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## LEGAL PROTECTION OF INTERIOR DESIGN IN INDUSTRIAL DESIGN INTELLECTUAL PROPERTY RIGHTS

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### Abstract

Intellectual property is creativity that results from human thought in order to meet the needs and welfare of human life. Currently, IPR issues are widely discussed in the context of international issues. IPR includes two parts, namely Copyrights and Industrial Property Rights. Industrial property rights include patents, industrial designs, integrated circuits layout designs, trade secrets, geographic indications, trademarks and plant variety protection (PVP). Interior design is part of industrial design. Interior design has experienced significant developments in recent years, including in Indonesia. Problems that arises is plagiarisms done by imitating or using the "similarity" of an interior design that already has an industrial design certificate without any permission from the design owner. This study aims to find out the legal protection of interior design in the intellectual property rights of industrial design and the legal basis used by judges in deciding industrial design rights disputes. The result of this study showed that the legal protection of interior design in the intellectual property rights of industrial design involved two legal protections; they are preventive legal protections and repressive legal protections. Furthermore, Gustav Radbruch's theory of legal ideals is used as a legal basis in deciding cases of disputes over industrial design rights based on justice, benefits, and legal certainty in the case of industrial design disputes Ecosfera Room.

**Keywords:** Design Industry; Intellectual Property Right; Interior Design; Legal Protection

### 1. INTRODUCTION

Intellectual property is creativity that results from human thought in order to meet the needs and welfare of human life. Creativity that appears as an intellectual capital for a person had a significant influence on human civilization, among others, through inventions and results in the fields of creative. The deficiency in developing a protection system for traditional knowledge is the limitation of data, documentation, and information about knowledge. Currently, IPR issues are widely discussed in the context of

international issues. The development of the free market has created a global market, which provides an opportunity for people to trade goods and services that cross beyond national borders more easily, quickly and cheaply. Such conditions create significant economic and social activities in the community. Economic globalization has implications for legal globalization and this cannot be avoided in which the substance of various laws and treaties spread cross-border. In general, IPR includes 2 parts, namely Copyrights and Industrial Property Rights. Industrial property rights include patents, industrial

designs, integrated circuits layout designs, trade secrets, geographic indications, trademarks and plant variety protection (PVP).

Interior design is part of industrial design. Interior design has experienced significant developments in recent years, including in Indonesia. Modern society considers interior design as a life style, especially in cities as a prestige to show one's economic and social status. Interior design as creative industry today are increasingly competing not only for domestic market but also for multi country, making this profession grow with excellent innovation. Works created in interior design are human intellectual property. In legal practice, legal uncertainty often arises in the protection of interior design rights in industrial design, this happens because there are business interests among entrepreneur. Problems that arises is plagiarisms done by imitating or using the "similarity" of an interior design that already has an industrial design certificate without any permission from the design owner. Consumers in Indonesia often think it is normal to buy a product that is plagiarized. The logical reasons that are often revealed by producers of pirating other people's works are various, as are the reasons revealed by consumers. Interior designer do not understand the legal protection of their work, especially the protection of industrial design rights. Interior designers also do not understand how to protect their work and avoid various violations.

Some similar studies with this present study have been conducted previously by the researchers. Suryansyah (2019) in his research, examine the regional regulations of Mamuju Regency about the economy, especially the protection of intellectual property rights for creative economic business actors and identify the potential of the creative economy. The results of this study are in the form of sources of economic law material and manuscripts of academic considerations, where the local government and the public can find out

the legal position in the protection of intellectual property rights of creative economy entrepreneurs in Mamuju Regency. The similarity of this study with this present study is jointly examining the legal protection of intellectual property rights. Another research that conducted the similar study with this present study is Nissa (2019) which examine the protection of Industrial Design Law in the Enhancement of Economic Development in Indonesia. The result of this study revealed that the legal protection of Industrial Design based on Law Number 31 of 2000, is based on the concept of the rule of law. State law regulates that all aspects of social life, statehood and government must be based on law. One element of the rule of law is the protection of human rights as the basis for legal protection of the Right to Industrial Design. Legal protection includes preventive protection and repressive protection. Nissa's study is similar with this present study which is examine the legal protection of industrial design. Based on the description above, this study aims to find out the legal protection of interior design in the intellectual property rights of industrial design and the legal basis used by judges in deciding industrial design rights disputes.

