

Intellectual Property Dispute Resolution Practices: Overlapping Copyright and Industrial Design Rights in Indonesia

Rubben Denova Rohmana¹⁾, Ahmad M. Ramli²⁾ & Tasya Safiranita Ramli³⁾

¹⁾Faculty of Law, Universitas Padjadjaran, Indonesia, E-mail: rubben19001@mail.unpad.ac.id

²⁾ Faculty of Law, Universitas Padjadjaran, Indonesia, E-mail: ahmad.ramli@unpad.ac.id

³⁾ Faculty of Law, Universitas Padjadjaran, Indonesia, E-mail: tasya.safiranita@unpad.ac.id

Abstract. *One of the important approaches to be studied on the issue of overlapping copyright and industrial design rights in Indonesia today is the practice of dispute resolution in the judiciary and its impact on stakeholders. In this research, the method used is a statutory approach with analytical descriptive specifications. This research found that Indonesia does not yet have preventive legal arrangements and protection for disputes over copyright and industrial design rights. The results of this study indicate that the settlement of overlapping disputes between copyright and industrial design rights in Indonesia does not reflect the principle of fairness because there is no comprehensive rule of law that can bridge between the two legal regimes. Therefore, a form of harmonization and renewal of copyright law and industrial design rights is needed, to ensure justice and legal certainty for all parties to the practice of dispute resolution.*

Keywords: *Copyright; Dispute; Intellectual Property; Resolution.*

1. Introduction

Intellectual property can be understood as a work or wealth that arises and is born from human intellectual capabilities, which are made at the expense of time, thought, energy, creativity, and the spirit and taste of the creator (Panjaitan & Sinaga, 2017). This is what distinguishes intellectual property from other property that is not born from human intellect. Some examples of intellectual property are works in the aspects of science, technology, and art and literature, in contrast to natural resources such as land or plants that were created by God, and not born from human intellect. Wealth, assets, or works that are the labor and arise from human thought or intelligence certainly have economic value and benefits and can become commercial assets for humans (Fahmi et al., 2023). Therefore, these intellectual works should be guaranteed and protected by a form of legal protection called the intellectual property law system.

In relation to intellectual property law, artwork is an object that is very relevant to the concept of intellectual property protection. In the Kamus Besar Bahasa Indonesia (KBBI), the word “art” contains 3 (three) meanings. First, the word “art” means a skill possessed by someone in creating a work that has value & quality. Second, the word “art” means a form of work made with extraordinary skill, such as dance, painting, and carving. Third, the word “art” means the ability of the mind to make something extraordinary and of high value. Based on these three definitions, it can be concluded that the definition of art in the Indonesian Dictionary is a work that is the result of a combination of thought and expertise involving physical skills and the final result is realized in a form or movement that has high value & quality (Mahila, 2018).

In the spectrum of intellectual property law, artwork itself has generally been understood as one of the protected objects in the copyright protection regime (Sierrad, 2022). This is also as regulated in Article 40 paragraph (1) of Law No. 28 of 2014 concerning Copyright, which states that works of art in all forms such as paintings and drawings are protected objects of creation. However, in practice, art such as paintings and drawings are often associated with commercial activities. For example, an image of Mickey Mouse as a copyrighted image created by someone will be protected as a form of creation in the copyright regime. Then, the image is made into various forms of objects such as mass-produced cups to be sold. In such a scenario, the mickey mouse image would actually be covered under the object of protection of the industrial design rights regime (Wijana, 2024).

Based on this example, the object of protection of the copyright regime with the object of protection of the Industrial design rights regime is closely related, giving rise to the risk of overlapping protection. This becomes a crucial issue to be studied when there are various parties who have a legitimate protection basis from different regimes for the same object. For this reason, of course, government participation is needed with its authority to formulate a regulation that does not clash with each other and is well harmonized. This will greatly impact the practice of dispute resolution between copyright and industrial design rights in the judiciary, especially in ensuring the consistency of the judge's decision and the application of the principle of fairness for all parties.

2. Research Methods

The approach method used in this research is a normative juridical approach, which thoroughly analyzes various laws and regulations related to the research topic (Ali, 2021). This research is descriptive analytical in which the information collected is studied in detail and presented in the form of narrative exposure. The analytical technique applied is normative qualitative, covering the systematic arrangement of written legal sources to support the formation of concepts and analysis in legal research, especially with regard to aspects of legislation.

