BENEFITS AND CHALLENGES OF ADOPTING THE HAGUE SYSTEM INTO INDONESIA'S INDUSTRIAL DESIGN REGISTRATION SYSTEM

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Abstract

The Hague System is a system that offers the possibility of obtaining protection for industrial designs in several states with a single international application filed with the International Bureau of WIPO. In such a system, lower cost and efficiency are seen as the biggest advantages as it unified the registration office, languages and accompanied by a single set of fees paid in one currency. However, some points of the system might be quite challenging for developing countries such as Indonesia – which plans to adopt the system into the amendment of current Industrial Design Law. This article aims to elaborate both the benefits and challenges a country will have to face by adopting the Hague System – in order to give out some insights to the Indonesia government and legislator before adopting the system into the revised Industrial Design Law.

Intisari

Sistem Hague merupakan sebuah sistem yang memungkinkan diperolehnya perlindungan desain industri di beberapa negara sekaligus melalui pendaftaran internasional tunggal dengan Biro Internasional WIPO. Biaya yang lebih rendah dan efisiensi dipandang sebagai manfaat terbesar dari sistem ini dengan adanya kesatuan kantor pendaftaran, bahasa, dan disertai pembayaran biaya dalam satu jenis mata uang. Meskipun demikian, beberapa poin dari sistem ini mungkin cukup menantang bagi negara-negara berkembang seperti Indonesia – yang berencana mengadopsi sistem ini dalam perubahan UU Desain Industri. Artikel ini bermaksud untuk mengelaborasi keuntungan dan tantangan yang harus dihadapi negara dalam mengadopsi sistem Hague – dalam rangka memberikan wawasan tambahan kepada pemerintah dan legislator Indonesia sebelum mengadopsi sistem ini dalam perubahan UU Desain Industri.

Keywords: *the Hague system, industrial design, international registration, benefits, challenges, Indonesia, industrial design law*

Kata Kunci: *sistem Hague, desain industri, pendaftaran internasional, keuntungan, tantangan, Indonesia, hukum desain industri*

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A. Introduction

Industrial property has long been recognized and used by industrialized countries and is being used by an increasing number of developing countries as an important tool of technological and economic development.[2] Through the ratification of Agreement Establishing the World Trade Organization by Law No. 7 of 1994, Indonesia as the member state of the World Trade Organization (WTO) is obligated to abide by the multilateral agreements under WTO, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It is later followed by the ratification of the Paris Convention for the Protection of Industrial Property (Paris Convention) through the Presidential Decree No. 15 of 1997. The norms of industrial design protection prescribed in the Paris Convention and TRIPS are internationally recognized as minimum standards in the intellectual property right administration of every member state.[3] Paris Convention stipulates that the member states shall protect industrial designs.[4] While TRIPS itself also requires the member states of WTO to provide legal measures for various kinds of intellectual property protection[5], including industrial designs. Therefore, Indonesia enacted Law No. 31 of 2000 Concerning the Industrial Design on December 20th of 2000.

According to Art. 1 no. 1 Law No. 31 of 2000, industrial design is defined as 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 the aesthetic impression and can be realized in a three or two-dimensional pattern and used to produce a product, goods, industrial commodity or a handy craft. The legal protection of industrial design is encouraged by the aims to promote a competitive industry within the scope of national and international trade by encouraging the creation and innovation in the field of industrial design.[6] While targeting a competitive international industry, Indonesia's industrial design legal system has yet been supported by a proper framework in realizing its vision. Indonesia has yet to adopt the international registration of industrial designs system, The Hague Agreement Concerning the International Registration of Industrial Designs – also known as the Hague System – which offers the possibility of obtaining protection for industrial designs in several contracting parties through a single international application filed with the International Bureau of the World Intellectual Property Organization (WIPO).[7]

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2 Noerhadi, C. C.,. (2013). The Weak Aspects of the Industrial Design Protection System in Indonesia. INDONESIA Law Review, 2(3), 115.

3 Suratno, Budi. (2004). Industrial Design Protection in Indonesia: A Comparative Study of the Law on Industrial Design Protection between Japan and Indonesia. Japan: Tokyo Institute of Technology. p. 2.

4 Article 5^{quinquies} of the Paris Convention for the Protection of Industrial Property [hereinafter Paris Convention]: "*Industrial designs shall be protected in all the countries of the Union.*"

5 Article 1 Paragraph 1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights [hereinafter TRIPS]: "*Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.*"

6 Law No. 31 of 2000 Concerning the Industrial Design [hereinafter Law No. 31 of 2000] Consideration.

7 World of Intellectual Property Organization [hereinafter WIPO]. Hague Guide for Users. Page 11. Available at: <https://www.wipo.int/export/sites/www/hague/en/guide/pdf/hague_guide.pdf> accessed 25 May 2020.

