

Comparison of Regulatory Substantive Examination of Industrial Design in Food Packaging Drawings: An Indonesian and Japanese Study

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Abstract

Protection of industrial designs for food packaging is vital to preserve originality and legal certainty. In Indonesia, substantive examination remains reactive triggered only by third-party objections during the publication period creating potential uncertainty, as seen in the red ginger drink packaging dispute between PT Aneka Boga Citra and PT Total Asri Sumber Alam. In contrast, Japan applies a full examination from the outset to assess novelty and originality. Using a normative juridical method (comparative approach and case studies), this study finds that full examination effectively strengthens protection and prevents disputes. This research recommends that Indonesia must adopt a Hybrid Substantive Examination Model combining rigorous expert review with AI technology.

Keywords : Industrial Design, substantive examination, comparative law.

A. Introduction

Modernization occurs in various aspects of life, including the food industry. Innovations in the food industry are also growing, where the marketing aspect in the food industry is getting more creative and consumer protection efforts are growing. The development of consumer protection efforts is based on the fact that the certainty of consumer protection is something that is highly expected by the public in protecting their rights.¹ This is because regulations regarding food products are becoming increasingly important to ensure that every product circulating in the community is safe and in accordance with applicable standards. According to Article 1 paragraph (1) of Law Number 18 of 2012 concerning Food, food is defined as anything that comes from biological sources, whether processed or not, intended for human consumption, as well as additional foodstuffs, raw materials, and other materials used to produce food or beverages.² In its distribution, food products require packaging as a container or protector, whether they are in direct contact with the product

¹ Kusumo, Suryo Hadi, Muthia Sakti, and Dwi Aryanti Ramadhani. "Consumer Protection against the Naming of Contemporary Coffee Menus Using Khamr Variant Names." *Canon Journal of Law* 22, no. 3 (2020): 477–492.

² Law Number 18 of 2012 concerning Food

or not.

Food packaging itself has an important role in the food industry, especially for products with certain characteristics. Its function is not only to be used to protect the contents of the food product, but also to have a role as a means of information about the food product to consumers.³ Food products that require packaging are generally food or beverages that are perishable, susceptible to contamination, require clear product information, have a certain shelf life, and require packaging to facilitate the distribution and consumption of these food products. Therefore, packaging not only functions as a protector, but also as an information medium that provides legal certainty to consumers regarding the content, safety, and quality of the products consumed. The information conveyed is in the form of food labels which can be in the form of pictures, writings, combinations of writings and drawings, or other forms of conveying information included in food by entering, pasting or parts on the food packaging.⁴

Food product packaging not only functions as a container or protector, but is also one of the marketing strategies used by manufacturers to attract consumer attention. Attractive packaging design, with a combination of pictures, writing, and striking colors, is a factor that affects the attractiveness of a product in the market.⁵ One of the important elements of packaging design is the inclusion of product images, which not only serve as a visual attraction but also as a source of information for consumers regarding the shape, content, or composition of the product.⁶ With that, this food label also serves to make it easier for consumers to choose food products according to the needs of the consumers themselves.⁷ In using a visualization, an image used in the packaging of food products itself has legal implications from Law Number 31 of 2000 concerning Industrial Design. Where in Article 1 of Law Number 31 of 2000, industrial design is defined as the result of creations in the form of configurations, lines or colors, either separately or combined, which are expressed in the form of two dimensions or three dimensions. These creations display aesthetic value and can be realized in certain patterns so that they can be applied to products, industrial goods, and handicrafts.⁸ By registering food packaging design in industrial design, business actors have legal protection for their food packaging.

Industrial design regulation has an important role in protecting and encouraging

³ Hermawan Seftiono, Abraham Wong, and Irfan Indra Gunawan. "Online Food Packaging Regulation Assistance for MSMEs in Bali Provincial Tourism Villages," *Transformative: Journal of Community Service* 3, no. 1 (June 2022): 13–22.

⁴ Regulation of the Food and Drug Supervisory Agency Number 1 of 2022 concerning Claims Supervision on Labels and Advertisements of Processed Foods.

⁵ Bomlal Pandey. "Impact of Packaging Factors on Consumer Purchase Decision of Energy Drinks in Nepal," *Dibyajyoti Journal* 6, no. 1 (2024): 19–34.

