

Harmonization of *Overlapping* Protection of Copyright and Industrial Design Rights: A Comparative Study of Indonesia and Australia

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Abstract

One of the crucial problems in the scope of intellectual property today is the phenomenon of overlap between copyright and industrial design rights. One of the important things to study is the existence of legal regulations that have been harmonized and effective to overcome these problems. In this research, the method used is a statutory and comparative approach with analytical descriptive specifications. This study found that the overlap of copyright and industrial design rights law has not been regulated and harmonized properly in Indonesian positive law. The results of this study indicate that by not harmonizing the protection of copyright with industrial design rights in Indonesia, Indonesia does not have legal certainty and has a legal gap in the enforcement of rights and settlement of disputes when compared to Australia. Therefore, harmonization between copyright and industrial design rights law is needed, including the necessary reforms to provide legal certainty for creators and industry players in the future.

I. Introduction

Intellectual property can be understood as a work or wealth that arises and is born from human intellectual capabilities, which are made at the expense of time, thought, energy, creativity, and the spirit and taste of the creator.¹ As a form of protection, intellectual property law includes several protection regimes, including trademark rights, copyrights, industrial design rights, patents, trade secrets, geographical indications, and plant variety protection. Each of these regimes protects different intellectual objects with different protection provisions.

In the practice of intellectual property protection, often an object does not have clear boundaries regarding which legal regime can protect it. In fact, there are overlaps or conflicts between the various existing legal regimes. This situation often occurs between the copyright protection regime and the industrial design rights protection regime, especially with regard to the object of "*artistic works*" which is difficult to separate from the two regimes.

Regarding copyright, the idea is basically present to provide protection for a person's copyrighted work that arises from his intellectual capacity. According to OK Saidin, copyright is a private right arising from the results of human thought and feeling, which produces a work in the fields of knowledge, art, and literature.² Copyright protection itself arises automatically without a registration system. Meanwhile, industrial design rights protect creations in the form, configuration, or composition of lines or colors in the form of 3 (three) dimensions or 2 (two) dimensions that give an aesthetic impression to be used to produce a product, goods, industrial commodities, or handicrafts.³ The State will grant industrial design rights to the party who first registers and is registered for an industrial design. This is a form of implementation of the *first to file* principle.⁴

In the spectrum of intellectual property law, artwork itself has generally been understood as one of the protected objects in the copyright protection regime. This has also been emphasized as regulated in Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta, where it has been stated that works of art in all forms such as

¹ Efridani Lubis, Elisa Anggraeni, Hendra Wibowo, & Krisnani Setyowati, *Hak Kekayaan Intelektual dan Tantangan Implementasinya di Perguruan Tinggi*, Bogor: Kantor Hak Kekayaan Intelektual Institut Pertanian Bogor, 2005, page. 1.

² Tasya Safiranita Ramli, dkk., *Cybersecurity: Pelindungan Hak Cipta pada Layanan Telekomunikasi di Indonesia*, Bandung: PT Refika Aditama, 2023, page. 19.

³ Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri.

⁴ Anjas Putra Pramudito, Vioxcy Ananta Putra, dan Fairuz Zahirah Zihni Hamdan, Analisis Prinsip *First to File* dalam Perkara Desain Industri (Studi Kasus: Putusan Pengadilan Niaga Jakarta Pusat nomor 16/PDT.SUS.DESAININDUSTRI/2020/PN.NIAGA.JKT.PST), *Jurnal Suara Hukum*, Vol. 5, No. 2, September 2023, 201 - 224, page. 203.

paintings and drawings are protected objects of creation.⁵ However, in practice, art such as paintings and drawings are often associated with commercial activities, such as being printed on fabric for mass production and sale. In such a scenario, the object will actually become the object of protection of the industrial design rights regime. Based on this example, the object of protection of the copyright regime and the object of protection of the industrial design right regime are closely related, giving rise to the risk of overlapping protection.

In fact, until now there are still minimal restrictions between the copyright regime and the industrial design rights regime in Indonesian positive law. This has been reflected by judges' decisions that cannot guarantee the public the protection of their creations. If not addressed immediately, the creative economy industry in Indonesia will be severely threatened and deprived of huge potential profits.

