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CRIMINAL LAW ASPECT IN INDUSTRIAL DESIGN INTELLECTUAL PROPERTY RIGHT PROTECTION

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Abstract

The aspect of criminal law in intellectual property rights, especially Industrial Design, is one of the legal aspects that is less well known in the community and among business people. This problem occurs because there is still a lack of socialization about the existence of Law No.31 of 2000 concerning Industrial Design. The lack of understanding of business people on industrial design rights, improper treatment of industrial design by industrial design owners in this case business people in Indonesia, which causes the design information to be transformed into public domain, which on the contrary is detrimental to industrial design owners. The absence of an effective mechanism to socialize industrial design laws carried out by the government, even though the Law has been effectively implemented.

Keywords: *Criminal Law, Protection, Industrial Design*



A. Introduction

Legal protection of intellectual property rights is increasingly becoming a concern of developed countries along with the progress of the creative and digital economic sectors.¹ Intellectual Property Rights originates from the results of thinking of a special and personal human brain that can produce products or processes that are useful for humans, can provide individual economic benefits, business entities and foreign exchange income for the State, which is now a complex problem in the trading system national and international trade as it enters the global market era, making it an important matter discussed by developed countries and developing countries.

The arrangements for Intellectual Property Rights in Indonesia have existed since the Dutch Government, Japan and the time of the independence of Indonesia. Especially since the Indonesian Government joined in ratifying the World Trade Organization through Law No. 7 of 1994 concerning Ratification of the Agreement on the Establishment of The World Trade Organization on 2 November 1994.² The existence of Intellectual Property Rights in the WTO can be seen from the existence of TRIPs (Trade Related Aspect of Intellectual Property Rights) in the structure of the WTO Institution. Indonesia as a member of the WTO must follow the rules set by the WTO so that it must be ready in today's free market competition.

Industrial Design is one of the parts of Intellectual Property Rights (hereinafter abbreviated as IPR) is a right that is fast in the development of business activities. This is evidenced by the enactment of Law No. 31 of 2000 concerning Industrial Design which came into force since December 20, 2000. In the era of



business competition that is so tight today, the protection of Industrial Design is a necessity that cannot be negotiated, because of uncertainty over this problem can lead to the consequence of increasingly unfair competition (unfair competition) which will damage the overall business climate.

B. Research Methodology

This type of research is legal research (normative juridical) that is descriptive, namely research that only provides an overview of social symptoms in the community related to criminal aspects of industrial design rights violations. Data sources used are secondary data consisting of primary legal material in the form of Laws, such as Law No. 31 of 2000, Law No. 5 of 1999, Criminal Code of Criminal Procedure and PP No. 16 of 1997, secondary legal material in the form of tertiary legal books and materials in the form of legal dictionaries and others. The data collection tool used is a study of documentation and then analyzed using qualitative analysis.

C. Results And Discussion

A. Application of Law No.31 of 2000 concerning Industrial Design in protecting the occurrence of violations of Indonesian Industrial Designs

Industrial Design Law (hereinafter abbreviated as ID) is formed from various cases which have contractual elements, wealth honesty, obligations based on trust and good faith.³ If we consider the legal considerations for the establishment of an Industrial Design Law (there are 2 reasons why Indonesia has a special law) regulate and protect the rights of Industrial Design, namely:

- a. Promoting industries that are able to compete in the scope of national and international trade needs to be created a climate



- that encourages the creation and innovation of society by providing legal protection against Industrial Design as part of the IPR system.
- b. Encouraging the diverse diversity of the Indonesian culture and ethnicity is a source for the development of Industrial Design.
 - c. Fulfill the demands of the Agreement Establishing the World Trade Organization (WTO) which includes the Agreement of Trade Related Aspect of Intellectual Property Rights (TRIPs) by ratifying it with Law No. 7 of 1994.

