

## **Implementation of the Principle of Novelty in the Registration of Traditional Batik Motifs as Industrial Designs in Indonesia**

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### **Abstract**

One of intellectual property that has legal protection in Indonesia is industrial design. In Indonesia, industrial design is closely related to the handicraft industry. In Indonesia there is already a registration of industrial designs that use handicraft designs such as traditional batik motif designs which are protected by copyright as an expression of traditional culture. This phenomenon is an overlapping and intersecting issue between the fields of copyright and industrial design. For this reason, legal studies are urgently needed to determine whether a traditional cultural expression can have industrial design novelty or not. This article uses a normative juridical approach, in the form of an analysis of legal principles of Indonesia's law which is related to research problems. Based on the research results, traditional batik motifs fulfill the elements of an industrial design that can be registered and protected by the industrial design legal framework in Indonesia. The principle of novelty of industrial design can be implemented to filter the novelty of industrial design in selecting registration of traditional batik motifs as industrial designs. The legal protection of traditional batik motifs based on the Industrial Design Law has not been regulated comprehensively and clearly, the legal protection is only regulated as a disclosure of pre-existing industrial designs. A theoretical approach is needed in applying the articles regarding provisions for checking the novelty and registration of industrial designs related to communal intellectual property using the legal principles and theories that underlie the formation of the Industrial Design Law in Indonesia.

Keywords: Industrial Design, Protection, Traditional Batik Motifs.

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## **INTRODUCTION**

When Indonesia joined the World Trade Organization (WTO) and signed the GATT Uruguay Round Multilateral Agreement in 1994 and then ratified it with Law Number 7 of 1994, Indonesia was required to develop and improve its Intellectual Property law. Intellectual property is an exclusive right obtained by the state to creators, inventors, and designers in terms of their intellectual work (Directorate General of Intellectual Property, 2019). In general,

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intellectual property consists of two parts: the first is Copyright and Related Rights; the second is Industrial Property Rights. Industrial Property Rights consist of Patents, Industrial Designs, Trademarks, Integrated Circuit Layout Designs, Trade Secrets, and Plant Varieties (Nainggolan, 2022). Industrial design is a creation of a shape, configuration, or composition of lines, colors, or a combination of lines and colors that gives an aesthetic impression and can be used to produce goods, industrial commodities, or handicrafts in three or two-dimensional patterns (Article 1 paragraph 1 of Law No. 31 of 2000 concerning Industrial Design). Law No. 31 of 2000 concerning Industrial Design, abbreviated as the Industrial Design Law, is a positive law that provides protection for industrial design (Latif et al., 2024; Putra & Asri, 2023). Unlike industrial countries where industrial design greatly influences the manufacturing industry, in Indonesia, industrial design is closely related to the craft industry because industrial design is included in both the manufacturing and craft industries. This phenomenon often occurs in developing countries. Craft product manufacturers are now not only played by developing countries but also developed countries. The craft product market has grown to the point that craft products have become global trade commodities, and large-scale companies handle their distribution and industry. This symptom has begun to be seen domestically, when a small number of large companies have included craft trade divisions in their professional businesses (Burger et al., 2015). One example of industrial design registration which is a traditional craft abroad is the didgeridoo. There are already several didgeridoos registered in the Australian Industrial Design registration database (Janke, 2018). Another example of a registered traditional craft industrial design is the Louboutin "Paloma" Handbag which was registered on April 18, 2017 with a claim of an ornamental bag design in the image without a pattern, but the final product that was marketed turned out to use a traditional Kente pattern on the bag product that was being sold (Bagley, 2018). In Indonesia, an example of an Industrial Design registration that uses traditional motifs is found in one of the registered Industrial Designs entitled "Batik Cloth" owned by Didi Sunardi with a registration date of October 6, 2016, registration number A002015003188. In the image of the Industrial Design "Batik Cloth" owned by Didi Sunardi which is registered in the Industrial Design database, the registered design contains a traditional batik motif from Cirebon, namely the Mega Mendung batik motif. The practice of registering "Batik Cloth" with registration number A002015003188 shows the practice of transferring traditional designs owned by communal communities into individual designs in

