

## Legal Protection of Intellectual Property Rights for Handicraft Innovations in Indonesia's Legal System



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**ABSTRACT:** In the Global Innovation Index 2022, Indonesia has a promising innovation culture. One of the innovation cultures is handicraft innovation in the creative economy sector. The culture of handicraft innovation needs to be preserved and maintained correctly. Therefore, protection is required regarding Intellectual Property Rights (IPR). This study examines the culture of Indonesian handicraft innovation in intellectual property rights and how the legal protection of intellectual property rights for handicraft innovation in Indonesia's legal system. This research is legal research using a normative juridical approach. Most handicraft artisans in several cities still need to fully understand the importance of registering Intellectual Property Rights, so few handicraft artisans from various towns still need to register their copyrighted works at the DJKI to obtain repressive legal protection. Legal protection Intellectual property rights on handicrafts are divided into copyrights and industrial property rights. The form of legal protection in Copyright Law is divided into legal protection in the constitutive system and legal protection in the declarative system. Intellectual property rights for handicrafts in the industrial sector can be obtained by protecting industrial design and trademark rights through a constitutive system.

**KEYWORDS:** Legal Protection; Intellectual Property Right; Handicraft.

### I. INTRODUCTION

The World Intellectual Property Organization (WIPO) released the Global Innovation Index 2022 report that Indonesia obtained a score of 27.90 and was ranked 75th out of 132 countries.<sup>1</sup> Besides, Indonesia rose 12 ranks from the 2021 ranking. As a result, Indonesia is included in the top 80 most innovative countries for the first time in the last 11 years. WIPO has also designated Indonesia as Innovation Achiever or countries that excels in innovation. The development of Indonesian innovation has exceeded predictions based on income groups. Indonesia itself belongs to the group of low-middle-income countries. According to WIPO, Indonesia's rise is influenced by a significant increase in the link between innovation and intangible assets. Indonesia also performs well on indicators such as startup and scale-up finance, university-industry collaboration in research and development, intangible corporate assets' intensity, and economic clusters' state.<sup>2</sup>

The results of the Global Innovation Index 2022 report show the government's efforts to increase Indonesia's competitiveness in various ways. One way is through innovation. Based on the Law Number 18 of 2002 concerning the National System for Research, Development, and Application of Science and Technology (Sisnas P3Iptek), innovation is research, development, and engineering activities to develop practical applications of new scientific values and contexts. It is also new ways to apply existing science and technology to products or production processes. It can be concluded that innovation is a novelty produced through a series of creative methodologies and used in a process to create certain competitiveness.

The creative economy is one of the industrial sectors that produce innovative works and has high economic value in the global market, as well as handicraft innovation works developed by Indonesian people from various tribes and regions. An example is the water hyacinth handicrafts innovation culture typical from the Hulu Sungai Nort, South Kalimantan, Garden Chairs with carved ornaments typical from Jepara, Central Java, Bamboo handicrafts such as Bamboo Guitars and Violins produced by Adang Muhidin and IBC (Indonesian Bamboo Community) from Cimahi city, West Java, and Wicker Rattan Bidai handicrafts

<sup>1</sup> World Intellectual Property Organization WIPO, "Global Innovation Index 2022," 2023, 148.

<sup>2</sup> Faisal Javier, "Peringkat Indonesia Di Inovasi Global 2022 Naik Segnifikan," Tempo.com Bicara Fakta, 2023, <https://data.tempo.co/data/1648/peringkat-indonesia-di-indeks-inovasi-global-2022-naik-signifikan#:~:text=Peringkat Indonesia di Global Innovation Index&text=Berdasarkan laporan Indeks Inovasi Global,dari peringkat di tahun 2021.>

typical from the tribe Dayak Bidayuh Bengkayang Regency, West Kalimantan. Some of these handicrafts have been proven to have high economic value in the industrial world, regionally and internationally. However, despite the high economic value of community innovation in making handicrafts, there are opportunities for fraud, such as theft or piracy of copyrighted works. Therefore, it is

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necessary to protect intellectual property through copyright, patents, trade secrets, trademarks, and even industrial designs to prevent fraud in copyrighted works.<sup>1</sup>

