



Legal Protection for Unregistered Clothing Design on Marketplace: Comparison Between the Indonesian and the UK Law

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Abstract

The industrial design protection system in Indonesia uses registration requirements, without registration, there is no protection. This is in contrast to the UK's existing industrial design protection system, where the UK implements two protection systems, namely the registered design right or unregistered design right. This unregistered protection system is used in products that do not last long on the market such as fashion products and as an alternative for companies to test design prospects on the market. Unregistered protection systems are also used as design protection alternatives to prevent copying or plagiarizing of designs that do not yet have registration numbers. This article will discuss the following issues: 1) The legal protection of Korean pop idol clothing designs is reviewed based on Indonesian and English laws; and 2) The urgency of legal novelty in the industrial design law in Indonesia. In this study the legal research method used is normative legal research with an approach through statutory regulations, a conceptual approach, and a comparative approach. The legal materials used are primary legal material and secondary legal materials. The conclusion is that the industrial design protection system in Indonesia still has to go through the registration process, this is irrelevant to products or goods that cannot last long in the market because trends change easily. This is different from that in the UK where it implements an unregistered design right system where industrial design rights are obtained automatically.

Keywords: Industrial Design; Registered Design Right; Unregistered Design Right

A. Introduction

The meaning of Intellectual Property Right is legal rights that are exclusively owned by the innovator or creator as part of the results of intellectual activity and human creativity, which are new and unique.¹ This creativity can generate economic value that is used as a form

¹ Iswi Hariyani, Cita Yustisia Serfiyani, and R. Serfianto D.P., *Buku Pintar Haki Dan Warisan Budaya*, etakan ke-3 (Yogyakarta: Gadjah Mada University Press, 2020), 207.

of support for the designer to keep working. Indonesia has ratified the results of the TRIPS-WTO by drafting a national law in the field of intellectual property rights which includes industrial design, namely Law Number 31 of 2000 concerning Industrial Design.²

The elements that must exist in industrial design can be in the form of creations that are three-dimensional and two-dimensional. Three-dimensional forms include shape and configuration, while two-dimensional forms include line or colour composition, the existing creations will later give a beautiful or aesthetic impression, from that aesthetic impression will produce a product, handicraft, or industrial commodity.

In the protection of industrial designs, it is necessary to have an external appearance that gives an aesthetic impression so as to provide a beautiful assessment of a work of goods. Industrial design protections can prevent unauthorized use of the right owner to import, sell, or manufacture products protected with industrial design rights. So basically, the protection of industrial design only protects the appearance of a product related to the aesthetic impression that creates a uniqueness, not protecting the function or usability or even the technicality of a product.³

In principle, industrial designs in Indonesia can be protected provided that the design submitted in the application for registration has fulfilled 1 (one) of 2 (two) inspections, including administrative inspection and substantive inspection, if there are third party's objections to the design. Administrative inspection, where the examination at this stage relates to the completeness of the application letter contained in article 11 of the Industrial Design Law. The next inspection is a substantive examination, this inspection is an examination carried out on the substances of the proposed industrial design, these substances include the novelty of the industrial design, matters that conflict with laws and regulations, public order, religion and morality, the unity of the application, and matters relating to the clarity of industrial design disclosure. Industrial designs in Indonesia must have an element of novelty in order to have legal protection to prove that the design is not an existing or pre-fabricated design.

The rights contained in industrial designs are exclusive rights belonging to the designer which are obtained from the state and used for a certain period of time, namely for 10 years

² Ranti Fauza Mayana, *Perlindungan Desain Industri di Indonesia* (Jakarta: Grasindo, 2004.), 144.

³ Dina Widyaputri Kariodimedjo, "Perlindungan Hak Cipta, Hak Terkait, dan Desain Industri," *Jurnal Mimbar Hukum* 22, no 2 (2010): 275, <https://doi.org/10.22146/jmh.16222>.

from the date of receipt, to carry out his own work or to give permission to other parties to use his design rights for works he has created. The holder of this industrial design right can prohibit other parties without permission from making, importing, exporting, selling, and/or distributing goods in which there is an industrial design right.

The legal system in England recognizes two forms of protection for industrial designs, namely registered designs protected in the Registered Design Act 1949 (RDA 1949) and design rights or design rights protected in the Design Copyright and Patent Act 1988 (CDPA 1988). The British protection requirements for industrial designs are novelty and individual character. A design can be said to be new if the design does not have identical material similarities or differences with the existing design. A design that has an individual character is an overall impression of the design that reflects a design character that is different from the design character of existing designs in general.

A design of a new item can be protected by law if it is something new and can be seen by the eye. An industrial design is said to be new if the date of receipt is not the same as the existing design and is not the same as the design that has been disclosed through electronic media or print media including participation in exhibitions. An example is one Korean pop idol named Jaehyun from NCT, boy group NCT 127 decided to collaborate with a clothing brand called Slow acid x Teddy Island.⁴ All members of the boy group NCT 127 also designed a t-shirt design, showing the results of their drawings.