The comprehensive implementation and implementation of legal protection against the ID has actually occurred before the enactment of the regulation and practice of the protection of the ID through Law No. 31 of 2000. The grouping of the terms ID into IPR in national legal instruments began to emerge in 1997, when the government of R.I issued a government regulation (PP) No. 16 of 1997 concerning franchising. In the explanation of number 1 PP it is stated that what is meant by intellectual property rights follows, among others: brands, trade names, logos, designs, copyrights, trade secrets and patents. Other provisions that explicitly include D, I as a part of IPR are article 50 b of Law No. 5 of 1999 concerning Anti-monopoly and business competition. This provision has further strengthened the position of ID as a form of exclusive rights and even exempt rights from objects which includes the prohibition of monopolistic practices and unfair business competition, although the provision has not been able to answer the substance of the ID protection arrangements in detail before the issuance of Law No. 31 of 2000 which specifically regulates Industrial Design.

Grouping of Industrial Design in IPR has juridical consequences, where ID has protection that is more permanent and specific through Law No. 31 of 2000 concerning Industrial Design. If previously violations relating to Industrial Design would be faced



with articles that were rather broad in nature such as criminal and civil provisions in general,⁴ then further when the enactment of Law No. 31 of 2000 the violators would be faced with a more specific legislation in this Act.

Protection of the ID in the context of national legislation is currently an integrated part and is in a package that is inseparable from the regulations per IPR Law and unfair competition. If this goal can be achieved, then automatically it will encourage a healthy national business climate while stimulating the entry of investment into Indonesia, but the application and implementation of legal protection Law No. 31 of 2000 is not an easy matter, therefore various kinds of business to overcome various forms of violations in the field of Industrial Design, it has the support of various parties related to this field.

The protection of industrial design provided by the state is essentially based on civil relations between the owners of industrial designs and holders of industrial designs or further recipients of industrial design rights in the form of industrial design licenses, including by providing information about industrial designs correctly and any matters in Industrial Design which is referred to as a violation of law. The civil relations basically have special provisions that regulate exclusively, both those originating from agreements, laws and regulations, public order, morality and custom and propriety of law that apply in a society at a certain period of time.

As well as legal protection against Industrial Design in Anglo Saxon law countries such as the United States and Canada having two aspects, namely civil and criminal, as well as protection of Industrial Design in the regulations of Indonesian Law also has 2 aspects, namely civil and criminal. The author will explain the



application and implementation of protection against the ID in Indonesia from the criminal aspect can be described as follows:

In the laws of Intellectual Property that apply in Indonesia, there are seven positive laws governing intellectual property consisting of copyright law, patent rights, brand rights, trade secrets, industrial design, integrated circuit layout design and protection of plant varieties. In each of these laws there are provisions concerning criminal acts. According to Molyatno and Pompe in Adam Chazawi, criminal acts are acts which are in the form of certain crimes for those who forbid them.⁵ Also, according to Pompe, a *strafbaarfeit* is an act which according to the Law Formulation has been declared a punitive action.

In the Indonesian Criminal Law system, any criminal offense determined by the legislator contains a legal interest to be protected. Likewise, the intention of the constitution of the IPR Act to form a crime in each IPR Law. There are 7 (seven) positive laws regarding IPR.⁶ Regulations concerning violations of Industrial Design qualifying as a form of criminal offense provide a form of threat to the perpetrators with criminal sanctions.

Article 322 paragraph (1) of the Criminal Code:

“Whoever deliberately opens a secret that must be kept because of his position or livelihood, both the present and the former are threatened with imprisonment for a maximum of nine months or a fine”, etc ...

Other provisions in the Criminal Procedure Code say:

Article 323 paragraph (1) Criminal Code:

“Whoever intentionally tells special things about a trading, crafting or agricultural company, where he works or



previously worked for which he is kept secret is threatened with imprisonment for a maximum of nine months", etc. ...