2. Research Method

The research method used in this research is a statutory and comparative approach. The method examines all regulations and laws relating to the legal issues being examined and compares legal formulations between one country and another.⁶ The specification used in this research is descriptive analysis, which describes the data that has been collected through an in-depth understanding of the data, which is then presented in the form of narrative writing. Qualitative normative data analysis techniques are also used, namely systematizing written legal materials which will ultimately facilitate construction and analysis in legal research, which in this case are laws and regulations.

3. Results and Discussion

Implementation of Indonesian law in harmonizing the overlap of copyright protection with industrial design rights based on Indonesian positive law

At present, Indonesia already has arrangements regarding copyright and industrial design rights in a *sui generis* system, as stipulated in Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri. The term *sui generis* comes from Latin which means "a separate type", which in the legal context refers to special provisions specifically designed to regulate a particular legal object. Thus, Indonesia has expressly separated the protection regime between copyright and industrial design rights.

Indonesia itself has fulfilled the minimum provisions required by the Berne Convention, Paris Convention, and TRIPs Agreement in providing protection to an industrial design work. These provisions include aspects such as the terms of protection, the period of protection, the element of novelty, as well as the granting of priority rights to the applicant of industrial design rights. However, both Undang-undang Nomor 31 Tahun 2000 tentang

⁵ Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta.

⁶ Muhainin, *Metode Penelitian Hukum*, Mataram: Mataram University Press, 2020, page. 56.

Desain Industri and Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta have not explicitly regulated the relationship between the two, although there are significant potential overlaps.

When looking at the substance of Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri, it has been stated that an industrial design is a creation about shape, configuration, composition of lines/colors, lines and colors, or a combination of all of them, in the form of 3 (three) dimensions or 2 (two) dimensions that give an aesthetic impression and can be realized in 3 (three) dimensions or 2 (two) dimensions and can be used to produce a product, goods, industrial commodities, or handicrafts. On the other hand, "creation" based on Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta is defined as the result of copyrighted works in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form.⁷

When looking at the object of creation based on Article 40 of Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta, it has been stated that works of fine art in all forms, such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collages, works of applied art, works of batik art or other pattern art, photographic works, and portraits are protected objects.⁸ Based on explanation of Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta, what is meant by "applied artwork" is a work of art made by applying art to a product, so that it has an aesthetic impression in meeting practical needs, including the use of images, patterns, or ornaments on a product.⁹

When referring to the definition of industrial design and applied art as one of the objects of copyright, there are at least two elements that have similar elements, namely the element of "aesthetic impression" and the use of "images, patterns, or ornaments on a product". The intersection between the two elements has the potential to cause legal problems, especially if there are significant differences in the protection provisions governing each right.

To illustrate, a flower vase made of clay with additional carvings and other decorative elements is generally understood as a work of applied art. The same applies to furniture or decorations such as chairs and carpets that are given modern batik patterns or drawings on their surfaces. At the same time, however, objects such as flower vases can also be categorized as industrial designs, as the vase itself can be considered a "form", while the carved elements can be classified as a "configuration". Similarly, with patterned furniture or decorations, where the applied patterns can be interpreted as a "combination of lines and colors" in a two-dimensional form that gives an aesthetic impression, and can be realized in both 2 (two) dimensions and 3 (three) dimensions and used to produce a product, goods, industrial commodities, or craft works.

Based on this example, applied artworks can essentially fall under two different legal regimes, namely Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta and Undang-

⁷ Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri.

⁸ Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta.

⁹ Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta.

Undang Nomor 31 Tahun 2000 tentang Desain Industri.¹⁰ This situation can occur especially if there are no clear boundaries regarding the scope of protection objects of each regime. The example can be further analyzed, where if a print or mould is made of the clay flower vase or patterned furniture or decoration, and then mass reproduction is carried out by the industry for commercial purposes, then the object has substantively shifted from the realm of “artwork” towards “product”, “works of art” towards “industrial products, goods or commodities”. For this reason, juridical questions arise regarding the form of legal protection that should be applied, whether the creator is still entitled to copyright protection with a period of 25 years, or is it more appropriate to be given protection through industrial design rights that are only valid for 10 years?

