

**Article history:** Submitted 18 January 2025; Accepted 27 February 2025; Available online 28 February 2025.

**How to cite:** Fatimatuz Zahra, Suparnyo, 'Legal Review of Knock-off Culture in K-Pop-Inspired Outfits Based on Industrial Design Law' (2025) 8 Media Iuris.

## Legal Review of Knock-off Culture in K-Pop-Inspired Outfits Based on Industrial Design Law

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### Keywords: Abstract

Industrial Design; Knock-off culture in K-Pop-inspired outfits is quite contrary to Indonesia's objective Knock-off; K-Pop. in developing the industrial sector, which is increasing competitiveness through the optimization of industrial design that is rooted in Indonesia's cultural wealth as a part of integrity in global trading. Considering the increasing number of local brands that replicate the industrial designs of foreign brands to fulfill consumer demands, it is crucial to study the knock-off culture phenomenon in local brands of fashion inspired by K-pop idols from the perspective of Law Number 31 of 2000 concerning Industrial Design (Industrial Design Law). This research is conducted using the normative juridical method which is strengthened by the socio-legal approach related to the knock-off culture's progress in society. This research results indicate that provisions in Industrial Design Law are still ambiguous, especially those related to the principle of novelty and ambiguity regarding the knock-off products that haven't been arranged clearly. Those indicate the lack of adequate legal apparatus that potentially triggers unfair business competition, and also increases the risk of violating intellectual property rights.

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Published in Media Iuris. Published by Universitas Airlangga, Magister Ilmu Hukum.



### Introduction

K-Pop culture or Korean Pop culture is a global phenomenon that is now attracting widespread attention from international society. K-Pop cultures originated from South Korea and then spread globally, reaching various regions such as Asia, to Europe and America.<sup>1</sup> The products spread in the K-Pop culture phenomenon cover various cultural aspects, including music, culinary, fashion, language, etc.<sup>2</sup> K-Pop culture has grown to an influential power in Asia since the early 21st century. In Indonesia, K-Pop culture is more dominant in music, serial drama, and fashion;<sup>3</sup> however, this writing will focus on the fashion aspect of K-Pop culture.

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<sup>1</sup> Jusmalia Oktaviani and Teguh Puja Pramadya, 'Korean Wave (Hallyu) Dan Persepsi Kaum Muda Di Indonesia: Peran Media' (2021) 8 *Insignia Journal of International Relations* 87-100.

<sup>2</sup> *ibid.*

<sup>3</sup> Ihda Aina Ratna Dewi, 'Berhenti Menjadi Fandom K-Pop (Life History Perubahan Kehidupan Seorang Mantan Penggemar K-Pop Pada Mahasiswa FISIP Universitas Brawijaya Kota Malang) SKRIPSI Diajukan Kepada Universitas Brawijaya' (Universitas Brawijaya 2018).

The spreading of K-Pop culture is also encouraged by technological advances, such as internet and social media, which have a significant role in expanding its reach.<sup>4</sup> With the advancement of technology, K-Pop culture is now spreading quicker and becoming known among society; therefore, it is reasonable that most people, especially the youth and the older generations in Indonesia, are already familiar with the term K-Pop.<sup>5</sup> K-Pop fans, who are dominated by the youth, are willing to spend a considerable amount of funds to imitate their idols' fashion or to support them by purchasing their merchandise and attending the concerts of the idols they admire.<sup>6</sup>

Korean traditional clothing, which is known as *hanbok*, is usually considered Korea's fashion symbol with aesthetics that suit its era. However, the trends in Korean fashion now are more emphasized in the theme of diversity.<sup>7</sup> Korea's fashion industry has achieved outstanding popularity globally, but Western fashion trends also influence and encourage various evolutions in its style, as seen in the fashions that are worn by K-Pop idols.<sup>8</sup> The majority of K-Pop idols tend to adopt the streetwear style, often wear oversized shirts with jeans to create a casual and trendy look.<sup>9</sup> That event encourages today's fashion industries, especially Korean fashion, to keep innovating and adapting to the uniqueness of fashion style shown by the K-Pop idols.<sup>10</sup> The uniqueness of Korea's fashion is in the use of clothing colors that tend to be bright. That factor makes Korea's fashion retail increasingly skyrocket, strongly influenced by K-Pop culture which opens big opportunities for market growth. That style uniqueness also inspires various fashion products in Indonesia, mainly because the bright coloring is suitable for Asian skin tones. In Indonesia, with a tropical climate and high interest in fashion, this combination has become increasingly popular and relevant.<sup>11</sup>

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<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> Muhammad Alvin Wicaksono, Annisa Patricia and Dita Maryana, 'Pengaruh Fenomena Tren Korean Wave Dalam Perkembangan Fashion Style Di Indonesia' (2021) 2 *Jurnal Sosial Politika* 74-85 <<https://doi.org/10.54144/jsp.v2i2.35>>.

