

The Urgency of Industrial Design Development in Indonesia through Hague System Ratification

Cita Yustisia Serfiyani

Law Faculty Universitas Wijaya Kusuma Surabaya, Dukuh Kupang Barat XXV / 54

Keywords: Industrial design, IPR, Hague system

Abstract: Industrial design protection is becoming increasingly important as the global competition grows. Industrial Design in Indonesia is currently regulated in Law No. 31 of 2000 concerning Industrial Designs to provide legal certainty and encourage the public to register their industrial designs. However, in practice, business actors, especially MSMEs, still think that industrial design registration is not a necessity and is not a priority due to the complexity of the bureaucracy. The constitutive registration of Industrial Designs in Indonesia is still not effective due to the long duration. There are still obstacles when the industrial design will be applied abroad, and there are still violations of the law against industrial designs that have been registered. The concept of unification of industrial design registration in the Hague agreement on international registration rules needs to be immediately implemented in Indonesia into the Industrial Design Bill to overcome these problems, although it is necessary to examine Indonesia's readiness for this digital system. This legal research will discuss legal protection and the development of industrial design in Indonesia through the Hague system to advance industrial design on a national and global scale.

1 INTRODUCTION

The creative economy is predicted to be the mainstay of the economy in the future. Protecting industrial designs is very important, especially with the development of technology and global market trends. Protection of industrial designs can help increase creativity and product diversity in the manufacturing and craft sectors (Yuliasih, 2018). Industrial Design Protection gives the design owner the right to prohibit unauthorized use or, with his permission and avoid other parties without permission to make, sell or import products that industrial design rights have protected.

Business actors, especially SMEs, still think that industrial design registration is unnecessary and not a priority. Registration has always been considered as complicated with bureaucracy, cost burden and takes a long time. Productivity of Industrial Design in Indonesia in 2018 and 2019 is low compared to other types of IPR. According to data on Directorate General of Intellectual Property (DGIP), the highest applications come from applications for Marks with a total of 130,679. The second is Patents with 18,569 copies, the third for Copyrights with 30,791 and Industrial Designs with 6,600. In the statistics on

Industrial Design applications, in 2018, there were only 3,812 industrial design products registered at the Directorate General of Intellectual Property (KI). In 2019 there was a significant decrease to only 2,788 products. Looking further, most of the statistical lists of Industrial Design Applicants from 2018 - 2019 are almost 95% dominated by non-UMKM, and 5% of applications come from MSMEs. It can be seen that design insight and industrial design productivity in Indonesia are still shallow.

The design improved the value of an item higher in market competition even though it seems complicated to determine the price with numbers. In a competitive global market, where many product choices can replace each other, consumers often choose according to the design they like or stand out the most. So, the design serves to convey the impression or the main idea of their product. Such as what the product can do and how the product symbolizes cultural values and aesthetic qualities expected from a product (Haines, 2017).

The Hague Agreement is a system that allows design owners to centrally register their designs with several countries and intergovernmental organizations. This method provides convenience because it only passes through one door, one

language, and one currency. It is cost-efficient because the holder of industrial design rights does not need to make a separate application for registration of the design to several other countries. Meanwhile, the Locarno Agreement is an agreement intended to provide a classification of designs. It aims to develop more varied industrial design products and having the same and clear standards. This classification is arranged progressively with periodic revisions following the times. The classification is applied by WIPO and the Benelux Design Office in administering the Hague treaty.

Indonesia has only ratified 3 (three) international agreements in the field of IPR. The first is the TRIPS/WTO Agreement which was ratified through Law Number 7 of 1994. The second is the Paris Convention 1883 (Industrial Property) ratified by Presidential Decree Number 15 of 1997. The third is the Berne Convention 1886 (Copyright), ratified by Presidential Decree Number 18 of 1997. Based on this background, this study intends to examine and identify legal protections for industrial designs as part of the IPR applied in Indonesia to assess the urgency of implementing an international industrial design registration scheme following the Hague System.

2 RESULTS AND DISCUSSION

2.1 The Problematics of Industrial Design Rights Registration in Indonesia

Industrial Design in Indonesia is currently protected by Law no. 31 of 2000. The Industrial Law Design as a follow-up to the ratification of the Agreement Establishing the World Trade Organization through Law no. 7 of 1994. The main design objective of Industrial law is to improve and protect IPR related to the shape, configuration or ornamentation of an item that contributes to the development of industry and handicrafts (Rahmi Jened, 2010). WIPO defines industrial design refers to the right granted in many countries, according to a registration system, to protect the original, ornamental and non-functional features of a product that result from design activity.

