

## **RENEWAL OF THE CONSTITUTIVE NATIONAL LAW SYSTEM IN INDUSTRIAL DESIGN**

**Waspiah**

Faculty of Law, Universitas Negeri Semarang  
East Campus Jl, K1 Building 1<sup>st</sup> Floor, FH UNNES, Sekaran Campus, Gunungpati, Semarang  
waspiah@mail.unnes.ac.id

### ***Abstract***

*The regulation of industrial design in Indonesia is still experiencing several challenges, one of which is regarding the legal system. This paper aims to analyze the reform of the constitutive national legal system on industrial design in Indonesia. This paper confirms that the requirements for legal protection with a Constitutive system on industrial design by MSMEs required by law, if they are still used in the current era, where world developments are very fast, do not reflect the national legal system, so that what should be based on Pancasila as a legal ideal. An alternative step in bridging is to internalize Pancasila values into the Industrial Design Law as a spirit or soul which is expected to be able to provide justice for the Design Community (MSMEs).*

**Keywords:** *Industrial Design; Legal System Reform; Constitutive Arrangements.*

### ***Abstrak***

*Regulasi desain industri di Indonesia masih mengalami beberapa tantangan, salah satunya mengenai sistem hukum. Tulisan ini bertujuan untuk menganalisis reformasi sistem hukum nasional konstitutif desain industri di Indonesia. Tulisan ini menegaskan bahwa persyaratan perlindungan hukum dengan sistem Konstitutif pada desain industri oleh UMKM yang diwajibkan oleh undang-undang, jika masih digunakan di era saat ini, di mana perkembangan dunia sangat cepat, tidak mencerminkan sistem hukum nasional, sehingga apa harus didasarkan pada Pancasila sebagai cita hukum. Langkah alternatif dalam menjembatani adalah dengan menginternalisasikan nilai-nilai Pancasila ke dalam UU Desain Industri sebagai spirit atau jiwa yang diharapkan mampu memberikan keadilan bagi Komunitas Desain (UMKM).*

**Kata kunci:** *Desain Industri; Reformasi Sistem Hukum; Pengaturan Konstitutif.*

### **A. Introduction**

The challenges of developing national law in Indonesia face various challenges, ranging from problems of legal substance, problems of law enforcement structure, to problems of legal culture in society. However, in general, the big challenges faced in the development of national law include three things<sup>1</sup>, namely: 1) problem of improving the quality of law enforcement *in concreto* (problem (law); 2) the problem of development /renewal of the national legal system);

---

<sup>1</sup> Barda Nawawi Arief, *Pembangunan Sistem Hukum Nasional* (Semarang: Pustaka Magister, 2002).

and, 3) multi-complex globalization development problems, legal internationalization problems, globalization /transnationalization of crime, and cybercrime problems that continue to grow

These three challenges, in this era of digitalization and technological advancements, are becoming increasingly complex, especially in the third problem. The development of the world is fast and dynamic, so it requires a legal reform that adapts to world developments, which of course takes into account the life of the Indonesian people who still maintain customary law that grows, develops and is maintained by the Indonesian people. difference in conception then divides 3 (three) categories, the first is awareness of private ownership, second, natural wealth in the real sense is land and buildings; third property known as intellectual property.<sup>2</sup>

The development/renewal of the national legal system which is essentially a renewal/sustainable development. In legal reform/development, it is always related to sustainable community development/development as well as sustainable development of scientific activities and the development of philosophical thinking/basic ideas/intellectual conceptions”. Therefore, law reform is closely related to sustainable society/development. Sustainable intellectual activity, sustainable intellectual philosophy, sustainable intellectual conceptions/basic ideas. The study of law reform requires a comparison of several generations, so that the direction of legal development can be seen and understood comprehensively.<sup>3</sup>

Legal reform in the concept of intellectual property is certainly inseparable from the development of civil law itself as the main law where the concept of intellectual property is located. Civil law, in general, is understood as a law that regulates relations between individuals which has a regulating character with the aim of protecting individual interests. based on the systematics of legal science, the systematics of civil law is divided into individual law (*personenrecht*), the second part on family law (*Familierecht*), the third part on property law (*Vermogenrecht*), and the fourth part on inheritance law (*Erfrecht*).<sup>4</sup>

According to Article 499 of the Civil Code, the definition of an object (*zaak*) is anything that can become an object of property rights. What can be the object of property rights can be in the form of goods and can also be in the form of rights, such as copyrights, patents, and others.