The Cases of fraudulent acts against the handicrafts of the Indonesian people include the Bidai Rattan handicraft belonging to the Dayak Tribe, which Malaysia claims. It is because most Bidai craftsmen sell to Malaysian collectors or even sell directly to Serikin in Malaysia. Therefore, Malaysian claimed that Bidai was their product. Then, they sold to Jakarta and Bali again by mentioning that bidai is a genuine product from Malaysia. In addition, similar goods made in China (pandanus) and Vietnam (water hyacinth) are starting to threaten the craft industry today. Although they do not have the same varieties of pandanus plants as Indonesia, China has succeeded in producing synthetic pandan crafts, which are considered more affordable by using modern technology. The economic value of goods is more important than its aesthetic value for buyers, who often come from developed countries. Another impact is many goods were originally purchased in Indonesia and then brought to China and Vietnam to be imitated by them and obtain more affordable prices.<sup>2</sup>

Based on the classification of industrial property rights in the convention establishing the world intellectual property organization, those actions can be seen as violating unfair competition protection in international trade.<sup>3</sup> This illegal behavior violates various international agreements for protection. This illegal behavior violates various international agreements for copyright protection, including the TRIPs Agreement, Bern Convention, Universal Copy Rights Convention, and Rome Convention. The TRIPs Agreement (Trade-Related Aspects of Intellectual Property Rights) was ratified by 117 countries in April 1993, including Indonesia.

Copyright, as defined in Law No. 19 of 2002, is the exclusive rights of creators or those who have received the right to publish, reproduce, or authorize their creations, subject to all applicable legal and regulatory requirements. According to Auteurswet 1912, Article 1, copyright is the sole creator's right, or the right of those who obtain the rights, for his creations in literature, science, and art to declare and reproduce them while considering the applicable provisions and the limitations determined by law. Based on the definition above, it becomes clear that there is a context where copyright relates to artists' exclusive rights to works in various disciplines, including artistic products such as Rattan Bidai, Pandan, and water hyacinth handicrafts. In this case, it is clear that the buyer blatantly violated Indonesian copyright law.

Reflecting on claims by Malaysia on the Bidai Rotan handicraft product of the Dayak tribe, the imitation of water hyacinth and pandanus woven handicrafts directed by national consumers to China and Vietnam violated national and international law. Based on some of these cases, the authors feel motivated to conduct research related to how the Indonesian people's handicraft innovation culture in the field of intellectual property rights and how the legal protection of intellectual property rights for handicrafts is based on the legal system in Indonesia.

Several previous researchers have discussed handicrafts in the community, but this research has a different focus of discussion from the previous studies. This research focuses on the culture of Indonesian handicraft innovation in intellectual property rights and how the legal protection of intellectual property rights for handicrafts is based on the legal system in Indonesia. While previous research, such as research by Miftahur Rahman and Nur Kholidah's "Brand Rights as Guarantees for Pawning for MSMEs Capital for Creative Batik Craft Industries"<sup>4</sup>, This research focuses on discussing the creative industry of Batik crafts by utilising the rights of the Batik industry brand as collateral for pawning. Further investigation by Cecep Tedi Siswanto, "Implementation of Intellectual Property Rights Law (IPR) on Industrial Design in the Bamboo Crafts Industry in the Sleman Regency Area"<sup>5</sup>, This study discusses implementing the Industrial Design Rights Act No. 31 of 2000 among bamboo designers in the Sleman Regency. Further research by Ida Nadirah, "Intellectual Property Legal Protection Against Handicraft Craftsmen"<sup>6</sup>, This research discusses the protection of industrial design rights, the reasons for the designer's lack of respect for his creations, and the vulnerable position of handicraft artisans.

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<sup>1</sup> Cita Citrawinda, "Naskah Akademik Rancangan Undang-Undang Tentang Desain Industri Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum nasional Kementerian Hukum Dan Hak Asasi Manusia," 2013.

