

Comparison of Indonesian Industrial Design Law with Malaysia Design Law: Protection of Indonesian and Malaysian Industrial Design Laws

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Abstract. The fourth industry focus on individual creativity, skills and talents has the potential to create wealth through exploitation of intellectual creations. Growth has been achieved at 15 percent annually, and the fact that Indonesia's 2020 Gross Domestic Product (GDP) Contribution is estimated to reach IDR 1,100 trillion, referring to data from the Opus Creative Economy Outlook 2020. Indonesia is the third largest country in the world after the US and South Korea, by absorbing a workforce of 17 million people. The minister's task is to organize the ecosystem and regulations to face global competition. This condition can be optimized, so that this industry helps investment. The implementation of intellectual creations is still low, in contrast to developed countries. Legal constructivism paradigm, with a socio-legal research approach to the essence of legislation, analysis using qualitative descriptive methods in the creative industry.

Keywords: Creativity, Industrial Design, National Law

1 Introduction

The spirit of creativity or someone's idea cannot be separated from the Spirit of Entrepreneurship. This spirit is inherent in innovation, which is a spirit with entrepreneurship. Those two words are very easy to implement, but what often happens is how to implement them is difficult. This is made possible by the doubtful attitude of the individual or perhaps because of a lack of confidence (doubt). Basically, everyone has the same opportunity to be able to build or improve a business. However, not everyone dares to take the risk to start immediately. This public doubt is the highest obstacle to being able to start a business or take action to implement the creative ideas that have been built. Life harmonization is created and maintained so that we must behave and behave wisely towards the environment. Wisdom towards the environment can be seen from our behavior towards objects, plants, animals, and whatever is around us, involving the use of our minds so that the treatment can be reflected in the results of our mental activities. The result is that we are treated and treated in an environment called local knowledge or so-called local wisdom.

This local wisdom describes the ways of attitudes and actions to respond to specific changes in the physical and cultural environment. Sometimes some of the people who are still

doubtful about their abilities, including the fields of advertising, architects, arts, crafts, design, fashion, film and video designers, software, music, publishing, software and computer services, is an industry that promising. Former President SBY, in his remarks at the Inauguration of the 2007 Trade Expo Indonesia, specifically conveyed to the Ministry of Trade, Ministry of Law and Human Rights, and business circles that Intellectual Property Rights must be developed, protected in the sense of the importance of effective intellectual property protection. Now the Joko Widodo administration is enthusiastically encouraging the growth of the creative economy, because it has proven that there are many local potentials in the creative industry that can be developed to boost the economy. This potential is being targeted by the Ministry of Villages, Disadvantaged Areas and Transmigration (DPDPT). The ministry, which is led by Marwan Jafar, is trying to grow villages that can become pioneers in the creative economy. Creativity or ideas or aspirations are dreams or shadows that have not yet been realized and have not become a finished product.

Daniel Gilbert (a famous American psychologist) in his book *Stumbling on Happiness* (2006), said that the greatest achievement ever created by the human brain is not a Great Pyramid or Borobudur or others, but the ability to imagine the future. Creative ideas in this case are interpreted as shadows or dreams that have not been realized or have not been done in real time. The ability to imagine events that have never been in the real world, and this ability allows us to think about the future. Daniel Denner, the evolutionist philosopher, says that the human brain is an "anticipation machine", and creating the future is his most monumental achievement. The ability to imagine the future is more than just the ability to predict (predicting), but the main thing is the ability to create possibilities in the future (nexting). The brain's ability to imagine the future, avant-garde scientists managed to realize almost dreamlike ideas. But da Vinci's nexting abilities far exceeded the capabilities of most humans of his time. Neurologically, its ability is supported by neural activity in the frontal lobe area, the forebrain which supports high-level cognitive activities: reasoning, planning, abstracting, and imagining. Although not a few animals have a labus frontalis area in the brain, but in reality, only human frontal labus is evolutionarily capable of developing to its full potential, so as to support high levels of cognitive activity. This fact by Gilbert actually serves as reinforcement of his thesis that the ability to "imagine" (nexting) is owned by all people with normal brain conditions, and even this ability has become a human need. As with the Law of Industrial Design that industrial design is a creation of the shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof which is three-dimensional or two-dimensional which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns. and can be used to produce a product, goods, industrial commodity, or handicraft. Meanwhile, industrial design rights are exclusive rights granted by the Republic of Indonesia to designers for their creations during a certain period of time to carry out their own activities, or to give their consent to other parties to exercise these rights.

