

International Journal of Engineering Sciences & Research Technology

(A Peer Reviewed Online Journal)
Impact Factor: 5.164



Chief Editor
Dr. J.B. Helonde

Executive Editor
Mr. Somil Mayur Shah

ABSTRACT

Since more than a decade ago, product design input contributes 60 % to its economic value addition and also influences 50 % of the inbuilt quality of its value chain, as conclusion product design contributes significantly to the competitiveness of the product. Ironically industrial design protection have not been properly utilized as the major driver of creative economy development. This research project will aim towards finding the reciprocal relationship between the comprehensive industrial design protection and the escalation of national product design creation and further will present the analysis of the possibility and potential of industrial design protection to be functioned as the instrument to transform creative economy concept into the establishment of creative industries. The result shows that in order to achieve the desired proportional sustainable development, legal certainty is the ultimate necessity alongside with the establishment of legal structure and culture to create “domino effects” in fostering start – up business to creative industries establishment in order to formulate weightless economy with creativity as the paramount capital.

KEYWORDS: Product design, Creative Economy, Creative industries, Weightless Economy.

1. INTRODUCTION

Statement of the Problems

In the early 19th century, the craftsman made their wares by hands. As the demands of amount and standardized product increased it is generally acknowledge that certain methods of production was required. These methods required to have higher number of output than manual methods. In a relatively short time, the mass production become the good solution for the product needs in the term of number, but this method does not provide the high distinctiveness of a product and further the aesthetic appearance came as the significant and differential factor in product market.

As the consequences, the aesthetic appearance came as the significant and differential factor for the product and set industrial design protection as the urgency. The producer are conduct many creative way to individualized and to build the characteristic of their products. This creative efforts become the inseparable process of production and further become a determining factor in product marketing, thus the creativity in product design become valuable asset in trade and business. This is the compelling evidence that trade activities in economic based knowledge are strongly related to intellectual property, including industrial design.

Design plays important role in influencing the consumer’s buying decision since most people are depend on the appearance of product, thus industrial design become determining element to gain market share and consumer’s loyalty and further industrial designs are important to the promotion of trade and innovation in the world that currently placed in between the information / knowledge economy era and innovation / design – based creative economy. Since more than a decade ago, product design input contributes 60 % to its economic value addition and also influences 50 % of the inbuilt quality of its value chain, as conclusion product design contributes significantly to the competitiveness of the product.

Those are compelling evidence that creativity has become paramount important in creating new, innovative and adaptive product in global trade. The comprehensive protection is in massive urgency to provide in order to empower the national product design creation, to foster the growth of creativity in every sector and further reach the expected economic growth with creative assets. Regarding the effort to escalate national product design and to transform creativity into factual platform in industrial scale the two most important problem statement of this research are:

- How to comprehensively protect industrial design and empower the national product design creation?
- How to promote industrial design as the instrument to transform creative economy concept into the establishment of creative industries?

Objectives

This paper aims to identify two problem statements:

- To analyze the escalation of industrial design protection in empowering national product design creation
- To identify the promotion of industrial design as the instrument to transform creative economy concept into the establishment of creative industries

Significance of the Study

This research project will aim towards finding the reciprocal relationship between the comprehensive industrial design protection and the escalation of national product design creation. Further this research will present the analysis of the possibility and potential of industrial design protection to be functioned as the instrument to transform creative economy concept into the establishment of creative industries. This research expected to be the reference for interested parties and institutions related to the regulation making process of industrial design regulation and national interest in escalating the number of creativity through the creation of product design and far more important this research expect to be the “eye opener” for state holder and stakeholders to conduct the collective and integrative action in exploring industrial design as the instrument to transform creative economy concept to the creation and establishment of creative industries sector.

2. THEORETICAL STUDIES

The overview of industrial design: terminology, concept and regulations

Design is aspect of a product or features applied to an article or product; it is not the article or product itself. Industrial Designs are primarily those elements incorporated into mass-produced products that aim to enhance their attractiveness by their appearance. Industrial design adds value to products and services; therefore Industrial design is important element of industrial development and significantly contributes to a branding strategy since the creative design makes a product attractive and more visually appealing. Industrial design also functioned to strengthen brands through a strong focus on product design, the way a certain products appear in the eyes of the consumers and the way a certain design entail certain characteristic to the product that functioned as the identity of the product and as the instrument to identify the producer.