<sup>2</sup> Anastasia Resti Muliana, "Perlindungan Hukum Hak Kekayaan Intelektual Bagi Usaha Kecil Di Bidang Industri Kerajinan Di Wilayah Kabupaten Bantul (Study Kasus Pada Kerajinan Pandan dan Eceng Gondok)," *Undip Repository* (Universitas Diponegoro, 2007).

<sup>3</sup> Saidin, *Aspek Hukum Hak Kekayaan Intelektual* (Jakarta: PT. RajaGrafindo Perkasa, 2004), 15.

<sup>4</sup> Miftahur Rahman Hakim dan Nur Kholidah, "Hak Merek Sebagai Jaminan Gadai Untuk Permodalan UMKM Industri Kreatif Kerajinan Batik," *Pena Justitia* 18, no. 2 (2019): 79–87, <https://doi.org/http://dx.doi.org/10.31941/pj.v18i2.1092>.

<sup>5</sup> Cecep Tedi Siswanto, "Pelaksanaan Hukum Hak Kekayaan Intelektual (HaKI) Terhadap Desain Industri Kerajinan Bambu Di Wilayah Kabupaten Sleman," *Cakrawala Hukum* 11, no. 1 (2015): 35–73.

<sup>6</sup> Ida Nadirah, "Perlindungan Hukum Kekayaan Intelektual Terhadap Pengrajin Kerajinan Tangan," *Delegata Jurnal Ilmu Hukum Fakultas Hukum UMSU* 5, no. 1 (2020): 37–50, <https://doi.org/https://doi.org/10.30596/dll.v5i1.3444>.

## II. RESEARCH METHODS

This research used a normative juridical method that focuses on studying Indonesian craft innovation culture in intellectual property rights and legal protection of intellectual property rights for handicraft innovation in the Indonesian legal system. It also used primary legal sources originating from laws and regulations such as Law No. 28 of 2014 concerning Copyright, Law No. 31 of 2000 concerning Industrial Design, and Law No. 15 of 2001 concerning Trademarks and Geographical Indications, as well as secondary materials from books and journals related to this study. The approach used a statutory analytic approach (statute approach).

## III. RESEARCH RESULT

### Indonesian Society's Handicraft Innovation Culture in the Field of Intellectual Property Rights

Indonesia is a country with a high spirit of innovation. It is evidenced by the results of the 2022 Global Innovation Index (GII) report released by the World Intellectual Property Organization (WIPO), which states that Indonesia is a country that has promising innovation potential.<sup>7</sup> Indonesia is ranked 75th out of 123 countries, scoring 27.9. Thus, Indonesia has successfully climbed 12 ranks compared to 2021, which has caused Indonesia to occupy the lower middle-income group.<sup>10</sup>

The culture of innovation in society has many fields, including innovation in the institutional environment, innovation in education, infrastructure, human resources and research, the creation of knowledge and technology, and the creative industry. The high culture of innovation in Indonesian people's lives certainly requires government support and guidance. This guidance aims to direct people's innovations into works that have the potential to improve the country's economy locally and globally, as well as direct people to seek legal protection for their works, both preventive and repressive legal protection. Protection of copyrighted works aims to encourage community creativity to increase creative innovation from various fields safely without worrying about fraud from other parties and as a form of appreciation for human intellectual work. Intellectual Property Rights (IPR) is a form of protection given to human intellectual creations with high economic value. The Indonesian government has facilitated the protection of the IPR of its citizens by registering their innovation works with the Directorate General of Intellectual Property (DGIP).

The handicraft creative industry is one of the fields of innovation that many Indonesian people are involved in. The culture of handicraft innovation has developed rapidly and significantly in every tribe and region. The community's creativity can create the latest innovations from previous works, such as Bamboo handicrafts. Indonesian people can process bamboo into various kinds of handicraft creations, such as making bamboo chairs and tables, accessories, flower vases, lampshades and many other innovative works created in various forms. Several handicrafts produced by craftsmen should be supported by legal protection through registering their intellectual property rights with DGIP to avoid cheating by irresponsible parties, such as theft and piracy of copyrighted works.