Indonesia (WIPO Global Design Database, 2016). Previously, there was a case of the most famous violation in Indonesia, namely the case of the Crocodile Skin Motif from Bali. PT Karya Tangan Indah, a group company of John Hardy International Ltd from America, in 2008 sued Balinese artist Ketut Deni Aryasa on charges of plagiarizing their Crocodile Skin Motif without permission. John Hardy claimed that his party had the copyright to the design under the name "Batu Kali" because it had been registered by him with the Directorate General of Intellectual Property. Thousands of silver craftsmen in Bali were worried by this case. It is estimated that many more Balinese silver jewelry motifs have been claimed and registered by foreign parties in Indonesia and abroad (Directorate General of Intellectual Property, 2019). Referring to this case, we can compare the potential impacts that would arise if traditional motifs were registered as individual intellectual property and the party registering was a foreign citizen or a party who wanted to monopolize Indonesian culture as individual property.

Traditional batik motifs are included in the examples of fine arts of the intellectual property type Traditional Cultural Expression (EBT) (Minister of Law and Human Rights Regulation Number 13 of 2017). The most important issue in registering traditional batik motifs as industrial designs is actually the novelty of the industrial design which is the main requirement for obtaining industrial design protection. In terms of protecting traditional batik motifs which are traditional cultural expressions protected by industrial design law after being applied to a product, industrial design is still an overlapping and overlapping issue between the fields of intellectual property copyright and industrial design. In addition, another most important issue in registering traditional batik motifs as industrial designs is that there will be a shift in the field of communal intellectual property objects into intellectual property whose ownership is individual and there is an aspect of monopoly by individuals in it. Therefore, a legal study is needed regarding the implementation of the principle of novelty in traditional batik motifs as an industrial design to determine whether a traditional cultural expression can have the novelty of industrial design if registered as an industrial design.

## **RESEARCH METHODS**

The research method approach used in this article is normative juridical, which is a method that examines the legal principles and norms underlying laws and regulations in the field of industrial design (Yulianto Achmad, 2010). This method focuses on normative analysis

of applicable legal regulations, with the aim of examining the consistency and relevance of the law in protecting industrial designs, especially those related to traditional batik motifs in Indonesia (Soekanto & Mamudji, 2014). This study utilizes secondary data, which includes primary legal materials such as laws and government regulations; secondary legal materials in the form of legal literature and previous research results; and tertiary legal materials such as legal dictionaries and encyclopedias. This approach allows the study to evaluate the application of the principle of novelty in industrial design, identify potential conflicts between copyright protection and industrial design, and provide recommendations for improving existing legal regulations.

## **RESULTS AND DISCUSSION**

### **Implementation of the Principle of Novelty in Traditional Batik Motifs Registered as Industrial Designs Based on Law Number 31 of 2000 concerning Industrial Design**

Culture is a valuable asset and must be preserved by every country because it is the cultural identity of the nation that will be passed on to the next generation. Culture itself is defined as a series of holistic values because it comes from holistic ideas. In addition, culture is a collective identity that can increase national pride (Nugraha & Nursyamsu, 2020). One of the nation's cultural assets is batik. Traditional batik motifs are certainly motif designs that are well-known to the public. Its disclosure has even existed long before the Industrial Design Law was formulated. In 2009, UNESCO made Indonesian Batik an Intangible Cultural Heritage and a manifestation of humanity, which shows batik as a cultural wealth and pride of Indonesia. The decision of the Intergovernmental Committee 4.COM 13.44 recognized the existence of batik globally as a world heritage. Indonesian batik has rich symbolism related to social status, cultural heritage, local communities, nature, and history. These aspects form a sense of identity for Indonesians that continues to be a vital part of their lives from beginning to end, while continuing to develop without losing its traditional meaning (Nugraha & Nursyamsu, 2020). The existence of batik is now not only limited to national culture but has spread to become a separate industry in various fields such as textiles and handicrafts, the presence of traditional batik motifs in the industry is a design whose protection is regulated by law, namely the field of industrial design intellectual property.