The case discussed this time is about clothing design plagiarism by several unscrupulous sellers in the Indonesian marketplace. This arises because the Korean artist's clothing is difficult to obtain and the price is relatively expensive for the size of their teenage fans. The unscrupulous seller plagiarized a clothing design worn by Korean pop idols including shapes, images and patterns that are clearly detrimental to the original clothing designer.⁵ They lose their economic rights because buyers are more interested in clothes that are cheaper but have a similar appearance to their favourite Korean idol clothes.

⁴ "NCT's Jaehyun Designed A T-Shirt And Fans's Reaction Have Been Hilarious," Koreaboo, Accessed May 19, 2022, <https://www.koreaboo.com/stories/nct-jaehyun-designed-tshirt-fans-reactions-hilarious/>.

⁵ Jati Kuncoro, "Copas Desain NCT 127 dan Dikomersilkan, Netizen Indo: Doyan Copas Ya," Portal Jember, January 30, 2022, <https://portaljember.pikiran-rakyat.com/konten-viral/pr-163600622/copas-desain-nct-127-dan-dikomersilkan-netizen-indo-doyan-copas-ya>.

Unfortunately, the clothing from the Korean idol does not yet have a registration number so according to Indonesian law it cannot be protected. However, this is in contrast to what is in the UK regulations. The UK itself, in addition to implementing registered design rights under the Registered Design Act 1949, also applies unregistered design rights under the Copyright Design and Patent Act 1988.⁶ So this can be used as a legal comparison between Indonesia and the UK.

Based on the above background, this article will further discuss the following issues: 1) The legal protection of Korean pop idol clothing designs is reviewed based on Indonesian and English laws; and 2) The urgency of legal novelty in the industrial design law in Indonesia. The purpose of this scientific article is to analyse the comparison of industrial design law against Korean pop idol clothing designs between Law Number 31 of 2000 concerning Industrial Design and the Copyright, Design and Patent Act 1988 in the UK. In addition, it is also to analyse the need for renewal of the industrial design law in Indonesia, especially those related to the protection of products that have not been or are not registered.

This research is normative juridical research conducted by analysing the substance of the legislation on legal issues in its consistency with existing legal principles.⁷ The research approaches this time uses three approaches, namely the statutory approach, the conceptual approach, and the comparative approach. In a comparative approach, we compare Law Number 31 of 2000 concerning Indonesian Industrial Designs with the Copyright, Design and Patents Act 1988 of the United Kingdom. This study also uses primary legal materials in the form of a collection of written rules, secondary legal materials in the form of journals, books, articles and existing scientific writings. The analysis of the legal material used by the author this time uses laws and regulations relating to the legal issues being discussed and analysis through the concept of legal science relating to the legal issues raised in this writing.

B. Discussion

B. 1. Review on the Legal Protection of Korean Pop Idol Clothing Designs Based on the Indonesian and the UK laws

⁶ Lionel Bently and Brad Sherman, *Intellectual Property Law*, 4th (UK: Oxford University Press, 2014), 684.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2016), 115.

Legal protection is defined as all the Government's efforts to the community in ensuring legal certainty, this is to guarantee the rights of citizens and provide sanctions to anyone who violates it. The concept of private law protection means that everyone has the ability to defend what is rightfully theirs by filing a civil lawsuit in order to get compensation for the incident they experienced. The protection applied in this industrial design is the result of the design work applied to a product. Protection of industrial designs is considered to help increase creative economic growth in the community so that it indirectly encourages the development of folk crafts and traditional arts

The intellectual property rights protection system is also regulated at an international level, including the industrial design protection system in TRIPs or Trade-related Aspects of Intellectual Property Rights. TRIPs are a combination of IPR protection in the Paris Convention and the Bern Convention which consists of copyright protection and related rights. The existence of the TRIPs Agreement is expected to be able to create a better condition related to the appreciation of one's innovation. The TRIPs Agreement is also expected to raise the standard of intellectual property protection in each country. The TRIPs Agreement provides protection for industrial designs through a dual approach, namely:⁸

- a. The TRIPs Agreement uses an originality approach in protecting design protections such as copyright. Originality here aims to prevent any bad intentions or intentions such as imitation or plagiarism of an industrial design.
- b. The TRIPs Agreement adopts a relatively short term of protection such as patent protection. The industrial design provides 10 years of protection and does not regulate the extension of the industrial design protection period.

TRIPs do not regulate the definition of industrial design, TRIPs only regulate the obligations of WTO member countries to protect an industrial design, protection criteria, violations and the period of protection.⁹ In order to obtain industrial design protection according to TRIPs, it is necessary to have the requirements of novelty and originality as stated in article 25 (1) of TRIPs. Furthermore, in article 25 (2) the TRIPs agreement regulates the

⁸ Ranti Fauza Mayana and Tisni Santika, *Perlindungan Desain Industri Transformasi Konsep Ekonomi Kreatif Menuju Industri Kreatif Nasional Berbasis Desain* (Bandung: Alumi, 2020), 45.