More complex legal issues arise when an image has been used on a product and registered as a separate industrial design. Such issues are mainly related to the economic rights of the creator, including the right to reproduce the work, as well as the difference in the period of protection between the copyright and industrial design regimes. Potential legal conflicts may arise if the image in question is still within the copyright protection period, while the industrial design protection has expired, resulting in uncertainty regarding the exclusive right to the use of the image form.

In the copyright and industrial design rights regimes, a work or design will enter the public domain when its term of protection has expired. However, in the context of overlapping copyright and industrial design rights, the concept of public domain can be problematic. This happens when an industrial design containing pictorial elements has expired its protection period, so that the entire design legally enters the public domain. However, at the same time, the pictorial elements contained in the design may still be protected under the copyright regime, given the significantly longer term of copyright protection. This situation creates legal uncertainty regarding who has the right to freely utilize the work.

Another relevant perspective to analyze is the process of creating a work of art and industrial design itself. In practice, compositional elements such as lines and colors in industrial designs are often derived from the form of a work of art. The use of copyright objects in the context of industrial design has become a common practice, especially in the creative industry sector, considering that the element of “aesthetics” is closely related to “works of art”. However, since the two objects are contained in two different legal regimes, adequate harmonization efforts are needed to ensure legal certainty and justice for the right holders of each regime.

In practice, the provisions of Article 68 of Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta which states that the Minister conducts an examination to determine whether the creation or related rights product requested to be recorded is essentially the same or not the same as the creation or other intellectual property object has not been optimally implemented. This is due to the non-mandatory nature of recording creations. Based on the

¹⁰ Hadi, H., Dualisme Pengaturan dan Pengertian Seni Terapan (*Applied Art*), pada Hak Kekayaan Intelektual, *Privat Law*, Vol. 6, No. 1, November 2014, page. 53.

declarative principle adopted in copyright law, a creation automatically obtains protection since it is realized in real form. Consequently, there is a legal vacuum or gap that can indirectly hamper the harmonization process between copyright and industrial design rights.

On the other hand, provisions governing harmonization between copyright and industrial design rights are not regulated at all in Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri. This can be a crucial problem, considering that the regulation and protection of industrial design rights tend to be more rigid than copyright, both in terms of the protection system and the time period. This is because the protection of industrial design rights needs to be regulated in such a way as to balance innovation incentives with the dynamics of market competition, in order to create a healthy and sustainable industrial climate. In contrast to copyright, which aims to protect copyrighted works as a form of appreciation for human intellectual creativity.

One of the references that can be used as a reference in the harmonization efforts between copyright and industrial design rights in Indonesia is the intellectual property module in the field of industrial design published by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia. In the module, it is explained that images, photographs, or paintings that will be applied to product designs must obtain permission from the creator of the work . Although the discussion in this module is limited, the guide makes a significant contribution in the effort to harmonize copyright with industrial design rights. However, this module ultimately only serves as a guideline for regional offices and the general public, without having the binding force of law or clear enforcement mechanisms and sanctions, as found in the laws and regulations.

With the phenomena that have been described, it has been seen that the main problem lies in the unharmonized Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta and Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri. Although the TRIPs Agreement and the Berne Convention have established international protection standards, Indonesian lawmakers have not provided adequate clarity regarding the legal relationship between the two regulations. This results in the potential overlap of rights protection between the two, which can lead to legal uncertainty for creators, industries, and other related parties.¹¹

The main purpose of copyright law protection is to encourage creativity by incentivizing talented individuals to produce works that are beneficial to the progress of the nation. It aims to protect creators from plagiarism and gives them exclusive rights to distribute, sell or develop their works. However, in a situation of overlap between industrial design rights and copyright, copyright holders face serious obstacles. While their works are protected by copyright, they cannot fully protect derivative products derived from them. This condition opens up opportunities for other parties to easily plagiarize and utilize such copyrighted works in their industrial designs, to the detriment of the original creator.

¹¹ Sulistianingsih, D., & Satata, B. B. N., Dilema dan Problematik Desain Industri di Indonesia, *Jurnal Suara Hukum*, Vol. 1, No. 1, Maret 2019, page. 9.