⁶ Wijayanti. "Evaluation of the Suitability of the Requirements for the Label of Mackerel Fish Crackers Circulating in Several Retailers in Semarang City and Consumer Perspectives on Product Labels" (Thesis, Soegijapranata Catholic University Semarang, 2021)

⁷ Tarina, Dwi Desi Yayi, Sylvana Murni Deborah Hutabarat, and Muthia Sakti. "Implementation of labeling standards for food packaging products in Indonesia." *International Journals of Multicultural and Multireligious Understanding* 6, no. 7 (2019).

⁸ Law Number 31 of 2000 concerning Industrial Design

innovation in food packaging.⁹ Every industrial design submitted to the Director General of Intellectual Property (DJKI) as a government institution responsible for the process of registering industrial design rights in Indonesia in its registration must meet the requirements of novelty and innovation, then it can be interpreted that an industrial design must have new elements and be different from the existing design. This design novelty assessment is carried out by comparing the appearance between the two industrial designs to determine whether the registered design contains novelty.¹⁰ In this requirement, it is ensured that only works that are truly original and provide added value to the market can be legally protected.

From the data provided by the Directorate General of Intellectual Property, Indonesia is the country with the largest increase in national industrial design applications in the world, which in 2022 DJKI recorded 4,875 industrial design applications with details of 3,533 domestic applications and 1,341 foreign applications. In 2023, this application increased to 6,326 applications with details of 4,850 applications from within the country and 1,476 from abroad. This trend continues to increase in 2024, where in 2024 the total number of industrial design applications will be 7,926 applications.¹¹

If you look at this data, it can be concluded that more and more business actors and individuals are aware of the protection of an industrial design right. Thus, the industrial design registration process is an important mechanism to strengthen business competitiveness and support technological developments and creativity in food packaging. The phenomenon of increasing the number of applications should be a warning alarm for Indonesia to ensure that the industrial design registration mechanism runs effectively. If the systematics of industrial design registration in Indonesia are not effective, the large number of registrations can actually turn around causing new legal problems in the form of disputes and legal uncertainty for business actors.

However, unfortunately, in the registration system of an industrial design in Indonesia itself, a registration system is used that only checks the formalities and physicality of the completeness of the application. Proof of the existence of a novelty in industrial design is not substantively examined in fulfilling these requirements. In practice, in Indonesia, testing the novelty of an industrial design is only carried out if there is a lawsuit from other parties. With this, Indonesia itself will only carry out a substantive test that depends on the objection mechanism from interested parties. This has implications by seeing. Based on Law Number 31 of 2000 concerning Industrial Design in Article 29 states that substantive examination

⁹ Sari, Putri Permata, Faiz Husni Abillah, and Qisthi Fauziyyah Sugianto. "The Complexity of Industrial Design Protection in Indonesia: Between Innovation, Novelty, and Challenges in Intellectual Property Law." *Journal of Nusantara Law* 1, no. 3 (2025): 305-313.

¹⁰ Mikhail Muhammad Ashiddiq, "Industrial Design Protection against Design Imitation Practices based on Industrial Design Novelty Qualifications," *PALAR / PAKUAN LAW REVIEW* 7, no. 2 (2021): 89-108.

¹¹ Directorate General of Intellectual Property (DJKI), "Indonesia Records the Largest Increase in National Industrial Design Applications in the World," accessed from <https://dgip.go.id/index.php/artikel/detail-artikel-berita/indonesia-catatkan-peningkatan-permohonan-desain-industri-nasional-terbesar-di-dunia?kategori=pengumuman>, accessed on September 17, 2025.

can only be carried out with the objection of other parties. If no objection is submitted, then the Directorate General of Intellectual Property (DJKI) is obliged to issue an industrial design certificate without conducting an in-depth examination of the novelty aspect.

This practice creates a gap in Indonesia's industrial design protection system, this is because industrial designs that actually do not meet the requirements for novelty can still obtain industrial design rights certificates. As a result, many industrial designs that are not completely new can still be registered and receive legal protection. This system is different from other countries that implement mandatory substantive checks for every application for industrial design registration. If at the initial stage of registration of an industrial design it has been revealed that the industrial design does not meet the requirements for novelty, then the industrial design will not get a right to industrial design protection.