Regarding the registration of intellectual property rights, several handicraft craftsmen have already registered their copyrights with DGIP to obtain intellectual property rights protection for their work, such as the bamboo craft in the form of a flower pot by Mr William Suhartono Umbul from Tegal Alur, Kalideres, The industrial design of the flower pot was registered by Mr William to DGIP and his application was granted with certificate number IDD000059053.<sup>8</sup> Besides, there is a rattan craft in the form of a rattan bicycle by Mr Cahyadi Tanujaya, who comes from West Jakarta. Mr Cahyadi has also registered his rattan bicycle design with DPIP, and his application has been granted with certificate IDD000046217.<sup>12</sup> Then, the innovation of handicrafts from shell shells in the form of decorative shell lamps by Mr Alexander William, Mr Grace Mulyono and Ms Tania Zipora Suhardjo from LPPM Siwalan Kerto Christian University. This handicraft has also been registered with DGIP with the number certificate IDD000062772.<sup>13</sup> Furthermore, various kinds of handicraft copyrights have been registered with DGIP. The registration of intellectual property rights is done because the craftsmen understand and know the importance of registering their copyrighted works to protect the attached intellectual property rights.

Muhamad Djumhana explained that several benefits would be obtained by protecting Intellectual Property Rights, including<sup>9</sup>:

- a. Strong IPR protection can encourage the improvement of the national technological base. It is to enable faster technology development.

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<sup>7</sup> WIPO, "Global Innovation Index 2022," 22.

<sup>10</sup> Ibid., 143.

<sup>8</sup> "Penelusuran Data Kekayaan Intelektual," Direktorat Jenderal Kekayaan Intelektual, 2020, <https://pdkiindonesia.dgip.go.id/detail/A00202002474?type=di&keyword=bambu>.<sup>12</sup> "Penelusuran Data Kekayaan Intelektual," Direktorat Jenderal Kekayaan Intelektual, 2015, <https://pdkiindonesia.dgip.go.id/detail/A00201500844?type=di&keyword=rotan>.<sup>13</sup> "Penelusuran Data Kekayaan Intelektual," Direktorat Jenderal Kekayaan Intelektual, 2022, <https://pdkiindonesia.dgip.go.id/detail/A00202104305?type=di&keyword=kerang>.

<sup>9</sup> Muhammad Djumhana, *Hak Milik Intelektual: Sejarah, Teori dan Prakteknya di Indonesia*, 4 ed. (Bandung: Cita Aditiya Bakti, 2014), 32.

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- b. Legal protection of Intellectual Property Rights is an effort to create a better climate for the growth and development of the spirit of creating or discovering something in science, art and literature.
- c. Legal protection of Intellectual Property Rights is the state's recognition of human works and initiatives. Besides, it is also to create a healthy macroeconomic atmosphere to attract foreign investors and expedite international trade.
- d. IPR protection, especially industrial design, helps designers or someone who has industrial design rights to be able to promote their designs throughout the world.

On the other hand, several handicraft craftsmen who have not registered their copyrighted works with DGIP with various background problems. For example, Mr Radiono's bamboo craft in the province of the Special Region of Yogyakarta; since the 1960s, Mr Radiono has been running a bamboo handicraft business in the Sendari hamlet in the form of a lincak with an old design originating from the village of Sendari, until in the end he was able to modify the bamboo lincak design by his creation. However, Mr Radiono has not registered his Lincak Bambu design with DGIP due to a lack of understanding of IPR protection.<sup>10</sup> Furthermore, Pearl Shell crafts originating from Ambon City with various forms of souvenir designs such as Flowers, Pigeons, Birds of Paradise, Calligraphy, and Sailboats. According to one of the Human Resources Development and Community Empowerment Agency for Maritime Affairs and Fisheries (HRDCEAMAF) work units, Pearl Shell Crafts are very popular in the industrial world. This unit stated that the results from Pearl Shell Craft waste are a source of welfare for the people of Ambon.<sup>11</sup> However, the craftsmen try to protect the craftsmen of Pearl Shell crafts. They have yet to try to protect the law by registering their work at DGIP to receive repressive government protection.<sup>12</sup> This problem was motivated by the ignorance of the craftsmen about the importance of registration and the procedure for registration. Different from the craftsmen who already know the IPR registration procedure but are still reluctant to register their work because obtaining a certificate of industrial design rights takes time. Therefore, it is better for the craftsmen to use this time to do other work than to take care of the registration. Even craftsmen object to the registration fee, especially when production results are still unstable.<sup>18</sup>

