



Criminal Law Aspects in Product Counterfeiting Cases Against Industrial Design Protection

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ABSTRACT

The criminal law facets pertaining to instances of product counterfeiting are examined in this article within the framework of industrial design protection. An examination of the current legal structure pertaining to product counterfeiting and an investigation into the ramifications of criminal law on the protection of industrial designs are the objectives of this article. Additionally, this article examines the diverse legal frameworks and regulations that pertain to the preservation of industrial designs against counterfeit products in different jurisdictions. The applicable elements of criminal law, such as the penalties levied against counterfeiters, are the primary focus. Furthermore, the article delves into the obstacles encountered by law enforcement in regards to safeguarding industrial designs and preventing product counterfeiting. This study demonstrates that criminal law protection of industrial designs is a crucial component in the fight against counterfeit products. It is necessary to strengthen the legal framework, promote cross-border cooperation, and increase all stakeholders' awareness of the significance of industrial design protection.

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1. Introduction

Two primary factors influenced Indonesia's decision to enact the Industrial Design Law. The initial rationale pertains to Indonesia's responsibilities as a member of the World Trade Organisation (WTO), which require the implementation of more stringent legislation concerning the safeguarding of industrial designs. Furthermore, it is associated with the government's objective of establishing robust safeguards against diverse types of infringement on industrial designs, including but not limited to plagiarism, piracy, and imitation. Along with the times, brands are very important in the world of trade and to protect the reputation that has been built by many people. trade and to protect the reputation that has been built by many companies company (Dwipayani & Fazriyah, 2021). Each of the aforementioned constitutes a violation of industrial designs. With any luck, more comprehensive protection

measures will function as a catalyst to stimulate the innovative output of designers and facilitate the growth of productive designers (Utomo, 2010).

Industrial design implementation is a domain in which industrial design rights are widely recognised. Typically, industrial design rights safeguard the attributes pertaining to the configuration, embellishment, or form of a product that have been introduced via diverse industrial processes. The aforementioned attributes are discernible and evaluable through the unaided eye in the conclusion product. Consequently, in order to qualify for Industrial Design Rights protection, a design must possess the qualities of being both distinctive and practical for a specific product. As the proprietor, the individual who originated the design is granted all the exclusive rights that are linked to the design (Hamzah, 2006).

Moral and economic rights are two classifications of rights that are encompassed within the domain of industrial design rights and require protection against violation. Economic rights are those which grant the right holder the ability to benefit monetarily from the exclusive rights. These advantages may manifest as the authority to grant or deny permission to third parties regarding the production, distribution, import, export, or use of the product for which the industrial design is intended, or the storage of goods intended for such commercial objectives. Property rights include economic rights (Bently et al., 2022). Conversely, moral rights pertain to the designer's personal rights in terms of receiving credit for their design work. By law, these liberties are safeguarded. Contrary to popular belief, moral rights are not considered a component of copyright in many nations. While copyright law does offer some degree of restricted protection against attribution errors, it does not encompass moral rights (Pearce, 1974).

As per the initial paragraph of Article 5 of Law No. 31 of 2000, the duration of safeguarding Industrial Design Rights is set at ten years subsequent to the application's receipt. In addition to being oriented towards the domestic market, a nation's economic structure is also oriented towards the international market. International developments influence the development of national law in a variety of ways, including through the formation of a transnational arena in legal practice and the interaction between the development of national and international law, which has been facilitated by economic forces and logics (Rahardjo, 1997). Indonesia's membership in the World Trade Organisation (WTO) serves as a means to achieve the nation's objective of contributing to the establishment of a global order founded on principles of social justice, sustainability, and independence, with a particular emphasis on the realm of international trade. The establishment of this objective serves to fulfil Indonesia's obligations as a WTO member. Indonesia is obligated to implement the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS/WTO Agreement), which regulates trade-related aspects of intellectual property rights, by virtue of its membership in the World Trade Organisation (WTO). This responsibility pertains to the domain of intellectual property rights (JDIH BPK, 1994)

Reporting from the archives of the Indonesian Society Against Counterfeiting (MIAP), the distribution of counterfeit of counterfeit goods in Indonesia is considered very alarming. MIAP mentioned that there are about 12 industrial sectors, including the shoe industry, invite losses totaling 4.4 trillion and tend to increase annually. totaling 4.4 trillion and tends to increase every year (Mardanugraha et al., 2014). In the interim, Nailul Huda, a digital economy researcher at the Institute for Development of Economics and Finance (Indef), was quoted by *Bisnis.com* as saying that the prevalence of counterfeit goods in online marketplaces is due to the fact that consumers are attracted to them due to their significantly lower prices notably more affordable (Risandi & Disemadi, 2022). The escalating prevalence of counterfeit brands Legislation and enforcement remain ineffective in Indonesia, which is inextricably linked to the escalating incidence of counterfeit brands. It is possible to say that this trend is a reflection of the societal condition in the country. The efficacy of legislation and law enforcement pertaining

to trademarks remains debatable. Enforcement of trademark legislation (Disemadi & Mustamin, 2020).