Basically, intellectual property is an exclusive right obtained from the state to inventors, creators, and designers in terms of their intellectual work. Traditional batik motifs are included as traditional cultural expressions that are included in the field of copyright. Sui generis regulations regarding traditional cultural expressions are contained in Article 38 of the 2014 Copyright Law (Rafianti, 2022). In Indonesia, the definition of "traditional cultural expression" includes one or a combination of forms of expression such as: verbal textual, music, movement including dance, theater such as wayang performances and folk dramas, two-dimensional and three-dimensional fine arts; and traditional ceremonies (Explanation of Article 38 paragraph (1) of the Copyright Law Number 28 of 2014). Copyright is a right that is based on the declarative principle is an exclusive right belonging to the creator and its protection arises automatically (Article 1 paragraph (1) of the Copyright Law Number 28 of 2014). Therefore, copyright arises in line with the real manifestation of a creative idea (Ramli & others, 2021). While industrial design is a right granted by the state to a person or legal entity in the form of the right to create a design or design that can be a configuration of parts, details, or ornamental patterns used for specific purposes in industry. Traditional batik motifs can be protected by two areas of intellectual property, namely copyright or industrial design, and their registration as industrial designs is subject to industrial design laws. The most important difference is that in the field of copyright, traditional batik motifs are protected as communal intellectual property owned by the communal community together and their commercial use must have a permit, while in the field of industrial design they are protected as individual intellectual property owned by individuals and tend to be monopolistic.

Traditional batik motifs in the field of industrial design have two rights, namely moral rights in the form of mentioning the designer's name for his work and economic rights are the rights of the rights holder to gain profit by allowing or prohibiting other parties from offering, selling, making, importing, placing on the market, exporting, or using the industrial design product for application or storing goods for commercial purposes (Soeparman, 2013). Only new industrial designs can be granted industrial design rights. In addition, it is also stated that an industrial design is considered new if on the date of receipt, the industrial design is not the same as a previously existing disclosure (Article 2 paragraphs 1 to 3 of Law Number 31 of 2000 concerning Industrial Design). So far, the category of "not the same" has not been interpreted significantly, meaning that even if there is a small difference, it is considered not the same and

can be considered a new industrial design. If there is a traditional batik motif design that is compared to be completely identical, the design is considered the same as the previously existing disclosure. With such an interpretation, the novelty standards of the Industrial Design Law allow for many conflicts or disputes in the field because the standards are not the same, only to the extent of not being identical (Nugroho et al., 2021). It is undeniable that many modern batik motif designs are born and inspired by traditional motifs so that they most likely have certain similarities to each other. The way to check these similarities is through a substantive examination carried out by an examiner from the Directorate General of Intellectual Property if there is an objection by a party to the application for registration of a traditional batik motif as an industrial design. (Article 26 paragraph 1 to paragraph 3 of Law Number 31 of 2000 concerning Industrial Design).

Of course, with such provisions if there are no objections, there will be no substantive examination of the traditional batik motif registered as an industrial design. In fact, the most basic requirement for registering an industrial design is that the industrial design must be confirmed as new first. Traditional batik motifs are generally applied to textile products, this type of industrial design is regulated in Article 25 (2) TRIPs as a two-dimensional design that must also be protected by design or copyright laws depending on the member country to protect two-dimensional designs through industrial design or copyright laws. Through an industrial approach, of course, batik is more popular as a textile industry commodity that produces industrial design products and is protected by the Industrial Design Law. Industrial Design is a field of Intellectual Property that is closely related to fine arts which are included in creations protected by Copyright. The composition of colors, lines and shapes that give an aesthetic impression are elements found in fine arts and industrial design. Moreover, if an industrial design that is registered has elements of batik motifs. Aesthetic industrial designs that have batik motifs that provide beauty value must be a special concern in the registration of industrial designs and the assessment of their novelty because they are at high risk of containing elements of traditional cultural expression. Because there are no written regulations regarding traditional cultural expression in the Industrial Design Law, a theoretical approach to the principle of industrial design novelty can be a solution in determining the novelty of traditional batik motifs that have not been regulated in writing in formal industrial design law.

From the description of the provisions of the intellectual property law concerning traditional batik motifs and the novelty of industrial designs, it can be concluded that the analysis of how to apply the principle of novelty of the Industrial Design Law to traditional batik motifs registered as industrial designs. The analysis that can be concluded is that substantive examination of the registration of traditional batik motif industrial designs can actually be carried out without any prior objection. The problem with substantive examination in the Indonesian Industrial Design Law is that substantive examination requires objections as the basis for carrying out a substantive examination. In fact, if we return to the principle of novelty of industrial design which is based on the theory of novelty of industrial design according to the TRIPs-WTO agreement, design rights according to the Industrial Design Law can be granted if the design for which registration is requested is a new design. If it is feared that the design is not new, a substantive examination can be carried out without any prior objection.