---

<sup>2</sup> Mohamad Rifan and Liavita Rahmawati, “Pembaharuan UU Desain Industri: Tantangan Melindungi User Interface Dan Komparasi Unsur Aesthetic Impression,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 295–309, doi:10.33331/rechtsvinding.v9i2.438.

<sup>3</sup> Arief, *Pembangunan Sistem Hukum Nasional*.

<sup>4</sup> Tan Kamello, *Hukum Perdata: Hukum Orang Dan Keluarga* (Medan: USU Press, 2011).

The development of law, which is followed by the development of society, does not seem to have occurred in Indonesian society. Since the Indonesian nation proclaimed its independence on August 17, 1945, the stage of development of a society that was originally feudalism towards a society based on the constitution. Since then the applicable law has modern characteristics, including written, universal and territorial in nature. Such legal developments are not accompanied by the development of society. As a result, the values possessed by the Indonesian people remain traditional and do not change. Such obstacles seem to have an effect on the law enforcement process to date.<sup>5</sup>

The laws governing intellectual property that have undergone changes are Patents, Copyrights, Marks and Indications. Although in practice industrial designs, patents, trademarks and copyrights are related to each other in terms of novelty.<sup>6</sup> The law has undergone changes, however, there are several intellectual property laws that have not changed since 20 years ago, one of which is Law No. 31 of 2000 concerning Industrial Design. The scope of reform of the national legal system covers substance, structure and culture. Regarding the renewal of the national legal system for Industrial Design, the discussion in this paper is about the legal substance, related to how the changes in the constitutive system in Law No. 31 of 2000 concerning Industrial Design. This is related that the legal protection of industrial designs related to the industrial design registration system uses 2 (two) approaches, namely the industrial design protection approach, there are two approaches, namely the patent approach and the copyright approach. Patent approach means implementing a constitutive system which means that the first registrant gets legal protection.<sup>7</sup>

Many previous studies have examined legal reform in the regulation of industrial design in Indonesia. For example, Sukarmi, in his research confirms that the protection of the main industrial designs for MSMEs will provide an impetus for the realization of social justice in Indonesia. In addition, Khakim and Handoko conducted a comparative study of industrial design settings in the context of intellectual property in Indonesia and South Korea where in their study it was emphasized that in South Korea, registration is not only focused on novelty and originality, but

---

<sup>5</sup> Esmi Warasih, *Pranata Hukum: Sebuah Telaah Sosiologis* (Semarang: Pustaka Magister, 2016).

<sup>6</sup> Ranti Fauza Mayana, "Kepastian Hukum Penilaian Kebaruan Desain Industri Di Indonesia Berdasarkan Pendekatan Kekataan Intelektual Dan Perbandingan Hukum," *Jurnal Litigasi* 18, no. 1 (2017): 127–43, doi:<http://dx.doi.org/10.23969/litigasi.v18i1.602>.

<sup>7</sup> Muh Ali Masnun, "Menggagas Perlindungan Hukum Bagi Usaha Mikro Kecil Dan Menengah Atas Hak Desain Industri Di Indonesia," *Dialogia Iuridica* 11, no. 2 (2020): 16–24, <https://journal.maranatha.edu/index.php/dialogia/article/view/2208>.

Industrial Design must meet elements in the form of novelty, creativity, industrial application, and does not contain things such as: identical or similar to national flags, national symbols, military flags, decorations, achievement orders, badges and medals of public organizations, national flags and national symbols of foreign countries, or characters or indications of international organizations; violates public order or morality; cause confusion regarding the business of others; and consist only of those forms which are essential to secure the function of the goods.<sup>8</sup>

However, none of the studies examined the constitutive laws regulating industrial design in Indonesia. Thus, in this paper the author will answer and analyze 1) How to reform the constitutional national legal system concerned with industrial design in Indonesia.

## **B. Discussion**

### **1. Development of Industrial Design Provisions in Indonesia**

On October 13, 1989, the House of Representatives approved the Bill on Patents, which was later ratified as Law no. 6 of 1989 (Patent Law 1989) by the President of the Republic of Indonesia on November 1, 1989. The Patent Law of 1989 came into force on August 1, 1991. Ratification of the Patent Law 1989 ending the long debate about the importance of the patent system and its benefits for the Indonesian people. As stated in the consideration of the 1989 Patent Law, legal instruments in the field of patents are needed to provide legal protection and create a better climate for technological invention activities. This is because in national development in general and particularly in the industrial sector, technology has a very important role. The ratification of the 1989 Patent Law was also intended to attract foreign investment and facilitate the entry of technology into the country. However, it was also emphasized that efforts to develop an IP system, including patents, in Indonesia were not solely due to international pressure, but also because of the national need to create an effective IPR protection system.