Trade development will be hindered with respect to the safeguarding of intellectual property rights via trademark rights, should a country fail to provide sufficient legal protection for a trademark. Knowledge in the field of commercial legal protection, such as copyright, predated the development of trademark law, as trademarks necessitate distinguishing design elements (e.g., lettering and insignia) from other products. Characteristics that set it apart from other products (Hanuka, n.d.). Clearly, the consumers are harmed by the existence of piracy in addition to the entrepreneurs who own or possess the rights to the trademark. Prominent brands such as "CARTIER," "LEVIS," and "NIKE" have amassed the capacity to generate prestige and high-quality goods or products as a result of substantial investments made by brand owners and aggressive marketing campaigns; as a result, these brands have achieved global recognition and are sustained by effective management. A trademark that is already owned by the public, in conflict with applicable laws, and fails to distinguish itself from other traded products is ineligible for registration in conjunction with other commodities that were exchanged and has since become public property (Dhani et al., 2021). The appeal of these global brands engenders a demand that is frequently satisfied by counterfeiters engaged in the manufacturing and dissemination of unauthorised merchandise. The products of counterfeiters are distributed globally, from New York City to Hong Kong, where urban areas are inundated with counterfeit goods. Brand proprietors incur financial and non-financial losses as a result of the sale of these counterfeit goods. In general, counterfeit goods are inexpensive and of lower quality than the authentic item. A clear illustration can be found in the "Kit-Kat" wafer, where Nestle, being the initial proprietor of the "Kit-Kat" brand, is profoundly perturbed by Danone's "Chit-Chat" brand. Regarding the originator and proprietor of the "Chit-Chat" trademark in the Indonesian sector. The mere existence of "Chat-Chit" can be regarded as an attempt to appropriate the long-standing "Kit-Kat" brand. Legal action was pursued by the proprietor of "Kit-Kat," who was domiciled in CH 1800, Vevey, Switzerland. The owner demanded that "Danone" furnish compensation totalling Rp. 10,828,473,970. As an offset for tangible and intangible losses, such as promotional expenditures, projected profits, legal consulting charges, and damages resulting from diminished goodwill or a decline in the organization's standing, this sum is accrued. Consequently, the unauthorised exercise of these rights constitutes a criminal offence punishable by civil litigation and criminal prosecution.

Several articles of Trademark Law Number 20 of 2016 demonstrate that Indonesia permits the imposition of criminal sanctions on those who commit criminal acts, including the following: As per the provisions outlined in Article 90 of the Trademark Law, individuals found guilty of trademark offences and employing a registered trademark in its totality are subject to the following penalties: imprisonment for a maximum of five years, or a fine of one billion Rp. Upon examination of the aforementioned article, it becomes evident that the range of activities subject to criminal sanctions has been diminished in comparison to Trademark Law No. 19 of 1992, which imposed a seven-year sentence down to five years. While the criminal penalty is reduced, the monetary penalty is elevated from Rp. 100,000,000.00 (one hundred million rupiah) to Rp. 1,000,000,000.00 (one billion rupiah). The substantial increase in this fine is highly commensurate with the fact that counterfeiters profit from the imitation of a trademark.

