

Protecting Industrial Design Rights: A Strategic Tool for Global Market Competitiveness

Intan Fitri Nursalim^{1*}, Karen Amaris¹, Agustianto¹, Suwardi², Indrajaya³

*Corresponding Author: 2251105.intan@uib.ac.id

ABSTRACT

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This study aims to analyze the fundamental role of industrial design rights as a key instrument in creating competitive advantages in international markets, while also examining the effectiveness of its legal protection in the context of global competition. The research employs a normative juridical method with a statute approach. It utilizes secondary data comprising primary legal materials, such as legislation and court decisions, secondary legal materials, including legal literature and academic journals, as well as tertiary legal materials. Through an analysis of concrete cases and regulations related to industrial design rights, the study reveals that legal protection of industrial design serves not only as a defensive instrument but also as a strategic mechanism for fostering innovation and creativity. The findings indicate that the effective implementation of an industrial design rights protection system significantly contributes to creating added value for products, enhancing investments in the development of original designs, and preventing unauthorized imitation practices. This research concludes that strategic and comprehensive management of industrial design rights is a key factor in building and sustaining a company's competitive advantage in international markets.

Keywords: Industrial Design Rights; Competitive Advantage Global Competition; Legal Protection

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¹ Faculty of Law, Universitas Internasional Batam, Indonesia

² Faculty of Law, Universitas Muhammadiyah Kotabumi, Indonesia

³ Faculty of Law, Universitas Muhammadiyah Palembang, Indonesia

INTRODUCTION

The regulation of industrial design serves as a foundation to protect against various infringements in the field, such as piracy, plagiarism, or imitation of industrial designs. Industrial design is a part of intellectual property that safeguards the unique appearance, shape, or ornamentation of a product, making it visually distinct. Intellectual property, in general, protects creations of the mind, including inventions, designs, artistic works, and symbols, ensuring creators' rights and fostering innovation (Disemadi, 2023; Agustianto, Disemadi, Hariyanto & Sihombing, 2024). Furthermore, enacting legislation to govern industrial design stimulates the ongoing creative efforts of designers to produce new designs, thereby driving rapid economic growth in a nation, as outlined in the General Explanation of Indonesia's Industrial Design Law (Khakim et al., 2022). Protecting industrial designs also incentivizes Indonesian talent, rich in traditional artistic value, to hone their skills and creativity in producing innovative designs (Sinaga, 2021).

According to the World Intellectual Property Organization (WIPO), industrial design is a branch of intellectual property, specifically categorized under industrial property, that warrants robust protection due to its reliance solely on the visual form of a product. When consumers purchase a product, their decision is often influenced not only by its functionality or quality but also by its design and aesthetic appeal (Schickl, 2014). Recognizing the obligation to safeguard intellectual property rights, Indonesia has demonstrated awareness by becoming a member of WIPO and signing the TRIPS Agreement, which includes provisions for industrial design protection. For instance, Article 25(1) of the TRIPS Agreement mandates that all WIPO member states ensure the protection of industrial designs.

The current legal reality) and *das sollen* (the ideal legal norms). While Indonesia has enacted various regulations, including Law Number 31 of 2000 on Trade Secret law on Trade Secret law, to safeguard industrial designs, the enforcement and implementation of these laws remain inadequate (Buana, dkk, 2024). Challenges persist, such as piracy and plagiarism, as the mere existence of legal frameworks does not guarantee effective protection. A key issue is the lack of awareness among industry stakeholders regarding the importance of design rights, which

leaves many original designs unregistered and unprotected (Maheswari, dkk, 2021). This skepticism about the efficacy of legal mechanisms discourages designers from registering their work, leading to stagnated innovation and reduced competitiveness in the global market. Despite Indonesia's membership in WIPO and ratification of the TRIPS Agreement, legal protections often fall short of international standards. Many cases of infringement are inconsistently addressed by law enforcement, creating legal uncertainty that undermines innovation and investment (Adz-hiya, dkk, 2022).

Insights from previous studies highlight both progress and gaps in protecting industrial design rights. For example, (Dwiatin, 2016) found that weak enforcement and public awareness remain key obstacles, despite the presence of regulations. (Ashiddiq, dkk, 2021) revealed Indonesia's lag in harmonizing laws with ASEAN standards but did not explore how design rights could enhance global competitiveness. (Gashi, dkk, 2021) examined obligations under international agreements but overlooked their localized impacts. Sabri Fataruba (2019) emphasized the low awareness of design rights among Indonesian designers but failed to propose practical solutions to address this issue. (Syafrinaldi & Hardiogo, 2022) documented widespread legal violations but did not recommend actionable policy improvements. These findings underscore the urgency of strengthening enforcement mechanisms, raising public awareness, and aligning domestic regulations with global standards to foster innovation and bolster Indonesia's position in the global market (Nugraha, 2023).