In addition, due to the application of traditional batik motifs that give an aesthetic impression to a product and the value of industrial commodity products increases, so that protection of traditional batik motifs is certainly part of the object of industrial design law because it has fulfilled the elements of an industrial design which is defined as a creation of shape, composition of lines and colors, or a combination of them in three dimensions or usually two dimensions that give an aesthetic impression and are usually manifested in the form of handicrafts, but can be manifested in the form of other industrial commodities. The aesthetic value given by traditional batik motifs is an aspect of a design that is protected by the Industrial Design Law and is in line with the TRIPs/WTO and WIPO Agreements that traditional batik motifs in the form of handicrafts are also included in an industrial design that can be protected by industrial design law and are classified into the disclosure of previously existing industrial designs. Regarding the registration of traditional batik motifs as industrial designs, one of the legal principles that must be considered is the principle of good faith. Both the industrial design law and its implementing regulations do not require good faith as a condition for registering an industrial design. Only Trademark Law Number 20 of 2016 regulates good faith in the intellectual property law regime (Kusumaningrum & Roisah, 2016).

Good faith in registering traditional batik motifs as industrial designs is very important in determining the granting of commercial permits for the use of traditional cultural expressions, especially individual commercial use such as industrial design registration. Industrial design

registrants must have good faith to pay attention to and implement the requirements for the use of communal intellectual property as industrial designs, namely that the use of traditional cultural expressions must pay attention to the values that live in the community of the bearer (Article 38 paragraph (3) of the Republic of Indonesia Law Number 28 of 2014 concerning Copyright). It is also emphasized that the use of KIK for commercial purposes is carried out by paying attention to the agreed distribution of benefits in accordance with the provisions of laws and regulations (Article 33 paragraph (4) of PP Number 56 of 2022).

### **Legal Protection of Traditional Batik Motifs as Industrial Designs Based on Law Number 31 of 2000 concerning Industrial Designs**

Protection of traditional batik motifs, traditional cultural expressions or communal intellectual property within the framework of the Industrial Design Law does not have an article that positively regulates this in concrete terms. In order to protect communal intellectual property in the field of industrial design in Indonesia, a theoretical approach to existing positive norms is needed in more depth. The existence of communal intellectual property within the framework of the intellectual property law in Indonesia such as the Copyright Law, the Trademark Law and Geographical Indications is an urgency for the Industrial Design Law to follow the development of the existence of communal intellectual property whose protection is greatly needed by the Indonesian communal community whose culture is very rich, especially in the field of traditional handicraft design. This urgency requires industrial design law enforcers to take a theoretical approach in order to rediscover the legal principles that form the basis for the legal protection of industrial design within the framework of Indonesian industrial design law.

Protection of industrial design, especially textile design, is within the copyright framework which usually consists of motifs, paintings, or drawings, which are basically considered works of art that receive protection within the copyright framework. The Industrial Design Law does not have an article that specifically talks about textile design, textile design is treated the same as other industrial designs (Susanti, 2017). Legally, traditional batik motifs are protected by copyright as traditional cultural expressions that are included in the form of fine art, but materially, the elements contained in traditional batik motifs that in practice are commonly and popularly applied in textile designs and fashion industry products, have fulfilled the aspects of a design that can be protected by the industrial design legal framework. It has



been explained previously that the diversity of traditional batik motifs that are very varied and rich provide a gap for industrial design registration examiners to pass registered traditional batik motifs without any objections and prior substantive examination, moreover, there are many traditional batik motifs that are less popular or can only be identified by the custodian of the origin of the traditional batik motif. Therefore, protection of traditional batik motifs in the Industrial Design Law is very important to maintain traditional cultural expressions from exploitation and monopoly but still support the spirit of preservation and creation of traditional crafts in the industrial scope in order to advance the economy and national development.