⁹ Sabri Fataruba, "TRIPs dalam Kaitannya dengan Perlindungan Hukum Terhadap Rahasia Dagang, Desain Industri dan Desain Tata Letak Sirkuit Terpadu Di Indonesia," *SASI* 26, no. 1 (2020): 5, <https://doi.org/10.47268/sasi.v26i1.207>.

issue of the protection of textile products that must obtain legal protection not only through the industrial design law but also the copyright law, WTO member countries are required to guarantee the requirements for obtaining protection against textile designs, especially in connection with fees, inspections or announcements does not reasonably impede the opportunity to obtain protection.

The next article relating to clothing is article 26 of the TRIPs agreement, namely the owner of a protected industrial design has the right to prohibit third parties who do not obtain a permit from it to sell, import or even manufacture an item containing or containing a copy of the protected design if the action is carried out for commercial purposes.¹⁰

Next, we will discuss the protection of industrial designs in the UK, particularly regarding the protection of unregistered industrial designs or unregistered design rights. The legal system in the UK recognizes two forms of protection for industrial designs, namely registered designs which are protected under the Registered Design Act 1949 (RDA 1949), and design rights which are protected under the Copyright Design and Patent Act 1988 (CDPA 1988).¹¹ CDPA 1988 has an unregistered design right (UDR) policy which is stated in chapter III of the 1988 CDPA, namely the design right chapter.¹²

The regulation of industrial design was first recognized in the 18th century in England because when the industrial revolution began to develop, the first law regulating industrial design was The Designing and Printing of Linens, Cotton, Colisoes, and Muslins Act in 1787 which gave a monopoly on industrial design. someone who creates new and original designs and paintings from card linen. This was triggered by the development of the textile and handicraft sector in England, when both industries began to be mass-produced. It should be noted that the law only protects two-dimensional designs with a relatively short period of protection, which is only for two months with an extension of the protection period for three months.

¹⁰ Cita Citrawinda, *et.al*, *Laporan Akhir Naskah Akademik Peraturan Perundang-Undangan Rancangan Undang-Undang Tentang Hak Kekayaan Industri: Paket Perubahan UU No. 31 Tahun 2000 Tentang Desain Industri, UU No. 14 Tahun 2001 Tentang Paten dan UU No. 15 Tahun 2001 Tentang Merek* (Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2011), 60.

¹¹ Mayana, *Perlindungan Desain Industri di Indonesia*, 52.

¹² Bently and Sherman, *Intellectual Property Law*, 684.

Furthermore, the Sculpture Copyright Act 1798 also developed which includes simple three-dimensional industrial designs that only protect human and animal models. Along with the development of time, the regulation of industrial design is even more complete by regulating the industrial design in the form of two or three dimensions used in the production process, the need for registration, an extended period of protection for 15 years. These are all listed in Registered Design Act 1949 (RDA). Simultaneously with this, in England there was a development of artistic copyright which caused imitation problems and then came the Copyright Act 1956.

The emergence of the Copyright Act 1956 is also a form of protection for creators against imitation of works of art and tries to resolve the overlapping problem between registered designs and artistic copyrights.¹³ The existence of this law makes an aesthetic design can be protected under the 1949 RDA and get protection for 15 years, but if a fully functional design is not registered under the RDA but obtains artistic copyright on the image and gets the creator's lifetime protection plus 50 years.¹⁴ This benefits a fully functional design due to a longer protection period

Therefore, the British Government made provisions to overcome these problems. Out of protection for copyright and design rights called the Copyright, Design and Patent Act 1988 (CDPA 1988). In article 236 explaining that a work that consists of or is included in a design which itself will be protected by copyright, design rights are cancelled for copyright purposes.

Furthermore, it is also explained in article 51 that if an item is made based on that design or an imitation of the item is made, it does not violate the copyright of a design document or model recorded or formed according to the design. Article 51 also provides provisions to cancel the possibility of indirect copyright infringement by imitating the designed goods. Thus, if a design is in the form of an image and someone makes an item based on that image, then he does not infringe the copyright on the item but rather the industrial design right.

Legislative reform continues to eliminate irregularities in the law and to keep up with the development of free trade, the 1988 CDPA took copyright protection of almost all industrial designs, and to replace copyright protection, the law introduced unregistered industrial design

¹³ Mayana and Santika, *Perlindungan Desain Industri Transformasi Konsep Ekonomi Kreatif Menuju Industri Kreatif Nasional Berbasis Desain*, 5.

¹⁴ Mayana, *Perlindungan Desain Industri di Indonesia*, 93.

rights.¹⁵ With the development of the times, a mechanism is needed that does not need to register a design for a while.

This is done because to open up opportunities for companies to test market prospects for the product designs that they make without the need to spend a large amount of effort and effort for registration, this is to avoid the possibility that the products registered do not sell well in the market and as an alternative. if the product that is made only lasts for a period of time that is not too long, an example is the fashion industry. The UK provides a solution by issuing a policy of unregistered design rights or the protection of industrial designs that are not registered even if only temporarily.

Before further discussing what legal protection in the UK looks like, it is necessary to first know what is meant by industrial design in the UK. The United Kingdom under article 213 (2) Design Right UK Copyright, Design and Patents Act 1988 mentions: “In this part design means the design of the shape or configuration (whether internal or external) of the whole or part of an article”.

