

August 29th 2018

THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

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THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

INVITED SPEAKERS :

- 1. Prof. Henning Glaser
Thammasat University, Thailand
- 2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
- 3. Prof. Shimada Yuzuru
Nagoya University, Japan
- 4. Prof. Dr. Topo Santoso, S.H., M.H.
Indonesia University (UI), Indonesia
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Faculty of Law, Sultan Agung Islamic University

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584

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AND CALL FOR PAPER**

“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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LEGAL PROTECTION OF INDUSTRIAL DESIGNS
BASED ON LAW NUMBER 31 OF 2000 CONCERNING INDUSTRIAL DESIGN

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Students of Master of Law, Faculty Of Law, UNISSULA, Semarang

ABSTRACT

The regulation of industrial designs within the framework of Intellectual Property Rights Law is inseparable from Indonesia's participation in international agreements in the trade sector. By participating in the WTO agreement, Indonesia has ratified the WTO with Law Number 7 of 1994. Thus Indonesia must apply TRIPs as a provision that regulates Intellectual Property Rights, where in the TRIPs law there are 7 (seven) fields of IPR, one of which is Industrial Design. In Indonesia, industrial designs are regulated in Law Number 31 of 2000 concerning Industrial Designs. Industrial design legal protection is based on Law Number 31 of 2000, based on the concept of a rule of law. The rule of law regulates that all aspects of social life, state and government must be based on law. One of the elements of the rule of law is the protection of human rights as the basis for protecting the law on industrial design rights. Legal protection includes preventive protection and repressive protection. With the existence of the industrial design law, it provides protection to designers to prevent and resolve disputes in the field of Industrial Design. The protection of industrial design rights enforcers makes designers more creative and productive in creating and producing industrial design works. With the existence of the industrial design law, it provides protection to designers to prevent and resolve disputes in the field of Industrial Design. The protection of industrial design rights enforcers makes designers more creative and productive in creating and producing industrial design works. With the existence of the industrial design law, it provides protection to designers to prevent and resolve disputes in the field of Industrial Design. The protection of industrial design rights enforcers makes designers more creative and productive in creating and producing industrial design works.

Keywords: Legal Protection, Industrial Design, Industrial Design Law.

A. INTRODUCTION

The birth of industrial design is inseparable from the creative ability, taste and intention of humans, which are thoughts that are commonly referred to as intellectual products of humans as perfect God's creatures who are endowed with the ability to think. This human thinking ability is manifested in intellectual works which are creative and innovative works that have the potential to be protected by the Intellectual Property Rights (IPR) system, either through Copyrights, Patents, Trade Secrets, Trademarks and even Industrial Designs. One of the protected IPR areas as stipulated in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS / WTO Agreement) is industrial design.¹ Indonesia as one of the countries participating in the TRIPs-WTO agreement seeks to provide legal protection for industrial designs through Law Number 31 of 2000 concerning Industrial Designs. This Law is for the first time made specifically to provide protection for Industrial Designs 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 enacted. Prior to the birth of the

¹ Willian C. Revelos, Patent Enforcement Difficulties in Japan: Are There Any Satisfactory Solution for The United States ?, George Washington Journal of International Law and Econmy, Vol. 29, 1995

Industrial Design Law, the Copyright Law has become the legal basis for the protection of Industrial Designs in Indonesia.²

Since its promulgation in 2000, the Industrial Design Law has never undergone any changes, unlike other laws in the field of intellectual property rights such as copyrights, patents and marks which have undergone several changes to be adjusted to TRIPs. Substantively, the Industrial Design Law consists of 57 articles. These articles regulate several important matters relating to the definition of designer, requirements for protection of industrial designs subject to industrial designs, scope of rights, application for registration, cancellation and settlement of industrial design disputes.

The definition of Industrial Design as regulated in Article 1 point (1) states: "a creation regarding the shape, configuration or composition of lines or colors, or lines and colors, or a combination thereof which is three-dimensional or two-dimensional which gives an aesthetic impression and can be manifested in three-dimensional or two-dimensional patterns and can be used to produce a product, goods, industrial commodity, or handicraft."³

The most important thing in Industrial Design is the outward appearance (physical appearance) which gives an aesthetic impression and not the function of an object. The aesthetic impression is a creation that generally gives the same assessment, namely seeing a beautiful creation from an Industrial Design.