<sup>8</sup> Hee-Sun Kim, '한류 K-패션 활성화를 위한 전략 분석 연구 An Analysis of a Strategy for the Activation of Korean Wave K-Fashion' (2017) 19 *Journal of the Korea Fashion & Costume Design Association* 175-192.

<sup>9</sup> Wicaksono, Patricia and Maryana (n 7).

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

Technology advances not only encourage sales growth globally but also contribute to the rise of knock-off culture or also known as imitation culture, which accelerates the design production illegally and distributes them to the global market more efficiently.<sup>12</sup> According to Dahlen fashion knock-off is widely identified as a replication of fashion clothing design intentionally among the competing brands, which not only strips away and diminishes the creative uniqueness of the fashion industry, but also causes social and environmental issues in society.<sup>13</sup> Knock-off culture emerged in the fashion industry as a result of the increasing consumer desire to get replicas of goods with lower quality and more affordable prices, which often serve as the alternative for authentic goods.<sup>14</sup>

The availability of easily accessible materials and the stable nature of the business encourage the opportunity to grow for knock-off culture in K-Pop-inspired outfits that are sold at more affordable prices on e-commerce platforms since many K-Pop fans continuously follow their idols' fashion trends, so brands see little to no risk in producing knock-off fashion.<sup>15</sup> Furthermore, consumers are motivated to buy knock-off products as an alternative because original brands sometimes discontinue their products.

Knock-off culture has a significant impact on designers, consumers, and companies because it disrupts the fashion industry ecosystem by reducing incentives for creative innovation and lowering the original product's value. Intuitively, it can be understood that when consumers have higher needs than the uniqueness of a fashion product, the utility gained from purchasing the original product tends to decrease. This phenomenon forces the original brands to reduce the prices, which potentially harms their supply chains. On the other hand, some consumers who initially planned to buy original products, switch to knock-off products, leading to knock-off products' increasing demands and improving their supply.<sup>16</sup> Knock-off culture's existence also demands legal protections for ideas and

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<sup>12</sup> Yudi Kornelis, 'Fenomena Industri Fast Fashion: Kajian Hukum Perspektif Kekayaan Intelektual Indonesia' (2022) 5 *Journal Komunikasi Yustisia* 262-278 <<https://doi.org/10.23887/jatayu.v5i1.46040>>.

<sup>13</sup> Yingjia Wang, 'Fashion Knockoffs And Counterfeiting Problems In The Fashion Industry' (The Hong Kong Polytechnic University 2022).

<sup>14</sup> Kornelis (n 12).

<sup>15</sup> Annisa Rahma Dianti, 'Analisis Usaha Drclth (Doctor Clothes) Solusi Busana Terjangkau Yang Authentic' (2023) 2 *ETNIK: Jurnal Ekonomi - Teknik* 726-734.

<sup>16</sup> Wang (n 13).

concepts that are implemented through creativity and innovation with economic value. This protection must be implemented through industrial design regulations relating to intellectual property rights to ensure the industry's security and sustainability.<sup>17</sup>

Knock-off culture in K-Pop inspired outfits is quite contrary to Indonesia's objective in developing the industrial sector, which is increasing competitiveness through the optimization of industrial design that is rooted in Indonesia's cultural wealth as a part of integrity in global trading. That principle is affirmed in Law Number 31 of 2000 concerning Industrial Design (Industrial Design Law) which states that the ratification of TRIPs agreement into the Industrial Design Law is expected to encourage designers' creativity in producing original designs so that it can strengthen the national industry and ensure the security of intellectual property rights in global economic competition.

The term industrial design, as defined in Article 1 Point 1 of Law Number 31 of 2000 concerning Industrial Design, refers to a creation that is related to form, configuration, or composition of lines and/or color, both in two-dimensional and three-dimensional form, which provides an aesthetic impression and can be applied to produce a product, industrial goods, or handicrafts. Generally, the enactment of the Industrial Design Law is driven by the desire to advance competitive industries at both the national and international levels, so that a policy is needed to encourage people's creations and innovations in the industrial design sector.<sup>18</sup>

Previous research by Ivan Fadjri<sup>19</sup> in 2016 reveals the lack of strictness of the Industrial Design Law in the implementation of the principles of novelty in the products which don't show significant distinctions, as well as the research conducted by Deny Andreas Krismawan<sup>20</sup> in 2021 which indicates that even though the fashion

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<sup>17</sup> Latipah Nasution, 'Efektifitas HKI Sebagai Pelindung Industri Kreatif Dan UMKM Di Tengah Pandemi Covid-19' (2020) 4 'Adalah: Buletin Hukum dan Keadilan 238-250 <<https://journal.uinjkt.ac.id/index.php/adalah/article/view/16466>>.