Broadly, the term “industrial design” refers to the creation of the form and function of objects of daily use. According to The International Council of Societies of Industrial Design (ICSID) Design is a creative activity whose aim is to establish the multi – faceted qualities of objects, processes, services, services and their systems in whole life – cycles. Industrial design rights commonly protect the features, configurations or ornaments applied to certain product through industrial process resulting finished articles that able to judge by the eye, possess a novelty and the designer granted with exclusive rights to use, utilize and forbid any unlawful use of the design. Generally, the definition of industrial design address to a design as measure / instrument to make an industrial product or goods has an attractive appearance in terms of the shape, color, pattern and configuration and in legal sense, industrial design refers to the right granted by states based on registration to protect the original creation in ornamental aspect and non-functional features of a product that result from design creative activity. Industrial product commonly possess two main elements; functional aspect and aesthetic appearance aspect. These two important aspects placed Industrial Design complicatedly between patent and copyrights and as the result, there are two basic approaches in protecting industrial design:

- The Patent approach: the provision of protection requires a substantive examination before granting industrial design rights, this approach used by The United States, Japan, Australia, United Kingdom and Indonesia.
- The Copyright approach: There is no need substantive examination to protect industrial design. This approach used by Netherland, Germany, France and Spain.

Industrial design protection has been internationally acknowledged since Paris Convention signed in Paris on 1883 and ratified by 11 states in 1884. The Paris Convention specified that the states party committed themselves to create the standard in protecting industrial property both for individuals and business entities consisting of patents, utility models, industrial designs, trademarks, service marks, trade names, indication of source or appellation of origin and the repression of unfair competition.

Aside from the scope of industrial property rights in article 1 verse (2), the Convention does not clearly defines each of the industrial property nor present the certain platform to regulate and implement the regulation in protecting those industrial property. This convention mainly regulate the general principle and minimum standard of protection while the exact and complete regulation are left to the domestic legislation of state parties to develop and define their own regulation and methods of protection and harmonization in some degrees. There are 4 (four) main substances in Paris Convention National treatment, Right of Priority, Common rules for patents, marks and unfair competition, Administrative framework and final clauses.

Paris convention states that industrial design must be protected in each contracting state, and protection may not be forfeited on the ground that articles incorporation the design are not manufactured in that state. Further, Paris Convention also regulates procedural requirement, for example the requirement for establishment intellectual property (industrial property) service for state parties to handle industrial design protection according to their national legislation through their national office and to publish an official periodical journal regularly for public communication.

The lack of measurement defining the scope of each industrial property rights and the procedure of law enforcement in Paris Convention as well as the platform of protection and the urge to comprehensively create the means to protect industrial property and intellectual property in common are the determining factor behind the establishment of Trade Related Aspect of Intellectual Property Rights (TRIPs) Agreement as the part of World Trade Organization (WTO). In the term of industrial design protection, the TRIPs Agreement states that member shall provide for the protection of independently created industrial design that are new or original and member may provide that such protection shall not extended to design that are not new or original because they do not significantly differ from known design or combination of known design features. In the field of implementation, member states may freely adopt regulations to provide both the fulfilment minimum standard of protection according to TRIPs and national policy. The TRIPs Agreement deals with industrial design with a double approach:

- TRIPs Agreement recognizes some aspects of industrial design protection that belong to intrinsically in the realm of copyright, for example originality
- TRIPs Agreement also adopt short term of protection for industrial design, as any other industrial property, for example patent

There are only two provisions of TRIPs agreement refer directly and (globally) to industrial design protection act. Both of article 25 and article 26 TRIPs Agreement merely states about the requirement for protection (without providing the definition of industrial design) and the scope of protection without constituting what type of protection should be applied leaves the implementation relatively free according to the national law of member states. As the consequences of this provision, member state should develop particular law and regulation and determine the scope of protection and application of protection.

The effort to capture the increasing significance of design in economic and industrial development is partly influenced by government policy, thus, the regulation of industrial design protection plays an important role as strategic importance of design for national industry competitiveness Legal protection become urgency because once certain design is successful, the competitors rush in and copy or imitates the particular product appearance.



Indonesia regulates Industrial Design on Law Number 31 year 2000. This law uses design approach where the artistic creation is the important consideration and basis for protection beside registration. The primary requirement for industrial design to be protected is novelty. Industrial design shall be considered new if no previous identical industrial design has been made available to the public before the date of filling of the application for registration, or if there is no application previously filled requesting of an identical industrial design.