The implementation of the current law has the potential to negatively impact the low appreciation of intellectual works in Indonesia. When legal protection of copyrighted works is inadequate, people will lose motivation to create innovative works that can encourage the progress of the country. This lack of clarity and weakness in the legal system can hinder the development of creativity and innovation in Indonesia, even though the country has great potential in this field. The absence of clear and firm legal guarantees risks reducing the initiative for creators to continue to work and innovate.

The impact of different harmonization efforts related to the overlap of copyright protection with industrial design rights in Indonesia and Australia

Currently, Australia has well-harmonized regulations between copyright and industrial design rights. Generally, an object in Australia cannot be protected by copyright law and industrial design law simultaneously. This is due to a provision in The Copyright Act 1968 that provides for the prevention of overlapping protection for objects that are also protected by The Designs Act 2003. The rationale behind the provision is that objects that are functional in nature and intended for mass production should not be given protection as broad as that afforded by copyright law.¹²

In Australia, copyright protection of an object can potentially be lost if the object is “industrially applied”. Generally, a design is considered to have been industrially applied when more than 50 articles have been produced, although this number can vary depending on the nature of the intellectual property object in question.¹³ Additionally, copyright protection may also lapse if the same object has been registered as an industrial design. With such provisions, if one plans to mass-produce and commercialize a copyrighted work, it is imperative to consider registration of industrial design rights from the outset, and not rely on copyright protection in the hope of obtaining a longer term of protection.¹⁴ Such a provision also has important implications in business practice, where the owner of the work has to make a strategic decision on whether it is more profitable to maintain copyright protection or switch to industrial design right protection. This decision should take into account various factors, such as the commercial value of the work, market potential, and the most appropriate rights enforcement strategy to achieve business objectives.

The Australian Copyright Act 1968 incorporates specific provisions within Sections 74 to 77 to reconcile the intersection between copyright and industrial design rights. These legislative mechanisms establish a framework for managing overlaps between these

¹² Australian Copyright Council, *Designs and Copyright, Fact Sheet G027v12*, October 2022, Retrieved from <https://www.copyright.org.au/browse/book/ACC-Designs-&Copyright-INFO027/>, page. 2.

¹³ *Copyright Regulations 2017*.

¹⁴ Australian Government IP Australia, *About Design Rights, Fact Sheet*, 2021, Retrieved from https://ipaaustralia.gov.au/tools-and-research/business-resources/~/_media/Project/IPA/IPAustralia/PDF/Business-advisory-guide/about-design-rights-fact-sheet.pdf?rev=d33d091d721e4e9ab8618da6734e1c78, page. 2.

distinct intellectual property regimes, acknowledging the functional duality of creations that embody both artistic expression and industrial application. The provisions have undergone iterative amendments to maintain contemporary relevance while addressing inherent tensions in dual protection scenarios.

Section 74 establishes the foundational concept of a "corresponding design," defined as a visual form deriving from an artistic work that is subsequently applied industrially through embodiment, weaving, affixation, or integration into a product. This statutory recognition formally acknowledges the symbiotic relationship between artistic works under copyright and functional designs under industrial design law. By delineating this category, the provision transforms potential jurisdictional conflicts into a coherent hybrid category, thereby providing legal clarity regarding the nature of such object protection and eliminating ambiguity about their status across intellectual property systems.

Section 75 governs the transition of protection when a corresponding design becomes registered under the Designs Act 2003. Upon formal registration, copyright protection ceases to apply to acts of reproduction associated with that design. This represents not merely a transfer of rights but establishes a decisive jurisdictional boundary between the intellectual property regimes. The extinction of copyright in reproduction contexts creates legal certainty, ensuring that once industrial design registration occurs, the mass production of articles falls exclusively within the design rights framework rather than triggering parallel copyright infringement claims.

Section 76 addresses scenarios involving improperly registered industrial designs. Where registration occurs without authorization from the legitimate copyright holder, the design registration is deemed void *ab initio* under the Designs Act 2003. This safeguard underscores the procedural primacy of copyright ownership in the design application process, requiring express permission from the artistic work's creator before industrial design rights can validly attach. The provision effectively neutralizes attempts to exploit design registration as a mechanism for circumventing copyright protections, thereby preserving the integrity of both intellectual property systems and preventing systemic abuse.