The weakness of the substantive examination system that is carried out after there is a lawsuit from other parties is only revealed when there is a dispute in the future, where the aggrieved party can file a lawsuit for cancellation on the grounds that the registered industrial design does not have novelty as required in Article 2 of the Industrial Design Law. The legal uncertainty that arises results in a considerable risk of financial loss if the design that is considered original turns out to be an imitation after going through a legal dispute process in the future. A clear example of this problem is the industrial design dispute between PT Aneka Boga Citra and PT Total Asri Sumber Alam regarding the packaging of red ginger instant drinks contained in decision No. 583K/Pdt.SUS-HKI/2021.

In the case of this decision, PT Total Asri Sumber Alam filed a cassation lawsuit against PT Aneka Boga Citra because it was considered to have registered the same red ginger beverage packaging design as PT Total Asri Sumber Alam's. PT Aneka Boga Citra itself has registered the packaging design on March 12, 2014 with the number IDD000040082 with the title "PACKAGING". Meanwhile, PT Total Asri Sumber Alam has already registered its packaging design.¹² From this dispute, it can be seen that the design that has received industrial design rights has only been proven to have no element of novelty due to a dispute lawsuit in the future. This decision indicates that the substantive examination system actually only works effectively when there is a lawsuit, not at the beginning of the registration period.

Japan, which is also a country that uses the same civil law system as Indonesia, also codifies the law comprehensively. Both provide legal protection for intellectual property rights with codified legal arrangements. In addition, Japan is one of the WTO member countries that also ratifies TRIPS. As a developed country bound by the TRIPS Agreement since the beginning of the WTO, Japan has an obligation to provide effective and adequate protection of intellectual property rights in accordance with the minimum standards set out in TRIPS. The TRIPS Agreement emphasizes the importance of effective and adequate protection of intellectual property rights and the public policy objectives of the national

¹² Supreme Court of the Republic of Indonesia, *Decision Number 583 K/Pdt.Sus-HKI/2021 concerning Industrial Design Disputes between PT Aneka Boga Citra and PT Total Asri Sumber Alam*

system for the protection of intellectual property, including development and technological objectives. Japan's ¹³ commitment to TRIPS is reflected in the implementation of a strict substantive vetting system to ensure that only designs that meet substantive requirements are legally protected

In contrast, Japan, which is a developed country, has implemented a strict substantive vetting mechanism since the beginning of the industrial design registration process.¹⁴ The substantive examination mechanism is implemented in Japan's *full examination*, where every industrial design application must pass a thorough examination stage to ensure that the registered design is completely new and original in accordance with the requirements of novelty. It can be said that Japan is better able to guarantee the novelty of a registered industrial design. This substantive examination includes verification of the technical and aesthetic aspects of the design to avoid any duplication or similarity to the previously listed design. Thus, Japan in practice provides stronger legal certainty to every owner of industrial design, as exclusive rights and legal protection are only granted to designs that have gone through a rigorous and substantially valid selection process .

Based on previous relevant research on substantive checks in industrial design registration in Indonesia. There is a study written by Kiki Firmantoro (2024) that offers a revision of Article 26 of the Industrial Design Law so that substantive checks are carried out at the beginning to prevent the registration of unoriginal designs and reduce legal disputes.¹⁵ On the other hand, Taria Hasna Setyawulandari et al. (2024) emphasize more on the importation of substantive examinations at the beginning and increasing competence for examining officials so that the results of the research in question are more comprehensive.¹⁶ In contrast to the research that the author writes, which overcomes these limitations through a comparative and normative approach by providing an explanation of the legal implications in the case of food packaging and focusing on the analysis of the Japanese system and its possible application in Indonesia. This research is expected to provide scientific benefits in the form of more effective legislative and institutional policy models and present legal updates in the industrial design registration system to strengthen legal protection and increase certainty in the protection of national intellectual property.

Based on this, this study aims to answer the following questions, namely how the systematics of substantive checks in the regulation of industrial design registration on food packaging in Indonesia and the comparison of the systematics of substantive checks between Indonesia and Japan.

¹³ Abdillah, Bayu. "TRIP'S Agreement in Legal Protection of Intellectual Property Rights in Indonesia." *Rechtenstudent* 5, no. 2 (2024): 142-153.

