup>8</sup> Oksaidin, *Aspek Hukum Hak Kekayaan Intelektual, Cetakan Revisi 6*, (Jakarta: Raja grafindo Persada 2007), p. 472.

<sup>9</sup>Sudarmanto, *KI Dan HKI Serta Implementasinya Bagi Indonesia: Pengantar Tentang Hak Kekayaan Intelektual, Tinjauan Aspek Edukatif Dan Marketing*, Vol. 1, (Jakarta: PT.Elex Media Komputindo, 2012), p. 75

## 2.1. Application of Legal Protection of Industrial Design that under Act - Act Number 31 of 2000 tentan Industrial Design.

Basically the design sense is very diverse. There yangberpendapat that the same design with the word,draft, which according to the dictionary Purwadarminta have meaning as composing, modify and fabricate.<sup>10</sup>

Designs can also be interpreted as an environment for creating human activities and treasures of artificial stock prepared from nature. Khazanah is then in line with the time that is always changing and fully characterized by innovations to create a culture of life.<sup>11</sup>

Further understanding of the industry is a business or activity processing of raw materials or semi-finished goods into finished goods that have added value to benefit. Assembling the assembly effort and also reparations are part of the industry. The results of the industry not only in the form of goods, but also in the form of services.<sup>12</sup>

Definition of industrial design that is used in Indonesia is the sense of industrial design, which reads as follows:

"Industrial design is a creation of shape, configuration or composition of lines or colors, or a combination thereof in the form of three-dimensional or two-dimensional gives aesthetic impression and can be realized in a pattern of three-dimensional or two-dimensional and can be used to produce a product, goods, commodities industry, or crafts."<sup>13</sup>

Based on these definitions, it can be concluded that the elements of industrial design is as follows:<sup>14</sup>

- Create protected by Act Number 31 of 2000 tentangDesain Industry can take the form of three-dimensional (shape and configuration) and duadimensi (composition of lines or colors)
- The creation gives aesthetic impression.<sup>15</sup>
- The creations can be used to produce a product, goods, industrial commodity or handicraft.

When listening to the considerations of Act Number 31 of 2000 on Industrial Design, then there are two major considerations the background of the need to establish such Acts include:

- That to advance the industry able to compete in national and international lingkupperdagangan need to create a conducive climate mendorongkreasi and

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<sup>10</sup> Iman Buchori Zainuddin, *Peranan Desain dalam Peningkatan Mutu Produk, Paradigma Desain Indonesia*, (Jakarta: Rajawali, 1986) ed. Agus Sachri. p. 80.

<sup>11</sup> Agus Sachri, *Desain Gaya dan Realitas*, (Jakarta: Rajawali, 1986), p. 23

<sup>12</sup> *Organisasi.org*,[http://organisasi.org/pengertian\\_defenisi\\_macam\\_jenis\\_dan\\_penggolongan\\_industri\\_di\\_Indonesia\\_perekonomian\\_bisnis](http://organisasi.org/pengertian_defenisi_macam_jenis_dan_penggolongan_industri_di_Indonesia_perekonomian_bisnis)>

<sup>13</sup> Industrial Designs Act No. 31 of 2000, op.cit.

<sup>14</sup> OK Saidin, op.cit, p. 468.

<sup>15</sup> *Unsur memberikan kesan estetis ini merupakan hal yang dapat mendatangkan kesulitan bagi pemilik desain maupun pemeriksaan desain. Hal ini dikarenakan penilaian estetika bersifat sangat subjektif.* Tim Lindsley, Eddy Damian Simon Butt dan Tomi Suryo Utomo, *Hak Kekayaan Intelektual Suatu Pengantar*, (Bandung: Asian Law Group Pty Ltd bekerjasama dengan PT Alumni, 2006), vol 5. p. 220.

community innovation in the field of industrial design as part of the system of Intellectual Property Rights;