## **2. LITERATURE REVIEW**

### ***Intellectual Property Right (IPR)***

Intellectual Property Rights (IPR) and are referred to in Dutch as Eigendom Intellectual Property. IPR is categorized as the property right considering that IPR produces intellectual works include knowledge, art, literature, technology. Intellectual property rights are rights that come from creative activities, an ability of human thinking that is expressed to the general public in various forms, has benefits and is useful in supporting human life, also has economic value.

### ***Industrial Design***

Article 1 number 1 of Law Number 31 of 2000 concerning Industrial Design.

"Industrial design is a creation regarding the shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in the form of 3 (three) dimensions or 2 (two) dimensions which gives an aesthetic impression. and can be realized in a 3 (three) or 2 (two) dimensional pattern and can be used to produce a product, goods, industrial commodity, or handicraft."

### **Legal Principles for Industrial Design Protection**

In addition to the applicable legal principles to the right to industrial design, the legal principles underlying this right are :

Publicity Principle means that the existence of this right is based on the announcement of a publication where the general public can know about its existence. For this reason, the right to industrial design is granted by the state after the right is registered in the official state. Here the fundamental difference with copyright, which concerns a declarative registration system, whereas the right to industrial design adopts a consumptive registration system, so there are similarities with patents.

Single Identity Principle Means that the right to industrial design must not be separated into one unified whole for one design component.

The principle of novelty is a legal principle that also needs attention in protecting the rights of industrial designs. Only completely new designs can be granted rights. The criteria for novelty is if the industrial design registered is not the same as the existing industrial design.

### **Gustav Radbruch Theory**

It has already been remarked that the idea of law refers not only to justice. It includes, as further elements or 'sides expediency and legal certainty. Occasionally, Radbruch, speaks of 'three principles' instead of the more familiar three elements or three sides. This is of considerable importance for determining,

by means of balancing, the relation of the three elements of the idea of law to each other.

#### Justice

Justice often takes the place of the greater idea of law in Radbruch's basic sentence, a fact that indicates the particular importance that he attaches to it. This high-level systematic ranking is connected, however, with a minimal content. Justice is understood as equality, and as equality it is defined in a purely formal way. The two classical elements of formal justice are found here, albeit not always clearly separated. The first is the general form. Radbruch says in this connection that 'it is essential to a legal precept that the claim to generalizability be raised'. 'Generalizability' is not thereby understood as referring to some test of universalizability. The claim of legal precepts to generalizability is confined to the claim of having a 'general character'. This is nothing more than a demand on the logical form of the legal norm, requiring that legal norms have the form. Nothing is said here about the content of the norm. The second classical element of formal justice is the Aristotelian demand 'that equals be treated equally, that unequals be treated differently according to their differences' Radbruch correctly emphasizes that with this it is not yet said 'who is to be treated as equal and who as unequal'. But this, so Radbruch in 1932, reaches beyond what justice can say. Justice determines only 'the form of what is right'. and at exactly this point, Radbruch takes a step that is fraught with consequences for his system: 'In order to gain the content of law, a second notion must be added, expediency.

#### Expediency

'Expediency' is generally understood as speaking to the suitability of a means for the realization of a purpose. Expediency in Radbruch's philosophy is something altogether different. It refers not to means but to purposes, and not to just any purpose but only to purposes that are

'capable of absolute value'. Three kinds of such purposes are said to exist: 'individual human personalities, collective human personalities, and human artefacts'. The question of whether and how, on this basis, the content of justice can be determined shall be considered in the context of the purpose triad, which consists of these three purposes. It will turn out that this triad is the place where the link between Radbruch's legal philosophy before 1933 and after 1945 is found. Ahead of this, however, it is well to turn to the third element of the idea triad, that of legal certainty.