Historically, IPR legislation in Indonesia has existed since the 1840s, namely since the colonial government introduced the law on IPR protection in 1844. Reformation Era (1998 - 2009), IPR legal policies implemented by Indonesia: first to continue the political policy on IPR law during the New Order government by adjusting the IPR Law with the TRIPS Agreement. Second, emphasize more on liberal values (individualism) in the Indonesian IPR Law and obscure the values of Pancasila and national development goals as mandated by the 1945 Constitution. Third, efforts to protect national IPR assets, especially Traditional Knowledge, the regulations are still scattered in various IPR regulations, for that we need regulations that explicitly mention traditional knowledge including characteristics, form, interested parties, procedures for its use and compensation. (benefit sharing) to the owner

community. Trip's Agreement recognizes the transfer of technology contained in the opening, the principles and objectives of the agreement, spurring technological discovery, facilitating the spread and transfer of technology while still taking into account the interests of producers whose use is to support social welfare and the balance of rights and obligations (article 7), according to Yang , Lei & Markus, Keith E, too tight IPR regulations can reduce competition and welfare, even based on Article 66.2 of the Trip's Agreement, it is hoped that the presence of foreign capital (direct investment) to developing countries as a technology transfer channel.

So it is necessary to provide legal protection that specifically regulates (*sui generis*) which until now has not been regulated. Fourth, encourage the birth of science and technology from Indonesian citizens and their use for the national interest. Fifth, socializing IPR law and building IPR legal culture, cooperation with various domestic and foreign parties, decentralizing the receipt of IPR registration at the Regional Office of the Ministry of Law and Human Rights in the Provincial Capital (limited as recipients of IPR application documents), based on the decision of the Minister of Justice of the Republic of Indonesia. Number: M.09.Pr.07.06 Year 1999 concerning Appointment of Regional Office of the Ministry of Justice to accept Intellectual Property Rights Application, as amended by Decree of the Minister of Justice of the Republic of Indonesia Number: M.11.Pr.07.06 of 2003 concerning the appointment of the Regional Office of the Ministry of Justice To accept an application for intellectual property rights. Sixth, there is the principle of justice for human benefit or the principle of just and civilized humanity. Seventh, the principle of balancing the interests of individuals and society, in which the implementation of individual rights in social life does not apply absolutely.

The problem that arises is whether the intellectual creations of cultural expressions of Indonesian traditional society have received legal protection within the scope of intellectual property rights as well as other creations? What is the contribution of the community (natives) in realizing the national law of industrial design that can provide community welfare.

As a knife of analysis, it uses a theoretical framework with an empirical sociological approach, where the IPR legal regulation is maximized for the welfare of the community, so that the balance of the exclusive rights of the creator which is intended to stimulate creation and further inventions for the public on their creativity This view is influenced by Jeremy Bentham's Utilitarian theory, a principle of telling everyone to do as much as possible to produce the greatest happiness or enjoyment desired (the greatest happiness for the greatest number). This theory is the philosophy of the Utilitarian theory which defines truth and justice as an action related to a contribution that is more considerate of its end goal. This is in line with the Qur'an, Surat Al-Qasas / 28: 77, which means approx. . . "Where Allah has done good with us and we do not cause damage to the earth, Allah does not like people who do damage." And the Ministry of Religious Affairs Education and Training. Whereas basically the Law was formed to provide benefits and happiness to the majority of individuals in society, so that the arrangement must be able to make the society the greatest happy.

On the other hand, the next theory is "the Law of the non transferability of law or the theory of the work of the legal system by William J. Chambliss and Robert B. Seidman to analyze the inability of the principles of intellectual property law to provide protection for the work of people's cultural expressions".