<sup>18</sup> Ansori Sinungan, *Perlindungan Desain Industri Tantangan dan Hambatan Dalam Praktiknya di Indonesia* (PT Alumni 2022) 17.

<sup>19</sup> Ivan Fadjri, Budi Santoso and Rinitami Njatrijani, 'Penerapan Asas Kebaruan (Novelty) Dalam Perlindungan Hukum Pemegang Hak Desain Industri Dari Tindakan Similiaritas Di Indonesia' (2016) 5 *Diponegoro Law Journal* 1-13.

<sup>20</sup> Deny Andreas Krismawan, 'Fast Fashion Dalam Konteks Hak Kekayaan Intelektual(Urgensi Perlindungan Hukum Karya Desain Fashion Sebagai Bagian Ekonomi Kreatif)' (2021) 18 *Jurnal Legislasi Indonesia* 282-295 <<https://doi.org/10.54629/jli.v18i2.785>>.

industry significantly contributes to the national economy, the practice of unauthorized appropriation of design concepts frequently occurs. That asserts the necessity of stronger policies to protect the industrial design work in the fashion sector.

Based on the analysis above, the rise of local brands replicating industrial designs from foreign brands to fulfill consumer demand in Indonesia makes it essential to examine the knock-off culture phenomenon in local fashion brands inspired by K-pop idols through the perspective of Law Number 31 of 2000 concerning Industrial Design. This article will discover the legal review concerning knock-off culture in K-Pop-inspired outfits based on the provisions of Law Number 31 of 2000.

### **Research Method**

This research adopted the normative juridical method. It is a method which examines law as a set of rules or norms that are applicable in society and functions as guidelines for every individual's acts.<sup>21</sup> In addition, normative juridical research examines written law from various aspects, including general explanations and materials in each article, also the formality and power to tie a legislation.<sup>22</sup> In this case, it means examining the laws and regulations and norms related to industrial design protection in Indonesia. To analyze the data and draw the conclusion, a qualitative analysis approach method is used. This approach is chosen because the data obtained from literature study will be served descriptively to answer and explain the research's problems. This analysis is non-numeric; thus, it focuses more on an in-depth understanding of the issues being studied.<sup>23</sup> Referring to Miles and Huberman's concept, data analysis is classified into three major aspects, data reduction, data presentation, and drawing conclusions.<sup>24</sup>

This research is also strengthened by using a socio-legal approach, namely not only examining legal products alone, but also considering the social phenomenon thriving in society. That approach reflects from the high consumers' interest for local brands'

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<sup>21</sup> Iman Jalaludin Rifa'i, *Metodologi Penelitian Hukum* (PT Sada Kurnia Pustaka 2023) 6.

<sup>22</sup> Muhammad Syahrums, *Pengantar Metodologi Penelitian Hukum* (DOTPLUS Publisher 2022) 52.

<sup>23</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika 2009) 105.




<sup>24</sup> Matthew B. Miles, A. Michael Huberman and Johnny Sadalna, *Qualitative Data Analysis: A Methods Sourcebook* (Sage Publication 2014) 12.

products such as Imbyklambee and Every1space. Both produce clothes with similar designs to the ones that K-Pop idols wear. That phenomenon shows how popular culture can influence people's consumption patterns, and how that interacts with law dynamics related to industrial design rights.

### Discussion

Knock-off or imitation goods refers to the products that have similar design with the original ones, imitating various certain elements but without the intention of being sold as authentic product.<sup>25</sup> Knock-off goods have three main characteristics:<sup>26</sup> **First**, distribution speed. The distribution speed of a product can be seen from its internal and external impacts, which in turn accelerate the product's distribution in the market. **Second**, sensitivity to excessive publicity. Products with lower public threshold indicate higher levels of sensitivity to publicity. However, excessive publicity can lower consumers' interest because overly popular fashion can remove the uniqueness of its usage. **Third**, price differences. The price gap between the original products and the knock-off is very influential on consumer appeal, a significant price gap usually encourages consumers to choose similar products with affordable price.