- That Indonesia has ratified the Agreement Establishing the World Trade Organization (Agreement Establishing the World Trade Organization) yang mencakup Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) by Act Number 7 of 1994 tentang Pengesahan Agreement Establishing the World Trade Organization.<sup>16</sup>

So it is necessary to stimulate industrial design, In addition as a consequence of the implementation and the participation of Indonesia in the World Trade Organization, Indonesia also has a national interest with the acceptance of this draft Act. One is to fulfill its obligations under the agreement of the World Trade Organization and Agreement on Trade Related Aspects of Intellectual Property Rights, which requires that each participant in the World Trade Organization, to abide by and accept dalam undang-undang legislation on its own or any other rule nationwide soon provision yang termaktub in agreement Agreement on Trade Related Aspects of Intellectual Property these Rights.

The draft Act is expected to increase the value and dignity of the Indonesian Nation, because it has been carrying out its obligations as a member masyarakat internasional, following the World Trade organization regulations dan persetujuan other conventions.

## 2.2. Principles of Legal Protection of Industrial Design.

In addition to the entry into force of principles (principles of Act) Act right over material to the industrial design, the legal principle underlying this right is:<sup>17</sup>

- principle Publicity  
The principle of publicity means that their rights are based on the announcement of the publication in which the general public can find out keberadaannya tersebut.
- Principle of Oneness (Unity)  
On the principle of oneness, this means that the right to industrial design should not be segregated into one unified whole to one komponennya.
- principle Novelty  
Therefore, the principle of novelty into a legal principle which is also a concern in the protection of the rights to the design of this industry. Just design a really new that can be granted. The size or the criteria of novelty it was when the industrial design to be registered it is not the same as industrial design that has been there before, as mentioned above.

## 3.3. Industrial Design Rights Protection System

### 3.3.1. Protection of Industrial Design Rights Characteristically Active

General provisions in other countries in regulating the protection of industrial design rights, only awarded to a registered design means protection through registration

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<sup>16</sup> Sudargo Gautama dan Raizawanto Winata, *Hak Atas Kekayaan Intelektual: Peraturan Baru Desain Industri*, (Bandung: PT. Aditya Bakti, 2000), p. 1.

<sup>17</sup> OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, (Jakarta: PT. Raja Grafindo Persada, 2004), p. 477

system. Thus, the owner or holder of industrial design rights will be protected after going through registration. Through the registration system of the country provides protection of industrial design on a work designing specific products after tests were performed shape of the design being applied pendaftarannyatersebut, if it is worth to be given recognition for the design industries, What plan it has a value benefit in the industry, what is the nature darirancangan it is new , but it also does the design memenuhisyarat both formal and material.<sup>18</sup>

### *3.3.2. Protection of Industrial Design Rights Granted to JangkaWaktu 10 (ten) years from the date of Acceptance.*

As an intellectual property rights, the rights to the design of the current industrisuatu should be publicly owned and run a social function. Therefore grace period of protection is limited. In Act DesainIndustri in Indonesia or Number 31 of 2000 on Industrial Designs, the protection of the right to industrial design is only given for a period of 10 years from the date of receipt of the registration contained in daftarumum industrial design are published in the official news design industriDepartemen of Justice of the Republic of Indonesia ,<sup>19</sup>

### *3.3.3. Application for Registration of Industrial Designs*

The provision of industrial design registration application Act Number 31 of 2000 on Industrial Designs is as follows:

- Request submitted in writing in the Indonesian language at the Directorate General of Intellectual Property by paying a fee as stipulated in this Act;<sup>20</sup>
- The application as intended to be signed by the applicant or its power;
- In the petition must contain:
  - Date, month and year of the application;
  - Name, complete address, and nationality of the designer;
  - Name, complete address and nationality of the applicant;
  - Full name and address power of attorney if the application is submitted melaluikuasa and;
  - State name and date of receipt of the request that was first dalamhal petition filed with priority rights;
- Application referred to shall be accompanied by:
  - Physical sample or drawing or photograph and description of yangdimohonkan industrial design registration;
  - Special power of attorney in case the application filed by the power;
  - A statement that the industrial design being applied for registration is owned by the applicant or the property of the designer;
- In case the application is submitted jointly by more than one applicant, the application is signed by one applicant dengandilampiri written consent on another applicant;

<sup>18</sup>Muhammad Djumhana and Djubaedillah, op.cit, p. 232.