The development of this small coastal town surrounded by a fort in the form of wood and bamboo has become a fairly large port. In the current era of globalization, there have been dynamic changes and on the other hand there is a tendency for the strengthening of the spirit of regional autonomy to demand a change in the development paradigm that is adaptative to these two poles in an effort to place Jepara Regency into a superior Regency.

Traditional Cultural Expressions are etymologically rooted in three words, tradition, "Expression" the meaning of expressing or clear goals, ideas or feelings. Meanwhile, "culture" is in accordance with the culture in Indonesia. It has its roots in the Sanskrit word "budhayah" which means mind or intellect. In general, culture can be defined as something that is produced by the human mind and intellect to develop and maintain their life in their environment. Meanwhile, traditional cultural expressions (local wisdom) are part of the cultural life of the community as owners. All of these values are respected by traditional societies. Therefore, the Traditional Cultural Expressions (EBT) of certain areas contain several values such as economic, spiritual. On the other hand, culture is a pillar or "pillar of teachers" that can make the community prosperous if it is properly protected.

While EBT according to Article 8 A traditional knowledge, innovation:

Whereas traditional knowledge directly refers to the knowledge, innovation and practice of indigenous and local communities in the world developed from their experiences in the centuries and according to the direct, cultural and environmental traditional knowledge transferred orally from generations. It is a collective that is owned and managed in several forms such as folk tales, folk songs, proverbs, cultural values, faith, rituals, community law, local languages and animal descent.

The rights inherent in creative design include economic morality and nationalism morality, which prioritizes national interests without neglecting global responsibilities. The twin powers of the world, namely competition and cooperation, are developed and maintained in harmony, forming a future harmony. This is the duty and obligation of active economists and creators to realize this culture and local wisdom. Competitivism moves towards and leads with the duty and spirit of cooperativism. We must not be careless for a moment to be aware of the efforts to realize the aspirations of achieving economic independence in Indonesia and the implementation of economic democratization in accordance with the ideology of the people as referred to in Article 33 of the 1945 Indonesian Constitution.

The creative industry is an industry that comes from individual creativity, skills and talents that have the potential to create welfare and jobs through the generation and exploitation of intellectual wealth, which includes the fields of behavior, architects, arts, crafts, design, fashion, film and video designers, software, music, publishing, software and computer services. Data revealed by Tempo Interaktif, in Indonesia, the creative industry grows 15 percent every year. It turns out that the creative economy in Indonesia The contribution of Indonesia's Gross Domestic Product (GDP) in 2020 is estimated to reach IDR 1,100 trillion, referring to data from the Opus Creative Economy Outlook 2020. In fact, Indonesia is the third largest country in the world after the US and South Korea, absorbing 17 workers. million people. In fact, the Minister's acknowledgment of the task of managing ecosystems and regulations to face global competition, he has paid close attention to. His hope is in line with the statement made by SBY in his remarks at the Inauguration of the 2007 Trade Expo Indonesia, stated: "... that SBY specifically conveyed to the Ministry of Trade, Ministry of Law and Human Rights, and business circles ... that intellectual property rights must be developed, we protect ... "because effective intellectual property protection is very important.

2 Methodology

The method used in this research is the legal constructivism paradigm, with the socio-legal research approach to the essence of legislation, empowerment analysis using qualitative descriptive methods in the environment Public community, social analysis in order to identify

character and culture, for analysis to determine the Model of Legal Protection regulation of community cultural expressions aimed at the economic welfare of society.

3 Results and Discussion

The government has a strong commitment to advancing every potential that exists in the region, including the tourism and culture sector, in line with the spirit and principles of implementing regional autonomy, and cannot succeed without the support of the private sector and all components of society. The results of the development efforts carried out can be felt by the community and have an impact on increasing community welfare.