**Table 1.** Comparison Between Original Products and Knock-off Products

Original Brand Products	Original Brand Products Worn by K-Pop Idol	Local Knock-off Brand Products
 <p><b>Product Name:</b> VinCo Blue Hawaiian Shirt <b>Price:</b> US\$ 35,50</p>	 <p>VinCo product worn by V BTS</p>	 <p><b>Product Name:</b> Ana Shirt <b>Price:</b> IDR 188.000</p>

<sup>25</sup> Gil Appel, Barak Libai and Eitan Muller, 'On the Monetary Impact of Fashion Design Piracy' (2018) 35 International Journal of Research in Marketing 591-610 <<https://doi.org/10.1016/j.ijresmar.2018.08.003>>.

<sup>26</sup> *ibid.*





**Product Name:** Celine Artist Jacquard Cardigan in Brushed Cotton  
**Price:** US\$ 1,950



Celine's product worn by Jaemin NCT



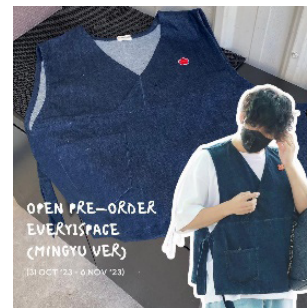
**Product Name:** Aera Cardigan  
**Price:** IDR 165.000



**Product Name:** Kenzo Denim Apron Top  
**Price:** US\$ 1,050.3



Kenzo's product worn by Mingyu Seventeen



**Product Name:** Every1space Mingyu Vest  
**Price:** IDR 160.000

Source: Instagram @imbyklambee and @every1space

### Knock-off Culture Implication to Industrial Design Protection

Most of the controversies about whether knock-off products are profitable or harmful for the original designers are often based on conceptual arguments rather than empirical analysis of the financial impact of design imitation. A formal approach focused on growth aspect and products profitability can provide concrete insights about knock-off impacts on consumers' perceptions for the uniqueness of the original design. This potentially lowers the perceptions of design exclusivity and causes financial losses for the original products if consumers are not capable of distinguishing knock-off products from the original ones.

A study conducted by Gil Apple, Barak Libai and Eitan Muller in 2013, discovered important data from Google Trends related to the financial impact of knock-off culture

toward the industrial designs.<sup>27</sup> Those findings indicate several significant aspects. *First*, complete imitations effect. Based on the growth pattern, the entry of knock-off culture tends to have negative impacts on financial performance of the original product designs. In 97% of the cases studied, the introduction of knock-off products on average reduced the value of original products by more than 13%. *Second*, product uniqueness factor plays an important role in dominating a product's market. However, knock-off products tend to ignore that aspect because of the production cost factor and focus on the profit taking which usually obstructs the emphasis on the uniqueness of the product. *Third*, the importance of a protection period gap before the emergence of knock-off culture. As seen in the United States, a shorter protection period tends to have minimal impact due to the balance between product uniqueness and the rapid emergence of knock-offs. On the other hand, a longer protection period shows a more significant impact, as it can be observed through the linear growth of the original product.

It can be concluded that knock-off culture has impacts on the authentic design rights holders in both the short and long term. The short-term effects include revenue loss for companies and workers, hindered industry growth, reduced production and innovation, and decreased consumer trust, ultimately damaging a company's reputation. In the long term, knock-off culture can weaken competitiveness and corporate investment, reduce the effectiveness of intellectual property protection, and harm the rights of original designers over their innovation and creativity.<sup>28</sup>

Knock-off culture in the fashion industry, particularly in K-Pop-inspired outfit designs, has a significant impact on innovation and creativity. When certain designs are mass-imitated, original designers' interest in investing in new ideas tends to decline, as their works can be replicated without financial compensation. The widespread presence of knock-offs weakens the incentive for original designers to create unique styles, ultimately reducing diversity in the fashion industry. In *The Knockoff Economy* by Kal

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<sup>27</sup> Barak Libai, Eitan Muller and Gil Appel, 'The Short- and Long-Term Impacts of Fashion Knockoffs on Original Items' (2013).

<sup>28</sup> Kadek Frediandrika Adnantara, 'Perlindungan Hukum Hak Desain Industri Kekayaan Intelektual Terhadap Pengrajin Songket Bali Di Klungkung, Semarapura' (2024) 18 Jurnal Yustitia 20-31 <<https://doi.org/10.62279/yustitia.v18i1.1192>>.