3. Result and Discussion

3.1 The Approaches to the Regulation of Copyright and Industrial Design Rights in Indonesia

In analyzing the approach to the legal regulation of copyright and industrial design rights in Indonesia, the provisions will first be reviewed based on the relevant legislation (Setyoningsih, 2021). With regard to copyright, based on Article 1 number 1 of Law No. 28 of 2014 concerning Copyright, copyright has been defined as: *“Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in tangible form without reducing the restrictions in accordance with the provisions of laws and regulations.”*

Based on this definition, several important points can be analyzed further. First, copyright is an exclusive right, which consists of moral rights and economic rights. Economic rights have been further elaborated in Article 9 paragraph (1) of Law No. 28 of 2014 concerning Copyright, namely: *“(1) Creators or copyright holders as referred to in Article 8 have economic rights to: a. Publish their works; b. Reproduce their works in any form; c. Translate their works; d. Adapting, arranging, or transforming the work; e. Distributing the work or copies thereof; f. Performing the work; g. Announcing the work; h. Communicating the work; and i. Renting the work.”*

While economic rights focus more on the industrialization aspect of copyright objects, moral rights are present to ensure that the rights and good name of the creator are guaranteed (Parmawati et al., 2022). This has been described in Article 5 paragraph (1) of Law No. 28 of 2014 concerning Copyright which reads: *“Moral rights as referred to in Article 4 are rights that are permanently attached to the Creator to: a. continue to include or not include his name on copies in connection with the public use of his creation; b. use his alias or pseudonym; c. modify his creation in accordance with social norms; d. modify the title and subtitle of the work; and e. preserve his rights in the event of distortion, mutilation, modification, or anything else that is detrimental to his honor or reputation.”*

Second, copyright protection is declarative. This means that the legislation does not require registration or recording as a condition of its protection, but a creation directly get protection since the completion of its creation. This is what distinguishes the copyright protection system with industrial design rights and other intellectual property that requires registration as a condition of its protection. Declarative nature has a more flexible impact on the application of copyright protection, but will be a burden and obligation of the creator to be able to prove its ownership if there is a problem in the future (Nurusyifa, 2023).

Third, there is a restriction on copyright protection. It has been described in detail in Article 43 of Law No. 28 of 2014 concerning Copyright that: Acts that are not considered copyright infringement include: a. The announcement, distribution, communication, and/or reproduction of the national emblem and national anthem in their original form; b. The publication, distribution, communication, and/or reproduction of anything carried out by or on behalf of the government, unless it is protected by law, a statement on the work, or when the work is published, distributed, communicated, and/or reproduced; c. The reproduction of current news, either in whole or in part, from news agencies, broadcasting institutions, newspapers, or similar sources, provided that the source is fully cited; or d. The creation and dissemination of copyrighted content through information and communication technology media that is non-commercial and/or beneficial to the Creator or related parties, or the Creator has stated no objection to such creation and dissemination. e. The reproduction, publication, and/or distribution of portraits of the President, Vice President, former Presidents, former Vice Presidents, National Heroes, heads of state institutions, heads of ministries/non-ministerial government agencies, and/or regional heads, while respecting their dignity and propriety in accordance with applicable laws and regulations.

Apart from the exclusive rights of creators and copyright holders, there are also related rights that are exclusive to performers, phonogram producers and broadcasters. For performers, the exclusive rights consist of moral rights and economic rights. Meanwhile, for phonogram producers and broadcasters, the exclusive rights are only in the form of economic rights (Nurwati, 2024).

Related to the objects of creation that can be protected by copyright, basically the protection protects the forms of science, art, and literature (Pohan et al., 2021). More specifically, there has been a list of creations that get copyright protection in Article 40 paragraph (1) of Law No. 28 of 2014 concerning Copyright, namely: *“(1) Protected works include works in the fields of science, art, and literature, consisting of: a. Books, pamphlets, published written works, and all other written works; b. Lectures, speeches, and other similar works; c. Teaching aids created for educational and scientific purposes; d. Songs and/or music with or without lyrics; e. Plays, musicals, dances, choreography, puppetry, and pantomime; f. Works of fine art in all forms, such as paintings, drawings, engravings, calligraphy, sculpture, or collages; g. Applied art works; h. Architectural works; i. Maps; j. Batik art or other motif art; k. Photographic works; l. Portraits; m. Cinematographic works; n. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and other works resulting from transformation; o. Translations, adaptations, arrangements, transformations, or modifications of traditional cultural expressions; p. Compilations of works or data, whether in a format readable by computer programs or other media; q. Compilations of traditional cultural expressions provided that the compilation constitutes an original work; r. Video games; and s. Computer programs.”*

The time limit or duration of copyright protection may vary depending on the type of work created. However, the copyright protection period can be said to have a very long time compared to other intellectual property. In general, copyright on a work will expire after a certain period of time since the creator died or since the work was first published (Oksidelfa Yanto, 2017).

