LEGAL PROTECTION OF PARTICIPANTS IN THE PROCUREMENT OF TECHNICAL EQUIPMENT AGAINST MISUSE OF EQUIPMENT DESIGN

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Abstract

The submission of a procurement request for engineering equipment is, of course, accompanied by a budget plan for the manufacture of the equipment. In practice, many companies that conduct engineering equipment procurement auctions often obtain engineering equipment designs from one tender participant to be used by other tender participants without disclosure. This causes injustice to tender participants whose engineering equipment designs are used without their knowledge or consent. The absence of registration of industrial designs results in no protection of industrial design rights, which can lead to imitation or plagiarism of the design, and there is even the possibility of using the design in the future. Another problem that also arises is that the engineering equipment designed or created is not mass-produced, as it is only produced for specific conditions. The formulation of the problem in this study concerns how to regulate engineering equipment design, how to protect engineering equipment procurement participants from misuse of engineering equipment design, and what solutions are available for addressing misuse of equipment design. The research methodology used was normative research. In Indonesia, industrial design, also known as industrial product design, has been recognized as a distinct entity from copyright. In 2000, a law specifically regulating industrial design was enacted, known as the Industrial Design Law. Additionally, the regulation regarding the layout of integrated circuits is outlined in Law Number 32 of 2000 concerning Integrated Circuit Layout Design. The protection of engineering equipment designs can only be carried out through repressive efforts, both criminally and civilly. This protection is only based on whether the engineering equipment procurement participant has an industrial design certificate. So that the engineering equipment procurement participant firmly owns the legality of the design, solutions that can be taken include: First, the need for preventive legal regulations in the form of obligations from the engineering equipment procurement company with the engineering equipment procurement participant in the form of a written agreement containing an agreement to maintain the confidentiality of information. Second, there is a need for ease in obtaining industrial design certificates by the Directorate General of Intellectual Property Rights. Third, there is a need for supervision and socialization of all business entities participating in the procurement of engineering equipments to prevent the misuse of engineering equipment designs.

Keywords: Legal protection, industrial design, procurement of engineering equipment

INTRODUCTION

The development of technology enables the movement of goods and services from one place to another. In the current situation, everyone is compelled to adapt to the times. In line with the development of the times, the existence of intellectual property rights is also a new phenomenon in the development of the times (Al-maamari, 2023; Atsar, 2019).

Intellectual property rights are rights to the human intellectual ability to create goods or products. This intellectual ability is a proper prerogative of every human being (Nainggolan, 2022; Nuzulah, 2024). The intellectual abilities produced by humans through stages of increasing power and feeling will then be expressed in works, such as designs, brands, logos, and so on. These works have economic value.

The right to intellectual property can be said to be abstract when compared to other rights, such as property rights, especially movable things (Atikah et al., 2022; Savale & Savale, 2016; Wulandari & Junaidi, 2024). In general, intellectual property rights are also rights to intangible objects. One of the intellectual property rights is industrial design rights. Industrial design rights, as exclusive rights, are part of a person's intellectual property, encompassing both material and immaterial aspects.

Article 1 Number (1) of Law Number 31 of 2000 concerning Industrial Design Rights states that industrial design rights are a form of human creativity expressed in the form of a shape, configuration, or composition of lines or colors, or color lines, or a combination of these in three-dimensional or two-dimensional form which gives an aesthetic impression and can be realized in a three-dimensional or two-dimensional pattern and can be used to create a product, industrial commodity or handicraft (Handayani, 2022; Jair, 2023).

The understanding of industrial design rights above indirectly includes several important points regarding industrial design, namely:

1. Industrial design is the result of human creativity
2. Appearing in a certain form, configuration or composition of lines or colors or color lines that are three-dimensional or two-dimensional
3. Can be used to make a product.

Based on the above understanding, the design of an item used in the production process is categorized as industrial design. The existence of industrial design is typically used in the design of a production tool, which is designed to increase the production activities of a mass-produced product (Rahman, 2023; Self, 2011).

The law on industrial design rights also confirms that industrial designs can be protected when they have been registered with the Office of the Directorate General of Intellectual Property Rights. The duration of protection for industrial design rights is 10 years from the date of receipt of the industrial design application received by the Office of the Directorate General of Intellectual Property Rights.

Production activities require significant funding to acquire production equipment. In terms of providing important sources of funds, not all companies can meet them. Companies often seek alternative solutions, such as holding auctions for the manufacture of engineering equipment that supports production activities (Mahira, D. F., & Karjoko, 2024; Spedicato, 2023).