The provisions of the Criminal Code have the following meanings:

- a. That a person is prohibited from disclosing secrets that must be kept based on his position or his livelihood. This shows that the basis for the obligation not to divulge the secret is the position or position he holds.
- b. That the secret was not limited to the secret at the time (when he was concerned in his current position) but also included the secrets he should have held and guarded in the past.
- c. Special matters (information) concerning a trading, crafting, or agricultural company are categorized as an object of information that must be kept confidential.
- d. The party is bound by both current and past work. In this case there must be clarity in how long a person is no longer bound to keep the information confidential.⁷

Specifically, an explanation of the regulation of the criminal aspects of Industrial Design is outlined below.

B. Violation of Industrial Design as a Criminal Act

Crime of Industrial Design in Law No. 31 of 2000 regulated in chapter XI concerning Criminal Provisions, namely in article 54 (paragraph 1) which reads as follows:

"Whoever intentionally and without the right to do the actions as referred to in Article 9 (paragraph 1) shall be punished with a maximum imprisonment of 4 (four) years and/or a fine of at most Rp. 300,000,000.00 (three hundred million rupiah)."



Criminal acts as referred to in Article 54 paragraph (1) constitute an offense of complaint. If we read the formulation of the provisions of Article 9 paragraph (1) we can know that Law No. 31 of 2000 concerning Industrial Design which regulates criminal acts relating to:

a. Use of Industrial Design Deliberately and Without Rights

Understanding intentionally and without rights relating to the rights possessed by Industrial Design Subjects, as stated in the formulation of Article 6 of Law No. 31 of 2000 concerning Industrial Design Subjects, namely Designers or those who receive such rights from Settlement. If the Designer consists of several people together then the industrial design rights are given to them together unless otherwise agreed.

Subjects of Industrial Design based on Article 6 and Article 33 of Law No. 31 of 2000 has the right to:

- i. Using its own Industrial Design;
- ii. Give licenses to other parties to use the Industrial Design.

Besides the provisions of Article 6 and Article 33 of Law No. 31 of 2000 which is broadly interpreted also gives the right to the recipient of an industrial design license to use (commercially) an industrial design licensed to him by the owner of an industrial design or holder of industrial design. This means other than those mentioned above, namely:

1. Industrial Design Owner;
2. Holder of Industrial Design;
3. Recipient of Industrial Design license.

No other party has the right to use or utilize Industrial Design. In this case, it is necessary to pay attention to the formulas that contain "intentionally" and "without rights", as stated in Article



54 paragraph (1) of Law No. 31 of 2000. Although the formulation "without rights" can be easily proven based on the reasons for the provisions of Article 6, and 33 Law No. 31 of 2000; but "intentional" verification is not that easy, given that Industrial Design is "a creation of the shape, configuration, or composition of lines and colors, or lines and colors or a combination thereof which gives an aesthetic impression ... etc." This can occur with the assumption of an Industrial Design, including how to keep it a secret and to whom the provisions regarding secrecy apply, with all the consequences subject to the prevailing habits in the community, then of course all kinds of methods can be proven, in this case protection against violations the law in Industrial Design is not only subject to Law No. 31 of 2000 concerning Industrial Design but also all kinds of laws and regulations, public order, morality, customs, and propriety that apply and exist in Indonesian society from time to time.

- b. Violations of Provisions of Article 9 of Law No. 31 of 2000
Formulation of Article 9 of Law No. 31 of 2000 reads: "... prohibits other people without the approval of making, using, selling, importing, exporting, and or distributing goods given industrial design rights."
- c. Violation of Article 8 of Law No. 31 of 2000
If the previous provisions relate to the use of Industrial Design without rights and intentionally, then the criminal provisions further in Article 8 paragraph Law No. 31 of 2000 regulates violations of the moral rights of industrial designers. The moral right is in the form of the inclusion of the name of the Industrial designer in the Industrial Design Certificate, the General Register of Industrial Designs and the Official Gazette of Industrial Designs so that those who use an Industrial Design obtained from other licenses or rights transfers must include the name of the designer.