In Indonesia, generally the copyright protection period applies during the life of the creator plus 70 years after the creator dies, starting from January 1 of the following year. If the work is made by more than one creator, copyright protection will apply for 70 years after the death of the last surviving creator (Disemadi & Kang, 2021). Regarding the specific protection period of copyright objects, it has been described in Article 58, Article 59, Article 60, and Article 61 of Law No. 28 of 2014 concerning Copyright according to the object of the copyright work created. After the period expires, the copyrighted work will enter the public domain, which means that others can use it without having to ask for permission or pay royalties.

In relation to industrial design rights, industrial design rights can basically be understood as an exclusive right granted by the state to the party who makes a design on the results of his creation to carry out himself or give his consent to other parties to carry out this within a certain period of time (Roychan, 2021). Industrial design itself has been defined in Article 1 of Law No. 31 of 2000 concerning Industrial Design namely: *“Industrial design is a creation of shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof, in three dimensions or two dimensions, which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a product, industrial commodity, or handicraft.”*

Based on this definition, 2 (two) main elements can be drawn that can make an object said to be an industrial design. First, the object is a configuration of lines and/or colors in the form of two or three dimensions. Second, the object gives an aesthetic impression that can be used to produce a product, industrial commodity, or handicraft.

In Law No. 31 of 2000 concerning Industrial Design it does not describe in detail the objects included in the scope of protection as in Law No. 28 of 2014 concerning Copyright, but the two previous elements can be used as qualifications for all existing intellectual property objects. As another reference, the type of “class” as stipulated in the international classification of industrial design in the Locarno Agreement tends to be used as a reference in determining whether an object is an object of industrial design protection or not (Lim, 2022). The following is a description of the types of industrial design classes based on the Locarno Classification - 15th Edition:

Table 1. Type of Industrial Design Class based on *Locarno Classification - 15th Edition*

Class	Title	Class	Title
-------	-------	-------	-------

01	<i>Foodstuffs</i>	17	<i>Musical instruments</i>
02	<i>Articles of clothing and haberdashery</i>	18	<i>Printing and office machinery</i>
03	<i>Travel goods, cases, parasols and personal belongings, not elsewhere specified</i>	19	<i>Stationery and office equipment, artists' and teaching materials</i>
04	<i>Brushware</i>	20	<i>Sales and advertising equipment, signs</i>
05	<i>Textile piece goods, artificial and natural sheet material</i>	21	<i>Games, toys, tents and sports goods</i>
06	<i>Furnishing</i>	22	<i>Arms, pyrotechnic articles, articles for hunting, fishing and pest killing</i>
07	<i>Household goods, not elsewhere specified</i>	23	<i>Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel</i>
08	<i>Tools and hardware</i>	24	<i>Medical and laboratory equipment</i>
09	<i>Packaging and containers for the transportation or handling of goods</i>	25	<i>Building units and construction elements</i>
10	<i>Clocks and watches and other measuring instruments, checking and signaling instruments</i>	26	<i>Lighting apparatus</i>
11	<i>Articles of adornment</i>	27	<i>Tobacco and smokers' supplies</i>
12	<i>Means of transport or hoisting</i>	28	<i>Pharmaceutical and cosmetic products, toilet articles and apparatus</i>
13	<i>Equipment for production, distribution or transformation of electricity</i>	29	<i>Devices and equipment against fire hazards, for accident prevention and for life saving.</i>
14	<i>Recording, telecommunication or data processing equipment</i>	30	<i>Articles for the care and handling of animals</i>
15	<i>Machines, not elsewhere specified</i>	31	<i>Machines and appliances for preparing food or drink, not elsewhere specified</i>
16	<i>Photographic, cinematographic and optical apparatus</i>	32	<i>Graphic symbols and logos, surface patterns, ornamentation, arrangement of interiors and exteriors</i>

Industrial design rights include the exclusive right to execute the industrial design owned by the holder and to prohibit others from making, using, selling, importing, exporting, and/or distributing the goods covered by the industrial design right without his consent (Nugroho, 2022). However, there is an exception for the use of industrial designs for research and educational purposes as long as it does not harm the reasonable interests of the holder of the industrial design right.