Raustiala and Christopher Sprigman,<sup>29</sup> it is explained that while some forms of knock-offs may be inevitable, the extensive practice of knock-offs can lessen the appeal for designers to continue innovating, as the market value of original designs diminishes when knock-offs are produced on a large scale. Moreover, the proliferation of knock-offs drives the cycle of “fast fashion,” where trends are quickly copied and then discarded. This cycle shortens the lifespan of quality original designs and pressures designers to continuously produce new styles at a rapid pace, often sacrificing creativity for production speed.

### **Legal Analysis of Knock-off Culture Based on Law Number 31 of 2000 Concerning Industrial Design**

Indonesia as a developing country needs to optimize the implementation of Intellectual Property Law (HKI) to strengthen the industrial sector and boost competitiveness in the international market. One of the strategies to increase competitiveness is by maximizing the role of industrial design, which is part of HKI and regulated under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).<sup>30</sup> The regulation related to HKI, which is based on the establishment of the World Trade Organization (WTO) and includes provisions in TRIPs, has been ratified by the Government of the Republic of Indonesia through Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization.<sup>31</sup> As a consequence of Indonesia’s membership in the WTO and its involvement as a signatory of the TRIPs Agreement, on December 20, 2000, the Government enacted Law Number 31 of 2000 concerning Industrial Design (Industrial Design Law).<sup>32</sup>

The Indonesian government has made efforts to provide legal protection for industrial design through Law Number 5 of 1984 concerning Industry (Industry Law).

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<sup>29</sup> Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (Oxford University Press 2012) 1-257.

<sup>30</sup> Erika Vivin Setyoningsih, ‘Implementasi Ratifikasi Agreement on Trade Related Aspects of Intellectual Property Right (Trips Agreement) Terhadap Politik Hukum Di Indonesia’ (2021) 2 *Jurnal Penegakan Hukum dan Keadilan* 117-129 <<https://doi.org/10.18196/jphk.v2i2.11749>>.

<sup>31</sup> *ibid.*

<sup>32</sup> Secha Wulida Adz-hiya and others, ‘Urgensi Pengaturan Hukum Indonesia Menggunakan Hague System Guna Melindungi Hak Kekayaan Intelektual Bidang Desain Industri’ (2022) 9 *Diponegoro Private Law Review* 181-204 <<https://ejournal2.undip.ac.id/index.php/dplr/article/view/21056>>.

However, the industrial design protection regulated in the Industry Law has not been effectively implemented since the implementing regulations, as mandated in Article 17 of the Industry Law, have not been issued.<sup>33</sup> The legal provisions in the Industry Law define design as “industrial product design,” while the term “industrial design” is more commonly used among European and Japanese societies.<sup>34</sup> In Indonesia, legal protection for industrial design is currently regulated through the Industrial Design Law, which states:

*“Industrial Design shall mean a creation on the shape, configuration, or the composition of lines or colours, or lines and colours, or the combination thereof in a three or two dimensional form which gives aesthetic impression and can be realized in a three or two dimensional pattern and used to produce a product, goods or an industrial commodity and a handy craft”.*<sup>35</sup>

In the context of the correlation between Article 1 Number 1 of the Industrial Design Law and knock-off culture, knock-off products in general and K-Pop-inspired outfit knock-offs in particular, can still be categorized as industrial designs because they meet the elements regulated in that article.

Article 1 Number 5 of the Industrial Design Law discusses industrial design rights, which states that:

*“Right to Industrial Design shall mean an exclusive right granted by the State of the Republic of Indonesia to a designer for his creation for a given period to exploit his creation by himself or to give permission to another party to do so”.*

Legal protection for industrial design rights holders plays an important role in realizing justice, order, legal certainty, and utility for industrial design rights holders, so that they can obtain protection. The submitted industrial design must not conflict with applicable laws and regulations, religion, morality, or public order.<sup>36</sup> The protection is granted for a period of 10 years.<sup>37</sup> During that period, the designer or rights holder can file a civil

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<sup>33</sup> Mikhail Muhammad Ashiddiq, Muhamad Amirulloh and Helitha Novianty Muchtar, ‘Perlindungan Desain Industri Terhadap Praktik Peniruan Desain Berdasarkan Kualifikasi Kebaruan Desain Industri’ (2021) 7 PALAR (Pakuan Law Review) 89-108 <<https://doi.org/10.33751/palar.v7i2.3401>>.

<sup>34</sup> Adz-hiya and others (n 32).

<sup>35</sup> Pasal 1 Angka 1 Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri.

<sup>36</sup> Vicaria Lim, ‘Perlindungan Hukum Bagi Pemegang Desain Industri Atas Desain Industri Yang Telah Didaftarkan Menurut Undang-Undang Nomor 31 Tahun 2000 Tentang Desain Industri’ (2022) 1 Jurnal Notarius 153-161.