Finally, Section 77 addresses the situation where an artistic work has been industrially applied as a corresponding design but remains unregistered. It states that copyright in the artistic work is not infringed by making articles embodying the corresponding design, or by selling or hiring such articles, provided those articles have been industrially applied in Australia or elsewhere by or with the licence of the copyright owner. This provision incentivises formal design registration by limiting the scope of copyright enforcement for unregistered designs that have entered the industrial marketplace. It underscores that, while copyright may initially protect the artistic work, reliance solely on copyright offers diminished protection against commercial reproduction once the work is applied industrially and traded; securing registered design rights becomes essential for obtaining robust, formal protection against copying in the commercial sphere. Collectively, Sections 74 to 77 create a coherent statutory mechanism for managing the interface between

copyright and industrial design rights within Australian law.

Reproducing an “artistic work” will not constitute copyright infringement when a product with a “corresponding design” of that work has been industrially applied and traded (sold, leased, or offered for sale/lease), but the corresponding design has not been registered under *The Designs Act 2003*. This emphasizes the importance of industrial design registration for parties who wish to obtain clear and formal legal protection for their design products.

Based on this explanation, the following table compares Australian positive law with Indonesian positive law in an effort to overcome the overlap between copyright and industrial design rights:

Australia	Indonesia
The Copyright Act 1968 regulates <i>corresponding designs</i> , unlawfully registered industrial designs (in relation to copyright), and industrially applied works of art.	Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta only regulates the examination of creations (in conjunction with other intellectual property) when the creation is registered.
The Designs Act 2003 incorporates copyright considerations into the elements of “novelty” and “distinctiveness” of a design.	Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri does not regulate harmonization or its relationship with copyright.

Table 1. Comparison of Australian and Indonesian Positive Law

With the above provisions in place, it can be seen that The Copyright Act 1968 has attempted to harmonize and address the potential overlap between copyright protection and industrial design rights. However, overlapping protection under The Copyright Act 1968 and The Designs Act 2003 is now possible for 2 (two-dimensional) artistic works that are used industrially, such as patterns printed on t-shirts. In this case, a two-dimensional artistic work such as a graphic design or pattern can be protected both by copyright (as an artistic work) and by industrial design rights (as an industrially applied design).¹⁵

These provisions set a clear boundary between the regimes of copyright protection and industrial design right protection, while providing legal consequences for owners of works who have industrially commercialized their works but have not registered their designs. Thus, this arrangement encourages owners of artistic works to register their designs immediately if they wish to obtain comprehensive legal protection. This is because without formal registration under *The Designs Act 2003*, the work will lose certain aspects of copyright protection once industrially commercialized.

¹⁵ *Legal Services Commission South Australia, Design and Copyright*, January 2025, Retrieved from <https://www.lawhandbook.sa.gov.au/print/ch11s12.php>, page. 1.

In contrast to Indonesian positive law, if some of the overlapping issues in Indonesia are analyzed using Australian positive law, the resolution is more reflective of the principle of *fairness*. The following are some examples of the resolution of these problems:

No.	Problem	Indonesia	Australia
1	Application of creations to industrial designs	The statement that images, photographs, or paintings to be applied to product designs must have the permission of the creator is limited to the level of "modules" rather than laws and regulations.	Where a work is unlawfully applied to an industrial design, the provisions of the Designs Act 2003 cannot be used as a defense.
2	Restrictions on the protection of copyright and industrial design rights	There are no restrictions between the two regimes.	If a copyrighted work or product has been industrially applied or registered as an industrial design, it will lose its copyright.
3	Relationship between copyright and industrial design rights	It does not stipulate the relationship or correlation between the two regimes.	Specifically regulates the arrangement and practice of "corresponding design".