In order for an industrial design to have protection, the industrial design must have the element of "novelty". This has been emphasized in Article 2 of Law No. 31 of 2000 concerning Industrial Designs, which states that: "(1) *Industrial design rights are granted for new industrial designs.* (2) *An industrial design is considered new*

if, on the date of filing, it is not identical to any prior disclosure. (3) Prior disclosure, as referred to in paragraph (2), means the disclosure of an industrial design that occurred before: - The filing date; or - The priority date if the application is filed with priority rights; - Has been published or used in Indonesia or outside Indonesia.”

Disclosure as referred to in the provision is disclosure through electronic or print media, including participation in an exhibition.

Applicants for registration of industrial design rights are not allowed to disseminate or disclose their industrial designs to the public before filing the application, so that the novelty of the industrial design is maintained. For industrial design applications from abroad, a priority date mechanism can be applied to protect the novelty of the design. The priority date refers to the date of first acceptance of an industrial design in the country of origin, before the application for industrial design registration is filed in Indonesia.

The protection period of industrial design tends to be shorter than that of copyright. This is because industrial design rights focus more on the protection of industrial commodities, such as the monopoly of a product, compared to copyright which focuses on appreciating the artistic quality and creativity of a person. Article 5 of Law No. 31 of 2000 concerning Industrial Designs states that: *“(1) Protection of industrial design rights shall be granted for a period of 10 (ten) years from the date of receipt. (2) The effective date of the protection period as referred to in the general list of industrial designs shall be announced in the official industrial design gazette.”*

For the 10-year protection period, no extension of protection can be applied for afterwards.

Based on the explanation of the two arrangements, it can be seen that Indonesia has regulated copyright and industrial design rights separately. However, given the interrelated nature of the object of protection of both, the drafter of Indonesian legislation has not regulated the relationship between the two legal regimes. Unlike the case with the practice of countries in the international scope, which although regulates the regime of copyright and industrial design rights separately, but has been further emphasized on the relationship between the two. This includes the regulation of overlapping protection objects, procedures for the use of creations in industrial products, as well as dispute resolution mechanisms between the two.

3.2 Practice of Dispute Resolution on Overlapping Copyright and Industrial Design Rights in Indonesia

As previously described, the State grants rights to creators of works in the fields of art, literature and science, known as copyright. This includes one-dimensional forms of paintings, caricatures, and drawings/graphics. Then the paintings,

caricatures, or drawings/graphics in practice are often applied into two or three dimensions in the form of a pattern that produces material products and can be implemented in industrial activities, which are then referred to as industrial designs (Dina Susiani, 2020). Thus, it can be seen that there is a link between intellectual property law in the field of copyright and industrial design rights, where often the copyright object becomes the first step for the creation of the object of industrial design rights, which is then likely to cause a dispute.

The overlapping relationship between copyright and industrial design rights is an issue that has been debated by intellectual property experts and legislators around the world (Tim Lindsey, 2006). In general, overlapping disputes between the fields of copyright and industrial design rights begin to arise when there are differences between the owner of industrial design rights and the owner of copyright over a work of art in the form of applied or industrial design object coverage. Although basically, the industrial design work is an advanced work of related copyrighted works. The relationship between the field of copyright and industrial design rights becomes complex when each party has legal rights to the same object, considering that the copyright protection system does not require registration.

Disputes between copyright and industrial design rights also often occur due to violations related to changes in the dimensions of a work. When a work that has undergone dimensional changes is then produced in large quantities and traded, then the action can actually be categorized as a form of copyright infringement, namely the duplication or reproduction of the work without rights by changing the dimensions of the work (Husin & Al Amalia, 2019). Conversely, an industrial designer who finds his industrial design has been transformed into another dimension that becomes the object of creation, will feel his industrial design rights are violated, even though the creation is protected because it is registered as copyright. This is often a case of overlap between copyright and industrial design rights.

The granting of intellectual property legal protection in the field of industrial design rights refers to the registration of new designs (constitutive). Meanwhile, protection in the field of copyright is granted automatically when a real expression is realized without having to be registered (declarative) (Purwaningsih, 2012). Copyright itself has the properties of originality, individuality, and automatic protection, so copyright is obtained without having to register a work. Meanwhile, industrial design rights require registration which is examined by testing the principle of novelty and the first registration submission.