The above definition has the meaning as industrial design is the design of an item in terms of form and configuration, both internally and externally of the whole or part of the article/goods. Protection of designs that are not registered automatically without the need for a registration, the protection is inherent since the design is made in the form of goods or in the form of a design document provided that the design is original or not the result of copying from another design, this protection is also useful for protecting a design of copying or plagiarism.¹⁶

Initially the UK provided unregistered design rights protection only to three-dimensional products, but since 2020 the UK has issued a Supplementary Unregistered Design or additional unregistered design that also protects two-dimensional and three-dimensional displays. UDR has a protection requirement, namely novelty and individual character.¹⁷ A design can be considered new if it is not identically similar or materially different from an existing design. Designs that have individual characters are the impression that the entire

¹⁵ Jennifer Davis, *Intellectual Property Law*, 4th ed, Core Text Series (Oxford, U.K: Oxford University Press, 2012), 338.

¹⁶ Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text Cases and Materials*, 2nd ed (United Kingdom: Oxford University Press, 2013), 795.

¹⁷ Nuzulia Kumala Sari, *Hukum Hak Kekayaan Intelektual* (Depok: Raja Grafindo Pesada, 2021), 159.

design reflects the character of the designer who is different from the character of the designer on a design that exists in general.

The protection period for designs that are not registered in the UK is 10 years after they were first sold to 15 years after they were created, with the scope of protection being to protect goods from plagiarism, copying or copying for commercial purposes. Design rights allow the owner to prevent unauthorized copying of a design and then production by copying the design.¹⁸ If there is a case of plagiarism, copying or copying, then a design holder must prove that it really is his own design by making good documents or records regarding each stage of design development, signing and dated each sketch and keeping an archive or document of the design.¹⁹ This has been applied by almost 80% of clothing designers in the UK, they are aware of the importance of it to prove their ownership.²⁰

After explaining about the protection of industrial designs in the UK, especially the protection of unregistered industrial designs, now will be carried out an explanation of the protection of industrial designs in Indonesia. Indonesia has a law regarding industrial design, namely after the enactment of Law Number 31 of 2000 concerning Industrial Design. Since the promulgation of industrial designs, Indonesia has used the Locarno Agreement system, this is basically an industrial design agreement that stipulates international classifications for linking design property.²¹

The industrial design classification based on the Locarno classification consists of 32 class titles with class numbers arranged from class 1 to class 32. Class numbering is carried out according to the nature, function or type of goods according to the title of the related class, where women's and men's clothing products or articles of clothing and haberdashery are classified in the Locarno class 2 classification. Therefore, based on this, clothing is protected by the industrial design law.

The industrial protection system in Indonesia is constitutive, namely the protection of industrial designs is obtained through registration, without registration there is no legal

¹⁸ CreationIP, *Registered and Unregistered Design Rights: A Guide to UK and European Registered and Unregistered Design* (United Kingdom: CreationIP, 2020), 4.

¹⁹ Kamar Dagang dan Industri Indonesia, *Tampil Menarik Pengantar Desain Industri Untuk Usaha Kecil Dan Menengah*, Terjemahan WIPO (Jenewa: World Intellectual Property Organization, 2008), 21.

²⁰ *Ibid.*

²¹ 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): 297, <https://doi.org/10.33331/rechtsvinding.v9i2.438>.

protection for industrial design rights. This industrial design right can make the person who owns it to prohibit other people without his consent from making, using, selling, importing, exporting, and distributing the goods.²² Industrial design protection in Indonesia is given for a period of 10 years, this is stated in Article 5 paragraph (1) of Law Number 31 of 2000 concerning Industrial Designs. After 10 years, the design will become public property or public domain.

The requirement for an industrial design to be protected in Indonesia is that it is novel and does not conflict with applicable laws, religion, public order or decency. In principle, industrial designs in Indonesia can be protected on condition that the design submitted in the application for registration has met 1 (one) of 2 (two) examinations, including administrative examination and substantive examination if there is an objection by a third party to the design. This pending administrative examination will result in a decision whether the industrial design applied for will be accepted or rejected. The administrative inspection is carried out in 3 stages which include a physical examination, an examination of formality requirements, and an examination of the clarity of disclosure of industrial designs.

Furthermore, there is a substantive examination, this examination is an examination carried out on the substances of the proposed industrial design, the substances include the novelty of industrial designs, matters that are contrary to laws and regulations, public order, religion and decency, unity of application, and other matters which related to the clarity of disclosure of industrial designs.²³ All processes for obtaining industrial design protection from the registration process to the industrial design inspection process take a long time. This will sometimes eliminate the spirit of the designer to be creative, especially in the era of globalization and an economy based on knowledge, technology, and creativity creates high global competition and the need for protection of industrial designs that also protects designs from abroad.²⁴

This time, there was a fashion product belonging to Jung Jaehyun, a member of the boy group NCT 127, who collaborated with a slow acid clothing brand and produced a t-shirt

²² Kholis Roisah, *Konsep Hukum Hak Kekayaan Intelektual (HKI): Sejarah, Pengertian Dan Filosofi Pengakuan HKI Dari Masa Ke Masa* (Malang: Setara Press, 2015), 101.