#### Legal Certainty

The third element of the idea of law, legal certainty, serves to compensate for the weaknesses of the first two elements. These weaknesses are epistemic in character. Here one can speak of the problem of practical knowledge. Practical knowledge concerns knowledge about what is obligatory, forbidden, and permitted, and what is good and bad. If this could be known in law in all cases 'with scientific discernibility', the principle of legal certainty would play a relatively small role. The determinations of positive law would not be real determinations. They would have only a declaratory character. The real field of legal certainty would no longer rest on the field of determination but on that of enforcement. This leads directly to the question of the degree to which expediency can give justice a discernibly recognizable content. This turns on the third triad, the purpose triad.

#### Legal Protection Theory

According to Philipus M. Hadjon, legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Setiono stated that legal protection is an act or effort to protect people from arbitrary actions by the authorities who are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as humans.

Legal protection is an illustration of the legal function to realize legal objectives, namely justice, benefit and legal certainty. Legal protection is a protection provided to legal subjects in accordance with the rule of law, both preventive or repressive. Legal protection for the people includes two things, namely:

Preventive Legal Protection, which is a form of legal protection where the people are given the opportunity to submit objections or opinions before a government decision takes a definitive form.

Repressive Legal Protection, a form of legal protection which is more aimed at resolving disputes. Conceptually, the legal protection provided to the Indonesian people is an implementation of the principle of recognition and protection of human dignity which is based on Pancasila. In essence, every person has the right to protection from the law.

### 3. METHOD

The method applied in this study is normative legal research or doctrinal legal research. This method is used to provide a detailed and systemic explanation about the legal protection of interior design in the intellectual property rights of industrial design. Furthermore, this study applied some approaches related to intellectual property rights of industrial design. The approaches used are the statute legal approach, conceptual approach, and comparative approach. In collecting the legal material, the technique used is by literature. After all the legal material collected, then analyze the data to answer the study problem.

### 4. RESULT AND DISCUSSION

#### ***The Legal Protection of Interior Design in the Intellectual Property Rights of Industrial Design.***

##### Preventive Legal Protections

Analysis the legal protection issues of interior design in the intellectual property rights with legal protection from Philipus M

Hadjon. Preventive legal protections given by government, Protection provided by the government with the aim of preventing disputes, preventing violations before they occur. This protections contained statutory regulations with the intention preventing a violation and providing limitations in carrying out an obligation. Constitutive Protection Mechanism that provides protection to those who have used an Industrial Design first by registering a novelty, so that when someone registers the same design it will be rejected by the office of the Directorate General of Intellectual Property Rights.

The Constitutive Protection Mechanism is aimed at ensuring legal certainty accompanied by provisions that guarantee justice for those who have registered industrial designs, where industrial design rights holders have legal rights, including the right to file a lawsuit at the District Court and the Commercial Court. The existence of constitution number 31 of 2000 provides protection to designers to prevent and resolve disputes in the design field. The most important thing in industrial design legal arrangements is the existence of an element of novelty in copyright works. Protection of interior design law is included in the realm of industrial design substantively, the industrial design law consists of 57 articles which regulate several important matters relating to the definition of the designer, design protection requirements, exceptions to protection of industrial designs, sub-contracts, scope of rights, application for registration of cancellation and industrial design dispute settlement and industrial design registration system, dispute resolution and dispute determination. The meaning provided by the provisions of Article 1 of the Industrial Design constitution does not automatically mean that industrial designs intended will receive legal protection. This is because the concept of industrial design protection adopted in the Industrial Design Law in Indonesia puts forward the first to file principle, which means that the party who

registers for the first time can be guaranteed legal protection.

The existence of industrial design at the beginning is an instrument that can be expected to provide effective and comprehensive protection in the field of IPR in general and industrial design in particular to achieve these goals. The existence of industrial design becomes a juridical tool in providing protection of industrial design. There are two weakness contained in provisions of industrial design normative perspective. The limitation of creation with contains aesthetic impression is not detail explained. This vagueness meaning can provide opportunities for moral hazards at industrial designs.