The Head of the Regency Tourism Office (Jepara) gave a convincing appreciation to the public through a guidebook published on "Tourism Objects, Regional Legends and Culture", which is a form of encouragement, support and assistance in empowering the potential of regional tourism, because the legend of a tourist attraction has an attraction and It is hoped that its own value in our cultural dimension will be given the legitimacy of the traditional cultural expressions of the Jepara people, both regionally and centrally through the Dirjenhumham RI which has global dimensions. For example, in Jepara, the old city was once the biggest city as well as a natural, historical and cultural tourism object, which needs to be known by the wider community and the tourism development of Jepara Regency.

The existence and neglected rights of indigenous peoples need to be protected. Actually there are regulated based on Article Although the government pays attention to the protection of PTEBT through its various participation in international forums and through the drafting of the RUU PTEBT, the government does not pay adequate attention to the existence and rights of indigenous peoples, even though there are several laws that provide recognition of indigenous peoples. For example, the explanation for Article 67 paragraph (1) of Law No. 41/1999 concerning Forestry recognizes customary law communities as a community group that fulfills elements including (a) the community is still in the form of an association (*rechtsgemeenschap*); (b) there is an institution in the form of a customary ruler; (c) there is a clear customary law area; (d) there are legal institutions and instruments, especially customary courts, which are still adhered to; and (e) Still collecting forest products in the surrounding forest area to fulfill their daily needs.

The Draft Law on Protection of Indigenous Peoples defines indigenous peoples as groups of people who have lived in certain geographic areas from generation to generation based on their ancestral ties, have rights born from strong relationships with natural resources and have customs, values and identities. a distinctive culture that determines the economic, political, social, and legal institutions that are enforced by customary institutions. Article 18 paragraph (2) of the 1945 Constitution also recognizes indigenous peoples as follows: the state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. Even though there is legislation that recognizes them, in reality the lives of indigenous peoples or communities are often marginalized by reason of economic growth. Even Article 5 of Law no. 41 of 1999 concerning Forestry categorizes customary forest as state forest, which raises the risk of the government being empowered of the state forest or customary forest to private companies holding Forest Concession Rights on the basis of development.

Since the New Order era, the government tends not to respect the rights and culture of indigenous peoples in Indonesia. Based on the policy of unification and modernization, the

Soeharto government applied a resettlement policy to groups of indigenous peoples who are accustomed to living in the forest by moving them to a new place of residence and living environment outside the forest. In the current reform era, both provincial and local governments often converge indigenous peoples' lands and forests into industrial plantation forests and mining areas whose management is given to domestic and foreign investors. As a result, indigenous peoples in Indonesia are rapidly losing their customary lands and traditions due to industrialization.

Although local and state communities can become custodians for Indonesian TKF, it is indigenous peoples who play an important role in the development of TKF in Indonesia. Those who develop local wisdom, ceremonies, arts, quilery, medicine, and folklore, which are unique to them, adapted to the ecosystem environment in which they live. If these indigenous peoples lose their land or forest where they live and can no longer carry out their traditions, Indonesia will also lose their intellectual property and wisdom to understand an ecosystem. This was also expressed by Darrell Posey with the extinction of every indigenous people, the world lost thousands of years of accumulated knowledge about life and how to adapt in tropical ecosystems. This invaluable information disappeared in the blink of an eye.

The principles of law enforcement and protection in development according to Satjipto Rahardjo tend towards "order" towards EBT, so that the government must make policies to legitimize the protection of EBT expansion. The function of law is to provide protection, the law is grown and needed by humans based on the product of human judgment to create a foundation and protect, promote human dignity and enable humans to live a fair life according to their dignity. For example: the Lomban Party. The term Lomban by some Jepara people is mentioned from the word "competitions" which means that the fishermen community at that time had fun carrying out sea competitions which as it is now still held every Lomban party, but there are some who say that the word lomban comes from the word "Forgetting" or having fun. The meaning is to celebrate the victory by having fun after fasting for a whole month of Ramadan. The competition has been going on for more than 1 (one) century, as published in the Kalawarti / Malay-language magazine called "Slomporet Melayu" which was published in Semarang in the second half of the XIX century, the 12th and 17th August 1893 edition which tells about the condition of the race at that time.