The procurement auction for the manufacture of engineering equipment, commonly referred to as the tender for the procurement of engineering equipment, is often carried out either openly or closed, involving CVs and PTs that specialize in the procurement of engineering equipment. The owners of business entities engaged in the procurement of engineering equipment certainly strive to create a design for equipment according to the needs of the tendering company.

The submission of a procurement plan for engineering equipment is, of course, accompanied by a budget plan for the manufacture of the equipment. In practice, many companies that conduct engineering equipment procurement auctions often obtain engineering equipment designs from one tender participant to be used by other tender participants without disclosure. This, of course, causes injustice to tender participants whose engineering equipment designs are used without their knowledge or consent.

The actions of the tendering company often occur, resulting in a lack of trust among tender participants in providing their tool designs, especially since there is no agreement between the tenderer and tender participants regarding industrial design protection.

The absence of registration for industrial designs results in the absence of protection for industrial design rights, which can lead to imitation or plagiarism of the design and even the possibility of using it in the future. Another problem that also arises is that the engineering equipment designed or created is not a mass-produced one, as it is only produced for specific conditions.

Therefore, the author is interested in researching "Legal Protection of Participants in the Procurement of Engineering Equipment Manufacturing Against Misuse of Equipment Design."

From the research background above, the author puts forward several main problems in this writing as follows: What are the regulations regarding engineering equipment design? How is the legal protection for participants in the procurement of engineering equipment against misuse of equipment design? What is the solution to the misuse of tool design?

RESEARCH METHOD

Research is a stage in science that is used to test whether the science can be said to be a science or not (Bambang, 2015; Febriana, 2020; Mokoginta, 2017). In other words, it is necessary to test the knowledge through research. The type of research used by the author was normative legal research with a statutory approach. The normative approach was employed to analyze the laws and regulations governing the design of engineering equipments and the legal protection afforded to procurement participants. Data sources were obtained from legal literature, official documents, and relevant regulations.

This normative legal research involves collecting legal materials in the form of secondary data. Secondary data is data obtained through document studies of library materials, namely:

1. Primary legal materials, namely legal regulations relating to the procurement of engineering equipment, rights to industrial designs, and other rules relevant to this research.
2. Secondary legal materials, namely materials that provide explanations regarding primary legal materials, such as scientific journals, results of seminars or other scientific meetings, and even personal documents or opinions from legal experts as long as they are relevant to the object of this research.
3. Tertiary legal materials, which include supporting legal materials, provide guidance and explanations for primary and secondary legal materials, such as legal dictionaries.

Data collection had a close relationship with data sources because it enables the collection of data needed for further analysis, as per the expected requirements. Regarding this, the author employs the library data collection method in this study *(library research)*.

Secondary data is obtained through library or literature studies. Secondary data includes:

1. Primary Legal Materials, which are binding legal materials in the form of statutory regulations and court decisions, including:

a. Civil Code
b. Law Number 31 of 2000 concerning Rights to Industrial Designs.
c. Law Number 8 of 2014 concerning Copyright.

2. Secondary Legal Materials

Secondary legal materials are legal materials that provide explanations regarding primary legal materials as contained in bibliographic collections that serve as support for primary legal materials, which consist of:

a. Books;
b. Journals;
c. Magazines;
d. Article-article media;
e. And various other writings.

3. Tertiary Legal Materials

Tertiary legal materials are legal materials that provide guidance or explanations for primary legal materials and secondary legal materials in the form of the Legal Dictionary and the Indonesian Language Dictionary.

Data analysis was conducted by categorizing the information obtained based on the central issues that had been determined. The collected data was then analyzed thematically to identify emerging patterns related to procurement arrangements, legal protection, and solutions to misuse of tool design. This method is expected to provide a clear picture of the actual conditions and potential improvements needed in the procurement system.

RESULTS AND DISCUSSION

Regulations Regarding the Design of Engineering Equipments

The design of an engineering equipment falls within the category of industrial design. In Article 1 paragraph (1) of Law Number 31 of 2000 concerning Industrial Design (Industrial Design Law), there is an explanation stating that: "Industrial Design is a work related to the form, configuration, or composition

of lines or colors, or a combination of both in three-dimensional or two-dimensional form that gives an aesthetic impression and can be realized in a three-dimensional or two-dimensional pattern, and can be used to produce a product, goods, industrial commodities, or handicrafts."

Furthermore, in Article 1 paragraph (5) of the Industrial Design Law, it is stated that Industrial Design Rights are exclusive rights granted by the Republic of Indonesia to the creator of a design for the results of his creation for a specific period, which enables the creator to exercise his rights independently or grant permission to another party to exercise them.