- d. Violation Article 23 of Law No. 31 of 2000 reads: "... all employees of the Directorate General or persons who are assigned to work for and or on behalf of the Directorate General are obliged to keep the confidentiality of the Application until the announcement of the said Application."
- This article relates to the obligations of the directorate general of IPR to always maintain the confidentiality of the registration process of industrial design carried out by someone.
- e. violation of Article 32 of Law No. 31 of 2000 which regulates the inclusion of the name of the designer even though the design right has been transferred to another party. Transfer of rights can occur due to inheritance, grants, wills of written agreements and other reasons justified by legislation (Article 31).

In the formula given in Articles 8, 23 and 32 of Law No. 31 of 2000 we can look back on the words "intentionally". As with the previous explanation, even in a criminal act, proof of whether or not there is actually:

1. Violation of the moral rights of Industrial Designers made jointly both in official relations and in employment relations based on orders.
2. Violation of the secrecy of the request for an industrial declaration by employees of the Directorate General of Intellectual Property Rights.
3. Violation of moral rights during the transfer of industrial design rights.

Unlike the formulation of Article 54 of Law No. 31 of 2000 which explicitly says "intentionally", the formulation of Article 4 reads in full: "The right of industrial design cannot be granted if the industrial design is in contravention of applicable laws, public order, religion or morality". Although if we look at the word



“contrary to the prevailing laws and regulations” it requires a process of proof that is not simple, but the essence of proof is only limited to the presence or absence of “contrary to the applicable laws” and not for other matters. Thus if a design is found that is contrary to law, public order and decency, the design is not a criminal offense but will only be canceled (Article 38).

According to the provisions of Article 54 paragraph 3 of Law No. 31 of 2000, the crime in Article 54 paragraph 1 and paragraph 2 is an offense of complaint. This means the process of running a new criminal case takes place if there is a complaint from the aggrieved party. This reflects the nature of the interest (civil) of the aggrieved party, which in this case is the owner of Industrial Design or holder of Industrial Design.

In some cases, the use of Industrial Design is not considered as a violation of Industrial Design, if the disclosure action of Industrial Design or use of Industrial Design is based on research and educational interests insofar as it does not harm the fair interests of industrial design rights holders (Article 9 paragraph 2). The reasonable interest is that the use of industrial design does not harm the designer (commercially), the quantity of usage is limited to academic circles only and the use of the design is not included in the rights referred to in Article 9 paragraph 1, namely making, using, selling, importing, exporting and or distribute goods that have been given industrial design rights.

The use of design information without permission is also included in a form of violation of the rights of Industrial Design. The use of design information without this permission can occur when the designer sees that the recipient uses the concept without the permission of the designer as follows:

- a. Where the designer does not give permission to the user at all;



- b. Where the designer allows the recipient to use the design for a specific purpose, but the recipient of the design uses it for other purposes not based on the permission given.

D. Conclusion

The criminal law aspect in the Intellectual Property Law is contained in each of its laws. In essence the legal relationship between the designer and industrial design users and third parties is civil. But even though Industrial Design is civil, the State continues to protect the rights of industrial designers by providing criminal sanctions for violators of industrial design rights as stipulated in Article 54 of Law No. 31 of 2000. The act of giving sanctions by this state is returned to the interests of the protected party by making the criminal act as a complaint of offense (Article 54 paragraph (3)).

Law enforcement for violations in the field of Industrial Design is more severe than other law enforcement. This is caused by several things, namely:

- a. Industrial design compared to other legal forms is less well known to the public, so that law enforcement in this field is more difficult than other laws.
- b. Violations of Industrial Design in business activities in Indonesia tend to occur due to a lack of understanding of business people in this field.
- c. Improper treatment of Industrial Design by the owner of Industrial Design in this case the business people in Indonesia, which causes the design information to be transformed into public domain, which on the contrary is detrimental to its owner.
- d. The absence of an effective mechanism to socialize the Industrial Design Law carried out by the government, even though the law has been effectively implemented



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