²³ Dewi Sulistianingsih and Bagas Bilowo Nurtantyono Satata, "Dilema dan Problematik Desain Industri di Indonesia," *Jurnal Suara Hukum* 1, no. 1 (2019): 4, <https://doi.org/10.26740/jsh.v1n1.p1-14>.

²⁴ Mayana and Santika, *Perlindungan Desain Industri Transformasi Konsep Ekonomi Kreatif Menuju Industri Kreatif Nasional Berbasis Desain*, 70.

designed by Jaehyun himself. But unfortunately, there are some people in Indonesia who carry out the design plagiarism and then resell it, one of them is through a platform on a marketplace like Shopee. The following are original product designs and product designs that are the result of plagiarism:



Figure 1. Scarp Short T-Shirt from www.hypermalaysia.com

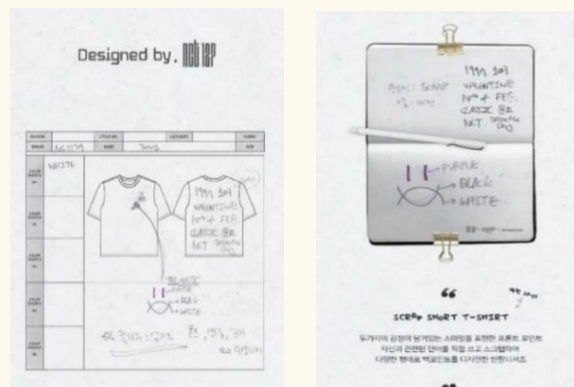


Figure 2. Scarp Short T-shirt Design by Jaehyun NCT 127 from www.hypermalaysia.com

The photo above is a photo of Jung Jaehyun's scarp short t-shirt design accompanied by a design made by Jaehyun himself, which was then plagiarized by one of the sellers in the Indonesian marketplace, Shopee, with the following design:

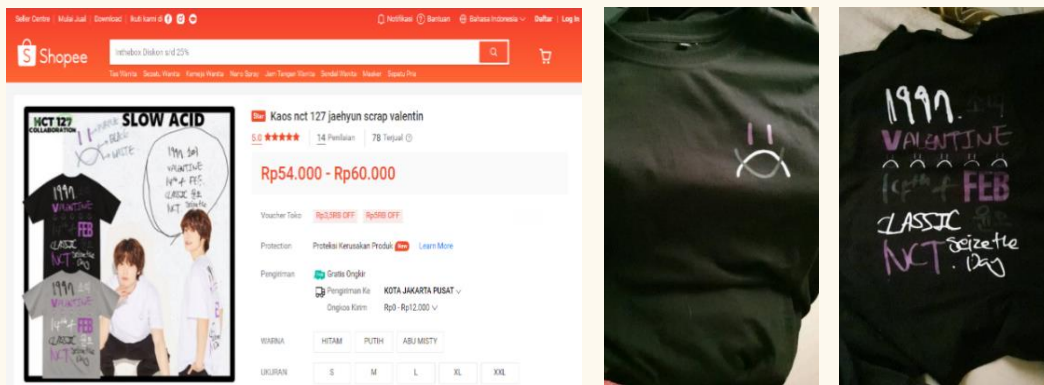


Figure 3. Scarp Short T-Shirt by an online shop in Marketplace from www.shopee.co.id

If we look closely, the appearance of the designs sold by one of the online shops in the Indonesian marketplace looks similar. But unfortunately, the original product from the slow acid x NCT 127 collaboration, namely Jung Jaehyun's original design from NCT 127, was not registered, so he could not get legal protection in accordance with the laws in Indonesia. Seeing a case of plagiarism against a clothing design but the laws in Indonesia cannot protect it is something that is very unfortunate. In addition, the registration period of approximately 6 (six) months is considered very long, not to mention the applicant is burdened with a number of fees.

Even though the development of technology, everything is required to be fast-paced. In its development, a mechanism procedure is needed, it is not necessary to register an industrial design for a while, this is to test the development of the product in the market, whether it is successful and durable or vice versa, especially if the product is a fashion product that has a trend among the people that is easy to change –change quickly.²⁵

This needs alternative protection, and awareness in developed countries to protect very high creativity. One example is the UK, which has implemented unregistered industrial design protection as an alternative protection to protect a product or item that requires fast processing. Legal protection is a way to guarantee the rights and obligations of intellectual property rights owners. The state is obliged to protect the same intellectual property rights between its citizens and foreign nationals.

Industrial design legal protection in the UK has implemented automatic protection through unregistered design rights, so that in this case the designer, Jaehyun, will receive legal protection from plagiarism by other people. The designer can easily protect his design from copying and direct compensation provided that the designer can prove that the design is his by creating a sketch document accompanied by the date of manufacture.