Long term consequences of the provisions industrial design article no 1 will impact weak efforts to industrial design legal protection.

In practice, the interpretation of "novelty" can cause problems in giving an assessment, especially on designs that have a similarity. The third weakness of the Industrial Design Law, which is implied in the industrial design registration process in the provisions of Article 26 and Article 29, in any condition if there an objection from a third party, there will be a substantive examination.

#### Repressive Legal Protections

Repressive legal is the industrial design rights protections from violations committed by every party against the law. The sanctions protection given when a dispute occurred registered industrial design has been violated. Violation of the right to industrial design is a complaint offense, so it is not an ordinary crime. Investigations can only be carried out if there is a complaint from the right holder. Investigations can only committee if there are any complaint from the right holder.

The placement of complaint offense against a contitution with intellectual property rights, including the right to industrial design. Of course in this case the right owner is constantly being harmed but they don't know about it. If the crime is

included in offense then of course the perpetrator of the crime cannot be convicted as long as the person concerned does not make a complaint. In the event that the Commercial Court Judge has issued a provisional order, the judge of the Commercial Court examining the dispute must decide to amend, cancel or strengthen the decision within 30 days of the issuance of the interim court order.

Legal Constitutions Used by Judges in Deciding Industrial Design Rights Dispute Cases "The Ecosfera Room Industrial Design Rights Dispute Case"

Felix Demin, Russian Citizen, Passport Number 550127963, residing in Saint Petersburg, Proskerkst Nastavnikov 30, Apartments 266. currently domiciled in Badung Regency, Bali, in this case authorizing Esra Karo-Karo, SH, and associated, Advocates, having an office at Jalan Pulau Moyo Number 36 Pedungan, Denpasar, Bali, based on a Special Power of Attorney dated August 5, 2019 ; Appellant for Cassation; versus I Putu Arich Supra, residing at Jalan Sahadewa No.1, Br. Umacandi Buduk, Mengwi District, Badung Regency, Bali Province, in this case authorizing Fredrik Billy, SH, MH, and associated office at Lucky Plaza, Jalan Merta Sari Number 180 E, Sidakarya, Denpasar, Bali. The dispute between Felix Demian (the plaintiff) and Putu Arich Supra (the defendant) who used the ecosfera room industrial design creat by plaontiff on the defendant's alien bubble Bali buiding located on Jalan Raya Singapadu Number 10 Singapadu Kaler, Sukawati, Gianyar without any plaintiff's permission. The Plaintiff through his attorney, submitted to Surabaya Commercial Court adjudicating this case to issue a temporary ruling ordering the defendant to stop using the plaintiff's ECOSFERA room industrial design on the defendant's Alien Bubble Bali.

To prevent greater losses suffered by the Plaintiff and to sentence the Defendant to pay compensation to the Plaintiff both material and moral and to declare the value of the Collateral Seizure placed on

the land and buildings controlled by the Defendant. The main points of the exception submitted by the Defendant indicated that the Plaintiff did not have the capacity to register a lawsuit (in person disqualification); The Plaintiff's claim is lacking in parties (plurium litis consortium); The Plaintiff's claim is blurred (obscuur libel); Details of the compensation demanded are unclear and not detailed. The Commercial Court at the Surabaya has decision Number 2 / Pdt.Sus.HKI / Desain / 2019 / PN.Niaga Sby dated July 30, 2019 against the lawsuit which was as follows:

In the Provisional Determination:

- Rejecting the petition for the Plaintiff's provisional determination;