<sup>19</sup>Muhammad Djumhana and Djubaedillah, op.cit, p. 232.

<sup>20</sup> Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights in cooperation with the Japan International Corporation Agency, op.cit.

- In the case of petition filed by the designer, the applicant must disertaipernyataan equipped with sufficient evidence that the applicant is entitled atasdesain relevant industries;
- Provisions regarding the procedure for requesting further stipulated by government regulations.<sup>21</sup>

First applying regarded as the industrial design right holder, unless proven otherwise. Each application is considered as an industrial design right holder, unless proven otherwise. Each application may be filed for:

- One industrial design; or
- Some of the design is an integral design or which have the same class;
- Date Request
- Priority Right

In general, the so-called right of industrial design is an exclusive right granted by the Republic of Indonesia to the designer for produce to a given period to yourself, or give Agreement to another party to do it, basically there are some rights that are owned by the holder of industrial design rights , among others:<sup>22</sup>

- Exclusive rights, namely the right to carry out industrial design rights and to prohibit a person without his consent make, use, sell, import, export and distribute goods or by hakdesain industry.<sup>23</sup>
- Rights filed a Actsuit in civil or criminal charges are kepadasiapa any person who deliberately and without rights to make, use, sell, import, export and distribute goods or authorized desainindustri.

In addition it is also known what diserbut with priority rights. Priority rights is the right of the applicant to submit an application originating from countries that have joined the Paris convention for the protection of industrial property or the agreement establishing the World Trade Organization to get recognition that the date of receipt in the country of origin is a priority date in destination countries that are also members of one of both agreements for submission is done within the time specified by the Paris Convention.

An application with a priority right must be filed within a period of six months from the receipt of the request was first received another State that is a member. Request with priority right as intended shall be furnished with the priority document endorsed by the office administering the registration of industrial designs accompanied by a translation in the Indonesian language in the period of 3 months at the latest after expiry of filing the petition with the right prioritas. If terms as set forth above are not met , the petition is considered filed without using the priority right.<sup>24</sup>

### 3. Closing

#### 3.1 Conclusions

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<sup>21</sup> OK Saidin, op.cit. p. 475.

<sup>22</sup> Ibid. p. 39.

<sup>23</sup> OK Saidin, op ., p. 473.

<sup>24</sup> OK Saidin, op.cit, p. 475.

Based on the description that has been described in the previous section, the authors conclude as follows:

The legal protection of industrial designs by Act Number 31 of 2000 on Industrial Designs contained in Article 5 (1) Right to Industrial Design granted for a period of 10 years and shall be extended to expire.

### 3.2. Recommendation

Holder Properties of Industrial Design can immediately register creations and publicize Design Industry-in area - breadth, to be known by many people, or user of the product, so that cases of violation of industrial design can not be claimed by any party, for the Protection of the design industry as a publication, can also reduce the occurrence of violations of Industrial Design.

Government provides protection for industrial designs that such as regulated by Act Number 31 of 2000 should be more careful again to accept the industrial design to be registered, so as to provide protection also for the recipients of the old industrial design rights that it is true - absolutely no one uses the industry's design rights.

For the Government, the role of government is very important, among others by providing socialization regarding the registration of industrial designs, the importance of registering industrial designs and government should improve enforcement of industrial design imply a firm and fair, especially to Act enforcement officials who are defenseless against violation of Industrial Design and conduct improvement of Act - Acts in accordance with the progress of time and the government must increase public interest above the interests of any kind.

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