This does not apply in Indonesia, where the protection is based on the design registration principle. Industrial design goods or products that are not registered do not receive legal protection and cannot protect against plagiarism that occurs in clothes made by Jaehyun. According to industrial design law in Indonesia, these t-shirts do not have the exclusive right

²⁵ Denny Andreas Krismawan, "Fast Fashion Dalam Konteks Hak Kekayaan Intelektual (Urgensi Perlindungan Hukum Karya Desain Fashion Sebagai Bagian Ekonomi Kreatif)," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 282, <https://doi.org/10.54629/jli.v18i2.785>.

to prohibit wearing, selling, importing, exporting or distributing their goods. Even though it is clear that the act of plagiarism in the design of scrap short t-shirts is detrimental to the designer.

No.	Criteria	Indonesia (Law Number 31 of 2000 concerning Industrial Design)	The UK (Design Right UK Copyright, Design and Patents Act 1988)
1	Definition of Industrial Design	A creation about the shape, configuration or composition of lines and colours or a combination thereof in the form of three or two dimensions that gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce goods, industrial commodities, or handicrafts. (Article 1 number 1)	In this Part “design” means the design of the shape or configuration (whether internal or external) of the whole or part of an article. (Article 213 (2))
2	Protection Requirements	New and not the same as previous disclosures, including before the priority date. (Article 2 paragraph (1) paragraph (2) and paragraph (3))	A design is not “original” for the purposes of this Part if it is commonplace in the design field in question at the time of its creation; and “qualifying country” has the meaning given in section 217 (3). (Article 213 (4)).
3	Exclusive Rights	Prohibit other parties without their consent from making, using, selling, importing, exporting, and/or distributing. (Article 9 paragraph (1))	Design rights allow the owner to prevent unauthorized copying i.e., producing goods by copying a design is an infringement, but independent creation of a similar design does not violate design rights. (Article 226)
4	The duration of protection	10 years from the date of receipt and cannot be extended, after which it will become public property or public domain. (Article 5 paragraph (1))	(1) Design right expires— (a) fifteen years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred, or (b) if articles made to the design are made available for sale or hire within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred. (Article 216 (1))

Table 1. Comparison of Legal Provisions for Protection of Industrial Designs in Indonesia and UK

After the explanation above, the question arises what are the legal consequences received by business actors who carry out these actions in a marketplace in Indonesia. The first thing we need to understand here is that technological developments make human life easier, now we can make buying and selling transactions from inside the house without having to buy from the shop in question. This transaction is carried out through a marketplace, this transaction is very popular because it has a variety of products to sell and minimizes fraud due to the intervention of a third party as an intermediary.

The wide area of transactions that can be reached by the marketplace with the help of information technology creates a problem in the legal field, one of which is the problem of

protecting intellectual property rights.²⁶ Based on a study by the Indonesian Anti-Counterfeiting Society (MIAP) and the University of Indonesia (UI), losses due to trade in counterfeit or counterfeit goods in Indonesia were estimated at IDR 65.1 trillion in 2014.²⁷ Counterfeit goods in the marketplace usually have a high similarity in appearance to industrial designs and /or brands that have been produced. The existence of the production of counterfeit goods has the aim of reaching buyers who are interested in the original product but have not been able to have it because of the high price. In this case, the sale of T-shirts designed by Jung Jaehyun is to attract Korean fans in Indonesia, who are known for their high loyalty attitude and will buy whatever their idols produce, including albums, photocards, merchandise, and clothes belonging to their idols.

Goods and/or services in a marketplace are related to intellectual property protection. This is in article 25 of the ITE Law which regulates provisions regarding intellectual property protection. Marketplace is classified as an electronic system operator in accordance with article 1 number 6a of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

In running it, every marketplace organizer has the obligation to be responsible for the operation of his electronic system. The marketplace party can be held liable in civil or criminal law for the impact or legal consequences due to a violation of the law in the operation of the electronic store in the relevant marketplace.²⁸ The terms in it are responsible for intellectual property infringement.

In order to prevent this from happening, one of the marketplaces in Indonesia, namely Shopee, internally made a Community Regulation aimed at all buyers and sellers in transacting at Shopee. The Community Rules on Shopee contain things that are recommended and prohibited at Shopee, and all those who use the Shopee application have indirectly agreed to the terms and conditions that apply. The Shopee Community Rules contain prohibited items, one of which is counterfeit and imitation goods. Shopee claims that only genuine products can

²⁶ Andreyana Nata Giantama and Munawar Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace," *Jurnal Privat Law* 8, no. 1 (2020): 22, <https://doi.org/10.20961/privat.v8i1.40358>.

²⁷ Maulida Sri Handayani, "Barang Palsu: Membuat Rugi, Tapi Juga Menghidupi," *Tirto*, May 22, 2016, <https://tirto.id/barang-palsu-membuat-rugi-tapi-juga-menghidupi-89R>.

²⁸ Maria Bertha Ismulyani Tambuwun, Sari Mandiana, and Joshua Evandeo Irawan, "Analisis Pertanggungjawaban Hukum Marketplace Selaku Penyedia Tempat Perdagangan Online Terkait Penjualan Produk Tiruan Yang Melanggar Kekayaan Intelektual," *Jurnal Gema Aktualita* 9, no. 1 (2022): 81.

be registered at Shopee, counterfeit and illegal goods and are prohibited in Indonesia may not be sold using the Shopee application. If this happens, Shopee has the right to report and delete the goods that are proven to be fake.