¹⁴ M. Y. Setyaningtyas, *Comparative Analysis of the Substantive Examination Stage in the Industrial Design Registration Process (Comparative Study of the Legal Provisions of the Industrial Design Law of Indonesia and Japan)* (Thesis, Universitas Brawijaya, 2018).

¹⁵ Kiki Firmantoro. "Analysis of the cancellation of the registration of industrial design rights for bag configurations by PT. Batik Keris," *IBLAM LAW REVIEW* 4, no. 4 (2024): 126-135.

¹⁶ Hasna, Taria, Suci Ramadhani Mahmud, Muhammad Amin Syahputra, Devri Santiyas Simbolon, and Rianda Dirkareshza. "Problematic Substantive Examination of Industrial Design Registration in Indonesia." *Al-Qisth Law Review* 7, no. 2 (2024): 185-198.

B. Research Methods

This paper uses literature research with a normative juridical approach, which focuses on laws and regulations.¹⁷ Normative research aims to systematically examine the structure of law with a primary focus on identifying the meanings, principles, or foundations contained in law. In this study, the author seeks to examine all matters related to the substantive examination mechanism in industrial design registration as regulated in Law Number 31 of 2000 concerning Industrial Design. The problem approach used includes a comparative approach, a legal approach and a case approach. Through a comparative approach, the author will compare the legal system that regulates the provisions of substantive examination in industrial design registration in Japan with the applicable regulations in Indonesia along with case studies that occurred in Indonesia. The analysis was carried out by linking the results of the comparison to the provisions of Law Number 31 of 2000 concerning Industrial Design in order to obtain a comprehensive understanding of the suitability and differences between the two legal systems.

Primary, secondary, and tertiary legal materials are the data sources used. The primary legal material includes relevant laws and regulations. and sort according to the hierarchy.¹⁸ Both from Indonesia such as Law No. 31 of 2000 concerning Industrial Design, and from Japan such as the *Design Act* (Act No. 55 of 2015). Secondary legal materials include draft laws, textbooks, research results published in journals or magazines, as well as the opinions of legal experts that function to strengthen the analysis and enrich the study of primary legal materials.¹⁹ Meanwhile, tertiary legal materials in the form of language dictionaries are used as a tool to help understand legal terms, especially those contained in Japanese laws and regulations, to ensure accuracy in the interpretation of foreign legal languages. Library *research* methods by collecting data and information from various literatures, such as books, journals, and articles, as well as relevant laws and regulations. The data analysis technique used is descriptive analysis, where the data and information that have been obtained are grouped and interpreted to produce answers to each research problem and describe the relationship between the legal aspects being studied.

C. Results and Discussion

a. Systematics of Substantive Examination in Industrial Design Registration Regulations on Food Packaging in Indonesia

In the food industry, industrial design has an important role in protecting the aesthetic value and innovation contained in food packaging. From the data provided by DJKI, that industrial design registration in Indonesia has increased significantly every year, this shows that more and more business actors and individuals are aware of the urgency of industrial design registration to protect their rights. Therefore, industrial

¹⁷ Muhaimin. *Legal Research Methods*, (Mataram: Mataram University Press, 2020).

¹⁸ Peter Mahmud Marzuki. *Legal Research* (Jakarta: Kencana Prenada Media Group, 2006).

¹⁹ Vicky Widiarty. *Textbook of Legal Research Methods* (Yogyakarta: Publika Global Media, 2024).

design regulations must ensure that the designs registered with the DJKI meet the criteria of novelty and do not contradict pre-existing designs.

The regulation of industrial design in Indonesia itself is regulated in Law Number 31 of 2000 whose basis for its formation comes from the ratification of the WTO and ratification of the TRIPs. Indonesia ratified the TRIPs agreement by issuing Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. With that, Indonesia must harmonize its national laws with its ratified international laws.

In this context, TRIPs explicitly regulates the protection of industrial designs in Article 25 and Article 26 as stated:

Article 25 Requirement for Protection

1. *"Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations."*
2. *"Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law."*

Article 26 Protection

1. *"The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes."*
2. *"Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties."*
3. *"The duration of protection available shall amount to at least 10 years."²⁰*

Where these articles indicate that the protection of industrial designs must be based on novelty, originality and aesthetic aspects, for which each country is obliged to have a substantive inspection mechanism in ensuring the novelty of each industrial design, the owner of the design is given exclusive rights to the commercial use of his

²⁰ TRIPs Agreement Article 25 and 26.

design with a minimum protection of 10 years and each member state can make adjustments to its implementation in its national legal system each.