This study presents a significant innovation in methodological approaches and provides a more in-depth analysis of industrial design rights protection in Indonesia. By integrating normative juridical methods with empirical analysis, it not only examines the legal dimensions but also explores their impact on business practices and innovation. A key novelty lies in its focus on industrial design as a strategic instrument in global competition (Masnun, 2020). Previous research has often emphasized legal aspects without offering a clear analytical framework for leveraging industrial design as a strategic asset for companies in international markets. Employing a comparative analysis approach, this study juxtaposes the protection of industrial design rights in Indonesia with those of other countries, particularly within the ASEAN context (Khakim & Handoko, 2022). This offers new insights into the challenges and opportunities faced by local designers and companies in navigating global competition. Furthermore, the study proposes a

comprehensive framework to optimize the protection of industrial design rights, an endeavor that has not been previously undertaken in academic research (Rifan, 2020).

The contributions of this study are twofold: theoretical and practical. Theoretically, it enhances the understanding of industrial design protection in a global context and introduces a fresh perspective on the importance of innovation in design. It also enriches legal literature by integrating intellectual property protection theories with industrial design practices. Practically, the study provides actionable insights for policymakers and businesses, contributing to the development of legal frameworks and public policies aimed at strengthening industrial design protection (Lim, 2022). Despite its innovative contributions, the study acknowledges several limitations. First, its focus on the Indonesian context may limit the generalizability of findings to countries with different legal systems. Second, data limitations may affect the robustness of the analysis, particularly in measuring the impact of design protection on innovation. Third, the reliance on secondary data may present challenges in terms of currency and relevance.

This study offers significant contributions both theoretically and practically. Theoretically, it enriches the understanding of legal protections for industrial design rights in a global context by highlighting the critical role of innovation and creativity in fostering competitive advantages. The research provides a comprehensive analysis of how protecting industrial designs can encourage investment in the development of original designs while preventing harmful imitation practices. From a practical standpoint, the findings of this study are valuable for policymakers, industry players, and designers. By understanding the importance of effective legal protection, policymakers can formulate more robust and adaptive regulations tailored to the needs of the industry. For industry practitioners, greater awareness of the importance of design registration can enhance their competitiveness in the global market. Furthermore, this study addresses emerging legal challenges, such as the rising number of industrial design infringement cases and the need for regulatory harmonization with international standards.

METHOD

This study employs a normative legal research method (juridical normative) with a statute approach, chosen to examine the principles, systematics, and synchronization of laws related to

the protection of industrial design rights in the context of global competition. This approach allows for an in-depth analysis of theoretical and doctrinal aspects of the legal system, emphasizing the autonomy of law as an institution independent of social systems (Disemadi, 2022). A case approach is employed as the primary method, enabling detailed examination of how legal norms are applied in concrete cases of industrial design infringement. It also facilitates the identification of violation patterns, evaluation of the legal protection system's effectiveness, and a comprehensive understanding of how industrial design norms are interpreted and implemented in business practices and global competition. Data collection relies on secondary data comprising three categories of legal materials: primary materials (legislation, government regulations, and international agreements on industrial design), secondary materials (reference books, journals, research articles, conference proceedings, and policy documents), and tertiary materials (legal dictionaries, encyclopedias, and cumulative indexes). The analysis employs a qualitative method with a systematic approach, beginning with identifying legal issues, gathering relevant materials, and analyzing the application and interpretation of legal norms in specific cases. While qualitative methods provide rich insights, they may be influenced by researcher subjectivity (Tan, 2021). This systematic approach ensures a nuanced understanding of industrial design protection within the framework of global competition.

DISCUSSION AND ANALYSIS

Regulation and Implementation of Legal Protection for Industrial Design Rights in Indonesian Legislation as a Competitive Advantage Instrument in the Global Market

To ensure the legal protection of industrial designs, Indonesia has enacted legislation to safeguard the rights of designers, establish their rights and obligations, and prevent unauthorized parties from exploiting industrial design rights. Beyond demonstrating a commitment to the TRIPS Agreement, the regulation of industrial designs aims to provide an effective framework for combating plagiarism, piracy, or imitation of widely recognized industrial designs (Sabri Fataruba, 2019). By ratifying the TRIPS Agreement and adopting Law No. 7 of 1994 concerning

the Agreement Establishing the World Trade Organization (WTO), Indonesia undertook the obligation to refine and prepare the necessary legal instruments to harmonize national laws with international standards. Law Number 31 of 2000 on Trade Secret law, enacted following Indonesia's ratification of the WTO and TRIPS Agreement, has yet to fully align with TRIPS' primary objective of enhancing the protection of intellectual property rights (Ashiddiq et al., 2021). A key legal obligation for TRIPS member states, including Indonesia, is to enact legislation that provides comprehensive legal protection across all fields of intellectual property rights.

