

Perbandingan hukum desain Jepang dan hukum desain Indonesia tentang aspek significantly different = The comparison of Japanese design law and Indonesian design law concerning aspect of significantly different

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Abstrak

ABSTRAK

Fokus pembahasan dalam tesis ini adalah membandingkan hal-hal penting berkaitan dengan aspek significantly different yang diatur dalam UU No. 31 Tahun 2000 dan Japanese Design Law, Act No. 36 of 2014. Melalui studi kepustakaan dan pendekatan komparatif, tesis ini membahas tentang arti significantly different, known design, combination of known design features, dan bagaimana cara menentukan aspek significantly different dalam aplikasi permohonan dan pemeriksaan desain industri yang diterapkan dalam UUDI dan Japanese Design Law, dengan mengacu pada ketentuan Pasal 25 ayat 1 TRIPS Agreement. Hasil dari penelitian ini adalah: pertama, tafsiran hukum desain Jepang tentang significantly different lebih baik daripada UUDI. Kedua, frasa known design, baik dalam hukum desain Jepang maupun UUDI sama-sama mengedepankan aspek publikasi sehingga dikenal umum, perbedaannya ada pada waktu publikasi di mana di Jepang dimungkinkan adanya jangka waktu non-publicly known design, yang tidak terdapat dalam hukum desain industri Indonesia. Sementara itu, frasa combination of known design features dalam hukum desain Jepang menekankan aspek fitur dari suatu desain tanpa mempertimbangkan kesamaan article, sementara dalam UUDI tidak diatur. Ketiga, pemeriksaan substansial dalam DA Jepang bersifat wajib setelah persyaratan administratif dipenuhi, sementara dalam UUDI, pemeriksaan substansial dilakukan berdasarkan sanggahan/keberatan. Fakta ini memungkinkan tidak adanya pemeriksaan terhadap aspek significantly different dalam hukum desain industri Indonesia. Keempat, Penentuan aspek significantly different pada dasarnya sama-sama dilakukan berdasarkan observasi mata. Perbedaannya terletak pada acuan penilaian yang diukur berdasarkan kesan estetis, dimana dalam hukum desain Jepang, kesan estetis tersebut ada dalam sudut pandang konsumen (termasuk pedagang), sementara dalam UUDI kesan estetis yang terdapat dalam pengertian desain industri tidak dijelaskan artinya dan pada sudut pandang siapa dinilai.

ABSTRACT

Focus of this thesis is comparing important aspects of significantly different case ruled in Indonesian Industrial Design Law No. 31 Of 2000 and Japanese Design Law, Act No. 36 of 2014. This study uses literature study and comparative approach to discuss about significantly different, known design, and combination of known design features interpretation, and how to determine significantly different aspect in design application and industrial design examination ruled in Indonesian Design Law and Japanese Design Law referring to TRIPS Agreement Provision Article 25 (1) as the main substance. This study has some results: first, Japanese Design Law better than Indonesian Design Law in applying significantly different aspects interpretation. Second, both Japanese Design Law and Indonesian Design Law take publication factor as the internal part of known design phrase interpretation. The different between them is the time of publication with create non-publicly known design only in Japanese Design Law. Besides, combination of known design features phrase specially concerns to the features aspect of design without taking

consideration to the article in Japanese Design Law; it is not specifically ruled in Indonesian Design Law. Third, regarding to the substantial examination, Japanese Design law regulates it as compulsory provision; in Indonesian Design Law, it shall not be done if there isn't a disclaimer from the plaintiff. This said provision will make the probability in determining significantly different aspect in Indonesian Industrial Design Law become weak. Fourth, both Japanese Design Law and Indonesian Design Law basically determine the significantly different aspect by sight observation. The different between them occurs when aesthetical impression is used; Japanese Design Law uses aesthetical impression in the view of consumer (including trader), but Indonesian Design Law doesn't regulate it specifically.