In most of the countries in the world, industrial design needs to be registered in order to be eligible for the protection.[8] However, due to different points of view in terms of national directions and legal infrastructures in any respective countries, it is common that there are some differences regarding administrative and substantive procedures applied to administer industrial design protection in each country.[9] Therefore, the existence of the Hague System makes it easier with an integrated international application. The system is now based on the Hague Agreement Concerning the International Registration of Industrial Designs, which is constituted by two different Acts, namely the Geneva Act (1999) and the Hague Act (1960).[10] Previously, Indonesia has once been a member of the Hague Agreement Concerning the International Deposit of Industrial Designs (London Act 1934).[11] But the London Act was later terminated on October 18th of 2016.[12]

On the other hand, the ASEAN Economic Community (AEC) through its Blueprint 2025 has encouraged the members to complete accession of several international treaties, includes the Hague Agreement, in order to ensure the development of a more robust ASEAN intellectual property system.[13] Singapore, Brunei Darussalam, and Cambodia are so far the ASEAN countries which had become the party to the agreement. Furthermore, Indonesia also plans on adding the Hague System into the amendment of Law No. 31 of 2000.[14] The revised draft itself is now listed on the National Legislation Program 2020-2024.[15]

Given the plan of adopting the Hague System into Indonesia's legal system, this article will advance a three-part discussion, which is *firstly* to give an overview about the system and how to determine which Act to govern the registration – as the system is constituted by two different Acts (i.e. the Hague Act and the Geneva Act). *Secondly*, the author will thereby advance analysis of the benefits of adopting the system and *thirdly*, on the challenges Indonesia has to face by adopting it. At some parts, another intellectual property international registration system (e.g. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks – also known as the Madrid System – and The Patent Cooperation Treaty – also known as the PCT System) would also be used as comparations to the Hague System. As Indonesia's parliament is working on the amendment of the existing Industrial Design Act (i.e. Law No. 31 of 2000), this article is drafted with the intention of giving insights to the government so it could be taken into consideration for preparation prior to implementing the Hague System. On a broader note, the author hopes that this article may contribute to increasing the readers' knowledge in the field of intellectual property protection.

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8 Suratno, 'Industrial Design Protection in Indonesia: A Comparative Study of the Law on Industrial Design Protection between Japan and Indonesia' (n 3).

9 *Ibid*.

10 WIPO, 'Hague Guide for Users' (n 7), p.10.

11 General Elucidation of Law No. 31 of 2000.

12 WIPO, 'Hague Guide for Users' (n 7), p.10.

13 Association of Southeast Asian Nations [hereinafter: ASEAN]. (2015). ASEAN Economic Community Blueprint 2025. Jakarta: Secretariat of ASEAN. p. 14.

14 Direktorat Jenderal Kekayaan Intelektual [hereinafter: DJKI]. (2018). *Sistem Hague Permudah Perlindungan Desain Industri*. Retrieved from https://dgip.go.id/sistem-hague-permudah-pelindungan-desain-industri Accessed on 18 May 2020.

15 Parliament Resolution No. 46/DPR RI/I/2019-2020 Concerning the National Legislation Program Draft Legislation 2020-2024.

B. Overview of The Hague System

Intellectual property rights (IPRs) play a very important role in the progress and development of society.[16] Other than providing an incentive to the creator and enhancing innovation and creativity, IPRs enhance invention and research, ensure the availability of the genuine and original products, and are necessary to stimulate economic growth.[17] In other words, it's important for the creator to have their intellectual properties registered and legally protected by law. But the registration and protection system might differ from state to state – in the case of administrative procedures, requirements, etc. This results in the presence of various international systems like the PCT System for patent registration, the Madrid System for marks registration, and the Hague System for industrial design registration.[18]

Like the other IPRs, the system for the protection of industrial design is different around the world and national protection of designs requires application and registration in most countries.[19] With the designs successfully registered, it can prevent others from making, offering, putting on the market, importing, exporting, neither using products incorporating the designs.[20] The Hague System confers a bundle of national registration in a single international application, but if the protection is not available in one of the designated countries, the application will be rejected only in that country and thus the rejection in one country will not exclude protection in the other designated countries.[21]

The Hague System is constituted by the Hague Act (1960) and the Geneva Act (1999), which both are independently applicable for their contracting parties. The membership of the Hague Act (1960) is only open to States[22], while an intergovernmental organization may also become a party to the Geneva Act (1999) with provided conditions to be fulfilled.[23] Currently, the Geneva Act (1999) has a total of 64 contracting parties[24], while the Hague Act (1960) has 34 contracting parties.[25]

One single international application through the Hague System might be governed by only one Act or several Acts – depends on which Act the designated contracting parties bound to. There are some principles below which are useful to determine which of the Act applies to the application:[26]

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16 Sharma, D. K.. (2014). Intellectual Property and the Need to Protect it. Indian J.Sci.Res, 9(1), 3.