When referring to the previous definition of industrial design, it can be concluded that the characteristics of an industrial design are as follows: 1. A work related to the shape, configuration, and composition of lines/colors, or lines and colors, or a combination of both; 2. Two- or three-dimensional; 3. The shape should give an

aesthetic impression; 4. Applied to creating a product, whether in the form of goods, industrial commodities, or handicrafts.

When analyzed further, the characteristics contained in points 1 to 3 can be very similar to the object protection of copyright (Maheswari et al., 2021). However, the characteristics contained in point 4 are distinguishing and must be present in the protection in the field of industrial design rights.

In practice, there are some objects that can fall under the "overlapping" category of copyright and industrial design rights, i.e. objects that can be protected under copyright as works of art or artistic crafts, or can be protected under industrial design rights law as industrial objects. One example is designer decorations, where many creators often have to decide whether to protect their works under copyright law or industrial design right law.

Until now, Indonesia has no rules and preventive legal protection for cases of overlapping copyright and industrial design rights, so it still raises the potential for copyright infringement under the pretext of industrial design rights. It is a real possibility, if the industrial design that a person creates is not the result of his own work, but the result of imitation of the copyrighted works of others. But in fact, the industrial design still get legal protection, because copyright law and industrial design rights do not discuss each other and are different regimes.

Basically, there are already criminal rules related to repressive legal protection aimed at parties who imitate a copyrighted work (Nurfadila et al., 2021). However, the repressive legal protection referred to in this copyright regulation does not include protection against imitation of works as a form of registered industrial design. Thus, the criminal rules do not apply to cases of imitation of works as industrial designs, resulting in the absence of a protection or legal vacuum related to dispute resolution between copyright and industrial design rights.

As a concrete example, the case of Putusan Nomor 238 K/Pdt.Sus-HKI/2014 has several interesting legal aspects to be studied regarding the resolution of overlapping copyright and industrial design rights. In this case, there was a dispute between Bun Bun Khui alias Radiman, hereinafter referred to as the plaintiff, with PT Tunisco Trading Investment, hereinafter referred to as the defendant, and the Minister of Law and Human Rights of the Republic of Indonesia Cq. Director General of intellectual property rights Cq. Director of copyright, industrial design, integrated circuit layout design, and trade secrets, hereinafter referred to as co-defendants. The plaintiff is the copyright holder of a painting entitled "PITA", registered at the Directorate General of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia under registration number 052789, dated April 16, 2010. Meanwhile, the defendant is the holder of an industrial design certificate with the title "KEMASAN" with registration number ID 0 033 235 - D, dated February 16, 2012.

The plaintiff essentially objected to the registration of an industrial design with the title “KEMASAN” in the name of the defendant. The plaintiff is a manufacturer of women's clothing which has been traded domestically and in Sudan since 2009 under the Haibah and Jakar brands. The goods with the design that the plaintiff has been trading since 2009 under the Haibah and Jakar brands were registered by the defendant under the title “KEMASAN” in the name of the defendant with Registration Number ID 0 033 235 - D Acceptance of Application date February 16, 2012. In addition, the plaintiff also found that the defendant's industrial design was not new or did not purely create a new design because the design incorporated the plaintiff's creation entitled “PITA” into the registered industrial design.

Due to this incident, the plaintiff filed a lawsuit at the Central Jakarta Court with the following petition:

In the provisions section, it is requested that the defendant or any party deriving rights from it be prohibited from taking any legal action as provided for in Article 54(1) in conjunction with Article 9(1) of Law No. 31 of 2000 on Industrial Design until there is a final and binding court decision regarding the registration of the industrial design with registration number ID 0 033 235 D, with the application received on February 16, 2012. Additionally, it is stated that the industrial design with the aforementioned registration number, which belongs to the defendant, remains in its current status quo until a final and binding court decision is issued.

In the main case, the plaintiff requests that the lawsuit be granted in full. It is stated that the defendant's industrial design with registration number ID 0 033 235 D dated February 16, 2012, is identical to the product marketed by the plaintiff under the Haibah and Jakar brands. The defendant's industrial design is also deemed to lack novelty as required under Article 2(1) of Law No. 31 of 2000 on Industrial Designs. The plaintiff further asserts that the defendant acted in bad faith in registering the industrial design, and therefore, the registration must be canceled. Furthermore, it is requested that the co-defendant be ordered to cancel the registration of the industrial design in the defendant's name, remove it from the public register of industrial designs, and publish it in the official industrial design gazette. Finally, the defendant is also requested to bear all litigation costs, or at least it is requested that the court issue a fair and reasonable decision (*ex aequo et bono*).