Industrial design protection in indonesia

Indonesia regulates Industrial Design on Law Number 31 year 2000. Industrial design shall mean a creation on the shape, configuration, or the composition of lines or colors, or lines and colors, or the combination thereof in a three or two dimensional form which gives aesthetic impression and can be implemented in a three or two dimensional pattern and used to produce a product, goods or an industrial commodity and a handy craft. One of the most important requirement for industrial design protection is novelty, where Article 2 stipulates that the right to industrial design shall be granted for an industrial design that is new and the differential approach are examine based on aesthetic impression, in accordance to Article 25 para (1) of the TRIPs Agreement which defines / classifies certain designs are new when the industrial design is different from the prior disclosure.

The novelty is an absolute requirements for industrial design protection although on its implementation it doesn't mean as totally different / significantly not the same and the novelty can be gained even when a design only possess small difference or only slightly different. To be protected, an industrial design must appeal to the eye since the object of protection is the aesthetic appearance and not the technical features of the article. Industrial design shall be considered new if no previous identical industrial design has been made available to the public before the date of filling of the application for registration, or if there is no application previously filled requesting of an identical industrial design. This law mainly uses design approach where the artistic creation is the important consideration and basis for protection beside registration and also an industrial design must be capable of being reproduced in industrial scale of production.

The industrial design protection in Indonesia also adopt the first to file principle, therefore, the party who first files an application shall be deemed as the right holder unless proven otherwise. The duration of industrial design protection shall be granted for 10 (ten) years, start from the date of application / registration. Once the industrial design is granted, the rights holder is given a right against its unauthorized copying or imitation by third parties and also the rights to forbid other parties for not having his consent on utilization of the rights.

Creative economy and design thinking: practical creative concept for intellectual property

Creative economy describes an entire system of relationship in the post – industrial, knowledge-based economy where creativity is an essential feature and driving factor for competitiveness and economic growth. It represents a new global awareness of the role of creativity and innovation. The fortunes and the sustainability of many businesses nowadays highly depend on intellectual property rights. Intellectual Property is a phrase that refers to proprietary rights in creation of the mind, as an abstract concept; they gain value by successful gaining of economic benefit for the creator or the holder. The existing and potential economic benefit determines the market value of intellectual property.

The strong relation between intellectual property and creativity brought creative economy as an ideal platform for intellectual property development. Nevertheless, creative economy is just a concept until it manifest into real sector: Creative industries, where intellectual property as the basis of the earnings. Intellectual property as the creative factor prove to have significance role, in this context product design contributes to value addition to the product and emerge wealth generation for the producer and further set the quality guarantee and contributes significantly to product competitiveness.

The creative industry has been acknowledged as the major driver of economic growth; the growth of creative industries is on average three times that of economic as a whole. Creative industries also provide the significant effect on poverty eradication. Creativity is the compelling trigger for product creation and development. In order to gain the real benefit of creativity the creator ought to do the manifestation of the creativity by producing the real product through manufacture process. This manufacturing stage is the generator of jobs as the early stage of creative industry formulation. Employment is the most important social indicator to analyze the impact and the



effect of creative industries. An effective creative industry should have the ability to create opportunity for - as many as possible individuals - to take part and gain benefit from it. The specialization of creative industries is its large and broad scope, started from individual creativity, this emerges the involvement not just other individuals but also small business as well as larger industrial company.

The ability of industrial design to transform creative economy into creative industry is massively acknowledged for industrial design always requires industrial applicability. The artistic features on finished articles should be

able to reproduce in mass scale. The growth of global manufacturing competition has pressured companies to distinguish themselves on features other than price, volume, speed and quality makes the ability to innovate has become major differentiator with industrial design as one of the key means and critical factor in produce products with greater efficiency and further make the products both less expensive and have consistent feature. Numerous proofs exist that the decision made during the design process determine 70 - 90 percent of a product's production cost by using certain design that require less time to bring a product to market and less cost in manufacturing. The efficient production also economically more benefit for the designer / IP holder. Taking UK as example industrial and innovation policy where strong national design capacity is necessary for economic sustainability because design perceived as the source of strategic advice, innovation and growth for other industries, A 2010 report by UNCTAD on creative economy states that UK creative share of Gross Value Added (GVA) is 5,8 % and design industry is predominantly made up of small or micro – businesses, this demands comprehensive legal protection and its enforcement is the key to maintain the sustainability of creative industries because intellectual property only has value as long as the owner or the holder can defend it against the unlawful use or misappropriation.