Intellectual property in Indonesia is divided into 2 (two) namely Copyright and Industrial Property Rights. Copyright law has been updated since 2014 and industrial property rights are divided into: 1) Trademarks and Geographical Indications Law Number 20 of 2016; 2) Patents, Law Number 13 of 2016; 3) Industrial Design, Law Number 31 of 2000; 4) Integrated Circuit

---

<sup>8</sup> Haydar Khakim and Widhi Handoko, "Studi Komparasi Kebijakan Pengaturan Desain Industri Di Indonesia Dan Korea Selatan Dalam Prespektif Pembaharuan Hukum Hak Kekayaan Intelektual," *Notarius* 15, no. 1 (2022): 440–58, doi:10.14710/nts.v15i1.46053; Sukarmi Sukarmi, "Perlindungan Desain Industri Bagi UMKM Yang Berkeadilan Sosial," *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 97–108, <http://jurnal.unissula.ac.id/index.php/PH/article/view/1350>.

Layout Design, Law Number 32 of 2000; 5) Trade Secrets, Law Number 30 of 2000; 6) Plant Varieties, Law No. 29 of 2000.

The Industrial Design Law since its promulgation in 2000 has never changed until now, unlike other Intellectual Property Rights Laws such as Copyrights, Patents and Marks which have been amended several times to suit TRIPs.

The definition of Industrial Design as regulated in Article 1 number (1) states: a creation of a shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in three-dimensional or two-dimensional forms that gives an aesthetic impression and can be realized. in three-dimensional or two-dimensional patterns and can be used to produce a product, goods, industrial commodity, or handicraft.<sup>9</sup>

The requirements for an industrial design that are protected by law are, the design must be in addition to the application of the principles (legal principles) of the law of objects to the right to industrial designs, the legal principles that underlie this right are:<sup>10</sup>

- a. The principle of publicity The principle of publicity means that the existence of the right is based on an announcement of a publication where the general public can know of its existence. For this reason, the right to industrial design is granted by the state after the right is registered in the official state news.
- b. The principle of oneness (unity) Regarding the principle of oneness, this means that the right to industrial design should not be separated into one unified whole for one design component. For example, if the design is in the form of a shoe, then it must be a complete shoe, not only the design of the cloth, then the right that is protected is only the sole. Consequently, if a new designer changes the shape of the lid, the first designer cannot claim

---

<sup>9</sup> It is contained in Article 1 paragraph 1 of Law no. 31 of 2000 concerning Industrial Design. This law contains 57 articles consisting of 12 chapters, namely general provisions, scope of industrial design, application for registration of industrial designs, inspection of industrial designs, transfer of rights and licenses, cancellation of registration of industrial designs, fees, dispute resolution, provisional court decisions, investigations, criminal provisions, transitional provisions and closing provisions. For further discussion please see M. Faisal Rahendra Lubis and Masnun Masnun, "Perlindungan Desain Industri Dalam Upaya Memajukan Produk Lokal Dalam Era Revolusi Industri 4.0," *MUKADIMAH: Jurnal Pendidikan, Sejarah, Dan Ilmu-Ilmu Sosial* 4, no. 2 (2020): 129–35, doi:10.30743/mkd.v4i2.2853; Zico Armanto Mokoginta, "Perlindungan Hukum Atas Desain Industri Berdasarkan Undang-Undang Nomor 31 Tahun 2000 Tentang Desain Industri," *Lex Privatum* 5, no. 5 (2017): 123–31, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/17047>; Dina Widyaputri Kariodimedjo, "Perlindungan Hak Cipta, Hak Terkait, Dan Desain Industri," *Mimbar Hukum* 22, no. 2 (2010): 265–82, <https://journal.ugm.ac.id/jmh/article/view/16222>; Natalia Arinasari Nadeak and Indirani Wauran, "Tumpang-Tindih Pengaturan Bentuk Tiga Dimensi Dalam Undang-Undang Merek Dan Undang-Undang Desain Industri," *Jurnal Hukum Ius Quia Iustum* 26, no. 1 (2019): 21–43, doi:10.20885/iustum.vol26.iss1.art2.