<sup>37</sup> Pasal 5 Ayat (1) Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri.

lawsuit or criminal prosecution against another party who intentionally and without permission makes, uses, sells, imports, exports, and/or distributes goods protected by the industrial design rights. In relation to knock-off culture, knock-off products in general and K-Pop-inspired outfit knock-offs in particular, have a great potential to violate the exclusive rights held by the original designers. This can be seen from Dahlen's opinion on knock-off fashion. Knock-off fashion is broadly defined as the intentional replication of fashion clothing designs between competing brands, which not only deprives and diminishes the creative uniqueness of the fashion industry but also raises social and environmental issues in society.<sup>38</sup>

In Chapter II of the Industrial Design Law, which discusses the scope of protection, it is stated that those entitled to legal protection for industrial designs are designs that are new in nature. Protection is granted if, on the date of receipt, the design is not identical or does not have similarities with previously disclosed designs. Disclosure in that context refers to the dissemination of information through print media or digital devices, including participation in exhibitions. Prior disclosure refers to the presentation of industrial designs that have been announced or used, both in Indonesia and outside Indonesia, before the filing date or priority date if the application is filed with priority rights.<sup>39</sup>

The provisions in Article 2 of the Industrial Design Law give rise to potential multiple interpretations regarding the definition of "novelty". In Article 2 Paragraph (2), it is stated that an industrial design is considered "new" if, on the date of receipt of the design, it is "not the same" as any prior disclosure. However, the provision does not provide a more detailed explanation regarding the meaning of the term "not the same", thus opening the possibility of differing interpretations of the intended novelty standard.<sup>40</sup> In its implementation, there are two interpretations related to the term "not the same". The first interpretation refers to "not significantly the same", as regulated in Article 25 Paragraph (1) of the TRIPs Agreement. Meanwhile, the second interpretation

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<sup>38</sup> Wang (n 13).

<sup>39</sup> Pasal 2 Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri.

<sup>40</sup> Dewi Sulistianingsih and Bagas Bilowo Nurtyantyono Satata, 'Dilema Dan Problematik Desain Industri Di Indonesia' (2019) 1 Jurnal Suara Hukum 1-14 <<https://doi.org/10.26740/jsh.v1n1.p1-14>>.

defines “not the same” as “not identical” or “not entirely similar”.<sup>41</sup> For example, one of the cases that arose due to the ambiguity of Article 2 Paragraph (2) is the cancellation of the industrial design registration for the STIHL 070 type chainsaw, with registration number ID 0 003 916. The dispute even continued to the level of juridical review (JR).<sup>42</sup> Another relevant case in the fashion industry is the handbag design dispute between PT. Batik Keris Indonesia and Wenny Sulistiowati. PT. Batik Keris Indonesia stated that Wenny Sulistiowati’s handbag design does not have the novelty requirement needed to obtain industrial design rights. The dispute focused on whether a bag had received an industrial design certificate with the number IDD0000035061, issued by the Ministry of Law and Human Rights (Kemenkum HAM). PT Batik Keris Indonesia contested that the design had been created and marketed by Wenny Sulistiowati before the grant of rights was applied for, leading to a conflict of ownership.<sup>43</sup>

The multiple interpretations also influence the existence of knock-off products in the fashion industry, considering that knock-off products often have similar shapes, even approaching identical to the original products. Therefore, a thorough evaluation by the competent authority is necessary to determine the eligibility for granting industrial design rights to knock-off products. The feasibility can be evaluated based on the legal principles underlying the protection of industrial design rights, which include: (1) the principle of publicity; (2) the principle of unity; and (3) the principle of novelty.<sup>44</sup>

a. Principle of publicity

The principle of publicity means that the rights to an industrial design is based on announcement or publication, so that the existence of the right can be known by the general public. Therefore, industrial design rights are granted by the state

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<sup>41</sup> *ibid.*

<sup>42</sup> Putusan Nomor 02/Desain Industri/2004/PN Niaga Jakarta Pusat; Putusan Nomor 025 K/N/HaKI/2004; Putusan Nomor 010/PK/N/HaKI/2005.

<sup>43</sup> Jeane Neltje and others, ‘Tinjauan Hukum Mengenai Sengketa Desain Tas Pt. Batik Keris Indonesia’ (2023) 3 *Jurnal Multilingual* 318-326 <<https://ejournal.penerbitjurnal.com/index.php/multilingual/article/view/561>>.