In addition, there are Copper and Brass handicrafts from the Tumang Hamlet of Cepogo Village. These handicrafts are marketed through galleries in Tumang, social media and the internet, domestic and foreign exhibitions, and third parties such as brokers. Copper and brass handicrafts are distributed not only in Indonesia but also abroad. These products are exported to Malaysia, the United States, France and Australia. Besides, it sold to local markets such as Jakarta, Yogyakarta, Surabaya, Bali, Semarang and Bandung.<sup>13</sup> The widespread marketing of Tumang's copper and brass handicrafts has not yet aroused the awareness of the craftsmen to register their works with DGIP to obtain repressive legal protection from the government. Even though Tumang's copper and brass handicraft marketing is already pervasive, it has a high potential to develop the local economy. However, it also opens up opportunities for fraud which can harm the Tumang copper and brass craftsmen. Therefore, there is a great need for awareness about IPR and the importance of registering copyrighted works. The absence of repressive legal protection efforts through the registration of IPR by Tumang Copper and Brass craftsmen is motivated by the lack of public understanding regarding IPR and the benefits they will get to protect their works.<sup>20</sup>

Some of the facts above show that many handicraft craftsmen still have not registered Intellectual Property Rights (IPR) for their work due to a lack of knowledge and understanding of IPR itself. It is regrettable if the innovative works of the community do not receive strong government legal protection because without registration of intellectual property rights to the works made, one day, it could harm handicraft craftsmen morally and economically. Based on the background of the craftsmen who do not register Intellectual Property Rights for their works, the government's role and intervention are necessary to resolve this problem. In this case, the government needs to provide guidance and direct the community, especially handicraft craftsmen, through active outreach to the community to participate in IPR development carried out by LSM. It aims for the craftsmen to know and understand the importance of IPR protection for their work and the registration procedure. In addition, the city government also needs to pay more intense attention and supervision to the presence of the handicraft industry in each city through related agencies.

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Legal protection of intellectual property rights for community innovation in handicrafts is essential in increasing the competitiveness and economic value of the handicrafts that have been produced. In addition, protecting IPR further encourages innovative people's creativity. It is because IPR legal protection is a force that can protect the exclusive rights of handicraft craftsmen from fraud that often occurs in the industrial world.

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<sup>10</sup> Siswanto, "Pelaksanaan Hukum Hak Kekayaan Intelektual (HaKI) Terhadap Desain Industri Kerajinan Bambu Di Wilayah Kabupaten Sleman," 63.

<sup>11</sup> "Kerajinan Limbah Kulit Kerang Sejahterakan Masyarakat Ambon," KPP News, 2016, <https://news.kkp.go.id/index.php/kerajinan-limbah-kulit-kerang-sejahterakan-masyarakat-ambon/>.

<sup>12</sup> Muchtar A.H Lubetubun, "Aspek Hukum Perlindungan Desain Industri Kerajinan Kerang Mutiara Dalam Pemberdayaan Usaha Kecil Di Kota Ambon," *Jurnal Sasi* 17, no. 2 (2011): 32, <https://doi.org/https://doi.org/10.47268/sasi.v17i2.351>. <sup>18</sup> Ibid., 33.

<sup>13</sup> Muhammad Rois dan Kholis Roisah, "Perlindungan Hukum Kekayaan Intelektual Kerajinan Kuningan Kerang," *Kanun Jurnal Ilmu Hukum* 2, no. 3 (2018): 405, <https://doi.org/https://doi.org/10.24815/kanun.v20i3.11717>. <sup>20</sup> Ibid., 413.