The design must meet the requirements for novelty and originality to be protected by industrial design rights in Indonesia. However, these two conditions are not related to function. Industrial Design Protection is not associated with or protects the product's usability, function, or technicality (Widyaputri, 2010). So, to be covered by the law, an

Industrial Design must be new and visible. Industrial design tends to be a total aesthetic value so that any technical characteristics that apply to the design are not protected (Soeparman, 2009).

Protection of Industrial Designs in Indonesia is still intended for intact Industrial Designs. In contrast to the trend in developed countries with a partial system. Industrial design tends to be a comprehensive aesthetic value so that any technical characteristics that apply the design are not protected. The Partial Industrial Design Registration system assumes that an Industrial Design does not involve an entirely new creation. Sometimes what is produced is not new; only the ornaments or decorations are unique. In addition, the design part of a product being developed is not necessarily a part that can be disassembled but can be a part that cannot be disassembled.

The subject of Industrial Design relates to the party entitled to obtain the Industrial Design Right. The party is the Designer or the Industrial Design Right Holder who receives the right from the Designer. The main difference between Industrial Design and other types of intellectual property rights is that it can be reproduced and is very suitable for large companies and SMEs. If they receive legal protection of their industrial designs properly, it can benefit their production and export levels. Therefore, the Industrial Design Right holder has the Exclusive Right to exercise the Industrial Design Right they own and prohibit other people without their consent from making, using, selling, importing, exporting, and distributing the goods that are granted the Industrial Design Right. Granting rights to other parties can be done through inheritance, grants, wills, agreements, or other causes.

Industrial Design Registration in Indonesia goes through a long process. The first step begins with a written application for registration in Indonesian to the Directorate General of Intellectual Property Rights. The registration system of Industrial Design is constitutive. Registration is an absolute must before industrial design rights occur. The requirements that must be met before submitting a design registration application consist of formal and material requirements. Standard requirements consist of the obligation to make a written statement by stating the identity along with proof of design ownership, a replica of the design of the goods, the deed of establishment of a legal entity, a power of attorney if needed, as well as proof of payment for registration. The material requirements consist of novelty, practical, functional aspects, not included in the list of exceptions to obtain industrial design rights. The

creator is a subject who has the right to register the work.

If all of these requirements are simplified, when a design is objected to, and a lawsuit is filed, a new certificate can be obtained after a total duration of approximately 18 months. Not to mention the costs that must be incurred during a relatively long time. This encourages business actors to override the urgency of registering Industrial Design Rights. Even business actors, both MSMEs and non-SME business actors, who comply with the administrative order for the registration of the Industrial Design Rights and then want to expand the market abroad to strengthen Indonesia's creative market and earn foreign exchange, will encounter other problems. MSME entrepreneurs will only be able to register their designs in a few countries, either because of the complexity of the procedure or the high cost that differs from the standard price in rupiah. The complexity of the registration process in a country does not seem to guarantee legal protection for creators because there are still cases of duplication of industrial designs that have been registered by a creator in a country but are also registered by other creators in other countries, either due to accident or an element of intent.

The problems mentioned above, such as the complexity of registration and the violation of industrial design rights on two products from different countries, are encountered by Indonesian creators and other countries, for example, in the case of the bogo helmet industrial design rights owned by Toni, an Indonesian citizen in collaboration with the Malaysian company Bo Go Optical Sdn Bhd. The industrial design rights are registered at the Directorate General of Intellectual Property Rights of Indonesia, valid from August 3, 2007, to August 3, 2017, with registration number ID 0012832. The license rights owned by Bo Go Optical Sdn Bhd are to produce and print helmet glass industrial designs and their distribution in Indonesia.

Therefore, WIPO seeks to facilitate the flow of international registration with the idea that an industrial design right does not have to be registered first in the country of origin of the applicant/creator following the rules of the country of origin and then re-registered when the industrial design right wants to be developed in another country. The simplification step of WIPO is a single registration for an industrial design right originating from a country to be validly / legally in the land of origin and internationally. This scheme is then called the Hague system (Hague System). Of course, only countries that have agreed and ratified the Hague Treaty can apply this

registration method. Currently, several countries have ratified the Hague Treaty. Singapore is the only ASEAN country that has received the most design protection through the Hague System in 2019 (WIPO, 2020).