<sup>44</sup> Wahidur Roychan, ‘Konstruksi Nebis In Idem Terhadap Perlindungan Hak Atas Desain Industri’ (2021) 1 *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial* 44-64 <<https://jurnalpps.uinsa.ac.id/index.php/sosioyustisia/article/view/107>>.

after the design is officially registered and announced in the official state gazette.<sup>45</sup> This distinguishes industrial design rights from copyright, which uses a declarative registration system. In contrast, industrial design rights adopt a constitutive registration system, similar to the mechanism applied to patents. The fulfilment of the publicity principle requires an examination process conducted by the institution responsible for the registration administration.

b. Principle of unity

The principle of unity in industrial design rights states that design protection must encompass the entire components as a whole.<sup>46</sup> For example, if the design in question is a shoe, then protection is granted to the entire shoe design, not just specific parts, such as the outsole or the bottom part of the shoe that comes into direct contact with the ground, unless the design is explicitly intended for the outsole only. The same applies to the design of a one-set outfit consisting of a shirt and vest, where the design protection covers both components as a single unit. However, if the new designer only changes the design of the vest, the first designer cannot claim infringement. Therefore, if the shirt and vest can be separated, then both are considered two separate industrial designs.

c. Principle of novelty

The principle of novelty means that design rights are only granted to designs that possess novelty value. The benchmark for assessing the novelty of a design is if the industrial design submitted for registration does not have substantial similarity or resemblance to any previously existing industrial design.<sup>47</sup>

In Chapter IV regarding Industrial Design Examination, the examination of industrial design rights applications includes two main aspects, namely administrative examination and substantive examination. Administrative examination must

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<sup>45</sup> A Zulkarnain, 'Suatu Kelemahan Perlindungan Hukum Terhadap Desain Industri Di Indonesia' (2024) 6 *UNES Law Review* 8157-8164 <<https://review-unes.com/index.php/law/article/view/1683>>.

<sup>46</sup> Altares Ainun Qadisah and others, 'Penerapan Metode: Amati Tiru Modifikasi Pada Seni Desain Poster Dalam Perspektif Hak Cipta' (2022) 9 *Diponegoro Private Law Review* 35-58 <<https://ejournal2.undip.ac.id/index.php/dplr/article/view/18230>>.

<sup>47</sup> Tengku Mega Rahmadini, Firdaus and Zulfikar Jayakusuma, 'Perlindungan Hukum Hak Pemegang Desain Industri Dikaitkan Dengan Nilai Kebaruan Di Indonesia' (2023) 8 *Journal Equitable* 32-50 <<https://doi.org/10.37859/jeq.v8i1.4326>>.



establish minimum requirements to determine the date of application receipt, as well as the consequences that arise if these requirements are not met. The administrative examination includes the verification of the completeness of the industrial design application. The duration of the administrative examination is aimed to be shortened as much as possible, taking into account the capacity of the Directorate General as the administrative executor and the applicant's ability to fulfil the necessary requirements for the registration of industrial design rights.<sup>48</sup> Meanwhile, the substantive examination refers to the evaluation of the application to assess the proposed novelty aspect, which can be conducted by referring to relevant references.<sup>49</sup>

Substantive examination is conducted to determine whether the application for industrial design registration is accepted or rejected. Based on the provisions of Article 26 Paragraph (5) of the Industrial Design Law, a substantive examination is only conducted if there is an objection from an interested party within three months after the announcement of the industrial design application in the official industrial design news. Thus, a substantive examination of the industrial design is only necessary if there is an objection to the application. If no one files an objection, then a substantive examination will not be conducted.<sup>50</sup> This factor becomes the main cause of problems in the field of industrial design, which ultimately leads to requests for the cancellation of industrial designs due to the lack of substantive examination. Without substantive examination, each industrial design application tends to be accepted and granted an industrial design certificate, without considering whether the submitted design meets the established novelty requirements.<sup>51</sup>

In relation to knock-off products with administrative examination and substantive examination, if the knock-off product submitted for industrial design rights application passes the administrative examination stage and no party raises an objection against the

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<sup>48</sup> Dinda Khofidhotuz Zuhroh and Rakhmita Desmayanti, 'Analisis Yuridis Terhadap Pendaftaran Desain Industri Tanpa Pemeriksaan Substantif Berdasarkan Undang-Undang Desain Industri (Studi Putusan Mahkamah Agung Nomor 594K/PDT.SUS-HKI.2017)' (2019) 1 Reformasi Hukum Trisakti 1-19.