The novelty requirement is perceived as non-identical approach brought its own dilemma regarding the protection. Concerning the reactivity of the market, the unlawful use or copy are potentially increased because the company use the imitative “second but better” as business strategy where they are only create insignificant changes to existing design and apply for the protection and create the business and competitive advantage. It's extremely important for the government to create the appropriate protection to protect and also encourage the designer and put design - based creative industry as one of the center of economic growth sector by joining up across government departments on creative industries when making decisions. It's an urgency considering creative industries are the major source and platform to develop innovative ideas as the starting points for the generations of new products and services.

3. METHODOLOGY

This research is preceded by studying and examining the literature on theories and concept related to the theme discussed. The method is qualitative research characterized by its aims, which relate to understanding some aspect of social life in exploring the potential of empowering industrial design protection to escalate the national product design creation. Qualitative methods are also expected to be effective in identifying the problems in intangible forms, such as social norms, socioeconomic phenomena and cultural values. This qualitative research also expected to be able to provide the appropriate, comprehensive and implementative legal platform for industrial design protection. Qualitative research also aim to explore and analyze the potential of industrial design in transforming creative economy concept into actual platform by identify the substance, structure and culture regarding industrial design regulation and implementation.

4. RESULT OF ANALYSIS

The escalation of industrial design protection and product design empowerment

Internationally accepted Intellectual Property regimes possess massive possibility in boosting the creativity in the term of product design development considering Intellectual property system provides the media of recognition and acknowledgement since as the rights are acknowledged and regulated by law, it always attached to the subject. This can be the point of social engineering to lead the mindset changing of subject (creative people and community) from the oblivion to the significance effect of product design to be aware and develop the sense of creativity. Intellectual property system provides the global system of utilization and application of creativity can be the instrument for more creative and proactive effort in creating product design and integrating creative design into business. The global trade currently pace between the information / knowledge – based economy era and design – based creative economy where the creativity of the product and the share of



information as the marketing strategy significantly determine the competitive advantage of the product in global market as well as adding the economic value to the product and inbuilt product identity.

In order to achieve the desired proportional sustainable development, legal certainty is the ultimate necessity. Legal certainty should be support by the availability of adequate legal instrument. Indonesia provide the protection of industrial design through law number 31 year 2000 on Industrial Design and Indonesia currently in processing the new Industrial Design Law that covers the protection for broader scope of industry including Small Medium Enterprises (SMEs) and micro business. This consider to be an important and influential breakthrough since the business sector in Indonesia dominated by Micro and Small Medium Enterprises with creativity as their main capital assets. The Development of creative economy massively and aggressively developed in Indonesia since the issuance of Presidential Instruction No. 6 year 2009 on Creative Economy Development. These two regulation project to be the legal substance, the law responsible of policing and maintaining the surface of order. Law as bundle of norms and order requires factual and formal implementation through the institution and apparatus as the implementer.

To be enforcedly effective the law (legal structure and legal substance) should be high acceptance and low resistance. Society should be perceived law as the important instrument and needed to keep social order as well as useful for common benefit. To be able to perform the function of law as tool of social engineering, internationally accepted intellectual property regime should be infiltrated in order to be absorbed by the society as the part of their living law. There are few possible steps to create intellectual property legal culture:

- **Create IPRs awareness**, outreach and promotion: aim to improve the community awareness about the benefits of intellectual property rights in creative design development, the importance in protecting industrial design, escalate the understanding of moral and economic value of a design and practical ability to explore the economic benefit of design.
- **Generation of IPRs by** forming the intellectual property rights pool as the center of IPR and stimulates the creation of product design by facilitating the designers and innovators, to ensure the balance between community needs, national priority and corporate sector interest by making the design protection and registration procedure more efficient, streamlined, cost effective and beneficial.
- **Commercialization of IPR, explore the maximum benefit and sustainable utilization** of creative through commercialization, encourage the entrepreneurship to create economic viability and capture the financial value by connecting the local creators and designers with global scale innovator and investor in order to support product development;
- **Human Capital Development**, the most vital sector of industrial design law enforcement and product design development of a nation is human capital development. The human expected to be the active element who utilizes law as the tool of social engineering. Human capital needs in creation of creative product design and the integration of a design concept into factual industrial product. It's extremely important to develop the mindset to perceive intellectual property not only as legal right but also asset with massive potential of economic benefit. Human capital development aim to develop community from uninformed and ignorant to a productive and skilled workforce, creator and producer.

Legal system theory by Lawrence M. Friedman strongly addressed that law is not autonomous of other elements of the social system, law is always open to external influences. The enforcement of intellectual property rights law plays important role in social engineering but it cannot be just build itself. Law making process should be accompanied and supported by public input to ensure its benefit and implementation in external acts, to guarantee that the structure, substance and culture contains in that law is fully suitable, beneficial and enforceable in practice. In this communal platform intellectual property should be seen as social relationship between people that allocate rights and responsibilities, personally or collectively.