The reform of the Industrial Design Law: The Challenge of Protecting User Interface and Comparison of Aesthetic Impression Elements was the subject of prior research by Muhammad Rifan. Muhammad Rifan's research examines the absence of legal regulations pertaining to user interfaces (UIs), which in turn undermines the protection of user intrusions under intellectual property rights (IPR) legislation. As a consequence of this research, a comparative analysis of intellectual property rights (IPR) legislation in the United Kingdom,

Japan, and Malaysia reveals that UI arrangements are addressed in Aesthetic Impression, whereas Indonesia's legislation merely describes the process of product production without providing any explanation regarding UI (Rifan & Rahmawati, 2020). In contrast, "Legal Protection for Holders of Eco Bottle Industrial Design Rights Against Counterfeiting Actions (Comparative Study with the United States)" by Muyassar Nugroho examines the protection of industrial design rights holders in the United States and Indonesia in comparison. By utilising the comparative method, the study was able to demonstrate that proprietors of industrial design rights are adequately protected, according to its findings (Nugroho, 2022). "Legal Protection for Industrial Design Holders of Industrial Designs That Have Been Registered According to Law Number 31 of 2000 concerning Industrial Design" is a pertinent study by Vicari Lim. The findings indicate that the registration system for industrial designs in Indonesia is constitutive, in the sense that the party that initially registered the design at the DJKI is the legal and recognised owner of the design (Lim, 2022). This research, as opposed to its predecessors, is concerned with particulars of the relevant criminal legislation, such as the penalties levied against counterfeiterers. Furthermore, this article delves into the obstacles encountered by law enforcement in regards to safeguarding industrial designs and combating counterfeit products.

This article will provide an introduction to the fundamental concepts of product counterfeiting, including its various forms and the motivations that drive such activities. Moreover, this article examines the diverse legal frameworks and regulations that pertain to the preservation of industrial designs against counterfeit products across multiple jurisdictions. Hence, the concerns that shall be examined in this study pertain to the manner in which protection for industrial designs is implemented within the context of criminal law. Anticipated benefits of this research comprise a more comprehensive comprehension of the law, promotion of adherence to legal requirements, safeguarding of innovation and creativity, prevention of economic losses, and provision of guidance for all parties concerned.

2. Method

Case analysis and normative legal research methodologies will be utilised in this investigation. In order to identify and analyse aspects of criminal law pertaining to product counterfeiting within the context of industrial design protection, the normative legal research method is applied. A search of pertinent legal literature, legislation, and court decisions will comprise this strategy. Furthermore, to acquire a more profound understanding of the application of criminal law elements in this particular domain, concrete case studies relating product counterfeiting to industrial design protection will be investigated through the application of case analysis. It is anticipated that a comprehensive understanding of the function of criminal law elements in addressing the issue of product counterfeiting in the design industry will result from the combination of these two approaches.

3. Analysis and Results

IPR is closely associated with tangible objects (intangible) and safeguards intellectual works that originate from the imagination, sensibility, and craftsmanship of humans. safeguard intellectual works that originate from the ingenuity, sensibility, and intellect of humans. The World Intellectual Property Organisation (WIPO), a United Nations-affiliated international institution that handles matters pertaining to intellectual property rights (IPR), provides the following definition of IPR: "Creations originating from the human mind," encompassing inventions, works of art, symbols, names, images, and designs utilised in commerce." utilised in business (Utomo, 2010).

The legally mandated exclusive rights provide an appropriate incentive for investors and IPR creators. IPR creators and investors. Creative individuals are incentivized to further

refine their intellectual capacities with the intention of applying them towards the betterment of human existence. aid in enhancing human existence. By imposing sanctions on those who exploit the creative process and providing adequate legal protection, the primary objective of the IPR legal system is to ensure that the creative process persists. protection and impose penalties on individuals who engage in unauthorised use of the creative process. procedure in violation of permission(Sufiarina, 2012).

3.1. Criminal Law Implications of an Industrial Design Product Counterfeiting Case

The impetus behind the development of this Industrial Design Law stems from Indonesia's responsibility as a WTO member to establish effective regulations on the protection of industrial designs. This obligation is linked to the government's commitment to ensuring efficient safeguards against infringements, plagiarism, piracy, and imitation of industrial designs. It is anticipated that more extensive protection measures will serve as a catalyst for designers' increased creativity and as a means to generate designers who are productive(Supasti Dharmawan, 2020).