In Exception

Refusing the Defendant's exception in its entirety

In the Case

Refused the Plaintiff's claim in its entirety

Charge the costs incurred in this case to the Plaintiff in the amount of Rp 9,665,000.00 (nine million six hundred sixty-five thousand rupiah). Based on constitution number 31 of 2000 concerning industrial design, constitution number 48 of 2009 concerning judicial power, law number 14 of 1985 concerning the supreme court as amended by constitution no 5 of 2004 and the second amendment by constitution number 3 of 2009, as well as other relevant constitutions and regulations. The Supreme Court in decision number 104 K / Pdt.Sus-HKI / 2020, tried to reject the appeal from Cassation Petitioner Felix Demin; Sentenced the Cassation Petitioner to pay court fees in the cassation rate of Rp.5,000,000.00 (five million rupiah). The Supreme Court is of the opinion that the Defendant has previously purchased the transparent house from Shang Hai Ning Tong Inflatables Products Co. Ltd domiciled in China. Before the plaintiff submits an application for registration of its

industrial design, there was no violation committed by the defendant.

Whereas the cassation objections contain repetition of matters that have been properly considered by the *judex facti* so that it is justified to set aside.

Based on Gustav Radbruch's theory of legal ideals as a legal basis in deciding cases of disputes over industrial design rights based on justice, benefits, and legal certainty in the case of industrial design disputes *Ecosfera Room*.

The judge's decision based on Gustav Radbruch's Theory, namely Justice (*Gerechtigkeit*); Benefits (*Zweckmassigkeit*); and Legal Certainty (*Rechtssicherheit*) for *Ecosfera Room*. Gustav Radbruch's theory teaches that there is a priority scale that must be run. where the first priority is always justice, then benefit, and finally legal certainty. The purpose of law is justice beside benefit and legal certainty, in fact this situation cause a few problems. It is uncommon for legal certainty to clash with benefit, between justice and legal certainty, and between justice and benefit. Justice is the priority in all other aspects.

The application of justice in making decisions is not an easy thing. The paradigm of judges are more inclined on the philosophy of legal positivism. From this point of view, the main goal of law is not justice but certainty. Only certain things can be used as measure of truth. Justice is a human right that must be enjoyed by every human being who is able to actualize all human potential, Of course in this case it will provide different values and meanings of different justice for the applicant / plaintiff and other parties who become the respondent / defendant when the judge makes a decision. In the case of disputes over the *Ecosfera Room Industrial Design* rights, the judge's decision rejecting the plaintiff's appeal was felt to be fair to the defendant but otherwise unfair to the plaintiff. The Panel of Judges in deciding cases is influenced by the civil law system, which requires judges to base

themselves strictly on the sound of the law. The decision was made based on existing facts and evidence (*Judex facti*).

The fact in the above case is that the defendant had purchased the building before submitting the industrial design registration by the plaintiff so that the industrial design did not meet the requirements regarding novelty as stipulated in Article 2 of constitutional No. 31 of 2000 concerning Industrial Design. Industrial design rights are granted for the new idea. An industrial design is considered new if on the date of receipt is not the same as the previously existing disclosures. The industrial design right which is the object of the dispute in this case is legally inappropriate to register and register and must be canceled because it is not an industrial design that has newness in both form and configuration, but is a pre-existing industrial design, also remembering that the plaintiff did not attach the industrial design certificate.

Benefit is the most important thing in a legal goal, regarding the discussion of legal objectives, it is first known whether what is meant by its own purpose and those who have goals are only humans but law is not a human goal, law is only one of the tools to achieve goals in society and the state. The purpose of law can be seen in its function as a function of protecting human interests, law has goals to be achieved. The case of disputes over the *Ecosfera Room Industrial Design* rights provided benefits to the defendant due to the refusal of the plaintiff's appeal by *Makamah Agung*. The Panel of Judges in deciding cases is influenced by the civil law system, which requires judges to base themselves strictly on the sound of the law.

The industrial design rights that are the object of the dispute in this case are actually legally it is not appropriate to be registered and registered and must be cancelled because it is not an industrial design that has newness in both form and configuration, but is a pre-existing industrial design, also remembering that

the plaintiff did not attach the industrial design certificate.

Relying on Article 3 of Law no. 31 of 2000 concerning Industrial Design in point b states "it has been used in Indonesia by designers in the context of experiments for the purpose of education, research or development".