The promotion of strong and effective industrial design protection regimes globally will be able to provide market share for national products as the part of global industry and it is essential that local producers have the option to protect their industrial design effectively in the terms of cost and registration procedures when trading globally. Harmonization is the key in global implementation of industrial design protection. The harmonization required the establishment of uniform filing procedures to the extent possible, standardize international



application formalities and procedures and also a treaty that can accommodate the different national industrial design laws and procedures.

The new Industrial Design law that currently on progress aim to modernize the legal framework for design protection, the upcoming law also enables the accession to the Geneva Act of the Hague Agreement for International Registration of Industrial Design. The ratification will therefore allow greater flexibility and effectiveness for designers and business entities in obtain industrial design protection, giving them more platform and larger scope in marketing and distributing their products. The accession and ratification of Hague Agreement will help local creative industries players to be more cost – effective and achieve more time – efficiencies in the term of industrial design protection.

The Hague Agreement provides a mechanism for registering an industrial design in state parties by means single application filled in one language with one set of fees. There are strict qualification to use this international industrial design registration:

- The applicant is a national of a contracting party / member country
- The applicant is domiciled in a contracting party
- The applicant has a real and effective industrial or commercial establishment in a contracting party
- The applicant has its habitual residence in a contracting party

The Hague Agreement Industrial Design Registration (“IDR”) applications were filled with the World Intellectual Property Organization (WIPO) where designs were examined only for formality compliance and then registered. These registrations were sent to the member countries where they had the same effect as the national registration protection. The Hague System provides several advantages in industrial design protection for example the short period of review process where the publication usually publish in 2 (two) to 3 (three) months from filling date and one the design registration published in WIPO Gazette, the information of publication then communicated to each country where protection is designated.

In order to effectively implementing and operating Hague system there are numerous aspect should be prepared by Indonesia, as follows:

- a. National regulation and implementing regulation concerning internal procedures
- b. The national office should be technically ready to support the industrial design registration and industrial design protection system
- c. Communication and coordination with international bureau
- d. Raising public awareness of industrial design protection
- e. The element of Intellectual Property (Industrial Design) enforcement

The enforcement of industrial design regulation will provide the effective protection of the implementation of ideas and creativity and will emerge the economic and commercial motivation that simultaneously will result greater number of idea – producer, greater number of production and lastly will optimally expand the role of creative industries as the generator of jobs and instrument in formulating creativity – based sustainable development and higher economic growth.

Promotion of industrial design as the instrument and catalyst for creative economy concept transformation to creative industry

Creative economy is the new economic concept based on idea and creativity, comes from human creation and knowledge including cultures. It plays an important role in socio-economic upgrading. Creative sectors across the world are increasingly recognizing its importance as a generator of jobs, wealth and cultural engagement. The main cores of creative economy are the cultural based creativity and creative industries that lie at the intersection of arts, culture, business and technology. UNCTAD’s 2008 report Creative Economy suggested a more inclusive definition which brought this term into popular use and recognized the wider societal impact: ‘the interface between creativity, culture, economics and technology as expressed in the ability to create and circulate intellectual capital, with the potential to generate income, jobs and export earnings while at the same time promoting social inclusion, cultural diversity and human development.

In this knowledge and creativity-based era, intellectual property plays a determinant role in promoting economic development even until the microeconomic level and strong potencies for economic transition. Based on Indonesian Statistic Board in 2015 the creative economy employed 15,9 % of total workers and in 2017 Creative Economy employed or opened new jobs about 16,4 million people to work in this creative economy sector. The internationally accepted intellectual property regime creates the global framework in which developing countries can participate in the economic and trade activities alongside with developed countries. The pressure point lies in the enforceability of the law. The power of the law will be effectively enforce if supported by the subject of the law.

The transformation from creative economy concept to the implementation in the actual form of creative industry is paramount important for economic development of a nation. Undeniably, culture and creativity has been the bond that binds the society and the nations, but in this knowledge based economy era, culture and creativity are much more than that, they are catalyst for development that millions of people across the world are make a living out of them. Irina Bokova The Director General of UNESCO stated that the cultural and creative industries has capitalizing US\$2,250 billion and nearly 30 million jobs worldwide and become a major drivers of the economies of developed as well as developing countries. Indeed, they are among the most rapidly growing sectors worldwide. It can forge a better future for many countries around the globe. In order to gain the maximum and significant development of a nation, it's extremely important for creative economy concept to be implemented and transformed into creative industry.