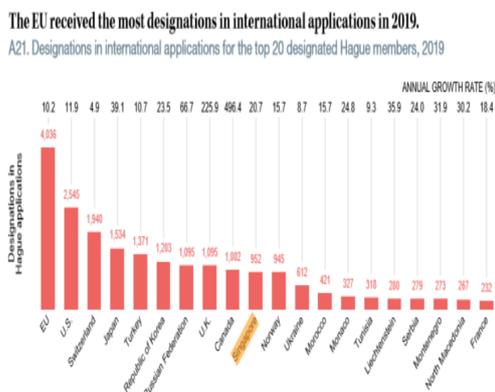


Figure 1. The improvement rate of Industrial Designs registration through the Hague System
Source: <https://www.wipo.int/ipstats/en/>

The quality of intellectual property protection will have an impact on the national economic growth of a country. The advantages of the Hague system include, the IPR office will be freed from the burden of formal inspection, data entry, publication, issuance of registration certificates, all of which are the responsibility of the International Bureau managed by WIPO. An advantage in the main feature of the Hague system is its simplicity which allows rights owners to obtain protection for their designs with minimal formalities. Fees in the Hague system will be effective because it will be set in one currency. The economic advantage that Indonesia will obtain if it has ratified the Hague agreement is that the government can provide full benefits to creators thanks to the use of the Hague registration system to distribute or license their designs to more countries easily cheaply.

The national interest must remain the main focus to ratify the Hague Treaty and adopt it into national regulations. The new Industrial Design Law must later be used as a barometer for the development of Design Policy. As part of the international community and a member of the World Trade Organization (WTO), Indonesia's global interests should also not be ruled out.

Indonesia may choose to become a "Receiving Office/Transmitting Office" (intermediary office) or not. Suppose Indonesia decides to become an intermediary office. In that case, Indonesia must be ready in terms of the online system and its filing because the primary key to this system is that the implementation of the system must be fast but

straightforward. If the Intellectual Property Office in Indonesia does not control it, it can slow down the application process. However, it is undeniable that the implementation of the new system in Indonesia will encounter many difficulties. So, it is essential to have socialization with creative industry players and related organizations.

In the Industrial Design Bill, there are several changes related to the protection of industrial design rights without registration, changes to the protection period, and rules regarding previous users. One of the new approaches included is "sui generis design", which applies 2 (two) types of protection, namely Industrial Design Rights without registration and Industrial Design Rights through registration. Protection without registration has a period of 3 (three) years from the date of publication. The requirements that are met are novelty and originality, while the protection of industrial designs with a patent approach or through registration will have a period of 10 (ten) years according to the contents of Article 5 paragraph (1) of Industrial Design Law. However, by ratifying the 1999 Geneva Act a minimum of 15 years. Penerapan *Geneva Act* juga memberikan dampak positif terhadap beban keuangan negara. Suppose many creative industry players register their designs. In that case, it will provide new revenue for the state through Non-Tax State Revenue (PNBP) first because this system allows extending a registered industrial design to occur. Second, with Indonesia becoming a member country of the 1999 Geneva Act, the revenue comes from international registration, making Indonesia a destination country.

2.2 Legal Protection against Industrial Design Creators in Indonesia through the Hague System

The Hague Agreement, also known as the Hague System, is a system that allows design owners to register their designs centrally / centrally to intergovernmental organizations. This method should provide convenience because it only passes through one door, one language, one currency and is cost-efficient because industrial design rights holders do not need to register their designs to several other designated countries separately.

There are three kinds of Hague Treaties, namely the London Act 2 June 1934, the Hague Act 28 November 1960 and the Geneva Act 2 July 1999. The three agreements are carried out autonomously and entirely independently. The London Act 1934 requires design owners to register their designs with

the International Bureau of Industrial Property in Berne. An assessment can be made after the applicant has submitted their product, image, photo or other graphic representation. Registration is done in French.[Art. 2 , London Act 1934.] Registration under the Hague Act 1960 is done directly through the International Bureau (WIPO) or the IPR office in the respective country that has become a member of the Hague Act 1960. The application is accompanied by a photograph or design representation. Registration is done in English and French. The protection period is only 5 (five) years and can be extended for 5 (five) years. This system prioritizes national law, so if the destination country's national law regulates more protection than the provisions in the 1960 Hague Act, it must be adjusted.