The impact of encroachment The Indonesian government must provide an antidote through legitimacy to the traditional cultural expression of the community (EBT) in the form of legal protection by amending the Law expanding the principles of Article 10 of Law Number 19 of 2002 or at least those related to EBT in Jepara Regency, it is obliged to provide protection laws are regional in nature.

In the context of developing culture in its various forms and expressions it is the responsibility of the government for its legal protection. However, matters of cultural development are the responsibility of the state and government officials, but it must also be done by the general public as well. Not only the community as the guardian and developer of culture, but the state has the obligation to guarantee freedom or freedom for all components of society to maintain and develop culture and enjoy cultural results including in maintaining and developing EBT.

Article 28 C paragraphs (1 and 2) of the 1945 Indonesian Constitution states:

Paragraph (1): Every person has the right to develop himself through the fulfillment of his basic needs, the right to education and to benefit from science and technology, art and culture, for the sake of improving the quality of his life and for human welfare. "

Paragraph (2): Every person has the right to advance himself in fighting for his rights collectively to develop his community, nation and state. "In addition to the above provisions,

the state recognizes the existence of indigenous peoples, maintains, maintains EBT and all forms of cultural expressions of indigenous peoples are part of of human rights must be respected by anyone, including the state. This recognition by the state is reflected in Article 18 B paragraph (2): "The state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in law. . " Article 28 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "The cultural identity and rights of traditional communities are respected in line with the times."

Article 6 of Law Number 39 Year 1999 regarding Human Rights reads

"In the context of upholding human rights, differences and needs within the customary law community must be heeded and protected by community and government law. The cultural identity of customary law communities, including protected customary land rights, is in line with the times."

Malaysia has made a number of changes to its industrial design law, including changing the period of protection from 15 years to 25 years, the 2013 industrial design law which came into effect on 1 July 2013 allows industrial design owners to extend their industrial design registration for as long as four extensions of 5 years each, after the protection period of the first 5 years. Another notable change from the 1996 industrial design law is the process of inspecting industrial designs at the Malaysian IP Office. The Malaysian IP Office will use priority rights from abroad as a basis for assessing the novelty of an industrial design.

These changes will bring Malaysia's industrial design law into line with international jurisdiction. Hemingway, partner of the law firm Marks & Clerk LLP in Kuala Lumpur, said that this change effort is a step towards harmonization - where the UK and the European Union have both been protecting industrial designs for 25 years. IPR Consultant Office Christopher Lee & Co, Tracy Wong said that the extension of industrial design protection in Malaysia will provide benefits for entrepreneurs so that they can provide longer protection to their industrial designs, besides that this longer protection of industrial designs can be a collateral tool to request loan to bank. This is in line with the recent transformation of collateral objects for banks such as IPR certificates (specifically for industrial designs) as a requirement to become collateral for collateral for banks required by entrepreneurs to obtain additional business capital loans.

The requirements for assessing the novelty of industrial designs in Malaysia will also be expanded. An industrial design is said to have novelty, if the industrial design has not been disclosed to the public before the priority date of its industrial design application. There has even been an increase in the number of industrial design registrations in Malaysia. Based on recorded data, around 1,800 industrial designs have been registered in Malaysia at the end of last year, while in the same period around the values of local wisdom. Value is something valuable, so it becomes the benchmark in life. Values give meaning in life, thus giving a character to human behavior.

William stated that value is "... What is desirable, good or bad beautiful or ugly". Whereas Light, Keller & Colhoun provide value limits as follows: "Value is general idea that people share about what is good or bad, desirable or undesirable. Value transcend any one particular situation... Value people hold tend to color their overall way of life". Among these values, local wisdom is the culture of the community that has been created by their ancestors and has become a legacy for their children and grandchildren and as a means of controlling community behavior. Values that are considered as a means of social control are also considered religious values which serve as guidelines for human life. Meanwhile, values that

are not in accordance with religious values are considered by the community as those that cannot appreciate values.