Yastino argues that the concept of design encompasses the phenomenon of man-made objects in a more comprehensive sense. In this context, design encompasses the production of even the most minute implements, including cutlery and forks, as well as the designs and prototypes of apparel and textiles, housing, urban planning, and tools. In addition to housing and urban planning, patterns and models of textiles and apparel, transportation instruments and their networks are also covered. transport and its associated networks. Thus, design encompasses an extensive array of disciplines, including transportation, product design, textiles, interior design, and graphics, among others. Urban design, product design, textiles, interior design, graphic design, and engineering design. Regardless of their scope, these disciplines can all be traced back to the fundamental principle of design, which states that all things are created to satisfy the material and spiritual needs of humanity(Djumadi, 2006). According to Article 1, paragraph (1) of Law No. 31 of 2000 concerning Industrial Design, the term "industrial design" is defined as follows:

"Industrial design refers to a creative outcome involving the arrangement, composition, or configuration of colours, lines, or a combination of colours and lines, expressed in two-dimensional or three-dimensional patterns that convey an aesthetic impression and are capable of being implemented in a three-dimensional setting." aesthetic effect resulting from a three-dimensional position that can be implemented in either a two-dimensional or three-dimensional configuration. or two-dimensional and may be employed in the fabrication of products, handicrafts, or industrial commodities."

Industrial design is one of the intellectual property rights pertaining to the industrial sector that are governed by Law No. 31 of 2000, which regulates the protection of industrial designs in Indonesia. The 57 articles of this industrial design law govern a wide range of significant issues, including definitions, protection requirements, exceptions to protection, subjects, scope, rights, registration applications, cancellations, and resolutions of industrial design disputes.

The criminal penalties for offences constituting violations of industrial design are governed by the Industrial Design Law. This is specified in Article 54 of the aforementioned legislation: (a) An individual found guilty of deliberately and unlawfully carrying out an action as specified in Article 9 shall be subject to a maximum incarceration sentence of four years and/or a fine of three hundred million rupiah (Rp 300,000,000.00). (b) An individual found guilty of deliberately contravening the stipulations outlined in Article 8, Article 23, or Article 32 shall be subject to a maximum prison term of one year and a fine of Rp 45,000,000.00 (forty-five million rupiah). (c) Criminal offences specified in paragraph (1) and paragraph (2) shall be considered as offences.

3.2. The Protective Effects of Criminal Law with Regard to Industrial Designs

As long as it is novel and original, the form of ornamentation on the surface of a product is safeguarded under industrial design, rather than the technology or inventor (Sutedi, 2013). To afford safeguards to individuals who possess registered industrial design rights. The holder of an industrial design right is bestowed with protection in the form of the exclusive right to exercise said right and the authority to forbid unauthorised third parties from manufacturing, using, selling, importing, exporting, and distributing the aforementioned goods. With the exception that it does not prejudice the reasonable interests of the holder of the industrial design right and is conducted for educational and research purposes, the aforementioned exercise shall not be deemed an infringement of the industrial design right. Industrial design right infringement is permitted for a duration of ten years beginning on the date of acceptance.

Protection of industrial design rights is essentially acquired via the registration process. In accordance with the constitutive nature of the industrial design registration system implemented in Indonesia, the design is initially registered at the office of the Directorate General of Intellectual Property Rights by the legal and recognised proprietor of the design. Protection of a novel industrial design is thus acquired through the registration of said design. Without registration, no protection will be provided (Ranti Fauza Mayana, 2004).

Difficulties pertaining to industrial design may be resolved by means of criminal law. The criminal procedure commences with the investigation, as mandated by Article 53 of Law No. 31 of 2000 concerning industrial design. Paragraph (1) of Article 53 of Law No. 31 of 2000 states that investigating officials of civil servants within the department, who are also investigating officials of the Indonesian National Police and whose duties and responsibilities include intellectual property rights, are granted special authority as investigators to examine criminal acts in the field of industrial design, as referenced in Law No. 8 of 1981 concerning Criminal Procedure Law.

Additional regulations governing the investigator's authority can be found in Article 53, paragraph 2, of Law No. 31 of 2000 on Industrial Design. These regulations pertain to the subsequent subjects: (a) Assessing the veracity of information or complaints pertaining to criminal activities in the domain of Industrial Design; (b) Investigating the party suspected of committing a criminal offence in the domain of Industrial Design; (c) Soliciting information and evidence from the parties concerning the criminal offence in the domain of Industrial Design; (d) Conducting an examination of books, records, and other documents associated with criminal activities in the domain of Industrial Design.

Industrial design rights infringement is categorised as a complaint offence carrying a four-year maximum penalty. In addition to the aforementioned penalty of a maximum of Rp 300,000,000.00, the magistrate may also combine the two sanctions. The relevant provisions can be found in Article 54, paragraph (1) of Law Number 31 of 2000 concerning industrial design. Similar to the regulation of copyright, the moral rights of the designer are governed by Law No. 31 of 2000. These rights persist despite the transmission of industrial design rights to third parties in adherence to relevant legal provisions. The infringement of moral rights is punishable by a maximum fine of Rp. 45,000,000.00 and/or a maximum imprisonment of one year; the relevant provisions can be found in Article 54, paragraph 2, of Law No. 31 of 2000 on industrial design.