<sup>10</sup> OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)* (Jakarta: Raja Grafindo Persada, 2004).

it. Therefore, if the bottle and the cap can be separated, then the bottle cap is a single unit and the bottle is a single unit, so there are two industrial designs.

- c. The principle of novelty is a legal principle that also needs attention in the protection of rights to industrial designs, only truly new designs can be granted rights. The measure or criteria for novelty is if the industrial design to be registered is not the same as the industrial design that has existed before.

In addition to the legal principles contained in industrial design, there is a system that underlies the legal protection of intellectual property including industrial design. There are two kinds of systems, namely the constitutive system and the declarative system. The constitutive system means that the registration of the work serves to give birth to the copyright of the work. In a declarative system, the registration of a work does not give birth to a copyright on the work.<sup>11</sup> Indonesia based on Article 10 of the Industrial Design Law adopts a constitutive system, meaning that the Right to Industrial Design is granted on the basis of an Application. Legally, this matter is no longer in accordance with the developments and changes in the times that no longer recognize boundaries. This can lead to economic crime.

Economic crime can be seen in a narrow sense or in a broad sense. Juridically, economic crime can be seen narrowly as an economic crime regulated in Law No. 7 /Drt./19 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes. In addition, economic crimes can also be seen broadly, namely all criminal acts outside the TPE Act (UU No. 7 drt. 1955) which have an economic pattern or motive or which can have a negative influence on economic activities and healthy state finances.<sup>12</sup> So there needs to be a change in the substance of the industrial design law.

Legal reform/development is an action or activity intended to shape legal life in a better and conducive direction. As part of national development, legal development must be integrated and synergized with development in other fields, and requires a sustainable process. The implementation of legal development is not only aimed at law in a positive sense which is identical

---

<sup>11</sup> Hesty D Lestari, "Kepemilikan Hak Cipta Dalam Perjanjian Lisensi," *Jurnal Yudisial* 6, no. 2 (2013): 173–88, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/112>. It is further emphasized that in the Declarative system, registration does not issue rights, but only provides an allegation or suspicion according to the laws and regulations, that the person whose Copyright is registered is the actual right owner of the Work or as the Author of the rights registered by him. *Please also see* Suyud Margono, "Prinsip Deklaratif Pendaftaran Hak Cipta: Kontradiksi Kaedah Pendaftaran Ciptaan Dengan Asas Kepemilikan Publikasi Pertama Kali," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 237–55, doi:10.33331/rechtsvinding.v1i2.99; Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*.

<sup>12</sup> Muladi Muladi and Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: Alumni, 1992).

to statutory regulations, but also law in a broad sense which refers to a system, which includes the development of legal materials, institutional development and law enforcement, legal service development and awareness building community law. Because these elements influence each other, the law must be built simultaneously, synchronously, and integrated. This will work effectively if it is associated with the development of the legal system by involving legal education or education at law college institutions.

Reformation is often interpreted briefly as “*renewal*”. However, if you think about its deeper meaning, reform is not just about making changes/changes, but it also means “improvement of better quality” because “to reform” means “to make better”, “become better”, “change for the better” , or “return to a former good state”.<sup>13</sup> It is further explained that there are efforts or forms/forms of reform. The renewal towards better quality can vary, among others, by reorienting, re-evaluation, reformulation, restructuring and reconstruction.<sup>14</sup>

Different people's views appear regarding the IPR regime which essentially reflects the different views between traditional society and western society. Western society sees it from the point of view of development theory, which views the resources on earth as something that can be exploited. On the other hand, traditional societies view humans as only custodians of the resources found on earth. The existence of these different views gave birth to different concepts regarding ownership, property, creation and discovery.<sup>15</sup>

Industrial design registration that adheres to the Constitutive system<sup>16</sup> with a period of legal protection which is only 10 years after it becomes public property or Public Domain. Indonesia's

---

<sup>13</sup> Barda Nawawi Arief, *Pendekatan Kelimuan Dan Pendekatan Religius Dalam Rangka Optimalisasi Dan Reformasi Penegakkan Hukum (Pidana) Di Indonesia* (Semarang: Badan Penerbit Universitas Diponegoro, 2018).