As a consequence of Indonesia's membership in the WTO, it is necessary to adjust its implementation. Indonesia has poured TRIPS into Law Number 31 of 2000 which contains the stages in industrial design registration. The industrial design registration process consists of several stages. The first stage is the submission of an application, because the application process is the basis for obtaining the right to industrial design.²¹ Furthermore, Article 11 regulates in detail the procedure used to apply for industrial design registration. All applications must be sent in writing in Indonesian to the Directorate General of Intellectual Property Rights, accompanied by proof of payment of fees as stipulated in the provisions of the law. The application must be signed by the applicant or by his/her legal representative if the application is made through an intermediary. In the application, several important information must be included, including the date, month, and year of the application letter, the name, address, and nationality of the designer and applicant, as well as the full name and address of the power of attorney if the application is made through a power of attorney. If the application is submitted based on priority rights, the name of the country and the date the application was first received must be stated.

In addition to containing the administrative data, the application must also be attached with a number of supporting documents. These documents include physical illustrations, photographs, or examples of industrial designs to be registered, a description of the design, a special power of attorney if the application is submitted through a power of attorney, and a statement stating the applicant's or designer's ownership of the proposed industrial design. Only one applicant needs to sign the application letter and include the written consent of the other applicant if multiple candidates apply for the same application. Adequate statements and evidence proving the applicant's ownership of the industrial design must be included if the application is submitted by a party other than the designer.²²

After the applicant gets the date of acceptance, the next stage is the examination of the industrial design that is requested. The administrative examination is the initial part of this exam, followed by an announcement, substantive examination, and the granting or rejection of the application. When the inspection has been completed, the applicant will be notified of the results of the inspection whether the proposed industrial design is in accordance with the criteria or there are conditions that are not met. The applicant may later file an objection or correction of an error from the industrial design for the rejection or withdrawal of the application.

The next stage is an announcement issued by the director general of IPR through the official gazette of industrial design within three months after the date of receipt,

²¹ Article 10 of Law Number 31 of 2000 concerning Industrial Design.

²² Article 11 of Law Number 31 of 2000 concerning Industrial Design.

where at this stage other parties can file objections to the application for industrial design that is requested, with which the director general of IPR will respond to the objection by conducting a substantive examination. Substantive examination is an important stage in the industrial design registration process. The substantive examination itself has the meaning of being an examination stage to examine the substances of the industrial design itself which in Government Regulation Number 1 of 2005 explains in detail the substance of the industrial design including the aspects of novelty of the registered industrial design, matters in industrial design that are considered to be contrary to the applicable laws and regulations, the unity of the application and matters related to clarity Industrial Design Disclosure.²³

Lebih lanjut dalam Pasal 26 mengatur mengenai keberatan atas suatu desain registered industry. It is stated in Article 26 paragraph 5, if the other party submits an objection at the time of the announcement of the industrial design application within three months from the date of the announcement of the application, a substantive examination will be carried out. The examination of the submitted application is carried out based on Article 2 and Article 4 of Law Number 31 of 2000, with the aim of assessing whether or not there is an element of novelty in the design that has been requested. This process is basically carried out through comparison with the references or references that have been available, so that it can be ascertained whether the design really has new properties and has never been registered before. If there are no objections, substantive checks are not mandatory, and industrial design certificates can be issued immediately.²⁴

If you look at the system used by DJKI regarding substantive inspections that are carried out only if there are objections from other parties and if there are no objections, DJKI will not conduct the inspection, then the industrial design that passes may not be really original or there may be similarities with the previous design. This shows that this condition risks lowering the objectivity and validity of the design registration, because designs similar to existing ones have the potential to be registered without in-depth evaluation.²⁵

The mechanism regulated in Article 26 of Law Number 31 of 2000 which states that substantive checks are only carried out if there are objections from other parties shows that Indonesia adheres to the registration system in the registration of its industrial designs. This is in accordance with the ratio legis of Article 26 itself provides a mechanism for public opposition in the submission of objections that give rise to substantive scrutiny with a strict time limit in the post-announcement stage of industrial design applications. The time limit is with the time for submitting objections no later than three months from the announcement, the submission of rebuttals by the

²³ Government Regulation of the Republic of Indonesia Number 1 of 2005 concerning Industrial Design.