Legal protection of industrial designs in Indonesia through Law Number 31 of 2000 is the government's determination to protect holders of Industrial Design rights from various forms of violations such as plagiarism, piracy, or imitation. This more comprehensive protection effort is expected to be a driving factor in increasing the creativity of designers and as a vehicle for producing productive designers.

In an effort to provide legal protection to holders of Industrial Design rights, in reality there are still violations of Industrial Design rights, such as the case between PT Buana Agung and Honda Motor. This case stems from the action of PT Buana Agung, which mass-produced motorbikes using various industrial designs belonging to manufacturers. Where between PT Buana Agung does not have a cooperation agreement with the owner of the motorcycle design. PT Honda Motor felt aggrieved by the actions of PT Buana Agung.

Another case example is the Bogo helmet. This type of helmet glass has unique characteristics so that many people like it. But it turns out that this helmet glass design invited a dispute to the court. According to the records of the Ministry of Law and Human Rights, the bogo helmet design was held by Toni with the registration number ID0012832D. Toni held the design rights for the period 3 August 2007 to 3 August 2017. Later, Toni was surprised to find bogo helmets in Bogor produced by Gunawan. As a result, Toni suffered a loss of up to Rp. 700 million, so Toni took legal steps by policing Gunawan.

Based on the description above, the authors are interested in making a paper with the title: "Legal Protection for Industrial Designs Based on Law Number 31 Year 2000 Concerning Industrial Designs".

B. PROBLEM FORMULATION

Based on this background, a problem formulation is produced, namely:

- 1) How is the arrangement of Industrial Design within the framework of Intellectual Property Rights?
- 2) How legal protection for industrial designs based on Law Number 31 of 2000 concerning Industrial Designs?

² Zico Armanto Mokoginta, Legal Protection for Industrial Designs Based on Law Number 31 of 2000 concerning Industrial Design, Jurnal Unsrat, Lex Privatum, Vol. 5 No.5, July 2017, p. 124

³ Law Number 31 Year 2000 regarding Industrial Design

C. DISCUSSION

1. Regulation of Industrial Design in the Framework of Intellectual Property Rights

Industrial Design as a part of Intellectual Property Rights in the Industrial sector which is regulated in Law Number 31 of 2000 is the first law that specifically regulates the Protection of Industrial Designs in Indonesia. This law was passed by the President of the Republic of Indonesia on December 20, 2000 and came into force on the date it was passed. The Industrial Design Law consists of 13 Chapters and 57 articles.

Until now, the Industrial Design Law has not been changed from the government, which is different from the Copyright, Patent and Trademark Laws which have undergone several changes. The birth of the Industrial Design Law was motivated by two reasons:

- 1) Related to Indonesia's obligations as a member of the WTO which must provide better regulations on the protection of industrial designs;
- 2) In connection with the government's determination to provide effective protection against various forms of violations against industrial designs such as plagiarism, piracy or imitation.

This more comprehensive protection effort is expected to be a driving factor in increasing the creativity of designers and as a vehicle for producing productive designers.⁴

2. Protection of Industrial Design Law Based on Law NO. 31 of 2000

Protection of industrial design laws cannot be separated from the form of the Indonesian state as a state law. Indonesia is a state based on law, according to Article 1 paragraph (3) of the 1945 Constitution. As a constitutional state, all aspects of life in society, state and government must be based on law.⁵ To realize a rule of law, one of which requires a legal instrument that is used to regulate balance and justice in all areas of life and people's livelihoods through legislation without neglecting the function of jurisprudence. This shows that laws and regulations have an important role in a rule of law.⁶

The meaning of the rule of law itself is essentially rooted in the concept of the rule of law theory which in principle states that the highest power in a state is law, therefore all state apparatus, regardless of name, including citizens must obey and obey and uphold the law without exception.⁷ Krabe stated: "The state as the creator and enforcer of the law in all its activities must comply with the applicable law. In this sense the law governs the state. Based on the understanding that law comes from the awareness of people's law, then the law has an authority that is not related to a person (impersonal)".⁸

One of the elements in a rule of law is the guarantee of human rights (citizens). This element was placed for the first time because the country was actually formed because of a social contract. From this social contract, individuals in the bonds of living together in the state surrender their political and social rights to the state community, so the state must guarantee the rights inherent in individuals and in the bonds of social life.

According to Philipus M. Hadjon, as described in the previous chapter, the definition of Legal Protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions of arbitrariness. In preventive legal protection, the people are given the opportunity to submit objections or opinions before a government decision takes a definitive form. That is, preventive legal protection aims to prevent disputes. Meanwhile,

⁴ Merry Elisabeth Kalalo, *Intellectual Property Rights*, Manado, Unsrat Press, Cet. 1, 2015, p. 89

⁵ Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

⁶ CST Kansil, *Introduction to Indonesian Law and Law Administration*, Jakarta: Balai Pustaka, 1989.