<sup>14</sup> Legal reform or also often referred to as legal reform in Indonesia is not just changing, growing, correcting, reviewing, replacing or completely erasing the provisions of legal rules and principles in law and the provisions of laws and regulations that apply in a legal system. the spirit in law, manifesting through affixing, adding, replacing or deleting a provision, rule or legal principle in the laws and regulations that apply to a legal system so that the related legal system becomes better, more just, useful and more certain. according to law. *See also* Teguh Prasetyo, *Pembaharuan Hukum: Perspektif Teori Keadilan Bermartabat* (Malang: Setara Press, 2017); Rosalind Croucher, “Law Reform Agencies and Government-Independence, Survival and Effective Law Reform?,” *University of Western Australia Law Review* 43, no. 1 (2018): 78–91.

<sup>15</sup> Agus Sardjono, *Hak Kekayaan Intelektual Dan Pengetahuan Tradisional* (Bandung: Alumni, 2006).

<sup>16</sup> Achmad Fata’al Chuzaiabi, “Sistem Konstitutif Dalam UU No 15 Tahun 2001 Tentang Merek Bagi UMKM,” *Syiar Hukum* 13, no. 2 (2011): 152–67, [https://ejournal.unisba.ac.id/index.php/syiar\\_hukum/article/view/657](https://ejournal.unisba.ac.id/index.php/syiar_hukum/article/view/657). The declarative system is a system in which the right to a brand arises because of the first use by the owner design industrial design, even though it is not registered by the owner of the industrial design. In a constitutive system, rights will arise if they have been registered by the holder. Therefore, in this system registration is a must. The constitutive registration system is also known as the first to file principle. That is, the industrial designs listed are those that qualify and are the first ones. The declarative system is a system in which the right to a brand arises because of the first use by the owner design industrial design, even though it is not registered by the owner of the

intellectual property which has ratified international regulations is under WIPO, then adjusted to the conditions in Indonesia. Countries that have ratified intellectual property agreements come from different economic, racial, cultural, religious, and political ideological backgrounds. With these different backgrounds, especially differences in political ideology, race, and religion, countries bind cooperation in international agreements. The existence of a different legal system with legal adjustments is called legal harmonization, and for international agreements, of course, international legal harmony is needed.

## **2. Law Reform on Constitutive Industrial Design Provision in Indonesia**

The national legal system, when viewed from the substance of the law, is based on Pancasila as a legal ideal. The Pancasila national legal system is based on the three pillars/values of the balance of Pancasila<sup>17</sup>, that is: 1) oriented to divine values (morally religious); 2) oriented to human values (humanistic); and, 3) oriented to social values (nationalistic; democratic; social justice).

The legal system / order in Indonesia which is not oriented to the 3 pillars / values of approach / soul (spirit), cannot be said to be a National Legal System, even though it was made by the Indonesian legislature. If it is based on such a law, then it is natural that industrial designs that are already 20 years old need to be changed immediately, following the development of an era where the world has no boundaries. The constitutive system that obliges to register industrial designs to get legal protection is not in accordance with the orientation to social values (nationalistic; democratic; social justice). This is due to the rapid development of information and technology. Industrial designs produced today, a few weeks later are out of date alias outdated.

This clashes with the industrial design requirement of novelty. Industrial Designs that are considered new are Industrial Designs that are different from other existing Industrial Designs. What is meant by pre-existing Industrial Designs are Industrial Designs that have been announced or disclosed at the national or international level. So that the novelty of an Industrial Design does

---

industrial design. In a constitutive system, rights will arise if they have been registered by the holder. Therefore, in this system registration is a must. The constitutive registration system is also known as the first to file principle. That is, the industrial designs listed are those that qualify and are the first ones. *Please see also* Raden Murjiyanto, "Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia," in *The 1st International Conference on Law, Governance and Social Justice (ICoL GaS 2018)*, vol. 54, 2018, 06014, doi:10.1051/shsconf/20185406014; Hani Subagio, "Ideal Construction of the Implementation of a Constitutive System ('First to File') in Brand Registration," in *The 6th Proceeding International Conference and Call Paper Sultan Agung Islamic University*, vol. 6 (Semarang: Unissula Press, 2020), 202–9.

<sup>17</sup> Arief, *Pendekatan Kelimuan Dan Pendekatan Religius Dalam Rangka Optimalisasi Dan Reformasi Penegakkan Hukum (Pidana) Di Indonesia*.



not fail, the applicant must not announce or disclose his Industrial Design to the public before the application for Industrial Design is submitted. In other words, the designer must first register the design before publishing it to the public.