The following are some of the requirements to be able to apply for registration under the Hague Act 1960, among others:

- a. Is a citizen of a member country or an intergovernmental organization within a member country such as the European Union, African Intellectual Property Organization.
- b. Have a domicile in the territory of a country that is a member;
- c. Have a real, practical and commercially established industry within the territory of a member country.

The Hague system adheres to Limited Protection, which means that protection only applies within the country that provided it. This is the principle of territoriality known in the Paris Convention (Widyaputri, 2010). The Hague system has detailed the standard content of registration applications. Among these are the main languages are English, French, Spanish. Electronic registration (e-filing) is directly submitted to WIPO without the need to go through national registration. Application filling can be done in 2 (two) ways, namely direct and indirect. The direct filling is through the WIPO International Bureau.

The international application may be charged for 3 (three) things (in Swiss Francs), namely Base Fee, Publication Fee, for each member country to which it is addressed, adjusted conditions apply for standard fees and individual fees. Payment schedules and automatic fee calculations are available on the WIPO website. Everyone who carries out international registration of industrial designs without proof of reverse is considered the legal owner of the work because the international registration is declarative.

The next step is to publish online through WIPO's International Designs Bulletin. The time required is approximately 6 (six) months after the international application is registered, unless the applicant requests

priority or delay. One of the main points is that the WIPO International Bureau does not assess the novelty of the design. He has no right to refuse the application for reasons related to the exclusive authority of the Intellectual Property office in each destination country.

Publication in the WIPO online bulletin allows free information for offices in each destination country to identify the registered industrial designs. The identification results are included in a substantial examination adapted to the law in each country of destination. One of the main characteristics of the Hague System is that each destination country can refuse the application for the protection of industrial design rights within the scope of that country. This can be done because this system prioritizes the national law of each country. However, under the 1999 Law, any Party whose office is the Investigating Officer, the law provides for the possibility of opposition, may declare that the 6 (six) month refusal period is replaced with 12 months. Any refusal of protection will only apply to the entire territory of the party whose office has issued the refusal. When there is rejection in the territory of the destination country, the applicant has the same corrective procedure as if the application is made directly. Subsequent processes are carried out automatically at the national level; Objections to the refusal must be submitted to the competent authority according to the applicable law in that country. Thus, the timing, procedures and conditions are left to the applicable laws of the destination country without involving WIPO at this stage. Rejection can be withdrawn, either in whole or in part. For example, in the registration of several industrial designs, protection can be accepted for only a few designs. Suppose the refusal is not notified within a specified period. In that case, the registration will issue a statement granting protection to the industrial design under the laws in force in each destination country.

This International Registration is only valid for the first five years. Applicants or holders of Industrial Design Rights can renew with an additional 5 years so that the total becomes ten years. The minimum term of protection must be at least a total of 15 years. The application for extension must be presented to the WIPO International Bureau, followed by payment for the extension. Renewal can be done electronically through the (e-renewal) feature on the WIPO website. Extensions can be made to all or part of the Industrial Design registered in the international registration or to the design registered in each destination country.

Several changes may affect international registration, including:

- a. Change of name and address of the applicant;
- b. Change of ownership of the international registration related to the application for protection of industrial design rights (whether in the case of the registered destination country or the object of the industrial design);
- c. Rejection of part or all of the object of industrial design applied for;
- d. Restriction of only part of the industrial design determined later by the destination country.

The Hague System for the International Registration of Industrial Designs arises from simplicity and economical cost. This allows the owners of industrial designs from member countries to get protection with minimal expenses and formalities. In particular, they become free without the need to file a separate application to protect the design in several countries of destination. Plus, the complexity of the procedure and language differences differ from country to country.

The Hague system also adds time effectiveness in reminding the deadline for extensions, considering that the deadlines in each country are also different. This system also prevents the applicant from paying various fees in foreign currencies and tends to be detrimental. This means, under the Hague Agreement, every one international application, made in 1 language, payment in a single set of fees, in 1 currency (Swiss Francs) and with one office (WIPO International Bureau) will get a collection of national rights from each country to become one. The centralized system makes it easy if there is a change in the name or address of the holder or a change in ownership only for some or all of the appointed parties. According to the WIPO annual report data, there was an 8% increase in international application registrations in 2019, reaching 5886 applications. At the same time, the total number of industrial designs included in the application section of the Hague System also increased by 10.4%. Countries that experienced a significant increase were dominated by Germany, Italy and South Korea (WIPO, 2020).