²⁴ Law Number 31 of 2000 concerning Industrial Design.

²⁵ Dewi Sulistianingsih and Bagas Bilowo Nurtantyono Satata. "The Dilemma and Problematic of Industrial Design in Indonesia," *Journal of Legal Voices* 1, no. 1 (2019): 1-14.

applicant no later than three months from the notification and the obligation from DJKI to decide whether or not to approve the objection is no later than six months from the end of the announcement period whose notification is made in writing for a maximum of thirty days. Thus, Article 26 provides an opportunity for the public to supervise the registration of industrial designs which in proof of novelty are submitted in the process after the registration of rights. In addition, the registration system also provides time efficiency in the registration process compared to using a full inspection system that conducts substantive checks before granting industrial design rights.²⁶

The registration system mechanism implemented in Article 26 is in accordance with the standards applied by TRIPS, which in Article 62 of TRIPS provides freedom for member states to regulate their own national procedures, this is also included in the opposition system implemented by Indonesia, as long as it ensures effective protection of qualified designs.²⁷ However, there is still criticism that the registration system is weak in its implementation, as the absence of proactive substantive checks can allow registration to run counter to TRIPS' objectives of promoting innovation and fair market access, resulting in legal uncertainty and a high litigation burden.

This apparent legal loophole is also not in line with the principles as a form of procedural weakness that can be exploited by parties who do not have good faith to register an industrial design that is similar but "quite different" semantically, because there is no obligation to carry out substantive checks in the industrial design registration process. In contrast to Japan, which maximizes legal certainty by assessing novelty not only based on "not identical", but also prohibits industrial designs that are "similar" to previously registered industrial designs. With this procedure owned by Indonesia, it can cause many adverse impacts because of the legal certainty that is not guaranteed in the design rights of this industry, this can result in injustice in the applicable law. This uncertainty raises potential disputes in the future that can reduce public confidence in the effectiveness of intellectual property legal protection in Indonesia. In addition, justice cannot be realized if there is no clarity of law, and legal certainty cannot be realized if the law is not able to maintain order.²⁸

Gustav Radbruch stated that law must have three basic values which contain justice, usefulness and legal certainty. From these three basic values, legal certainty requires that the law can function as a guideline of behavior that is obeyed by the community, not only at the level of implementation, but also in the substance or material content of the regulation itself.²⁹ In the context of industrial design registration, legal certainty requires

²⁶ National Center for Legal Development Planning, National Legal Development Agency, Ministry of Law and Human Rights. *Final Report on the Alignment of Academic Manuscripts of the Draft Law on Industrial Design* (Jakarta: National Legal Development Agency, Ministry of Law and Human Rights, 2015).

²⁷ TRIPs Agreement Article 62

²⁸ Romli Atmasasmita, *Integrative Legal Theory: Reconstruction of Development Law Theory and Progressive Legal Theory* (Yogyakarta: Genta Publishing, 2012).

²⁹ Siti Halilah and Mhd. Fakhurrahman Arif. "The Principle of Legal Certainty According to Experts", *Siyasah: Journal of Constitutional Law* 4, no. 2 (2021): 65–65.

that the registration mechanism be able to guarantee that each registered design is completely new and original, so that it does not cause overlapping rights and injustice for the legitimate creator.

This legal certainty is the benchmark for public legitimacy and trust in the national legal system. In the field of intellectual property, which is closely related to individual rights and economic values, legal certainty is an important foundation for the growth of a climate of creativity and innovation. Inventors and inventors will be encouraged to innovate if they are confident that their creations are protected by clear, consistent, and predictable laws. So if this legal certainty can be implemented in a rule, then the purpose of legal certainty to ensure peace and order can be realized.³⁰

b. Comparison of Substantive Examination Systematics between Indonesia and Japan

Regulations regarding industrial design in Japan are regulated in *Japan Design Act No. 55 of 2015*. In the regulation, in Japan itself in order to obtain a right to industrial design, the stage starts from the registration system.³¹ *The Japan Design Act No. 55 of 2015* regulates the provisions for industrial designs that cannot obtain the right to design protection, namely designs that do not have elements of novelty or creativity, are contrary to public order and morals, cause misrepresentation, or are only intended for the function of an item.³² The provision shows that Japan strictly places the aspect of novelty and aesthetic value as the main elements in granting industrial design rights. Therefore, the inspection process carried out by the relevant authorities is not only administrative, but also substantive examination to ensure that the proposed design is truly worthy of legal protection.