To address the requirements for national legislation, the TRIPS Agreement outlines specific provisions for developing and least-developed countries in Articles 65(2) and 66(1). Article 65(2) states: "Any developing country Member is entitled to delay for a further period of four years from the date of application..." Article 66(1) further provides: "In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period."

These provisions clarify that developing countries had until January 1, 2000, to fulfill their legal obligations under TRIPS, which included a five-year grace period from its enforcement on January 1, 1995. Meanwhile, least-developed countries were granted a ten-year grace period, with compliance required by January 1, 2006. Notably, the full implementation of TRIPS provisions for least-developed countries remains subject to further extensions due to their economic and administrative constraints (Syafrinaldi & Hardiogo, 2021). This nuanced legal landscape highlights the challenges faced by developing and least-developed countries in meeting TRIPS obligations while addressing domestic economic conditions and technological capacities (Putri, 2022).

The legal protection granted to industrial design holders is a fundamental right afforded to every industrial design owner in Indonesia. The country adopts a constitutive system, or the "first-to-file" principle, meaning that the party who first registers the design with the Directorate General of Intellectual Property (DJKI) is recognized as the legitimate and acknowledged owner.

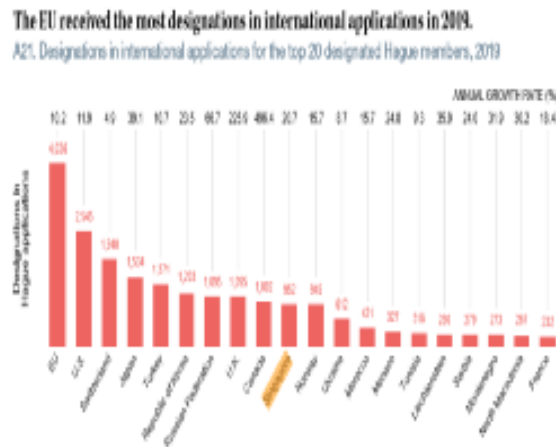
Consequently, protection for an industrial design can only be obtained if the design has been registered. Unregistered designs are not afforded any legal protection, as explicitly stipulated in Article 12 of Law Number 31 of 2000 on Trade Secret law: "The party who first files an application is considered the holder of the industrial design right, unless proven otherwise." According to Article 2 of the Industrial Design Law, protection is granted only to new industrial designs. Specifically, industrial design protection is provided for designs that are new, and a design is considered new if, at the date of its filing, it does not resemble any prior disclosures. From this provision, it is evident that an industrial design is deemed new if, at the date of registration, it does not match any pre-existing designs. Consequently, Law Number 31 of 2000 on Trade Secret law does not emphasize originality but focuses on novelty (Rogomos Simamora & Simona Bustani, 2023).

Industrial design protection is territorially limited, applying only within the country where protection is granted. This principle aligns with the territoriality doctrine under the Paris Convention. For those seeking protection in multiple countries, separate applications must be submitted to each country's intellectual property office. Alternatively, the Hague Agreement Concerning the International Deposit of Industrial Designs (Hague System) simplifies this process. The Hague System facilitates the protection of one or more industrial designs in multiple countries through a single application filed with the International Bureau of WIPO. Under the Hague System, individuals, residents, or businesses established in member countries can apply for industrial design protection across multiple member states using a streamlined process. This involves submitting a single application in English or French, paying a single fee (in Swiss Francs), and filing with either the International Bureau of WIPO or the intellectual property office of a Hague Agreement member country. This system provides significant advantages, allowing design holders to secure protection in several countries with a single application. Moreover, the process typically encounters fewer rejections, as member countries rarely conduct extensive examination of these applications (Indriani, dkk, 2021).