In response to the lawsuit, the defendant filed an exception. In the exception, the defendant rejected all of the plaintiff's arguments except those that were explicitly acknowledged to be true. The defendant stated that the plaintiff's lawsuit was unclear (*obscure libel*), because the plaintiff sought the cancellation of industrial design number ID 0033235 D entitled “PACKAGING” owned by PT Tunisco Trading Investment on the basis of copyright over the painting “PITA,” which is not a legally relevant basis in the field of industrial design. The Industrial Design Law only regulates forms that can be qualified as industrial designs, in accordance with

Article 1(1) of Law No. 31 of 2000, and does not regulate the existence of paintings, as paintings are legally protected under copyright law pursuant to Law No. 19 of 2002.

The defendant also asserts that the plaintiff has conflated legal arguments from two distinct branches of intellectual property law industrial design law and copyright law which legally regulate and protect different objects. Therefore, the lawsuit becomes unclear because it combines two legal concepts whose resolutions cannot be addressed simultaneously. Thus, the lawsuit must be dismissed or at least declared inadmissible.

In the statement of claim, the plaintiff explicitly bases its claim on copyright over the ribbon painting and the Haibah and Jakar trademarks, while the defendant's rights are based on industrial design with registration number ID 0033235 D titled "PACKAGING." Therefore, legally, the plaintiff's lawsuit should be declared inadmissible (niet ontvankelijke).

The defendant also refers to the provisions of Article 25(1) of Law No. 4 of 2004 on Judicial Power, which states that every court decision must not only include reasons and legal grounds but also include specific provisions of relevant laws and regulations or unwritten legal sources that form the basis for adjudication. This is reinforced by the Supreme Court of the Republic of Indonesia's Jurisprudence No. 638 K/Sip/1969 dated July 22, 1979, which states that decisions of the District Court and High Court that are insufficiently reasoned (onvoldoende gemotiveerd) must be annulled.

In this case, the Court at the Central Jakarta has issued Decision Number 31/Pdt.sus-DesainIndustri/2013/PN.Niaga.Jkt.Pst, dated January 13, 2014 which reads as follows: In its ruling, the Panel of Judges rejected the plaintiff's provisional claim. Regarding the exception, the court accepted the defendant's objection on the grounds of obscure libel, indicating that the lawsuit was unclear or vague. On the merits of the case, the court declared the plaintiff's lawsuit inadmissible (niet ontvankelijke verklaard) and ordered the plaintiff to pay court costs in the amount of Rp6,616,000.00 (six million six hundred sixteen thousand rupiah).

Then, the plaintiff filed an appeal against decision Number 31/Pdt.sus-Industrial Design/2013/PN.Niaga.Jkt.Pst but the appeal was rejected with the following verdict: *"1. Menolak permohonan kasasi dari Pemohon Kasasi: BUN BUN KHUI alias RADIMAN tersebut; 2. Menghukum Pemohon Kasasi/Penggugat untuk membayar biaya perkara dalam tingkat kasasi sebesar Rp5.000.000,00 (lima juta rupiah);"* *"1. Rejecting the appeal filed by the Appellant: BUN BUN KHUI alias RADIMAN; 2. Ordering the Appellant/Plaintiff to pay the costs of the appeal proceedings in the amount of Rp5,000,000.00 (five million rupiah);"*

Based on these rulings, it can be seen that the provisions of copyright law are not systematically applied, especially related to the moral and economic rights of a

creator as stated in Article 4 of Law No. 28 of 2014 concerning Copyright. Although the cassation applicant's painting entitled "PITA" is obviously identical and/or has similarities in essence with the composition of lines and colors with the respondent's industrial design entitled "KEMASAN", it is not considered substantively, but only viewed as two different regimes or fields of law.

When viewed from the legal protection system, Indonesia uses a separate protection system between intellectual property law in the field of copyright and industrial design rights, so that the protection of a work will also be separately (Atallah et al., 2023). Although the decision does not reflect the principle of fairness, on the other hand, when discussing the novelty of an industrial design, in the Indonesian regulation the novelty is only interpreted as there has been no previous disclosure of a similar "industrial design". Fairness is basically an application of the principle of equality that considers all stakeholders' rights fairly and in accordance with the rules of legislation (Ramli & others, 2022). An industrial design will be considered new if at the date of acceptance, the design has not been the same as a previously disclosed design. This is in accordance with the provisions of the industrial design law which explains that prior disclosure includes industrial designs that have been announced or used either in Indonesia or abroad before (Djumhana & Djubaedillah, 2003): 1. Date of receipt, or 2. Priority date if the application is filed with priority rights; has been published or used in Indonesia or outside Indonesia.