In the initial stages of the industrial design registration process in Japan, it is to submit an application to the JPO, where the applicant will fill out the official form that has been set and attach all the required supporting documents. after that, the JPO will begin to conduct an administrative audit to ensure the completeness and suitability of the documents with the applicable formal and procedural provisions. If there are deficiencies in this stage, the JPO will make a notification in the form of an opportunity to make improvements or complete the completeness of documents that have not been met. After passing the administrative stage, the next stage is the substantive examination. This examination aims to see the feasibility of the industrial design that is applied for in obtaining its rights. Where this examination looks at the design discovery in the design registration application, the search of the database of previous designs as a comparison to the requested design and the evaluation of the requested design in

³⁰ Riza Multazam Luthfy, "Fulfillment of the Principle of Legal Certainty in the Financial Services Authority Regulation on Equity Crowdfunding", *Paramarta Discourse: Journal of Law* 23, no. 1 (2024): 102-111.

³¹ Design Act [Act No. 125 of 1959], as amended by Act No. 55 of 2020 (Japan).

³² Tadao Urimoto, "Design Examination Guidelines in Japan" (*WIPO Design Mission to Directorate General of Intellectual Property Rights (DGIPR)*, September–October 2002).

terms of novelty requirements, the level of creative difficulty, can be used industrially and does not contradict public order.³³

If an application does not meet these criteria, the JPO will issue a decision of rejection and the reasons in writing, and the applicant is given the opportunity to appeal with arguments or amendments to revise the content of the application. If the appeal is rejected, the JPO will issue a final rejection decision, but if accepted by the JPO, the requested design will be officially registered. After the application is declared accepted, the applicant will be required to pay a registration fee which indicates the administration ends. Also, JPO will announce the registration of the industrial design to the public through official media.

At the announcement stage, interested third parties can file a rebuttal to the design registration if there is a suspicion of a violation of the law or pre-existing property rights. This objection will be reviewed by the Appeals Commission at *the Japan Patent Office* (JPO). If after the examination no violations are found, then the registration status remains valid. However, if a defect is identified in the registration process, the commission has the authority to cancel the registration. If the applicant does not agree with the JPO's decision, either in the form of refusal or cancellation of registration, he has the right to file a lawsuit with the *Intellectual Property High Court* of Japan. This procedure is the last legal avenue provided to ensure fair and accountable protection of rights.

If a comparison is made between (the name of the Japanese regulation) and the provisions stipulated in Law Number 31 of 2000 concerning Industrial Design, it is clear that there are quite fundamental differences in the regulation of substantive examination in the two countries. Japan stipulates that substantive examination is a mandatory stage that is an integral part of the industrial design registration procedure. In other words, any application for industrial design registration in Japan will automatically go through a substantive examination process before obtaining legal protection. However, in Indonesia, substantive checks are only carried out if there is a request for objection from a third party regarding the proposed design registration. This means that the Indonesian system is reactive, while the Japanese system is proactive in ensuring the authenticity and novelty of an industrial design from the beginning of the registration process.

The obligation of substantive checks at the early stages of registration as implemented in Japan has a positive impact on the efficiency and structure of the industrial design registration administrative process. This mechanism not only ensures that the industrial design rights granted have gone through a rigorous verification process, but also strengthens legal certainty for rights holders. In addition, the implementation of a comprehensive substantive examination contributes to reducing

the burden of judicial administration and preventing the emergence of legal disputes that require large costs.