The values that are used as the benchmark of local wisdom in society have long evolved in society and the environment and have experienced several generations from generation to generation. With the existence of social changes in society, resulting in local wisdom, it is almost forgotten by today's society and almost forgotten by history in its presence. In the era of the ancestors, local wisdom is formed by the customs and traditions of the community, so that it can be said to be a cultural product. Today, local wisdom is almost unknown to the community and even the world of education today, because local wisdom has been replaced by character education. When viewed from the history of local wisdom, character education has almost the same meaning as local wisdom. Because, local wisdom is not being paid attention to by our education world, so character education is present in the world of education which also consists of values. If examined more deeply, character education is education that teaches positive values, so that these values become personalities in children. Whereas local wisdom is the legacy of our ancestors that teaches positive values as well, to be passed down from generation to generation so that these values can become a means of control in themselves. For more details, let's pay attention to the understanding of local wisdom itself. Etymologically, "wisdom (wisdom) means a person's ability to use his or her mind to respond to an event, object, or situation". Whereas local means events that occur in the area. Local wisdom is positive human thoughts related to nature, the environment that comes from customs, religious values, ancestral advices formed by the surrounding community. This inheritance is used as a means of control in society and has been institutionalized so that it becomes a culture.

Table 1. Recency table in Several Countries

1.	Indonesia	Law Number 31 of 2000	About Industrial Design	Novelty
2.	Japan	Act 125 of 1959	Japanese Design Law	Novelty Creativity
3.	Malaysia	1996	Malaysia Industrial Design Act	Novelty
4.	United Kingdom	1949	United Kingdom Registered Design Act	Novelty Individual Character
5.	Australia	2003	Australian Design Act of Novelty	Khas Distinctive

Table 2. IPR Settings in Several Sountries

	Industrial Design	Copyright	Brand
Settings	Law Number 31 Year 2000 regarding Industrial Design	Law Number 28 of 2014 concerning Copyright	Law Number 20 of 2016 concerning Trademarks and Geographical Indication
Protection period	10 years	Lifetime when the creator is alive, and 70 years when the creator has died	10 years
In terms of protection / scope of protection	Aesthetics, the outer appearance of a product. And requires novelty (novelty)	Science (scientific), literature (literary), and art (art)	As a product differentiator, the protection lies in what is attached to a product

The amendments to the industrial design law in Malaysia will encourage the creativity of small and medium enterprises in Malaysia, so that they can raise their industrial design standards and make Malaysia a developed country. Another minor change in Malaysia's industrial design law is that industrial design rights holders can renew their industrial designs before the expiry date of protection (6 months from the industrial design protection deadline).

The requirements for assessing the novelty of industrial designs in Malaysia will also be expanded. An industrial design is said to have novelty, if the industrial design has not been disclosed to the public before the priority date of its industrial design application. There has even been an increase in the number of industrial design registrations in Malaysia. Based on recorded data, around 1,800 industrial designs were registered in Malaysia at the end of last year, while in the same period around 4,000 industrial designs were registered in the UK and more than 22,500 industrial designs were registered in the European Union.

Global phenomenon:

- a) Currently, the industrial economy has shifted to the Creative Economy, with the growing power of creative ideas. Most of the workforce is now in the service sector, producing abstract products, such as data, software, news, entertainment, advertising, and others. United States and other countries Capital spending on information technology has more than tripled since 1960, from just 10 percent to 35 percent. The era of an economy based on ideas, the potential for success is much greater because ideas are contagious, can spread to a very large population in a very fast time.
- b) Indonesia also has undergone significant changes although there is still a need for strong encouragement from the community and stakeholders to be willing to implement their creative ideas. As an example, Jepara Regency has attempted to identify the intellectual creations of the community within the scope of community local wisdom. This is clear evidence that the community has begun to be serious in efforts to ground local wisdom in the national industrial design law, to prevent the traditional values that underlie the formation of character and national character to fade.
- c) The State of Malaysia has made several amendments to the Industrial Design Law regarding the period of protection of the Industrial Design law and has expanded the scope of protection of its intellectual creations.

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