The nature of the novelty is still limited to the field of industrial design and has not yet covered the object of creation of the copyright regime. This becomes a complexity in itself considering the object of protection between the two regimes is very similar, can be an advanced process, and can overlap.

The consideration and decision at the first level was then strengthened by Decision Number 238 K/Pdt.Sus-HKI/2014 in which the Supreme Court held that the Court at the Central Jakarta did not misapply the law. The Supreme Court held that the legal construction used by the plaintiff is vague or unclear, because these types of rights are regulated and determined by different laws, in short, the existence of copyright owned by the plaintiff is different from the rule of law with industrial design rights owned by the defendant, as well as the way of settlement in the event of a dispute.

The owner of the creation "PITA" suffered a serious loss because it seemed to lose its copyright protection. This resulted in the basic idea and purpose of the protection of intellectual property law itself to be unachieved. According to Satijipto Raharjo, the protection of human rights (HAM) aims to protect the injured party and ensure that people can enjoy the rights granted by law. However, in the case of overlap between copyright and industrial design, such protection is not fully reflected (Vatikha, 2024).

However, it should be understood that the settlement of overlapping disputes between copyright and industrial design rights as such may occur due to the absence of a comprehensive rule of law that can bridge between the two legal regimes. This is a complicated issue considering that Indonesia itself adheres to the European continental legal system, which is more dependent on the presence of positive law than the discovery of judges.

4. Conclusion

Indonesia's intellectual property law regulations still have a legal vacuum in regulating the relationship between copyright and industrial design rights. Although these two areas of law have intersecting objects of protection, Indonesia has not provided an adequate framework to regulate the relationship between the two. This condition is not optimal with international standards that have developed comprehensive mechanisms to address the overlap between the two regimes, including in terms of procedural and dispute resolution. Regulatory harmonization is needed to address this legal vacuum to provide better legal certainty for rights holders. Putusan Nomor 238 K/Pdt.Sus-HKI/2014 has revealed fundamental weaknesses in Indonesia's intellectual property law protection system. The judiciary has not been able to provide adequate protection to the parties simply because of the view of separate legal domains. The decision does not reflect the principle of fairness, because the original creator seems to lose the protection of his rights due to the formulation and too rigid interpretation of the concept of copyright infringement in industrial design. This condition becomes more complex with Indonesia's continental european legal system that prioritizes written rules, while regulations governing the relationship between copyright and industrial design are not yet comprehensively available. As a result, the fundamental purpose of intellectual property law protection to protect creators and innovators is not optimally achieved.

5. References

- Ali, Z. (2021). *Metode Penelitian Hukum*. Sinar Grafika.
- Atallah, F. B., Zahrah, D. S., Anwar, M. F. M., Satya, A. M. A., & Ananti, W. R. M. (2023). Perspektif Hak Kekayaan Intelektual Dalam Fenomena Iphone Handphone Copy Draw (Hdc) Terhadap Pelanggaran Kekayaan Intelektual Mengenai Hak Cipta Dan Desain Industri. *Diponegoro Private Law Review*, 10(1), 1–13.
- Dina Susiani, & Dina. (2020). *Buku Hukum Hak Kekayaan Intelektual*. Pustaka Abadi.
- Disemadi, H. S., & Kang, C. (2021). Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0. *Jurnal Komunikasi Hukum (JKH)*, 7(1), 54–71.