Product design and intellectual property management is becoming an increasingly important part of creative sector. Product design came as an important distinctive factor that influence consumer's buying decision, therefore designers hold an important role in industries as creators of products with competitive values. Since more than a decade ago, product design contributes 60 % to its economic value addition and also influences 50 % of the inbuilt quality of its value chain, as conclusion product design contributes significantly to the competitiveness of the products and creative industries are mainly about combining creativity and product creation.

Industrial design is a necessity in creating aesthetically pleasing, efficient, cost - effective and competitive products. The competence of industrial design is in the planning, creating and designing the beneficial products with a purpose to solve daily problems of human needs and the main key for a product to success in any of those fields is to be original, inventive and creative. Industrial designs are primarily those elements incorporated into mass produced products that aim to enhance their attractiveness by their appearance, When industrial product combine with creative content, it will me manifesting into creative products.

Industrial design adds value to products and services; therefore Industrial design is important element of industrial development and significantly contributes to a branding strategy since the creative design makes a product attractive and more visually appealing. Industrial design also functioned to strengthen brands through a strong focus on product design, the way a certain products appear in the eyes of the consumers and the way a certain design entail certain characteristic to the product that functioned as the identity of the product and as the instrument to identify the producer. There are compelling interdependency between creativity and productivity. Product with strong identity and creative content tend to attract consumers, maintain consumer's loyalty and enlarge the market share.

The adequate and comprehensive industrial design protection proved to impact creativity and innovation with short term and long term purposes. Industrial design protection instantly generates greater revenue to business holder in the form of reward and remuneration and in long term expected to provide greater incentives to supply creative works development and further triggers the establishment of creative industry as the vital platform to transform creative economy concept into factual creative industry regarding several considerations:

1. **Create the Creative Culture.** Industrial design protection empowers creativity and innovation by ensuring that the designer will gain acknowledgment and beneficial reward or fairly compensated for their creative efforts, when ideas and creativity are given proper protection the creative culture will rise simultaneously.
2. **Strong trigger for Start - up Business.** Most of start – up business use ideas and creativity as

- their main capital. When the implementation of ideas and creativity gain proper protection start up business will be the ideal option for self-employment.
3. **Accelerate the Innovations** by trigger the creator / designer to be highly innovative since industrial design protection mainly granted based on novelty and creation.
 4. **Escalate the Competitiveness of the Business.** Global market economy allow and encourages competition between industrial and commercial entities. Industrial design protection increase the competitive edges of a product and eager the producers to defend build competitive edge in global economy. Legal protection also functioned to prevent the unfair competition in global business by protecting the good faith.
 5. **Improvement of Product Quality.** The competition among producers caused direct implications of product quality. In order to be able to compete in the market, the producers are encouraged to simultaneously improve the product quality as the most determinant factors of consumer's buying decision.
 6. **Generators of Job,** when creative economy concept transform from small business or informal sectors into the industrial scale, the scope of business are automatically increased. This will requires the higher number of workforce and will be able to contribute more in unemployment eradication.
 7. **Support Economic Growth.** WIPO finds a strong positive correlation between the creative economy share of GDP, international measures of intellectual property protection and international measures of competitive edge. A well enforced industrial design protection system positively balances with economic growth. Recent studies in Indonesia shows that creative economy contributes 7 % on average for Domestic Income and since 2010 annually absorb 10 million workers

As the form of actualization creative economy concept to creative industry establishment, Government Regulation Number 6 Year 2015 establishing Indonesian Creative Economy Agency (ICEA / BEKRAF) as non-ministerial agency to support the president in formulating, determining, coordinating and synchronizing the creative economy policies. ICEA / BEFRAF has launch 6 strategic visions to manifest Indonesia into creative superpower country in 2030:

1. Flowing the creative asset to escalate creative culture
2. Create the conducive ecosystem for Creative Industry development
3. Encourage the creative innovation, wealth creation and competitive edge in global trade
4. Broaden the insight and community appreciation to relatable aspect of Creative Economy
5. Develop the awareness and acknowledgment of Intellectual Property Rights, including legal protection of industrial design
6. Designing and enforce the specific strategy of Creative Economy development in order to gain Indonesia's competitive edge in Global Trade