Table 2: Comparative Example of Resolving Overlapping Issues Between Indonesia and Australia

The statutory framework established by Sections 74 to 77 of the Australian *Copyright Act 1968* (Cth) provides a clear mechanism for delimiting copyright and industrial design protection. This deliberate separation grants creators a defined choice between intellectual property regimes, enabling them to strategically align protection with their commercial objectives for works embodying both artistic and functional elements. The impact of this well-defined separation extends beyond mere procedural clarity, serving fundamental policy goals within the intellectual property ecosystem.

A primary objective is the prevention of undue legal exploitation arising from the potential overlap of protection regimes. Without the statutory displacement effected by Sections 75

and 77, creators could potentially leverage the significantly longer duration of copyright protection lasting for the life of the author plus seventy years for works intended for mass industrial application. This scenario would circumvent the policy rationale underpinning the *Designs Act 2003*, which offers a shorter, finite term of protection (initially five years, renewable to a maximum of ten years) specifically tailored for commercially exploited designs. The harmonisation provisions thus maintain an essential balance: copyright protects artistic creativity in its traditional domains, while the design system safeguards commercially applied innovations within a competitive market context, preventing the misuse of copyright's longevity for industrial articles.

Furthermore, this clear statutory delimitation engenders vital legal certainty for all market participants. Entrepreneurs, manufacturers, and designers require unambiguous understanding of the applicable legal regime governing a particular article. The provisions in Sections 74-77 establish predictable rules: copyright governs the original artistic work until the point of industrial application and potential design registration; upon valid registration under the *Designs Act 2003*, copyright protection for reproduction of the design in articles ceases; conversely, specific limitations apply to copyright enforcement for industrially applied but unregistered designs. This clarity mitigates confusion and costly legal disputes regarding the nature and scope of protection, allowing parties to accurately ascertain their rights, obligations, and potential infringement risks. Reflecting Gustav Radbruch's emphasis on legal certainty, the framework provides clear norms, establishes a predictable system to avoid misinterpretation, and fosters firmness in application.¹⁶ Jan M. Otto's perspective reinforces that such certainty requires not only clear legislation but also consistent implementation a goal furthered by the Australian framework's explicit rules, contrasting with jurisdictions experiencing ambiguity, such as Indonesia, where overlaps can create significant confusion for rights holders and industry.¹⁷

A critical consequence of this separation is the restriction of prolonged monopolies over industrially applied designs. The *Designs Act 2003* intentionally provides a limited monopoly period, acknowledging that functional and aesthetic designs applied to mass-produced articles should enter the public domain relatively swiftly to foster ongoing innovation and competition. The harmonisation provisions prevent the extension of this monopoly through concurrent copyright protection. Absent Sections 75 and 77, the de facto protection period for a design could be vastly extended via copyright, hindering market development by restricting competitors' ability to use or build upon the design after the design right expires. By terminating copyright protection for the industrially applied design upon registration (Section 75) and limiting its enforcement for unregistered but industrially applied designs (Section 77), the law ensures that after the finite design protection period, or immediately if unregistered and industrially applied, competitors are

¹⁶ Zulfahmi Nur, "Keadilan Dan Kepastian Hukum (Refleksi Kajian Filsafat Hukum Dalam Pemikiran Hukum Imam Syâtibî)", *Misykat Al-Anwar Jurnal Kajian Islam dan Masyarakat*, Vol. 06, No. 2, 2023, page. 255.

¹⁷ S S, Shidarta, *Moralitas Hukum-Suatu Tawaran Kerangka Berpikir*, Bandung: Refika Aditama, 2009, page. 85.

free to utilise the design, thereby stimulating healthy market competition and continuous innovation. This deliberate limitation on exclusivity duration is fundamental to a dynamic design economy.

Collectively, these impacts preventing exploitation of overlapping regimes, ensuring legal certainty, and restricting monopolies demonstrate that the Australian harmonisation provisions serve a sophisticated policy purpose. They create a fair and balanced ecosystem for the creative and design industries, ensuring that intellectual property protection is appropriately targeted, avoids stifling competition, and ultimately promotes ongoing innovation within the marketplace. The system acknowledges the distinct rationales for copyright and design protection, channelling subject matter towards the regime best suited to its nature and commercial use.