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Intellectual property rights are divided into two categories: copyrights and industrial property rights.<sup>14</sup> Copyright is an exclusive right given to the creator or recipient to announce or reproduce his work or give permission for it without reducing the restrictions based on the applicable laws and regulations.<sup>15</sup> Copyright protection for crafts protects craftsmen's original ideas from being stolen and used against them. The purpose of protecting ideas is to give moral and economic rights to artisans. Moral rights can include the author's name. While economic rights include using the economic value of creations to publish, reproduce, and sell their products.<sup>16</sup> Under Article 12 paragraph (1) letter f of Law no. 28 of 2014 concerning copyright, fine arts in all forms such as painting, drawing, carving, calligraphy, sculpture, collage, and applied art are creations protected by copyright. Copyright protection comes automatically when a work appears in a real medium by the creator. The originality of work in the context of copyright is obtained if the work is created without taking and plagiarizing from various existing works.<sup>17</sup> Article 59, paragraph (2) states that "Copyright protection for Works in the form of works of applied art is valid for 25 (twenty-five) years from the first Announcement".

As a key component in developing national creativity, copyright protection is a serious effort to defend creators' and Related Rights owners' economic and moral rights. Considering that the creative economy is one of the pillars of the national economy to improve the country's economy. The current development of copyright has provided something of cultural, economic, aesthetic, creative and historical value, which generates state income, especially in industrialized countries. Copyright protects the economic value of artists or copyright owners, allowing them to enjoy their creations' results materially.<sup>18</sup> According to the Copyright laws and regulations, there are two types of legal protection: constitutive (registered) legal protection and declarative (unregistered) legal protection. The legal protection system begins when work appears. At the same time, industrial property rights consist of Patents, Trademarks, Industrial designs, Integrated circuit layout designs, Trade secrets, and Plant varieties.\

Handicrafts are one of the growing sectors in the field of industrial design. In the 18th century, industrial design knowledge began to be recognized and developed by various countries, such as England, that developed the industrial revolution.<sup>19</sup> Handicraft techniques were used in the 18th century when design improvements concentrated more on artistic and aesthetic goals than commercial and practical considerations. The Industrial Revolution led to increased technical advances, and in the 19th century, several new industries emerged that used manufacturing techniques to make various new goods.<sup>20</sup> The design sector thrived in the 20th century. It is shown by the many industrial products that are closely related to the designer's work. The industrial design order was initially recognized in the 18th century, especially in countries like England experiencing the industrial revolution. In the 20th century, industrial design developed very rapidly. It is evidenced by the large number of industrial products that cannot be separated from the role of designers.

The first industrial design arrangements were known in the 18th century, especially in countries that developed the industrial revolution, namely England. The Designing and Printing of Linens, Cotton, Calicoes, and Muslins Act was the first Act governing Industrial Design in 1787.<sup>21</sup> It was due to the development of the design industry at that time, namely the massproduced textile and handicraft industries. Industrial design laws at that time only protected for two months, which could be extended for up to three months. Design work is considered intellectual property because it is the product of the designer's thoughts and creativity.

Yastino mentioned that the design scope includes manufactured phenomena in a broader sense. This definition of design includes everything from the smallest pieces of common equipment, such as silverware, to the patterns and models used in textile and apparel production, housing, urban planning, and networks connecting many modes of transportation. Therefore, design covers various disciplines, including product, textiles, interior, graphics, architecture, engineering, and urban design. However comprehensive, all of these domains can be reduced to the basic concept of design, which holds that everything is created to satisfy human material and spiritual needs.<sup>22</sup> The Indonesian government regulates the protection of industrial designs through Law No. 31 of 2000 concerning Industrial Design.

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<sup>14</sup> Hari Sutra Disemadi dan Cindy Kang, "Tantangan Penegakkan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum* 7, no. 1 (2021): 60, <https://doi.org/https://doi.org/10.23887/jkh.v7i1.31457>.

<sup>15</sup> "Undang-Undang Republik Indonesia NO. 28 Tahun 2014 Tentang Hak Cipta" (2014).

<sup>16</sup> Zulvia Makka, "Aspek Hak Ekonomi Dan Hak Moral Dalam Hak Cipta," *Jurnal Akta Yudisia* 1, no. 1 (2016).

<sup>17</sup> Lubetubun, "Aspek Hukum Perlindungan Desain Industri Kerajinan Kerang Mutiara Dalam Pemberdayaan Usaha Kecil Di Kota Ambon," 34.