Industrial design rights are rights granted to individuals or legal entities for design works that regulate certain elements or details, as well as ornamental patterns intended for specific purposes related to and used in Industry. The provisions of the law govern the regulation of these rights.

In Indonesia, industrial design, also known as industrial product design, has been recognized as a separate entity from copyright. For decades, the regulation of industrial design rights has not been stated in a specific and comprehensive law. Instead, it remains part of the general industrial regulations, as outlined in Law Number 5 of 1984 concerning Industry. Provisions regarding industrial design are contained in a single chapter, which includes several articles. However, in 2000, a law specifically regulating industrial design was issued, known as the Industrial Design Law. Additionally, regulations regarding the layout of integrated circuits are outlined in Law Number 32 of 2000 concerning Integrated Circuit Layout Design.

Legal Protection Against Misuse of Engineering Equipment Design

The manufacture of engineering equipments is carried out to fulfill the needs of facilities by the procurer. Private parties or non-private parties can provide the procurement of this tool's manufacture. This study focuses on the procurement of engineering equipments manufactured by the private sector, particularly by companies. The need for this engineering equipment gives rise to a causal relationship between the procurer and the procurement participants.

The manufacture of this engineering equipment is formed in the tender for procurement of engineering equipments. The tender is a stage used to select the provision of engineering equipments and construction work. A tender is a formal invitation made by a company to contractors to submit offers for the manufacture of engineering equipments they need (Mariyati, 2018; Simarmata & Firah, 2023; Wardhana et al., 2021). The definition of tender, according to Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, is an offer for a job, either in the form of a contract or in the form of providing goods or services. A tender can be interpreted as an offer made to obtain work that involves producing goods or services.

Tenders are divided into two types: open tenders and limited tenders. Open tenders are a form of procurement of goods and services that are carried out openly through widespread announcements in the mass media. Limited tenders are a form of procurement of goods or services that are carried out among a limited number of procurement participants who are believed to be capable of performing the work offered.

Tenders for the procurement of goods and services are usually accompanied by the manufacture of goods that are initially designed to meet the specifications of the goods. The design of the goods to be manufactured must also be accompanied by a detailed budget for their production, along with the specifications of the materials used in their manufacture. The design of the goods is categorized as industrial design.

Industrial design is a creative process that involves the arrangement of shapes, configurations, line combinations, colors, or combinations of lines and colors applied to three-dimensional or two-dimensional forms. The design can create an aesthetic impression that must be implemented in either a three-dimensional or two-dimensional form to develop industrial products, goods, commodities, or handicrafts. The protection of industrial designs is regulated in the Industrial Design Law (Nainggolan, 2022).

The distinctive characteristic of technical equipment design lies in its non-mass-produced and project-specific nature, which differentiates it from conventional industrial designs. Industrial Design Law in Indonesia primarily protects designs that are applied to industrial commodities capable of being produced repeatedly on a large scale. However, technical equipment is usually developed to meet specific operational requirements, environmental conditions, or engineering challenges in a particular project. Such designs often have a functional and situational uniqueness that makes them incompatible with the general framework of industrial design protection intended for standardized, aesthetic-oriented products.

Because of this uniqueness, technical equipment designs possess a **sui generis** nature — a special category of creation that does not fully fit within the traditional boundaries of intellectual property rights such as industrial design or copyright. The sui generis concept recognizes that certain innovations deserve their own distinctive legal framework due to their hybrid character: they combine functional utility, engineering creativity, and contextual adaptation. Consequently, the protection mechanism for these designs should not depend solely on the rigid, lengthy, and costly industrial design registration process, which was originally structured for mass-produced commodities.

Engineering equipment design in engineering equipment procurement is often misused by companies that procure engineering equipments. The misuse of the design is discovered after the tender ends. The mode frequently used to misuse the engineering design is by conducting a limited tender. The engineering equipment procurement company then selects the engineering equipment design that best meets their needs and subsequently uses this design to inform other participants who win the tender.

This misuse is often done because there is no agreement between the procurement participants and the company procuring the equipment. The agreement between the two parties is usually referred to as an agreement to maintain the confidentiality of information (*Non-Disclosure Agreement*). The agreement serves to protect sensitive information. In addition to the absence of the agreement, the failure to register the design of the engineering equipment is also another reason.