The interface between copyright and industrial design rights extends beyond purely legal conflicts, generating significant non-legal consequences that distort market dynamics and impede industrial innovation. Where overlapping protection occurs or where clear statutory separation is absent several detrimental effects manifest within the commercial ecosystem, fundamentally undermining the policy objectives of intellectual property systems.

The misapplication of copyright protection to mass-produced industrial articles represents a fundamental distortion of copyright's purpose.¹⁸ Artistic works are traditionally safeguarded to incentivise expressive creativity and cultural enrichment, not to confer long-term commercial monopolies over functional or aesthetic product designs. When copyright is leveraged to protect articles intended for industrial-scale manufacturing and sale, it effectively misappropriates a regime designed for cultural goods to shield commercial products. This exploitation disregards the inherent limitations of copyright law in addressing the rapid obsolescence and competitive dynamics characteristic of industrial markets. The result is a systemic imbalance where the extended duration of copyright (life of the author plus 70 years) is deployed in a context requiring the finite, market-calibrated protection offered by registered design rights (maximum 10-15 years in most jurisdictions).

Consequently, such overlap confers excessive and prolonged market power on rights holders. Copyright's expansive duration and broad scope of protection, when applied to functional articles, create de facto monopolies extending far beyond the period deemed socially optimal for encouraging design innovation. This grants rights holders disproportionate control over market entry, pricing, and product development cycles. Where industrial designs remain shielded by copyright, competitors face significant barriers to market participation for decades, hindering the emergence of substitute products, derivative innovations, and price competition. This market distortion contravenes the fundamental intellectual property principle that exclusive rights should be

¹⁸ Eugenia Georgiades, *Closing the Gap Between Copyright and Designs: An Age of Enlightenment or State of Confusion*, *Information & Communications Technology Law*, Vol. 22, No. 1, 45 – 59, <http://dx.doi.org/10.1080/13600834.2013.778522>, page. 48.

limited in scope and duration to balance private incentive with public access, ultimately stifling market dynamism and consumer choice.

Perhaps the most profound impact lies in the suppression of follow-on innovation and design evolution. Robust design industries thrive on incremental improvement, adaptation, and competitive challenge. Overlapping copyright protection creates legal uncertainty that chills legitimate design activities: competitors and new market entrants cannot confidently modify, improve, or draw inspiration from existing industrially applied designs without facing potential copyright infringement claims. This creates a pervasive "innovation chill," particularly affecting smaller designers and manufacturers lacking resources for complex legal risk assessment or litigation. The prolonged exclusivity period impedes the natural cycle of creative destruction within markets, where expired rights should liberate designs for broader use, adaptation, and recombination into novel products. This barrier to iterative development ultimately slows overall industry progress and reduces the diversity of products available to consumers.

These interconnected impacts misaligned protection incentives, market concentration, and innovation suppression demonstrate that unclear boundaries between copyright and design regimes generate significant economic inefficiencies. They highlight the necessity for precisely calibrated statutory frameworks, such as Australia's Sections 74-77, which actively prevent such overlap. Effective harmonisation ensures that each intellectual property regime operates within its intended sphere, fostering genuine innovation, market competition, and sustained industry development without the detrimental effects of uncontrolled concurrent protection.

Australia's statutory harmonisation under Sections 74-77 of the *Copyright Act 1968* exemplifies a coherent approach to resolving conflicts between copyright and industrial design rights, achieving fairness by preventing concurrent protection and aligning exclusivity periods with the distinct policy rationales of each regime. In stark contrast, Indonesia's framework, governed by Industrial Design Law, exhibits significant structural deficiencies, most notably under Article 37.¹⁹ This provision restricts standing to challenge the validity of a registered industrial design solely to other registered rights holders, effectively excluding copyright owners whose underlying artistic works may have been misappropriated within a registered design. This lacuna necessitates comprehensive legal reforms to establish balance, certainty, and fairness within Indonesia's intellectual property ecosystem.