In addition to issuing Community Regulations, Shopee also makes regulations that contain the Prohibited and Restricted Items Policy. The regulation explains that the seller is responsible for ensuring that the goods sold on the Shopee platform comply with all laws and are allowed to be registered and sold. Regarding prohibited and restricted goods, Shopee has regulated goods related to intellectual property rights, content and services. Shopee supports the enforcement of the intellectual property rights of an item so that items including replicas, counterfeits and imitations of products or goods without permission that have the potential to infringe copyright, trademark rights, or other intellectual property rights can be reported to Shopee, by clicking the “Report Product”.

But unfortunately, even though there are regulations from the Government or Shopee internally, there are still shops that sell these imitation or imitation products. One of the people at Shopee still sells replicas or imitation products from T-shirts made by Jung Jaehyun, in the description of the shop’s product description, he writes a description if the process and production is carried out by himself, this strengthens if he commits an act of plagiarism in the design of a scarp short t-shirt. . The explanation above explains the consequences borne by the seller from the marketplace side. Furthermore, we will discuss the legal consequences obtained under Indonesian law and compared with existing law in the UK.

A design can be given to a third person without having to break the law, namely with a license agreement. A license agreement that can grant permission to use exclusive rights to parties other than the designer. Licensing is an important issue as a mechanism for the economic use of intellectual property rights by rights holders.²⁹ A license is needed in IPR because that’s where the designers or creators or inventors get their money from.

The issue of industrial design licenses in Indonesia has been regulated in Article 35 of the Industrial Design Law, it is said that the license agreement must be registered in the general register at the directorate general by paying a certain fee, if the agreement is not registered then

²⁹ Ansori Sinungan, *Perlindungan Desain Industri Tantangan Dan Hambatan Dalam Praktiknya di Indonesia* (Bandung: Alumni, 2011), 169.

it does not apply to third parties. Further licenses will be announced in the official industrial design news.

Industrial design rights holders can implement them themselves or grant licenses to third parties. In making a license agreement, it is prohibited to contain provisions that are detrimental to the Indonesian economy or contain provisions that result in unfair business competition in Indonesia.³⁰ This industrial design right is an exclusive right to reproduce his own design for commercial purposes, the design right is exclusive so that the owner of the industrial design has the right to make his own or give rights to others without the designer's approval, so other people may not commercialize the design results.³¹

In the case of plagiarism of Jung Jaehyun's scrap short t-shirt design, unfortunately no registration number was found, only evidence of Jung Jaehyun's t-shirt sketch was found. According to the industrial design law in Indonesia, the t-shirt does not have the exclusive right to prohibit wearing, selling, importing, exporting or distributing his belongings. Even though it is clear that if the act of plagiarism in the scrap short t-shirt design harms the designer, based on the principle of intellectual property rights, namely the economic principle, the creator or designer has the right to get economic value which provides economic principles derived from creative activities from the human mind that have benefits and values. an economy that provides material benefits to the creator or designer.

This is different from what is in the UK, where the country implements a system of unregistered design rights or protection of unregistered designs. The existence of unregistered design rights makes the design rights received by the designer appear automatically without the need to register. Protection of designs not registered in the UK also protects against copying or plagiarism of designs.³² With a license, the recipient of the design rights can exploit the design but is still required to pay royalties.³³

This is a middle way to protect a fashion product that does not last long in the market, as well as an alternative for companies to test market prospects for the product designs that they make without the need to spend money and effort and considerable effort for registration,

³⁰ Sulasno, "Lisensi Hak Kekayaan Intelektual (HKI) Dalam Perspektif Hukum Perjanjian Di Indonesia," *ADIL: Jurnal Hukum* 3, no. 2 (2019): 376, <https://doi.org/10.33476/ajl.v3i2.815>.

³¹ Mayana and Santika, *Perlindungan Desain Industri Transformasi Konsep Ekonomi Kreatif Menuju Industri Kreatif Nasional Berbasis Desain*, 45.

³² Aplin and Davis, *Intellectual Property Law: Text Cases and Materials*, 795.

³³ Davis, *Intellectual Property Law*, 351.

this is to avoid the possibility if the registered product does not sell well in the market. designers can still enjoy their economic rights in accordance with what is in the principle of protecting intellectual property rights. If Indonesia applies an unregistered design policy like what is in the UK, it is possible that design plagiarism violations that occur can be reported and then held accountable for economic losses.

B. 2. Urgency of Legal Novelty of Industrial Design Law in Indonesia

Reflecting on the law in UK, where the country implements a system of unregistered design rights. This is a middle way to protect a fashion product that does not last long on the market, as well as an alternative for companies to test market prospects for product designs that they make without the need to spend a lot of money and effort for registration, this is for the possibility that if the product shown was not selling well in the market. The existence of unregistered design rights makes the design rights received by the designer appear automatically without the need to register

Design protection not registered in the UK also protects against copying or plagiarism. In addition, the protection of unregistered industrial designs in the UK grants license rights to designers so that they can exploit those designs profitably. Design rights are said to be violated if someone does or does something based on the exclusive rights of the design owner. If someone violates design rights, but does not have a license, the designer has the right to claim compensation. If Indonesia implements an unregistered design policy like what is in the UK, it is possible that design plagiarism violations that occur can be reported and then held accountable for economic losses.