Industrial design that is developing now is an industrial design that adapts to market desires, meaning that the market can change in a short time. This feels unfair, especially for MSMEs that require industrial designs to be registered on their designs. Whereas related to MSMEs, attention must be paid to and strengthened to compete in the global market, so that MSMEs also determine the success of developing countries.<sup>18</sup> A long process and a period of protection that is only 10 (ten) years does not match the value of justice. Especially when it comes to royalties that may not be distributed optimally. This is proven by the fact that the number of registrants is getting less and less due to the degradation of creativity and has not fulfilled the values of social justice.<sup>19</sup>

In a further context, if look more deeply, in Law No. 31 of 2001 concerning Industrial Design, it will be clear that the law is not in favor of the Indonesian people, especially the MSMEs who always create new designs. Whereas MSMEs dominate 90% of the market in Indonesia related to industrial design.<sup>20</sup> Criminal provisions of Law No. 31 of 2000 concerning Industrial Design Article 54 paragraph (1) states that Whoever intentionally and without rights commits an act as referred to in Article 9 shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah). Paragraph 2 further states that Whoever intentionally violates the provisions as referred to in Article 8, Article 23 or Article 32 shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 45,000,000.00 (forty five million rupiah). The crime in Paragraphs 1 and 2 is a complaint offense. The criminal provisions of the Industrial Design Law are detrimental to MSMEs, this happens because industrial designs are changing rapidly and are no longer updated and have the potential for imitation.

---

<sup>18</sup> Alan Febriana, "Hak Kekayaan Intelektual Di Dalam Bidang Desain Industri," *Infoman's: Jurnal Ilmu-Ilmu Informatika Dan Manajemen* 14, no. 1 (2020): 1–12.

<sup>19</sup> Sukarmi, "Perlindungan Desain Industri Bagi UMKM Yang Berkeadilan Sosial." One of the principles in intellectual property is the principle of justice. Where, according to this principle, the creator of a work or other person whose work produces results from his intellectual abilities deserves a reward. *See also* Anis Masdurohatusun, Hayyan Ul Haq, and Sony Zuhada, "Aspek Hukum Hak Kekayaan Intelektual," *International Journal of Law Reconstruction* 1, no. 1 (2017): 114–60; Andy Usmina Wijaya et al., "Philosophical Values of Pancasila on the Intellectual Property Rights Regulation in Indonesia," *Journal of Law, Policy, and Globalization* 113 (2021): 28–34, doi:10.7176/JLPG/113-04.

<sup>20</sup> Inayah Inayah, "Kesadaran Hukum Pelaku Usaha Mikro Kecil Menengah (UMKM) Dalam Perlindungan Kekayaan Intelektual," *Law and Justice* 4, no. 2 (2019): 120–36, doi:https://doi.org/10.23917/laj.v4i2.8942.

Industrial design for large companies that have adequate capital and human resources to register Industrial Designs. It is very clear that the initial purpose of making this Law was initially motivated by 2 (two) reasons. The first reason is related to the issue of Indonesia's obligations as a member of the World Trade Organization (WTO) which must provide better regulations on the protection of Industrial Designs. Second, it relates to the government's determination to provide effective protection against various forms of violations of industrial designs such as plagiarism, piracy or imitation. This more comprehensive protection effort is expected to be a driving factor for increasing the creativity of designers and as a vehicle for producing productive designers.<sup>21</sup>

In its development, after 20 (twenty) years have passed, the law is not in accordance with the times, especially when it comes to the rapid development of MSMEs in Indonesia. According to data from the Ministry of Cooperatives and MSMEs, it is predicted to reach 60 million units within the next five years. This amount increased by 3.5 percent compared to the position at the end of 2016 as many as 58 million units. MSMEs produce the most industrial designs, especially in the presence of e-commerce, which makes it easy for MSMEs to enter the market share.<sup>22</sup>

Related to this, the constitutive system in industrial design has a weakness because it is not known when a brand is used. So, for example, there is a dispute between 2 (two) parties where one party claims that he is the first user of the website brand. While other parties also stated the same thing, it is not easy to prove who was the first user of the brand. In a constitutive system, rights will arise if they have been registered by the holder. Therefore, in this system registration is a must.

What kind of legal reform should be applied in Indonesia, especially in the MSME community, is a declarative legal system with ease of proof in the event of a dispute. Another thing that is no less important is that the state accommodates how the law is applied. This can happen because of the rapid development of the digital world which can be easily accessed by anyone and at any time so that industrial designs are easily used by others without permission.