17 *Ibid*.

18 Indonesia has accessed the Patent Cooperation Treaty through the Presidential Decree No. 16 of 1997 and the Madrid Protocol through the Presidential Regulation No. 92 of 2017.

19 Hallenborg, Louise, *et.al*. (2008). Intellectual Property Protection in the Global Economy. Technological Innovation: Generating Economic Results Advances in the Study of Entrepreneurship, Innovation and Economic Growth, 18, 65.

20 *Ibid*., 71.

21 *Ibid*., 69.

22 Article 1 Paragraph (2) of The Hague Act (1960) of the Hague Agreement Concerning the International Registration of Industrial Designs [hereinafter The Hague Act].

23 Article 27 Paragraph (1) of The Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs [hereinafter The Geneva Act].

24 WIPO. Contracting Parties of Geneva Act (1999). See <https://www.wipo.int/treaties/en/ActResults.jsp?act_id=7> accessed on 25 May 2020.

25 WIPO. Contracting Parties of Hague Act (1960). See <https://www.wipo.int/treaties/en/ActResults.jsp?act_id=3> accesed on 25 May 2020.

26 WIPO, 'Hague Guide for Users' (n 7) 17-18.

a. *First*, where there is only *one* common Act between the two contracting parties concerned, it is such Act which governs the designation of a given contracting party. In this case, if the applicant's state of origin is bound by both the 1999 and the 1960 Acts and the designated contracting party is bound exclusively by the 1960 Act, thus the 1960 Act applies here.
b. *Second*, where both the contracting parties concerned are bound by *more* than one common Act, it is the *most recent* Act which applies to the designated contracting party. In this case, if the applicant's state of origin is bound by both the 1999 and the 1960 Acts and the designated contracting party is also bound by both the Acts, thus the 1999 Act applies here.
c. *Third*, if there are more than one designated contracting parties:
   - The 1999 Act governs exclusively i.e. all the designated contracting parties are bound by the 1999 Act.
   - The 1960 Act governs exclusively i.e. all the designated contracting parties are bound by the 1960 Act.
   - Both Acts govern the application i.e. at least one contracting party are bound by the 1999 Act and at least one contracting party are bound by the 1960 Act (e.g. State A as the state of origin of the applicant is bound by both the Acts and the applicant applies to state B, C, and D which are under the 1960 Act and state E which is under the 1999 Act. Therefore, in the international application, the 1960 Act applies in respect of the contracting parties B, C, and D, and the 1999 Act applies in respect of the contracting party E).

C. Benefits of The Hague System

With the Hague System, design owners are relieved from the need to make separate national applications in each of the contracting parties in which they require protection, thereby avoiding the complexities arising from procedures that may differ from state to state.[27] The application is submitted through a "one door system" to the International Bureau of WIPO which later will be transferred to the designated contracting party for substantive examination and final decision purposes.

Upon publication of the international registration in the International Designs Bulletin[28], the office of each designated contracting party can proceed with the substantive examination according to its national legislation and send the statement of grant of protection or notify a refusal of protection to the International Bureau within the applicable refusal period.[29] In this case, the role of the designated contracting party is clear – which is only to proceed substantive but not the formal examination. The separated roles between the International Bureau and the designated contracting party also make it easier for the designated state at the national level. In comparing to the national registration in Indonesia where the Directorate General needs to conduct the formal examination

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27 *Ibid*., 14.

28 International Designs Bulletin is an official publication of the Hague System which contains data regarding new international registrations, renewals, and modifications affecting existing international registration. See WIPO. International Designs Bulletin. <https://www.wipo.int/haguebulletin/?locale=en> accessed on 26 May 2020.

29 A refusal of protection must be notified within six months from the date of publication. However, under the 1999 Act, any contracting party whose office is an examining office or whose law provides for the possibility of opposition to the grant of protection may declare that the refusal period of six months is replaced by a period of twelve months. See WIPO, 'Hague Guide for Users' (n 7) 13.

firstly which later followed by announcement and substantive examination[30], with the Hague System, the workload of the designated state for international registration is reduced by freeing them from the responsibility of formality examination which had been transferred to the International Bureau.