Further, BEKRAF has create "Design Plan on Creative Economy" with 4 (four) core principles: The Mastery of Science and Technology, Design Thinking, Arts and Culture also The Power of Media. The Mastery of Science and Technology focus on human empowerment and their capability to gain comprehensive understanding, practical capability and attain economic and non-economic benefit from the manifestation of idea and creativity combine with science and technology. Design thinking also plays important and significant role in creative industries. Design thinking means collaboration of science, technology and creativity in creating added value of the product in wide scope: economic, functional, social and aesthetic. When creative design applied to industrial products it will transform them into creative content / creative product with higher economic value and stronger product identity. Arts and culture play the role as the inspiration in creating distinctiveness and competitive edge of creative works, strengthening identity, the unity of the nation and to intensify the existence and position of local product in global market. In this information technology era, the media power appear to be very important in product marketing and distribution and media is the channel of distribution and global display of creative works and creative contents in order to be globally spread and gain acknowledgment and appreciation and further the escalation of the protection of creativity and it's derivative with strong and adequate intellectual property system will promote direct and indirect investment both local and foreign.

Indonesia's creative industry still faces heavy challenges due to the lack of access to financing and most of the players in the sector are Small and Medium Business (SME) with limited capital. And according to Data from BEKRAF and Indonesian Statistic Board in 2017, there are 4 (four) main challenges for creative industry:

1. **Funding**, More than 92 % of Creative industry players in Indonesia are self-funded and have not received any external funding / credit from financial institution
2. **Company Legal Aspect**, most of creative industry players starts from micro business or home industries and as the result 53,49 % of creative economy business are not established as limited liability companies
3. **Intellectual Property Rights Protection for Products**, 88,95 % of creative economy product have not obtained intellectual property rights
4. **Marketing and distribution**, 97,36 % of creative industry business still only capable to market their products locally

Aside from regulation aspect, BEKRAFT also initiate the creation of supporting platform and concerning funding and investment matters due to those challenges, for example Investment Readiness Levels (IRL) serve as benchmark to assess investment readiness as well as to anticipate technology life cycles and market competition. Through this platform, Creative Business Entity with high IRL Position will be labelled as "Ready for Investment / Incentive" and qualified to obtain "Government Incentive Aid" with maximum amount Rp. 200.000.000,-

The transformation of creative economy concept into factual creative industries aim to optimally expand the role of creative industries as the generator of jobs and instrument in formulating creativity – based sustainable development to formulate "Weightless Economy" as the term to describe new economic model that relies on creativity, knowledge, information technology, telecommunications and other intangible assets to gain high value benefit where the basic ideas no longer embodied in intermediate tangible goods. Weightless Economy promotes ideas, knowledge and creativity as the basic of economic development.

5. CONCLUSION

In order to get better impact, creative economy should be transform into creative industry. In this transformation, intellectual property, especially industrial design plays the vital role since creative industries are mainly about combining creativity in design thinking and product creation. The transformation of creative economy concept into creative industry cannot solely depend on the renewal of Indonesian copyright law substance. In accordance with legal the legal system theory of Lawrence M. Friedman, the enforceability of the law depends on legal substance, structure and culture.

There are certain "expected domino effects" as a result of industrial design protection, first it will be able to encourage the growing of start – up business as the generators of jobs and vital platform in transforming creative economy concept into factual instrument creative industries as the generator of jobs and further will create creativity – based sustainable development as the pillar of weightless economy that puts creativity as the paramount capital.

REFERENCES

- [1] Abdul Kalam, A.P.J. and A. Sivathanu Pillai, (2004), *Envisioning an Empowered Nation, Technology for Societal Transformation*, TATA McGRaw – Hill Publishing Company.
- [2] Agreement on Trade – Related Aspects of Intellectual Property Rights (*TRIPs Agreement*)
- [3] Blakeney, Michael, (1996), *TRIPs : A Concise Guide to the TRIPs Agreement*, Sweet & Maxwell, London.
- [4] Bonsiepe, Gui (1991), "Developing Countries : Awareness of Design and the Peripheral Condition" *In History of Industrial Design 1919 -1990 : The Dominion of Design*, Milan, Electa.
- [5] Brainbridge, David I, (2002), *Intellectual Property*, Pearson Education Limited, Essex.
- [6] CitaCitrawindaNoerhadi, *The Weak Aspect of The Industrial Design Protection System in Indonesia*, <https://media.neliti.com/media/publications/26860-EN-the-weak-aspect-of-the-industrial-design-protection-system-in-indonesia.pdf>