Based on Article 4 of Law no. 31 of 2000 concerning Industrial Designs, states that "Industrial Design Rights cannot be granted if the Industrial Design is contrary to the prevailing laws and regulations, public order, religion, or morality".

It is also stated that Article 6 of Law no. 31 of 2000 concerning industrial designs, namely: (1) Those entitled to obtain industrial design rights are designers or those who receive said rights from designers; (2) In the event that a designer consists of several people together, the right to industrial design shall be granted to them jointly, unless otherwise agreed.

#### Legal Benefits

Benefit is the most important thing in a legal goal, regarding the discussion of legal objectives; first it is known whether what is meant by its own purpose and those who have goals are only humans but law is not a human goal, law is only one of the tools to achieve goals in society and the state. The purpose of law can be seen in its function as a function of protecting human interests, law has goals to be achieved.

The case of disputed rights to the Ecosfera Room Industrial Design provided benefits to the defendant due to the refusal of the plaintiff's appeal by the Supreme Court so that he was freed from claims for material compensation along with confiscation of collateral in the form of land and buildings. However, the plaintiff received losses because his claim was rejected and incurred costs in the case mentioned above.

#### Legal Certainty

Legal certainty contains two meanings, first, there are general rules that make

individuals know what actions are allowed or not to be done and second, in the form of legal security for individuals from government abuse because with the existence of general legal rules, individuals can know what the state may impose or do against individuals. Legal certainty is not only in the form of articles in the law but also the consistency in the judge's decision between the decisions of one judge and the decisions of another judge for similar cases that have been decided.

The decision of the Panel of Judges in the case of the Ecosfera Room Industrial Design rights dispute can provide legal certainty for both parties, both the plaintiff and the defendant. The plaintiff provides legal certainty that all forms of plagiarism against their industrial designs after the issuance of the industrial design rights certificate by the Director General of IPR will have legal force. Meanwhile, the defendant obtained legal certainty that the house purchased did not violate the plaintiff's industrial design rights and henceforth could no longer use the design for other buildings without the permission of the owner of the industrial design rights.

## 5. CONCLUSIONS

Based on the explanation above, it can be concluded that weakness in the substance of the Industrial Design Law in practice opens up opportunities and this is widely exploited by applicants with bad intentions and deliberately registering industrial designs that no longer have novelty. In article 1 paragraph (1) of Law Number 31 of 2000, the meaning of this article is too broad so that it can lead to multiple interpretations, for example someone can argue that the design has an aesthetic that can be manifested in the product, while in law there is no mention of benchmarks or standards. Aesthetic that is abstract in nature because it should be remembered that every individual has a different taste and view of aesthetics. It could also be someone has the same design form but with different



configurations, colors and materials. Article 2 of Law Number 31 Year 2000 also has multiple interpretations. The first interpretation assumes that with a slight difference, the comparison of two industrial designs can be said to be different. Meanwhile, the second interpretation assumes that the difference between the two industrial designs must show a significant difference, so that a slight difference between the two industrial designs can still be stated substantially the same as long as the overall impression still looks the same. In practice in Indonesia, the assessment of the novelty of industrial design, whether carried out by the industrial design examiner in the registration process carried out by the DJHKI or in cases of cancellation of industrial design rights at commercial courts, there are often problems in assessing the novelty, especially with regard to designs that are similar (similarity). The industrial design registration process can be seen that between the provisions of Article 26 and Article 29 of Industrial Design contains an injustice value. If in the announcement of the industrial design application there is no objection from a third party, then the Directorate General of IPR will automatically grant the industrial design rights. Violation of the right to industrial design is a complaint offense, so it is not an ordinary crime. Investigations can only be carried out if there is a complaint from the rightful, namely the right holder or right recipient. The right to industrial design is a private right of a person, so violations of this right are only the owner of the right to harm, so it does not harm the public interest. The industrial design lawsuit was directed to the commercial court. In addition, to settling claims in the commercial court, the parties can resolve disputes through Arbitration or alternative dispute resolution.

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