The Hague System, managed by the World Intellectual Property Organization (WIPO), enables applicants to efficiently secure industrial design protection in multiple member states through one international application. This reduces administrative complexity, saving time and costs associated with filing separate applications in each country. Furthermore, the Hague System

offers extended protection periods. While Indonesia's Law Number 31 of 2000 on Trade Secret law provides industrial design protection for 10 years, the Hague System allows protection to extend to 15-20 years, with the option for renewal every five years (Rif'an, 2020). The extended protection period aligns with market demands and provides businesses with greater flexibility to assess the relevance of their designs over time (Faisal Rahendra Lubis, 2020). As of now, several countries have ratified the Hague System. Notably, Singapore has emerged as the ASEAN nation with the highest number of industrial designs protected under the Hague System in 2019 (Serfiyani, 2022). By adopting such frameworks, the Hague System not only fosters innovation but also ensures that businesses can manage their industrial design portfolios effectively on a global scale, enhancing their competitiveness in an increasingly interconnected market.

Figure 1. The Improvement Rate of Industrial Designs registration through the Hague System



Source: <https://www.wipo.int/ipstats/en/>

Based on an in-depth analysis of previous research (Lindati Dwiatin, 2016), several key aspects can be compared and elaborated upon regarding the alignment, differences, and novel contributions of this study. Both this study and the research by Lindati Dwiatin (2016) align in emphasizing the importance of legal protection for industrial designs as a strategic tool in global competition. Both also recognize Indonesia's efforts to establish legislation in the field of industrial design to ensure designers' rights are protected and harmonized with international regulations, particularly the TRIPs Agreement. However, significant differences arise in the focus and approach of the research. This study places greater emphasis on the technical aspects of legal

protection implementation and registration systems, offering an in-depth analysis of TRIPs provisions and the delays in their enforcement. Furthermore, this research provides detailed insights into the Hague System and its implications for industrial design protection in Indonesia. Conversely, Lindati Dwiatin's (2016) research adopts a more comprehensive approach, analyzing industrial design as a strategic asset and offering a broader perspective on competitive advantage, supported by a more systematic research methodology.

In terms of novel contributions, this study makes significant advancements by proposing a new perspective on industrial design as a strategic instrument for competitive advantage. It develops a comprehensive analysis of the effectiveness of the protection system and introduces an analytical framework for optimizing the protection of industrial design rights. This approach facilitates a deeper understanding of how industrial designs can be leveraged as strategic tools in global competition.

Optimizing Industrial Design Rights Protection to Enhance Competitive Advantage in the Global Market

The protection of industrial design rights is a critical component in strengthening a nation's competitiveness, particularly in an era of globalization marked by intense international rivalry. Industrial design encompasses not only the physical appearance of products but also reflects the innovation and creativity that can add significant value. This study aims to identify and formulate strategies for optimizing industrial design rights protection within the context of global competition. By advancing this understanding, industrial design is expected to serve as a strategic tool for enhancing the competitiveness of Indonesian products in the international market. A pivotal step in optimizing the protection of industrial design rights lies in strengthening existing regulations. Indonesia governs industrial design protection through Law Number 31 of 2000 on Trade Secret law, which stipulates that rights to an industrial design are granted exclusively to the first party to register the design. Consequently, more intensive awareness campaigns are essential to emphasize the importance of registration among designers and industry players. Although the "first to file" system ensures legal certainty, many designers are reluctant to register their work due to a lack of understanding about the significance of registration and the perceived complexity of the process (Sabri Fataruba, 2019).

One major challenge is the low awareness among industry players regarding the importance of design rights protection. Research indicates that many designers fail to recognize the potential losses resulting from the infringement of their design rights. Therefore, enhancing legal education and awareness campaigns is vital to encourage designers to actively register their creations (Gashi et al., 2021). For instance, a study by Gashi et al. (2021) revealed that only 30% of designers in Indonesia register their designs, highlighting the urgent need for more intensive educational campaigns about the benefits of legal protection. Additionally, weak enforcement against design rights violations presents another obstacle. This study reinforces the Intellectual Property Rights (IPR) theory, which emphasizes the necessity of robust legal protection to foster innovation and investment (Kitch, 2000). Strengthened enforcement mechanisms and streamlined registration processes are thus imperative to support the broader goal of industrial design rights optimization in Indonesia's global competitiveness agenda.

Effective law enforcement is crucial for ensuring the proper implementation of industrial design rights protection. However, in practice, enforcement remains suboptimal. According to Ashiddiq et al. (2021), numerous cases of industrial design rights violations are not effectively addressed by law enforcement authorities. This creates legal uncertainty, which can hinder investment and innovation. Data from WIPO (2021) indicates that countries with efficient registration systems experience significant growth in design registrations. Hence, adopting a digital-based registration system represents a strategic move for Indonesia to enhance industrial design registrations. Moreover, enhancing the capacity of law enforcement officers and fostering collaboration between the government and private sectors are essential for addressing infringement cases more seriously. Providing alternative dispute resolution mechanisms, such as mediation and arbitration, is critical for building trust among industry players in utilizing their design rights. These mechanisms enable quicker and more cost-effective conflict resolution compared to lengthy and expensive litigation processes (Fitri, 2022).