<sup>49</sup> Rizqi Tsaniati Putri, 'Syarat Kebaruan Pada Desain Industri Sebagai Dasar Gugatan Pembatalan Desain Industri' (2022) 1 Dharmasisya: Jurnal Program Magister Hukum FHUI 2111-2128 <<https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/34/>>.

<sup>50</sup> Zuhroh and Desmayanti (n 48).

<sup>51</sup> Putri (n 49).

submitted industrial design, then the applicant or designer of the product will receive the industrial design certificate. However, this condition can have a negative impact, namely the lack of objective oversight by the Directorate General of Intellectual Property (DJKI) regarding the fulfilment of novelty requirements in each submitted industrial design application.<sup>52</sup>

Meanwhile, if there is a party that objects to a knock-off product for which an industrial design application has been submitted, that party has the right to file a lawsuit or resolve the dispute through arbitration mechanisms or other alternative dispute resolution methods, such as negotiation, mediation, conciliation, or other methods agreed upon by the parties in accordance with the applicable laws and regulations.<sup>53</sup> If the dispute resolution through litigation mechanisms is unsuccessful, the aggrieved party may file a criminal complaint as regulated in Chapter XI of the Criminal Provisions Article 54 of the Industrial Design Law:

- (1) *“Any person who deliberately and without rights commits any acts as referred to in Article 9 shall be sentenced to imprisonment of at most 4 (four) years and/or a fine of at most Rp300.000.000,00 (three hundred million rupiahs).*
- (2) *Any person who deliberately commits any acts as referred to in Article 8, Article 23 or Article 32 shall be sentenced to imprisonment of at most 1 (one) year and/or a fine of at most Rp45.000.000,00 (forty five million rupiahs).*
- (3) *The criminal action as referred to in paragraph (1) and (2) shall constitute offence that warrants complaint”.*<sup>54</sup>

In criminal provisions, the principle of complaint-based mechanism is applied, where the investigation process by the Indonesian National Police (POLRI) or the Civil Servant Investigator of Intellectual Property Rights (PPNS HKI) can only be conducted after a report from the holder of industrial design rights who feels harmed of their industrial design rights by another party.<sup>55</sup>

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<sup>52</sup> *ibid.*

<sup>53</sup> Cindy Wahyuni, Nuzul Rahmayani and Jasman Nazar, ‘Perlindungan Hukum Pemegang Hak Desain Industri Berdasarkan Undang-Undang Nomor 31 Tahun 2000’ (2023) 6 *Ensiklopedia of Journal* 280-288 <<https://jurnal.ensiklopediaku.org/ojs-2.4.8-3/index.php/ensiklopedia/article/view/1946/0>>.

<sup>54</sup> Bahasa Indonesia = delik aduan

<sup>55</sup> Happy Yulia Anggraeni and Reni Mardiani, ‘Penerapan Sanksi Pidana Sebagai Bentuk Perlindungan Hukum Terhadap Hak Kekayaan Intelektual Dibidang Desain Industri’ (2023) 13 *Humani (Hukum dan Masyarakat Madani)* 1-14.

## **Conclusion**

Based on the discussion above, it can be concluded that the lack of adequate legal instruments can trigger unhealthy business competition and increase the risk of intellectual property rights violations. The industrial design protection system can actually serve as a guideline for parties intending to produce knock-off products and register their designs with the Directorate General of Intellectual Property (DJKI). However, the provisions in the current Industrial Design Law are still ambiguous and there have been no new amendments. This could create loopholes for the abuse of industrial design rights and complicate the process of protecting original designs.

Based on the above conclusion, the author provides several suggestions: *first*, the government needs to consider drafting new regulations related to industrial design, given that Law Number 31 of 2000 concerning Industrial Designs is quite outdated and less relevant to current developments. *Second*, specific regulations are needed to specifically govern certain industrial design works, including knock-off products. *Third*, parties wishing to use existing product designs are advised to first obtain permission from the original designer or the holder of industrial design rights through a licensing mechanism.

## **Acknowledgments (Optional)**

The author offers all praise and gratitude to Allah SWT, the God, for His blessings and grace, which have enabled the author to complete this scientific article. On this occasion, the author would like to express gratitude to:

1. Mr. Suparno, as the supervising lecturer who has provided guidance in the writing of this article;
2. Mrs. Adissya Mega Christia, as the Head of the Study Program who always provides encouragement and support in completing the final project;
3. Owner @imbyklambee, who has granted permission to include their fashion business products in this article;
4. Owner @every1space, who has also given permission to include his fashion business products in this article.

### **Disclosure Statement**

No potential conflict of interest was reported by the author.

### **Funding**

No funding received for this research

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