This view is in line with the statement that if a patent institution conducts a careful examination, the court no longer needs to review its decision in fact, a 'perfect' patent institution will never issue a patent that is later declared invalid.³⁴ Where in this view, it is still not in line with what is happening in Indonesia. An example of a case from decision No. 583K/Pdt.SUS-HKI/2021 involving industrial design from food packaging illustrates the existence of regulations that are not careful because of their reactive nature in issuing industrial designs because there are still disputes in the future that revoke industrial design rights, because they are considered invalid. Thus, the substantive examination system implemented in Japan not only creates legal stability and administrative efficiency, but also encourages innovation and differentiation of registered industrial products. This approach ultimately adds value to the quality and credibility of industrial design protection in the country.

In the view given by Romli Atmasasmita in integrative legal theory, where law must be seen as a system of norms, behavioral systems, and value systems.³⁵ If you look at the substantive examination mechanism in Japan, Japan has succeeded in integrating these three systems. On the other hand, the system in Indonesia that is still reactive shows that the application of the law emphasizes more aspects of procedural norms, without being balanced by bureaucratic behavior and substantive justice values as referred to in integrative legal theory. Thus, to strengthen the protection of industrial designs, Indonesia needs to build a legal system that not only formally enforces the rules, but also reflects consistent law enforcement behavior and the moral values of Pancasila that animate the goal of justice and legal certainty.

In an effort to minimize the possibility of disputes in the future over the registered industrial design, Indonesia can revise Law Number 31 of 2000 by using a full examination *procedure* to ensure whether a registered industrial design is innovative and *newness*), a formal examination is carried out in addition to substantive assessments by tracing *previous prior art*.³⁶ By looking at the comparison between Indonesia and Japan, Japan with its substantive examination procedure in full *examination* carried out at the beginning of registration provides more legal certainty and causes other good impacts. Indonesia can learn from Japan in terms of the systematics of its substantive examination, Indonesia can understand to make the Industrial Design Law more proactive in order to increase legal certainty for industrial design rights holders.

³⁴ Wesley M. Cohen and Stephen A. Merrill, *Patents in the Knowledge-Based Economy* (Washington, DC: National Academies Press, 2003).

³⁵ Andrieansjah Soeparman, *Industrial Design Rights Based on the Assessment of Industrial Design Novelty* (Bandung: PT Alumni, 2013).

³⁶ Ranti Fauza Mayana and Tisni Santika, *Industrial Design Protection* (Bandung: PT Alumni, 2020).

The full examination used by Japan can be applied in Indonesia using the *Hybrid Substantive Examination* system which combines the examination mechanism by the expert with *artificial intelligence (AI) technology*. In the mechanism, an examination will be carried out on industrial design applications received by DJKI which will later be directly scanned by *AI* to compare the application with the *prior art database* to see the novelty of the applied industrial design and will produce a similarity score along with a reference list. Furthermore, if the results obtained from the examination using *AI* show that there is a similarity between the industrial design applied for and the existing *prior art*, then experts will re-check the industrial design before deciding on the granting of industrial design rights to the applicant.

D. Conclusions and Recommendations

Based on the results of this study which conducted a comparison of regulations on substantive inspections of industrial designs between Indonesia and Japan, it was found that the system in Indonesia is still reactive, because substantive inspections are only carried out when there are objections from third parties during the announcement period. This opens up opportunities for legal uncertainty and becomes a legal loophole for the registration of industrial designs that do not really have novelty as required. On the other hand, Japan has implemented a *system of full examination* since its inception and every approved food packaging design has been verified for novelty, originality, and conformity with the principles of intellectual property law. This provides the power and benefits of administrative efficiency in avoiding disputes that may arise in the future.

This means that Indonesia still needs to improve design industry regulations to ensure that substantive checks do not only rely on objections from other parties, but also mandatory checks in the registration process. From these results, it is recommended to the Directorate General of Intellectual Property (DJKI) which is responsible for industrial design to revise the industrial design examination system and adopt the *Hybrid Substantive Examination Model* mechanism which combines substantive examination by experts as owned by Japan and *artificial intelligence* technology. This step needs to be accompanied by increasing the capacity of human resources and the use of international database technology to ensure the effectiveness of newness checks. In addition, the Ministry of Law is expected to encourage the preparation of amendments to Law Number 31 of 2000 concerning Industrial Design to strengthen legal certainty and provide more comprehensive protection for national industrial design works, especially in the growing food packaging sector.

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