Preventive legal protection for technical equipment design can be effectively implemented through the mandatory use of a Non-Disclosure Agreement (NDA) in every procurement process involving the submission of design proposals. An NDA serves as a legal instrument that binds the procuring entity and the tender participant to maintain the confidentiality of design information shared during the bidding stage. This preventive measure aims to close the legal gap that currently exists in Indonesia, where there is no explicit regulation requiring confidentiality agreements in the procurement of technical equipment. Without such agreements, participants face a high risk of unauthorized disclosure or reproduction of their designs by competing entities.

To ensure legal certainty and enforceability, the obligation to include NDAs in procurement activities should be anchored in a formal regulatory framework. This requirement could be stipulated in a Presidential Regulation governing national goods and services procurement, or further operationalized through a Ministerial Decree issued by the Ministry of Industry or the National Public Procurement Agency (LKPP). These instruments would establish NDAs as a standard compliance requirement within tender documentation, ensuring that all submitted designs remain confidential and that any breach of confidentiality could lead to administrative sanctions, civil liability, or even criminal penalties under intellectual property law. Such legal codification would strengthen preventive mechanisms and align Indonesia's procurement practices with international standards on design protection and trade secrecy.

The design of engineering equipments is indeed protected under the Industrial Design Law, but this form of protection is only for engineering equipment designs registered with the Directorate General of Intellectual Property Rights. Legal protection itself is a form of protection for the rights, interests and security of a person or group by using available legal instruments, both preventively and repressively (Hadjon, P. M., & Indonesia, 1987).

Repressive legal protection of engineering equipment designs is regulated in the Industrial Design Law, which explicitly provides sanctions in the form of a maximum of 5 years imprisonment and a maximum fine of Rp. 2,000,000,000 (Two Billion Rupiah). In addition, acts of violating the Industrial Design Law can also be subject to civil sanctions, including compensation and termination of the violation. In many aspects, this certainly cannot be applied immediately. In criminal terms, the offense applied is a complaint offense, which means that the design owner must first file a complaint before it can be processed.

Preventive legal protection for engineering equipment designs is not available as a means to prevent violations of industrial design rights. This is because no law requires every party conducting a tender to make a confidentiality agreement or facilitate access for engineering equipment procurement participants to register their tool designs. Registration of industrial designs for tools takes 8 months from registration to issuance of industrial design certificates.

Protection of engineering equipment designs can only be done through repressive efforts, both criminally and civilly. Such protection is based solely on the procurement participants of engineering equipments holding an industrial design certificate, ensuring the legality of the design is firmly in the hands of the procurement participants of engineering equipments.

Solutions to Misuse of Engineering Equipment Design

The large number of misuses of engineering equipment designs is due to several factors, including the absence of legal regulations that regulate preventive measures against the misuse of engineering equipment designs, as well as the lengthy time required to issue industrial design certificates. For these problems, several solutions are needed, including:

First, there is a need for preventive legal regulations in the form of obligations from the procurement company for the manufacture of engineering equipment, as well as from participants in the procurement process, in the form of a written agreement containing an agreement to maintain the confidentiality of information. The agreement to maintain the confidentiality of information must be regulated both in the Presidential Regulation and the relevant Ministerial Decree.

Second, there is a need for ease in obtaining industrial design certificates by the Directorate General of Intellectual Property Rights. The ease of registering industrial design certificates is intended to ensure the legality of industrial designs, primarily when the industrial design is intended for producing products in small quantities.

Third, there is a need for supervision and outreach to all business entities participating in the procurement of engineering equipment to prevent the misuse of engineering equipment designs.

CONCLUSION

In Indonesia, industrial design, also known as industrial product design, has been recognized as a separate entity from copyright. In 2000, a law specifically regulating industrial design was enacted, known as the Industrial Design Law. Additionally, regulations regarding the layout of integrated circuits are outlined in Law Number 32 of 2000 concerning Integrated Circuit Layout Design.

Protection of engineering equipment designs can only be done through repressive efforts, both criminally and civilly. Such protection is based solely on the procurement participants of engineering equipments holding an industrial design certificate, ensuring the legality of the design is firmly in the hands of the procurement participants of engineering equipments.

Solutions that can be implemented include: First, the need for preventive legal regulations in the form of obligations from companies procuring the manufacture of engineering equipment, as well as from participants in the procurement process, in the form of a written agreement containing an agreement to maintain the confidentiality of information. Second, there is a need for ease in obtaining industrial design certificates by the Directorate General of Intellectual Property Rights. Third, there is a need for supervision and socialization of all business entities participating in the procurement of engineering equipment to prevent the misuse of engineering equipment designs.

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