<sup>18</sup> Lutfi Ulinnuha, "Penggunaan Hak Cipta Sebagai Objek Jaminan Fidusia," *Jurnal Of Private And Commercial Law* 1, no. 1 (2017): 91.

<sup>19</sup> Astrid Savitri, *Revolusi Industri 4.0: Mengubah Tantangan Menjadi Peluang di Era Disrupsi 4.0*, 3 ed. (Yogyakarta: Penerbit Genesis, 2019), 8.

<sup>20</sup> *Ibid.*, 9.

<sup>21</sup> Budi Santoso, *Butir-Butir Berserakan Tentang Hak Atas Kekayaan Intelektual (Desain Industri)* (Bandung: CV. Mandar Maju, 2005), 31–32.

<sup>22</sup> Djumhara, *Hak Milik Intelektual: Sejarah, Teori dan Prakteknya di Indonesia*, 294.

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The definition of Industrial Design based on the Industrial Design Law Article 1 paragraph (1) is:

"Industrial Design is a creation of shape, configuration, composition of lines or colors, lines and colors, or a combination thereof in a three-dimensional or two-dimensional form which gives an aesthetic impression. Then, it can be realized in a threedimensional position which gives an aesthetic impression and can be realized in a three-dimensional or two-dimensional pattern. Besides, it can be used to produce a product, item, industrial commodity or handicraft."<sup>23</sup>

Industrial design is part of Intellectual Property Rights. Protection of industrial designs is based on the concept that the birth of an industrial design is inseparable from human creativity, taste, and initiative. Industrial design is a human intellectual product, a product of human civilization. Thus, the government protects the copyright through Law No. 31 of 2000 concerning Industrial Design. Protection of intellectual property rights for handicrafts in the industrial sector is obtained through registration, and industrial design rights are given for new industrial designs under Article 2 Number 1 of Law Number 31 of 2000 concerning Industrial Designs. According to Article 12 of the same law, a person can be called the holder of the rights to an industrial design if they are the party who first applied for registration. To effectively prevent various forms of plagiarism, piracy, or imitation of industrial designs, in other words, to obtain legal protection, it is necessary to apply for the registration of industrial designs. Thus, the protection of industrial designs is a form of preventive legal protection provided by the government to handicraft craftsmen, which can be obtained by registering their IPR with the Directorate General of Intellectual Property (DGIP).<sup>24</sup>

The registration system for the Industrial Design Law is constitutive. It is because registration is necessary for industrial design rights to implement, so rights will be obtained after registration which has legal force. The constitutive system guarantees more legal certainty and provisions that guarantee justice. According to Article 5, paragraph (1) of the Industrial Design Law, legal protection for industrial design rights is granted ten years from receipt (application) and cannot be extended. Indonesia makes policies related to the period of protection for industrial design rights by following the minimum protection required in the Article TRIPS Agreement; therefore, the policies differ from those of other countries.<sup>25</sup> Not all handicrafts in terms of industrial design can obtain protection as the right to industrial design. It is because only the result of a new industrial design can be given design right protection to its designer by the state and has been announced or used in Indonesia or outside Indonesia. Article 2 of the Industrial Design Law regulates the requirements for industrial design protection, namely:

1. Industrial design rights are only granted for New Industrial Designs,
2. Industrial Design is considered a new matter when on the Filing Date, the Industrial Design is different from registering an industrial design that existed before.
3. Registration of previous industrial designs is the one that occurred before: a) Date of receipt;  
b) Date of priority if the Application is filed with Priority Rights;  
c) Has been published or used in Indonesia or outside Indonesia.

If there is a violation in the field of industrial design, then the holder of the Industrial Design Rights can sue civil and criminal parties who commit violations. Civil prosecution is stipulated in Chapter VIII of Dispute Resolution Articles 46-48 of the Industrial Design Law. In contrast, provisions for criminal prosecution of an industrial design violation are stipulated in Chapter XI of Criminal Provisions Article 54 of the Industrial Design Law. By guaranteeing the protection of Industrial Design Rights, designers will be more enthusiastic about creating creations in the field of Industrial Design.