The Hague system consists of 71 members and has been implemented in 88 countries. The difference in numbers is because the African Intellectual Property Organization (OAPI) and the European Union (EU) are members of the Hague. This indicates that OAPI and EU member countries, for example, have appointed Intergovernmental organizations in terms of managing applications. In 2019, approximately 2,429 applicants from at least 65 countries registered one or more designs with Hague international applications. In 2019, 67.6% of all applicants for the Hague system came from Europe. A total of 4,036

applications were registered with a total of 16,339 designs. Germany is the country with the most active members using the Hague system. Seen in 2019, Germany took first place with a total of 772 applications consisting of 4,487 designs, followed by South Korea with 2,736 designs, Switzerland (2,178), Italy (1994) and the Netherlands with 1,376 designs. Like Indonesia, China is in the stage of ratifying the 1999 Geneva Agreement and considering that China is one of the countries with many products resulting from industrial designs. To increase global market penetration, in 2020, China plans to ratify the Hague Agreement. For three years in a row, products from "Samsung", an electronics company from South Korea, ranked first on the list of significant applicants. Samsung has 929 designs listed in the published registration. Second place is the Netherlands' Fonkel Furnituremarketing (859 designs), LG (598), Volkswagen AG from Germany (536) and Procter & Gamble from the United States (410). If you look at the data on Industrial Design Applications from other countries to Indonesia, it can be seen that there are only around 2,670 applications. However, 1,784 came from Indonesia itself. That means only about 886 pieces came from overseas applications (Ditjen KI, 2020).

The Hague Treaty is appropriate when applied within the European Union. This is because the European Union was the first to develop legal unification in intellectual property rights among European countries. The UK is a member of the European Union, which has just ratified the Hague Agreement in 2015. The UK is aware that although the EU is an intergovernmental organization that is a member of the Hague System, individually, the UK is not a member state. Companies wishing to use the Hague system to obtain the protection of their industrial designs in the UK must register it with all member states of the European Union (Intellectual Property Rights Office of UK, 2020).

In contrast to the implementation of the Hague System in America. The United States ratified the Hague Agreement in 2013. The US Patent and Trademark Office (USPTO) classifies patents into two, namely, based on function and design. The first type is to protect the way innovation is used and how it works. Meanwhile, the second type covers the shape and appearance of a product. So it can be said that America classifies designs as another category protected through the Patent Act. America experienced a surge in acceptance of industrial design registrations in its country. America received product registrations from other countries in 2009 before becoming a member of the Hague System as many as

156,321 products, and in 2018, it became 368,172 products. This can happen because, for example, a designer applying to the European Union can also add a small fee to register it with the United States. The reason is that the American market is a potential destination in marketing a product.

The Hague system only regulates the registration procedure to be more effective and unified without changing the legal substance in each country, evidenced by the difference in terms applied in America and the European Union. In America, because it is tied to patent protection, the requirement for a patent design to be accepted is that it must be "new, not primary, original and only in the form of ornaments" (Monseau, 2012). So, it can be seen that the required conditions seem very complicated. While the European Union allows a more comprehensive design in the form, product packaging and emblem. The European Union looks more severe in modifying the Copyright approach in the protection of Industrial Designs.

Therefore, it is necessary to strengthen the database and network owned by DJKI as the administrative manager of industrial design registration. The implication of this online and electronic registration for the community is that it makes it easier for people from various parts of the country who want to obtain industrial design protection for their work without the need for additional fees to come to Jakarta or the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia, this system is also considered a user friendly because there is no need for face-to-face contact between the applicant and DJKI employees, which can minimize the practice of extortion that is often complained of by the community using IPR services. So in this Hague system, one application replaces a series of applications that should be submitted separately to each country or regional office for which the industrial design registration application is intended. This facility is an essential element in international commercial cooperation and can assist in increasing trade.

3 CONCLUSIONS

Indonesia needs to immediately ratify the contents of the Hague Agreement in the Geneva Act 1999. The same applies to trademarks that the Madrid Protocol and copyrights have protected that the Bern Convention protects. Indonesia's participation as a member country can be a vital sign to the international

community that Indonesia is willing to collaborate in enforcing intellectual property policies. Indonesia's participation as a member country later can be a good sign that Indonesia is ready to implement intellectual property policies, help prevent plagiarism, and reduce the possibility of violating industrial design rights in Indonesia. The Indonesian government needs to revise Industrial Design Law by adding provisions adapted from the ratification of the Hague Treaty to adapt to the times, strengthen the global, national industrial design market and adjust the period of protection.

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