According to Mochtar Kusumaatmadja's development law theory, good law is law that is in accordance with the living law in society and also reflects the prevailing values of society. "As a means of community renewal" or "as a means of development" are two terms used to describe the role of law in national development, the protection of traditional batik motifs as industrial designs must pay attention to the laws that live in society and not immediately provide legal protection to industrial designs without paying attention to the values of batik designs that live in society (Rasjidi & Putra, 1993). The Industrial Design protection system must also be based on five principles, according to the Pancasila Justice theory: (1) the principle of human welfare, or the principle of humanity; (2) the principle of balance between individual and community interests; (3) the principle of social justice; and (4) the principle of nationalism, or protection of national interests; and (5) the principle of developing IPTEK (science and technology) that is not free of values, or IPTEK based on Pancasila values. So this theory is related to the protection of industrial designs for traditional batik motifs, requiring that its protection must still be limited by Pancasila values.

The five basic principles of industrial design protection according to the Pancasila Justice theory are described through the following description; That the protection of human rights is one form of the principle of human welfare or the principle of humanity. Protection of industrial design ensures that humans live with the resources of creativity, feeling, will, and belief as a basis for acting in accordance with human values. The principle of balancing the interests of individual industrial design registrants and communal society in the Pancasila Justice theory is realized through a regulatory system that rewards the intellectual work of industrial design registrants by granting exclusive rights by continuing to protect the interests of communal society, and these rights may be revoked if the action has a negative impact on communal

society. Then the principle of nationalism can be realized by complying with international agreements on industrial design and continuing to prioritize national interests in protecting industrial design. Furthermore, the principle of social justice is realized through the regulation of an industrial design protection system that balances rights and obligations. This system also balances the love of development and progress to achieve the ideals of a society that is equitable, just, prosperous both materially and spiritually, but remains in line with the noble values of the Indonesian nation.

Although the intellectual property regime of industrial design was born from a capitalist perspective, the implementation of its protection and regulation must uphold the noble values of the Indonesian nation which are dominated by communal culture so as to find a balance between legal certainty and public welfare. Then, the principle of developing traditional batik motif culture related to the protection of industrial design based on Pancasila must pay attention to all values in the principles of divinity, humanity, unity, democracy, and social justice (Wiryomartono, 2016). That way, benefits can be found in the protection of industrial design which can develop the communal intellectual property of traditional batik motifs in the realm of industrial design. Labor Theory is also one of the most appropriate theories for analyzing the legal protection of traditional batik motifs in the field of industrial design. This theory explains the basis for granting property rights as the basis for protecting intellectual property. Labor or the work of a designer deserves to be given an award, especially protection such as economic incentives in this case in the form of industrial design rights in order to motivate, develop and encourage new designs to be born to advance creativity in the field of industrial design.

However, labor theory does not want excessive protection of intellectual property in this case industrial design (Purwandoko & Imanullah, 2017). When associated with traditional batik motifs, labor theory appreciates design work that uses traditional batik motifs in order to create new designs that enrich the creation of industrial designs that exist in society, but not industrial designs that are too common such as a combination of several traditional batik motifs that do not enrich the designs that have been circulating in society. This must be accompanied by the condition "enough and as good left in common for others" and traditional batik motifs that, if used to be registered and protected as industrial designs, do not violate the interests of the

wider community, especially communal communities due to the importance of the values and culture contained therein.

## **CONCLUSION**

The principle of industrial design novelty has been accommodated in the Industrial Design Law in Article 2 of the Industrial Design Law. Traditional batik motifs fulfill the elements of an industrial design that can be registered and protected by the legal framework of industrial design in Indonesia as regulated in Article 1 number 1 of the Industrial Design Law. The principle of industrial design novelty can be implemented to filter the novelty of industrial design in selecting the registration of traditional batik motifs as industrial designs reviewed from the substantive examination of industrial designs, previously existing disclosures and commercial use permits for traditional batik motifs registered as industrial designs. Legal protection of traditional batik motifs based on the Industrial Design Law has not been regulated comprehensively and clearly, its legal protection is regulated as the disclosure of previously existing industrial designs as regulated in Article 2 paragraphs (2) and (3) of the Industrial Design Law. A theoretical approach is needed in applying the articles regarding the provisions for examining the novelty and registration of industrial designs in relation to communal intellectual property using the principles and legal theories underlying the formation of the Industrial Design Law in Indonesia.

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