3.3. Protection under the law for holders of industrial designs that have been registered in accordance with Industrial Design Law No. 31 of 2000

The necessity for protection for industrial design is evident in Indonesia, as evidenced by the enactment of Law Number 31 Year 2000 on Industrial Design, among other legislative measures: In order to foster an environment that supports innovation and competition within

the realms of national and global commerce, it is imperative to establish an industry environment that promotes such activities. In order to facilitate both domestic and international trade, it is imperative to establish an environment that fosters innovation and production within the community of industrial designers, in accordance with the principles of industrial property rights. community in the domain of industrial design as an integral component of the intellectual property rights framework; further supported by the extremely diverse culture and ethnic makeup of the Indonesian nation, which serves as a source of inspiration for the advancement of industrial design; Indonesia, meanwhile, has ratified the Agreement Establishing the World Trade Organization, which encompasses the aforementioned agreement; Year 1994(Sinaga, 2021).

The amendment of the Industrial Design Law by the government has not yet taken place. The government, in contrast to the numerous modifications that have occurred in the Copyright, Patent, and Trademark laws. The inception of the Industrial Design Law was spurred by the following two factors: 1) Pertaining to Indonesia's duty as a WTO member to establish more stringent regulations safeguarding industrial designs; 2) Concerning the government's resolute commitment to furnish efficacious protection against diverse manifestations of industrial design infringement, including plagiarism, piracy, and imitation(Sutedi, 2013). It is anticipated that the implementation of more extensive protection measures will serve as a catalyst for enhancing designers' creativity and as a means to generate productive designers. in order to develop efficient designers(Sutedi, 2013).

The regulations that establish the legal framework for safeguarding industrial designs are Government Regulation No. 1 of 2005 and Law No. 31 of 2000 on Industrial Design. Government Regulation No. 1 Year 2005 on the Implementation of Law No. 31 Year 2000 and Law No. 31 Year 2000 on Industrial Design. with respect to the Implementation of Law No. 31 Year 2000. It can be deduced, in accordance with paragraph 5 of article 1 of Law No. 31/2000 on industrial design, that the state grants the proprietor a special right to industrial design. the nation. In other words, the privilege is an inherent result of the industrial design having been registered. The legal system safeguards the rights of the holder by prohibiting fraudulent business activities involving the production, use, sale, import, export, or distribution of products acquired without the owner's knowledge. Import or distribute merchandise manufactured without the proprietor of the industrial design right's knowledge or consent. the proprietorship of the industrial design patent(Maheswari et al., 2021).

The industrial design registration system in Indonesia is a constitutive system based on the principle that the party that initially registers the design with the DGKI is the design owner who is legally recognized. DGKI registration of the design. Hence, the acquisition of protection for a design is contingent upon its registration. The significance of registration of designs by The designer's registration of a design is crucial in order to facilitate proof and safeguard the design in the event that a third party attempts to claim or acknowledge the registered design. desires to recognize or assert ownership over the registered design. Safeguarding of industrial designs The purpose of industrial design protection is to promote a thriving industrial environment and deter unjust competitive practices and design imitation. The legal framework safeguarding industrial designs also prohibits the counterfeiting of designs and designs used in commerce. This safeguard is additionally an administrative measure implemented as a means of law enforcement against industrial design, functioning as a supplementary mechanism to criminal and civil protection(Maheswari et al., 2021).

4. Conclusion

The criminal law aspect in product counterfeiting cases against industrial design protection has broad implications on various fields, ranging from law, intellectual property, industry, to law enforcement efforts. The distribution of the results of this research will assist in improving

understanding, awareness, and practical actions in protecting intellectual property rights related to industrial designs. Criminal law protection is essential to effectively combat the illicit activity of product counterfeiting and impose appropriate penalties on those responsible. Counterfeiters may be subject to criminal investigation, prosecution, and conviction, which may result in detention and punishment. The purpose of industrial design protection is to protect intellectual property and promote innovation in the business sector. Criminal law plays an important role in achieving this goal. When industrial design protection is violated in cases of product counterfeiting, the criminal justice system plays an important role in maintaining market integrity and safeguarding the rights of industrial design owners.

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