This study adopts the theory of intellectual property (IP) to examine industrial design rights protection as a strategic instrument for creating a competitive advantage in the global market. The theory encompasses fundamental principles of industrial design rights and offers a framework for understanding how legal protection can stimulate innovation, enhance competitiveness, and safeguard designers' interests. Intellectual property theory emphasizes the

recognition and protection of human intellectual creations and includes several categories such as copyrights, patents, and industrial design rights. Industrial design rights specifically protect the aesthetic aspects of products, adding significant value to businesses. According to WIPO (2021), industrial designs encompass shapes, patterns, or colors that provide a product with aesthetic appeal. The principal objective of intellectual property rights is to incentivize innovation and creativity. Effective protection ensures that designers receive recognition and compensation for their creations, motivating them to continue innovating. Kitch (2000) argues that IP protection serves as a catalyst for investment and the development of new products, thereby contributing to economic growth (Kumala, 2020).

Intellectual property theory is highly relevant to this research as it provides a framework to understand how industrial design rights protection can serve as a tool for achieving competitive advantage. In the context of globalization, companies with robust design protection are better positioned to compete in international markets. Research by Gashi et al. (2021) shows that countries with strong IP protection systems tend to have higher innovation rates, reinforcing the importance of effective enforcement and comprehensive frameworks for industrial design protection.

The harmonization of industrial design protection regulations with international standards, such as the TRIPS Agreement, is crucial. Adopting international agreements like TRIPS and the Hague Agreement ensures comprehensive global protection for industrial designs. Such alignment provides Indonesian designers with better access to protection in other countries (Gashi et al., 2021). As a member of the World Intellectual Property Organization (WIPO), Indonesia is committed to fulfilling its international obligations in protecting intellectual property rights. Enhancing collaboration with other nations in the area of industrial design protection is essential to foster a conducive business environment. This collaboration, involving the exchange of information and best practices, can help Indonesia address existing challenges. For instance, countries that have successfully implemented effective industrial design protection systems can offer valuable insights for Indonesia. The Hague Agreement, for example, allows design owners to secure protection in multiple countries through a single application, simplifying the registration process and boosting the global competitiveness of Indonesian designs. This system benefits design owners by facilitating international protection of their creations.

Innovation and creativity are key drivers of competitive advantage. Effective protection of industrial design rights must encourage designers to innovate and create appealing products. Legal protection provides designers with the confidence to develop new works without fear of infringement (Gashi et al., 2021). This is particularly important in an era where innovation is a cornerstone of industrial development. The government plays a vital role in fostering an innovation-friendly ecosystem. Through support programs such as grants for design research and development, the government can incentivize industry players to actively pursue innovative products. Furthermore, adequate research and development facilities are critical to promoting growth in the industrial design sector. Optimizing industrial design protection in Indonesia is a strategic step toward enhancing global competitiveness. By improving legal education, strengthening law enforcement, harmonizing regulations with international standards, and supporting innovation, Indonesia can create an environment that nurtures creativity and enhances the competitiveness of industry players. Consequently, industrial design protection serves not only as a defensive instrument but also as a crucial driver of innovation in the face of global competition (Safitri, 2022).

CONCLUSION

This study presents critical conclusions regarding the legal protection of industrial design rights in Indonesia within the context of global competition. Although Indonesia has established a formal legal framework through Law Number 31 of 2000 on Trade Secret law on Industrial Designs, its implementation faces significant challenges. The "first-to-file" system adopted by Indonesia provides legal certainty, yet gaps persist between regulations and their practical application, as evidenced by low registration rates and weak enforcement mechanisms. Enhancing the protection of industrial design rights requires strategic measures, including strengthening regulatory implementation, aligning with international standards through the Hague Agreement system, and increasing awareness among industry players. The research reveals that effective protection serves not only as a defensive mechanism but also as a catalyst for innovation and creativity, ultimately contributing to increased competitiveness in the global market. The success of an industrial design protection system hinges on a comprehensive approach encompassing regulatory reinforcement, institutional capacity building, and the development of a supportive innovation ecosystem. By optimizing the protection of industrial

design rights through a holistic and coordinated strategy, Indonesia can significantly enhance its competitive advantage in the global arena.

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