Foremost among the required reforms is the legislative harmonisation of copyright and industrial design protection. Indonesia currently lacks explicit statutory provisions delimiting the boundaries between these regimes, leading to unresolved overlaps and legal uncertainty. Enacting clear norms akin to Australia's "corresponding design" concept and

¹⁹ Novita Ratna Cindi Filianky, Adi Sulistyono, & Pujiyono Suwadi, *Comparison of Overlapping Legal Protection Systems for Copyright and Industrial Designs Between Indonesia and The United Kingdom*, *RES MILITARIS: Revue Europeenne d etudes europeane journal of military studies social science journal*, Vol. 12, No. 2, 2022, page. 3295.

displacement rules is essential. Legislation must expressly define when an artistic work applied industrially falls under design law, clarify that valid design registration precludes concurrent copyright enforcement for the industrial application, and establish limitations on copyright where designs are industrially exploited but unregistered. Such harmonisation would eliminate the current ambiguity, providing creators, manufacturers, and investors with predictable rules for determining applicable rights and avoiding inadvertent infringement, thereby fostering a more secure commercial environment.

Furthermore, Indonesia requires a significantly enhanced and integrated dispute resolution mechanism capable of adjudicating conflicts arising from the copyright-design interface. Article 37's limitation, preventing copyright owners from directly challenging design registrations that incorporate their protected artistic works without authorisation, creates a profound injustice and undermines the legitimacy of the design register. Legislative amendment must grant standing to copyright holders to initiate cancellation proceedings against designs derived from their works. Concurrently, the Commercial Court's jurisdiction and procedural rules should be adapted to efficiently handle hybrid claims involving allegations of both copyright infringement and invalid design registration. This requires specialised judicial training and possibly dedicated IP panels to ensure consistent, informed decisions that fairly balance the interests of artistic creators and design innovators, thereby restoring trust in the system's ability to rectify wrongful appropriations.

Finally, Indonesia should adopt a more flexible and context-sensitive approach to protecting creations embodying both artistic and functional elements. Unlike Australia's tailored provisions (Sections 75-77), Indonesian law remains rigid, forcing creators into a binary choice of regimes ill-suited to works spanning both domains. Reform could introduce a grace period allowing copyright enforcement for industrially applied designs prior to formal registration, establish nuanced criteria for assessing "industrial application". Such flexibility would acknowledge the practical realities of design innovation, where aesthetic originality and functional utility often merge, ensuring protection is fit-for-purpose and does not artificially constrain creative expression or commercialisation strategies.

Implementing these reforms statutory harmonisation, procedural fairness in disputes, and flexible protection models is imperative for Indonesia to align its intellectual property framework with the principle of fairness demonstrated in jurisdictions like Australia. Addressing the deficiencies exposed by Article 37 and the broader lack of interface rules will promote legal certainty, prevent misappropriation, stimulate legitimate design innovation, and ultimately cultivate a more equitable and dynamic creative economy.

4. Conclusion

The conclusions of this study are as follows:

1. Indonesia has established the protection of industrial design rights and copyright through a *sui generis* approach, namely by enacting Undang-undang Nomor 31 Tahun

2000 tentang Desain Industri and Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta separately. This shows that Indonesia separates the protection system between copyright and industrial design rights. In addition, Indonesia has also fulfilled the minimum provisions of the Berne Convention, Paris Convention, and TRIPs Agreement in its efforts to protect industrial designs. However, Indonesian legislation has not been able to regulate the legal linkage between the copyright regime and industrial design rights properly. Examination of creations based on Article 68 of Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta has not been implemented properly in bridging the copyright regime with industrial design rights. The lack of harmonization raises the potential for conflict or overlapping protection, which in turn can hinder the growth of Indonesian innovation and creativity despite its potential.

2. The problem of overlapping protection between copyright and industrial design rights still cannot be regulated and harmonized optimally in the Indonesian legal system. This is reflected in Undang-undang Nomor 31 Tahun 2000 tentang Desain Industri which is less adaptive in outlining the basis for cancellation of industrial design registration. This is in contrast to Australia, which has successfully harmonized its two protection systems. The result of not harmonizing the two protections is the creation of legal uncertainty and inhibition of the development of creative industries in Indonesia. This condition also has an impact on not achieving the principle of fairness, which leads to losses for rights owners. The current intellectual property legal system in Indonesia has not been able to maintain the essence and purpose of intellectual property protection itself, thus requiring more comprehensive regulatory harmonization and legal reform efforts to overcome the overlapping problems.

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