

Aspek hukum pelanggaran desain industri kemasan makanan dengan larangan praktik monopoli dan persaingan usaha tidak sehat = Legal aspect of food beverages industrial design infringement in connection with anti monopoly and unfair business competition

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Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20389152&lokasi=lokal>

Abstrak

[ABSTRAK

Untuk memajukan industri yang mampu bersaing serta memberikan perlindungan hukum bagi para pendesain diberlakukanlah Undang-Undang Desain Industri Nomor 31 Tahun 2000 Tentang Desain Industri. Akan tetapi aturan hukum di bidang desain industri belum sepenuhnya mendukung perkembangan desain industri di Indonesia. Hal ini bisa dilihat dari maraknya kasus pembatalan desain industri yang terjadi. Hasil penelitian ini menunjukkan bahwa faktor utama yang menyebabkan terjadinya pembatalan desain industri, yaitu tidak adanya kepastian mengenai kebaruan (novelty). Novelty merupakan persyaratan utama dalam paten dan desain. Suatu desain dianggap baru apabila ada perbedaan yang menyolok dengan desain yang sudah ada sebelumnya. Namun apabila perbedaan tersebut hanya terletak pada perbedaan yang minim, terkait beberapa unsur saja, baik itu warna maupun lekuk penampang luar, maka tidak akan bisa dianggap baru. Belum ada Pasal dalam Undang-Undang Desain Industri yang mengatur mengenai persamaan pada pokoknya yang dapat menentukan nilai kemiripan suatu desain industri yang dapat dijadikan acuan untuk menolak atau mengabulkan suatu permohonan desain industri. Dalam Pasal 2 ayat (2) menggunakan kata "tidak sama" akan tetapi di dalam penjelasannya tidak dijelaskan lebih lanjut mengenai pengertian maupun batasan kata "tidak sama" ataupun kemiripan antara desain yang satu dengan yang lain yang dapat dikatakan mempunyai unsur persamaan pada pokoknya atau berbeda. Undang-undang desain industri di Indonesia menganut stelsel pendaftaran/pendaftar pertama atau "first to file" dalam hal klaim atas hak desain industri yang baru. Lebih jauh dijelaskan dalam Pasal 26 ayat (5) menyatakan bahwa pemeriksaan substantif tidak akan dilakukan apabila tidak adanya keberatan dari pihak lain. Dengan tidak adanya pemeriksaan substantif mengakibatkan setiap permohonan desain industri harus dikabulkan dan langsung diberikan sertifikat desain industri. Apabila pemeriksaan substantif tidak dilakukan maka apabila terdapat 2 (dua) desain industri yang memiliki kemiripan ataupun sama, dan 2 (dua) desain industri tersebut tidak diajukan keberatan, maka kedua desain industri tersebut berhak mendapatkan sertifikat desain industri. Hal tersebutlah yang menyebabkan terjadinya sengketa desain industri dan maka dari itu harus diajukan pembatalan desain industri. Penelitian ini menggunakan metode pendekatan yuridis normatif, yaitu dengan cara meneliti bahan kepustakaan atau bahan data sekunder. Sifat penelitian ini adalah deskriptif analisis dan analisis data yang dilakukan secara kualitatif.

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ABSTRACT

The imposition of Law No. 31/2000 on Industrial Design is aimed to develop industry which is able to compete and to give legal protection to designers. However, Legal provisions in industrial design do not support the industrial design in Indonesia. It can be seen from

various kinds of cancellation in industrial design. The results of the research showed that main factors which caused the cancellation of the industrial design is the uncertainty regarding novelty. Novelty is a patentability requirement. A design could be considered new, if there is a significant distinctive with the prior design. However, if the difference that just lays in distinctive minim one, concerning severally elemental only, therefore it can't be looked on as a new one. There is no article in Law on Industrial Design No. 31/2000, which rules the resemblance of an industrial design which can be used as the reference for rejecting or accepting a application request for an industrial design. Based on Article 2 Paragraph (2) uses the phrase "not similar", but in its explanation it does not clarify the term "not similar" or not resemble between one design and the other. The industrial design law in Indonesia embraces the "first to file" system in order to claiming the rights of the newest Industrial Designs. According to Article 26, paragraph (5) which states that the substantive examination will not be carried out if there is no complaint from other parties. The absence of substantive examination will cause the certificate for industrial design to be given. Substantive examination will not be carried out if there are 2 (two) industrial designs which resemble to each other; if there is no complaint about them, they have the right to get industrial design certificate. This will cause industrial design dispute; the result is that it has to be cancelled. The research used judicial normative approach, using literature materials and secondary data. The nature of the research was descriptive analysis; the data were analyzed qualitatively.;The imposition of Law No. 31/2000 on Industrial Design is aimed to develop industry

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