- [7] Cornish, William and David Llewelyn, (2003), *Intellectual Property : Patents, Copyright, Trademarks, and Allied Rights*, Sweet & Maxwell, London.
- [8] Cultural Times, (2015), *The First Global Map of Cultural and Creative Industries*.
- [9] Dreyfuss, Henry, (2003), *Designing for People*, Allworth Press, New York.
- [10] Lawrence M. Friedman, (1990), *Legal Culture and The Welfare State : Law and Society : An Introduction*, Massachusetts, London: Harvard University Press.
- [11] Fryer, William T. (2007), The Hague Agreement on the Protection of Industrial Designs : Strategies to Use and U.S. Choices in Ratification of the Geneva Act”, *89 Journal of the Patent and Trademark Office Society*.
- [12] Giard, Jacques (1996), Canadian Design and the National Agenda: Toward the Year 2005, *Design Management Journal* 7 : 3.
- [13] Goans, Judy Winegar, (2004), *Intellectual Property : Principles and Practices*, Nathan Associates Inc, Cairo.
- [14] Gray, Brian W. & Effie Bouzalas, (2001), *Industrial Design Rights: An International Perspective*, Kluwer Law International, London.
- [15] Hamzah, Zaid, (2006), *Intellectual Property Law and Strategy : A Legal and Business Toolkit to Manage Intellectual Property and Innovation*, Singapore : Sweet and Maxwell Asia.
- [16] http://www.policyconnect.org.uk/apdig/sites/site_apdig/files/news/289/fieldnewsdownloads/apdig_esponsetoheseltinereview.pdf.
- [17] <http://www.designcouncil.org.uk/our-work/insight/research/design-industry-research-2010/>.
- [18] Mandel, Gregory. N, (2011), *To Promote the Creative Process : Intellectual Property Law and the Psychology of Creativity*, Notre Dame Law Review, Volume 86, Article 9.
- [19] Müller, Kathrin, Christian Rammer and Johannes Trüby, (2008), *The Role of Creative Industries in Industrial Innovation*, Discussion Paper No. 08-109, <ftp://ftp.zew.de/pub/zew-docs/dp/dp08109.pdf>, accessed on July 24th 2018.
- [20] O Koshy, Darlie, (2011), *Important of Design as a Factor of Competitiveness*, WIPO International Symposium on Design, Santiago, Chile, November, http://www.wipo.int/edocs/mdocs/hague/en/ompi_di_san_11/ompi_di_san_11_2.pdf.
- [21] Paris Convention for the Protection of Industrial Property
- [22] Pham, Binh, (1999), Design for Aesthetic: Interactions of Design Variables and Aesthetic Properties, *Proceeding of SPIE IS & T / SPIE 11th Annual Symposium – Electronic Imaging 99*, San Jose, USA, Vol. 3644.
- [23] Petron, Arthur, (2007), *Factors Affecting Creativity in the Product Design Industry*, Massachusetts Institute of Technology, Cambridge, Massachusetts, USA.
- [24] Policy Research Group, (2013), *The Creative Economy : Key Concepts and Literature Review Highlights*, https://cch.novascotia.ca/sites/default/files/inline/documents/creative-economy-synthesis_201305.pdf.
- [25] Pound, Roscoe, (1960), *Law Finding Through Experience and Reason*, Athens, University of Georgia Press
- [26] Reiss, Seth M. Reiss, *Commentary on The Paris Convention For The Protection of Industrial Property*, Lex-IP.com, Honolulu, Hawaii, United States, <http://www.lex-ip.com/Paris.pdf>
- [27] Republic of Indonesia Industrial Design Law Number 31 Year 2000.
- [28] Schecter, Roger E. & John R. Thomas, (2003), *Intellectual Property: The Law of Copyrights, Patents and Trademarks*, Thomson West, St. Paul, Minnesota.
- [29] The British Columbia Premier’s Technology Council, (Supplement to the 11th Report, 2008), *The Industrial Design Advantage*
- [30] UNESCO and UNDP, *Creative Economy Report 2013 Special Edition: Widening Local Development Pathways*. <http://www.unesco.org/culture/pdf/creative-economy-report-2013.pdf>, accessed November 14th 2018.
- [31] United Nation Development Programme (UNDP), (2013), *Creative Economy Report : 2013 Special Edition, Widening Local Development Pathways*, United Nations/ UNDP/UNESCO.
- [32] World Economic Forum, *Factors for Enabling the Creative Economy*, White Paper of World Economic Forum, Geneva.



-
- [33] World Intellectual Property Organization (WIPO), *Understanding Industrial Property*, WIPO Booklet, WIPO Publication No. 895 (E).
- [34] World Intellectual Property Organization (2017), *How to Make a Living in the Creative Industries*, World Intellectual Property Organization, Switzerland.