⁷ Hestu Cipto Handoyo, *Indonesian Constitutional Law*, Yogyakarta Atmajaya University, 2009, p. 17

⁸ Usep Ranawijaya, *Indonesian Constitutional Law*, Yogyakarta: Atmajaya University Yogyakarta, 2009, p. 17

repressive legal protection has the opposite character, which aims to resolve disputes. In relation to legal protection, industrial design is linked to the theory of preventive and repressive legal protection by Phillipus M. Hadjon⁹, the government has made a legal regulation on Industrial Design in Indonesian laws and regulations, namely Law Number 31 of 2000 concerning Industrial Design. This law was passed by the President of the Republic of Indonesia on December 20, 2000 and came into force on the date it was passed. Prior to the issuance of the Industrial Design Law, the Copyright Law has become the legal basis for the protection of Industrial Designs in Indonesia.¹⁰

There are similarities between copyright in painting (graphic art) and industrial design, but the difference will be more visible when the industrial design is closer to a patent.¹¹ If the industrial design is originally manifested in the form of paintings, caricatures or pictures / graphics, one dimension that can be claimed as copyright, then in the next stage it is arranged in two or three dimensions and can be realized in a pattern that gives birth to a material and applicable product. in industrial activity. In this form, it was formulated as an industrial design.¹²

Industrial designs that receive protection as regulated in Article 2 of the Industrial Design Law are:

- a. Industrial Designs are awarded for new Industrial Designs;
- b. An Industrial Design is considered new if on the date the Industrial Design is received it is not the same as the existing disclosures;
- c. (2) Previous disclosures as referred to in paragraph (2) are disclosures of Industrial Designs which are prior to the date of receipt; or priority date if the application submitted with a Priority Right has been announced or used in Indonesia or outside Indonesia.

The criminal act against violation of the right to industrial design is a complaint offense. Investigation can only be carried out if there is a complaint from which is legal, namely, the right holder of the right recipient. In Law Number 31 of 2000, the criminal threat against this crime is formulated (1) Anyone who deliberately and without the right commits the act as referred to in Article 9 shall be sentenced to imprisonment of up to 4 (four) years and / or a maximum fine of IDR 300,000. .000.00 (three hundred million rupiah). (2) Anyone who deliberately violates the provisions referred to in Article 8, Article 23 or Article 32 shall be sentenced to imprisonment for a maximum of 1 (one) year and / or a maximum fine of Rp. 45,000,000.00 (forty five million rupiah).

D. CONCLUSION

1. By participating in the WTO agreement, Indonesia has ratified the WTO with Law Number 7 of 1994. Thus Indonesia must apply TRIPs as a provision that regulates Intellectual Property Rights, where in the TRIPs law there are 7 (seven) fields of IPR, one of which is Industrial Design. In Indonesia, industrial designs are regulated in Law Number 31 of 2000 concerning Industrial Designs;
2. Industrial design legal protection is based on Law Number 31 of 2000, based on the concept of a rule of law. The rule of law regulates that all aspects of social life, state and government must be based on law. One of the elements of a rule of law is the protection of human rights as the basis for protecting the law on Industrial Design Rights. Legal protection includes preventive protection and repressive protection. The existence of the industrial design law provides protection to designers to prevent and resolve disputes in the field of industrial

⁹ Phillipus M. Hadjon, *Legal Protection for the Indonesian People*, Surabaya: PT Bina Ilmu, 1987

¹⁰ Tomi Suryo Utomo, *Intellectual Rights (HKI) in the Globalization Era, a Contemporary Study*, Yogyakarta, Graha Ilmu, First Edition, 2010, p. 224

¹¹ Agus Sachari in Muhamad and Djubaedillah, *Intellectual Property Rights, History, Theory and Practice in Indonesia*, Bandung: PT Citra Aitya Bakti, 2014, p. 294

¹² Saidin OK, *Legal Aspects of Intellectual Property Rights*, Jakarta, PT Raja Grafindo Persada, 2006, p. 467

designs. With the protection of industrial design rights holders, it makes designers more creative and productive in creating and producing industrial design works.

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2. Legislation

1945 Constitution of the Republic of Indonesia

Law Number 31 Year 2000 regarding Industrial Design