---

<sup>21</sup> Tomi Suryo Utomo, *Hak Kekayaan Intelektual (HKI) Di Era Global (Sebuah Kajian Kontemporer)* (Yogyakarta: Graha Ilmu, 2010).

<sup>22</sup> Galih Gumelar, "Lima Tahun, Sandiaga Sebut Jumlah UMKM Bisa Tembus 60 Juta," *CNN Indonesia*, 2017, <https://www.cnnindonesia.com/ekonomi/20170724113610-92-229887/lima-tahun-sandiaga-sebut-jumlah-umkm-bisa-tembus-60-juta>.

### 3. Conclusion

The development of the national legal system is related to the substance of Law no. 31 of 2000 concerning Industrial Design needs to be done immediately. Terms of legal protection with a Constitutive system on industrial design by MSMEs required by law, if they are still used in the current era, where the world's development is very fast, does not reflect the national legal system, so that it should be based on Pancasila as a legal ideal. An alternative step in bridging is the internalization of Pancasila values into the Industrial Design Law as a "spirit or soul" which is expected to be able to provide justice for the Designer Community (MSMEs), which can spur the development of further Designer creativity. legal substance, this corresponds to Pancasila national legal system is based on three pillars/values of the balance of Pancasila, namely; divine values (religious morals), human values (humanistic) and social values (nationalistic; democratic; social justice). Social justice is something that must be considered when compared to the period of protection for industrial designs which is only 10 years and how the law is enforced in society.

### REFERENCES

- Arief, Barda Nawawi. *Pembangunan Sistem Hukum Nasional*. Semarang: Pustaka Magister, 2002.
- . *Pendekatan Kelimuan Dan Pendekatan Religius Dalam Rangka Optimalisasi Dan Reformasi Penegakkan Hukum (Pidana) Di Indonesia*. Semarang: Badan Penerbit Universitas Diponegoro, 2018.
- Chuzai, Achmad Fata'al. "Sistem Konstitutif Dalam UU No 15 Tahun 2001 Tentang Merek Bagi UMKM." *Syiar Hukum* 13, no. 2 (2011): 152–67. [https://ejournal.unisba.ac.id/index.php/syiar\\_hukum/article/view/657](https://ejournal.unisba.ac.id/index.php/syiar_hukum/article/view/657).
- Croucher, Rosalind. "Law Reform Agencies and Government-Independence, Survival and Effective Law Reform?" *University of Western Australia Law Review* 43, no. 1 (2018): 78–91.
- Febriana, Alan. "Hak Kekayaan Intelektual Di Dalam Bidang Desain Industri." *Infoman's: Jurnal Ilmu-Ilmu Informatika Dan Manajemen* 14, no. 1 (2020): 1–12.
- Gumelar, Galih. "Lima Tahun, Sandiaga Sebut Jumlah UMKM Bisa Tembus 60 Juta." *CNN Indonesia*, 2017. <https://www.cnnindonesia.com/ekonomi/20170724113610-92-229887/lima-tahun-sandiaga-sebut-jumlah-umkm-bisa-tembus-60-juta>.
- Inayah, Inayah. "Kesadaran Hukum Pelaku Usaha Mikro Kecil Menengah (UMKM) Dalam Perlindungan Kekayaan Intelektual." *Law and Justice* 4, no. 2 (2019): 120–36. doi:<https://doi.org/10.23917/laj.v4i2.8942>.
- Kamello, Tan. *Hukum Perdata: Hukum Orang Dan Keluarga*. Medan: USU Press, 2011.