The establishment of an industrial design law in Indonesia must be able to become a pillar of growth in the national interest to build an industry based on creativity in the field of industrial design which is prepared and implemented for the benefit of Indonesia and most importantly brings benefits to the progress of the national economy. Obstacles and weaknesses faced in the implementation of the industrial design law so far, among others are:³⁴

³⁴ Badan Pembinaan Hukum Nasional, *Laporan Akhir Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Desain Industri*, (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2015), 120

- a. The definition of industrial design which requires an aesthetic impression but the contents of the article do not explain the explanation of the aesthetic impression, this is in article 1 number 1 of the Industrial Design Law
- b. Dualism in the procedure for applying for design rights through substantive examination, this is in article 26 and article 29 of the Industrial Design Law
- c. There is no regulation regarding the implementation and licensing of industrial design rights related to intellectual property rights belonging to other parties

In addition to the three points above, in the fashion world, plagiarism or plagiarism in a design is rife. They use other people's work and pass it on as their own regardless of minor changes or modifications. This is different from the concept of "ATM" which is to observe, imitate, and modify. If you use this concept, what happens is a design development by producing something different. This culture of imitation is what is known as a knock-off culture in the world of design. Imitation of fashion designs often occurs because of the long period of registration of industrial designs in Indonesia which is not in accordance with the changing nature of fashion design following trends.³⁵ In addition, many designers argue that registering a design takes a long time and is expensive, even though fashion products usually don't last long in the market.

The legal protection of industrial design in Indonesia needs to be strengthened again, this is because industrial design can provide more selling value because it makes a product more attractive in the eyes of consumers. This will strengthen an item in the market and then create new market gaps and strengthen the branding of a product. This industrial design protection system without registration is given to parties who have good intentions but have not registered their industrial designs, but it should be underlined that this is not used as a loophole to override the urgency of registering industrial designs in Indonesia. In the future, the application of industrial designs without registration in Indonesia can be a means to overcome a number of problems, namely illegal design taking by other parties who are not the original designers and efficiency in protecting products whose life cycles in the market are rapidly changing.³⁶

³⁵ Krismawan, "FAST FASHION DALAM KONTEKS HAK KEKAYAAN INTELEKTUAL (URGensi PERLINDUNGAN HUKUM KARYA DESAIN FASHION SEBAGAI BAGIAN EKONOMI KREATIF)," 290.

³⁶ Mayana and Santika, *Perlindungan Desain Industri Transformasi Konsep Ekonomi Kreatif Menuju Industri Kreatif Nasional Berbasis Desain*, 73.

Indonesia itself is trying to update its industrial design law, as in the academic text of the draft law on industrial design, the Government has issued a draft law on industrial design. In Article 2 of the Bill on Industrial Design, the scope of protection of industrial design rights will be further expanded by the protection of industrial design rights through registration and industrial design rights without registration. In Article 4 of the Bill on Industrial Design, the right to industrial design without registration will be granted automatically to the designer since it was first published. The period of protection provided is set for 3 (three) years from the date it was first commercialized.

The new industrial design arrangement is expected to be the basis for providing effective protection against the threat of various forms of piracy, plagiarism, or design plagiarism that can deprive the original designer of the economic rights. This is deemed necessary considering international developments regarding the protection system for industrial design rights are developing rapidly so that national regulations in Indonesia need to be adjusted so that Indonesia is able to compete with the international trading system.³⁷ Although Indonesia has not legally implemented a design protection system without registration, this has become a concern for the Indonesian Government and is expected to be legalized soon.

C. Conclusion

It can be concluded that the legal protection of industrial design in Indonesia currently only applies the types of industrial design protection that are registered. Meanwhile, there are two types of industrial design protection systems in the UK, namely protection with registration or registered design rights and protection without registration or unregistered design rights (UDR). Industrial design rights in this unregistered design right system are obtained automatically, designs do not need to be registered to get legal protection but must keep documents or records regarding each stage of design development. This protection system is used to anticipate cases of plagiarism, copying or copying a design. Several marketplaces in Indonesia, such as Shopee, has made regulations regarding Community Regulations and Prohibited and Restricted Goods Policy. The regulation states that sellers are prohibited from

³⁷ Badan Pembinaan Hukum Nasional, *Laporan Akhir Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Desain Industri*, 225.

selling replica goods, counterfeit goods and imitation products or goods without permission that have the potential to infringe copyright, trademark rights, or other intellectual property rights. But unfortunately, there are still some shops that sell these items and are still operating today. Indonesia has considered the protection of industrial designs without registration; this is already stated in the article in the Draft Law on Industrial Designs. The protection provided will be automatically granted to the designer from the moment it is first published. The period of protection provided is set for 3 (three) years from the date it was first commercialized.

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