- Djumhana, M., & Djubaedillah, R. (2003). *Hak milik intelektual: Sejarah, teori, dan praktiknya di Indonesia*. PT Citra Aditya Bakti.
- Fahmi, F., Bachtiar, M., & others. (2023). Perlindungan Hukum Pemegang Hak Cipta Atas Penggandaan Film Melalui Aplikasi Tiktok. *Jurnal Ilmu Hukum Prima*, 6(2), 397–409.
- Husin, U., & Al Amalia, A. (2019). Perlindungan Hukum Terhadap Hak Cipta Dari Penggunaan Sebagai Desain Industri (Studi Kasus Putusan Nomor 238 K/Pdt. Sus-Hki/2014). *Populis: Jurnal Sosial Dan Humaniora*, 4(1), 37–48.
- Lim, V. (2022). Perlindungan Hukum Bagi Pemegang Desain Industri Atas Desain Industri Yang Telah Didaftarkan Menurut Undang-Undang Nomor 31 Tahun 2000 Tentang Desain Industri. *Jurnal Notarius*, 1(1).
- Maheswari, N. K. M. D., Budiatha, I. N. P., & Ujianti, N. M. P. (2021). Perlindungan hukum terhadap pemegang desain industri yang sama dengan merek yang berbeda. *Jurnal Preferensi Hukum*, 2(1), 39–44.
- Mahila, S. (2018). Keberadaan hak kekayaan intelektual seni batik jambi di kota jambi. *Jurnal Ilmiah Universitas Batanghari Jambi*, 18(3), 565–574.
- Nugroho, M. (2022). Perlindungan Hukum Bagi Pemegang Hak Desain Industri Eco Bottle Terhadap Tindakan Pemalsuan (Studi Perbandingan Dengan Amerika Serikat). *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)*, 6(1).
- Nurfadila, N. C., Rokhim, A., & Heriawanto, B. K. (2021). Perlindungan Hukum terhadap Pelanggaran Hak Cipta Penulisan di Aplikasi Digital (Wattpad) Berdasarkan Law No. 28 of 2014 concerning Copyright. *Jurnal Ilmiah Ilmu Hukum*, 27(9), 1261–1274.
- Nurusyifa, D. (2023). Prinsip Deklaratif Dalam Regulasi Hak Cipta Di Indonesia. *Unes Law Review*, 6(2), 6361–6367.
- Nurwati. (2024). *Hak Cipta Karya Musik dan Lagu*. PENERBIT KBM INDONESIA.
- Oksidelfa Yanto. (2017). *Hukum Hak Cipta dalam Ranah Hak Kekayaan Intelektual*. BuatBuku. com.
- Panjaitan, H., & Sinaga, W. (2017). *Performing Right Hak Cipta Atas Karya Musik Dan Lagu Serta Aspeknya (Edisi Revisi)*. Uki Press.
- Parmawati, R., Hardyansah, R., Pangestuti, E., & Hakim, L. (2022). *Ekowisata: Determinan pariwisata berkelanjutan untuk mendorong perekonomian masyarakat*. Universitas Brawijaya Press.
- Pohan, T. G., Sahira, S. S., Khalistia, S. F., & Wibawanto, W. N. (2021). Perlindungan Hak Moral Pencipta dalam Hak Cipta terhadap Distorsi Karya Sinematografi di Media Sosial. *Padjadjaran Law Review*, 9(1).

- Purwaningsih, E. (2012). *Hak Kekayaan Intelektual (HKI) dan Lisensi*. Mandar Maju.
- Ramli, A. M. & others. (2022). *Aspek Hukum Hubungan Platform Digital Over The Top Dan Pengguna Konten Multimedia*. PT Refika Aditama.
- Roychan, W. (2021). Konstruksi Nebis In Idem Terhadap Perlindungan Hak Atas Desain Industri. *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial*, 1(2), 44–64.
- Setyoningsih, E. V. (2021). Implementasi Ratifikasi Agreement on Trade Related Aspects of Intellectual Property Right (Trips Agreemeent) terhadap Politik Hukum di Indonesia. *Jurnal Penegakan Hukum Dan Keadilan*, 2(2), 117–129.
- Sierrad, M. Z. (2022). Larangan Pengalihan Hak Moral Dan Pembatasan Waktu Dalam Perjanjian Jual Putus Hak Cipta Buku Dalam Perspektif Hak Asasi Manusia. *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 1(1), 24–44.
- Tim Lindsey. (2006). *Intellectual Property Rights*. PT Alumni.
- Vatikha, R. (2024). Analisis Terhadap Unsur Kebaruan dalam Perlindungan Desain Industri (Studi Kasus Putusan MA Nomor 559k/Pdt. Sus-Hki/2016). *Jurnal Ilmu Hukum Lasadindi*, 1(3), 120–132.
- Wijana, M. (2024). Digital Literacy Training for the MSME Community in Citaman Village in Using Information Technology: Pelatihan Literasi Digital Pada Masyarakat Pelaku UMKM Di Desa Citaman Dalam Menggunakan Teknologi Informasi. *CONSEN: Indonesian Journal of Community Services and Engagement*, 4(1), 69–78.