- Kariodimedjo, Dina Widyaputri. "Perlindungan Hak Cipta, Hak Terkait, Dan Desain Industri." *Mimbar Hukum* 22, no. 2 (2010): 265–82. <https://journal.ugm.ac.id/jmh/article/view/16222>.
- Khakim, Haydar, and Widhi Handoko. "Studi Komparasi Kebijakan Pengaturan Desain Industri Di Indonesia Dan Korea Selatan Dalam Prespektif Pembaharuan Hukum Hak Kekayaan Intelektual." *Notarius* 15, no. 1 (2022): 440–58. doi:10.14710/nts.v15i1.46053.
- Lestari, Hesty D. "Kepemilikan Hak Cipta Dalam Perjanjian Lisensi." *Jurnal Yudisial* 6, no. 2 (2013): 173–88. <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/112>.
- Lubis, M. Faisal Rahendra, and Masnun Masnun. "Perlindungan Desain Industri Dalam Upaya Memajukan Produk Lokal Dalam Era Revolusi Industri 4.0." *MUKADIMAH: Jurnal Pendidikan, Sejarah, Dan Ilmu-Ilmu Sosial* 4, no. 2 (2020): 129–35. doi:10.30743/mkd.v4i2.2853.
- Margono, Suyud. "Prinsip Deklaratif Pendaftaran Hak Cipta: Kontradiksi Kaedah Pendaftaran Ciptaan Dengan Asas Kepemilikan Publikasi Pertama Kali." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 237–55. doi:10.33331/rechtsvinding.v1i2.99.
- Masdurohatun, Anis, Hayyan Ul Haq, and Sony Zuhada. "Aspek Hukum Hak Kekayaan Intelektual." *International Journal of Law Reconstruction I*, no. 1 (2017): 114–60.
- Masnun, Muh Ali. "Menggagas Perlindungan Hukum Bagi Usaha Mikro Kecil Dan Menengah Atas Hak Desain Industri Di Indonesia." *Dialogia Iuridica* 11, no. 2 (2020): 16–24. <https://journal.maranatha.edu/index.php/dialogia/article/view/2208>.
- Mayana, Ranti Fauza. "Kepastian Hukum Penilaian Kebaruan Desain Industri Di Indonesia Berdasarkan Pendekatan Kekataan Intelektual Dan Perbandingan Hukum." *Jurnal Litigasi* 18, no. 1 (2017): 127–43. doi:http://dx.doi.org/10.23969/litigasi.v18i1.602.
- Mokoginta, Zico Armanto. "Perlindungan Hukum Atas Desain Industri Berdasarkan Undang-Undang Nomor 31 Tahun 2000 Tentang Desain Industri." *Lex Privatum* 5, no. 5 (2017): 123–31. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/17047>.
- Muladi, Muladi, and Barda Nawawi Arief. *Bunga Rampai Hukum Pidana*. Bandung: Alumni, 1992.
- Murjiyanto, Raden. "Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia." In *The 1st International Conference on Law, Governance and Social Justice (ICoL GaS 2018)*, 54:06014, 2018. doi:10.1051/shsconf/20185406014.
- Nadeak, Natalia Arinasari, and Indirani Wauran. "Tumpang-Tindih Pengaturan Bentuk Tiga Dimensi Dalam Undang-Undang Merek Dan Undang-Undang Desain Industri." *Jurnal Hukum Ius Quia Iustum* 26, no. 1 (2019): 21–43. doi:10.20885/iustum.vol26.iss1.art2.
- Prasetyo, Teguh. *Pembaharuan Hukum: Perspektif Teori Keadilan Bermartabat*. Malang: Setara Press, 2017.
- Rifan, Mohamad, and Liavita Rahmawati. "Pembaharuan UU Desain Industri: Tantangan Melindungi User Interface Dan Komparasi Unsur Aesthetic Impression." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 295–309.

doi:10.33331/rechtsvinding.v9i2.438.

- Saidin, OK. *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*. Jakarta: Raja Grafindo Persada, 2004.
- Sardjono, Agus. *Hak Kekayaan Intelektual Dan Pengetahuan Tradisional*. Bandung: Alumni, 2006.
- Subagio, Hani. "Ideal Construction of the Implementation of a Constitutive System ('First to File') in Brand Registration." In *The 6th Proceeding International Conference and Call Paper Sultan Agung Islamic University*, 6:202–9. Semarang: Unissula Press, 2020.
- Sukarmi, Sukarmi. "Perlindungan Desain Industri Bagi UMKM Yang Berkeadilan Sosial." *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 97–108. <http://jurnal.unissula.ac.id/index.php/PH/article/view/1350>.
- Utomo, Tomi Suryo. *Hak Kekayaan Intelektual (HKI) Di Era Global (Sebuah Kajian Kontemporer)*. Yogyakarta: Graha Ilmu, 2010.
- Warasih, Esmi. *Pranata Hukum: Sebuah Telaah Sosiologis*. Semarang: Pustaka Magister, 2016.
- Wijaya, Andy Usmina, Sekaring Ayumeida Kusnadi, Farina Gandryani, and Fifin Dwi Purwaningtyas. "Philosophical Values of Pancasila on the Intellectual Property Rights Regulation in Indonesia." *Journal of Law, Policy, and Globalization* 113 (2021): 28–34. doi:10.7176/JLPG/113-04.