In addition to protecting industrial designs, craftsmen of handicrafts can obtain protection of Trademark Rights for their work. According to Law Number 15 of 2001 concerning Trademarks and Geographical Indications, a mark is a sign that has distinctive characteristics, and it is used in economic activities, which can be in the form of an image, name, word, letter, number, color arrangement, or a combination of these components.<sup>26</sup> In this case, there are two categories of marks: trade names used for traded goods and service names applied to traded services. Protection of Trademark Rights is obtained when the trademark owner has registered his trademark with the Directorate General of Intellectual Property (DGIP). It is the trademark registration system; the first registrant for the mark will receive protection (required by registration).<sup>27</sup> According to the Mark law, registration must be based on good faith. This arrangement is intended to protect the owner of a registered mark if another party registers an identical or similar mark which can confuse consumers because of a resemblance to the mark of the first owner. Therefore, if there is piracy or imitation of a brand by another party, a request for trademark cancellation can be made, as stipulated in the provisions of Article 76 Law No. 20 of 2016 concerning Brands and Geographical Indications.

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<sup>23</sup> "Undang-Undang Republik Indonesia N0. 31 Tahun 2000 Tentang Desain Industri" (2000).

<sup>24</sup> Lubetubun, "Aspek Hukum Perlindungan Desain Industri Kerajinan Kerang Mutiara Dalam Pemberdayaan Usaha Kecil Di Kota Ambon," 32.

<sup>25</sup> Siswanto, "Pelaksanaan Hukum Hak Kekayaan Intelektual (HaKI) Terhadap Desain Industri Kerajinan Bambu Di Wilayah Kabupaten Sleman," 56.

<sup>26</sup> "Undang-Undang Republik Indonesia N0. 15 Tahun 2001 Tentang Merek Dan Indikasi Geografis" (2001).

<sup>27</sup> Yayan Hanapi, "Pelaksanaan Perlindungan Hukum Merek Untuk Pengusaha Sulaman Karowo di Gorontalo," *Gorontalo Law Review* 18, no. 2 (2018): 6, <https://doi.org/https://doi.org/10.32662/golrev.v1i2.316>.

## Legal Protection of Intellectual Property Rights for Handicraft Innovations in Indonesia's Legal System

Brand protection provides appropriate and accurate information to consumers about a product or service.<sup>28</sup> Brands with differentiating values will make it easier for consumers to search for products and services and also make it easier to identify a product. Therefore, they can find the product they are looking for.<sup>29</sup> Providing incentives to brand owners is one aspect that can improve the quality of their products. Therefore, trademark legal protection is the government's effort to protect trademark rights from infringement. For example, it is using a well-known brand among the public to sell goods inferior to the original brand and taking consumers away from that brand.<sup>30</sup>

### CONCLUSIONS

The Indonesian people's handicraft innovation culture has developed quite rapidly. However, the craftsmen still need to understand fully Intellectual Property Rights. Therefore, few handicraft craftsmen from various cities have yet to register their copyrighted works at the DGIP to get Repressive legal protection. Intellectual property rights are divided into two categories: copyrights and industrial property rights. Copyright protection for crafts protects craftsmen's original ideas from being stolen and used against them. The purpose of protecting ideas is that handicraft artisans can obtain their moral rights and economic rights. Copyright protection for Works in the form of applied works of art has been valid for 25 (twenty-five) years since the first announcement. The copyright law protection system is divided into constitutive (registered) system legal protection and declarative (unregistered) system legal protection.

Intellectual property rights for handicrafts in the industrial sector can be obtained by protecting industrial designs and trademark rights. Protection of intellectual property rights for handicrafts in the industrial sector is obtained through a registration system; the protection period for industrial designs is given for ten years from when the application is received and cannot be extended. In the event of a violation in the field of industrial design, the holder of Industrial Design Rights can sue civil and criminally the party committing the violation. While the protection of trademark rights is obtained by registering the mark with the Directorate General of Intellectual Property (DGIP), as required by the registration system, if there is an imitation of a registered mark, a request for cancellation of the mark can be made.

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