Besides the decreasing workload, the Hague System itself is also very beneficial to the adopting country in the globalization era. Globalization brings a significant impact on economic activities nowadays and the trade of goods and services across state borders. Industrial design as one of the intellectual properties holds a very important role in the said economic and trade activities. In an attempt to develop global industrial designs over Indonesian local products and to develop small and medium-sized enterprises capability to compete in the global market, an effective and efficient international registration system, *in casu* the Hague System is advantageous and necessary for one country in securing legal protection to support global trade.

In the Hague system, the applicants may also avoid filing documentation in various languages,[31] while using translation services is unavoidable in the case of making separate national applications. They are given options to file in whether English, French, or Spanish.[32] Thus, with the Hague System, additional translator fees for each state are excluded. Comparing to the PCT System, the Hague System is much simplified. Patent registration through the PCT System is classified into the international phase and national phase. The language in which an international application must be filled depends on the receiving office which is indicated in Annex C of the PCT Applicant's Guide – International Phase.[33] Besides, in order to enter into the national phase, each state generally requires translation of the international application into their national language to be submitted.[34]

In addition, the applicants through the Hague System may avoid the need to pay fees in various currencies.[35] The payments of application are paid in one currency – which is the Swiss currency – through the International Bureau.[36] In the case of PCT System, though the payment of international fee is unified in one currency – Swiss Franc – but it doesn't apply the same for a national fee, which depends on the requirements of each state.

Furthermore, unlike the marks international registration under the Madrid System[37], the Hague System does not require any prior national application or registration. Thus, the protection for an

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30 Article 24 Paragraph (1) jo. Article 25 Paragraph (1) jo. Article 26 of Law No. 31 of 2000.

31 *Ibid*., 14.

32 Rule 6 (1) Common Regulations Under 1999 Act and the 1960 Act of the Hague Agreement [hereinafter Common Regulations].

33 WIPO. PCT Applicant's Guide – International Phase. Page 10. Available at: <https://www.wipo.int/export/sites/www/pct/guide/en/gdvol1/pdf/gdvol1.pdf> accessed on 25 May 2020.

34 e.g. Thailand requires translation into Thai, Poland requires Polish, Uzbekistan requires Uzbek or Russian, Indonesia itself requires Indonesian, etc.

35 WIPO, 'Hague Guide for Users' (n 7) 14.

36 Rule 28 (1) Common Regulations.

37 Prior registration of marks in the country of origin is obligated in the case of Madrid Protocol. See Article 3 Paragraph (1) of the Madrid Agreement Concerning the International Registration of Marks [hereinafter Madrid Agreement]: "*Every application for international registration must be presented on the form prescribed by the Regulations; the Office of the country of origin of the mark shall certify that the particulars appearing in such application correspond to the particulars in the national register, and shall" mention the dates and numbers of the filing and registration of the mark in the country of origin and also the date of the application for international*

industrial design can therefore be applied at the international level through the Hague System *for the first time*.[38] This is especially beneficial for those who have yet obtained registration in their state of origin. They may directly file for an international registration without formerly going through additional procedures for national registration. Moreover, the applicant may apply for several different designs in a single international application.[39] The limit is up to a maximum of 100 and they must belong to the same class of the international classification of Locarno.[40] This indicates a pretty efficient side of the Hague System in the registration of the industrial designs.

Another extra point of the Hague System is in the event of the absence of the statement of grant of protection. In principle, the office of the designated contracting party must send to the International Bureau a statement of grant of protection to the industrial designs registered if there isn't any notification of refusal within the applicable refusal period.[41] However, even though such a statement is not sent by the office, it remains the case that the industrial designs registered are protected as long as there is no refusal within the period.[42] In this case, it can be seen that the protection of the applicants is higher enough.

Besides all the points mentioned above, the Hague System also provides subsequent management of the protection obtained for registered industrial designs. A change in the ownership or the name or address of the holder can be recorded in the International Register with effect in all the designated contracting parties by just one simple procedural step.[43] It can relieve the owners from the complicated procedures they might have to face in case there is any transfer of ownership of the designs to the third party. At the same time, the new owners are relieved from the need to re-apply for international protection of the designs.

Regarding that two different Acts are constituting the Hague System, Indonesia Government is planning to accede the Geneva Act (1999).[44] It's a wiser and better choice considering the Geneva Act (1999) is "newer" and is the one that will bind the mutual parties in the case where the States are both parties to different Acts.[45] Besides, the Act also introduced a certain number of features to extend the Hague System to new members, e.g. the entitlement to file an international application is expanded[46] also to nationals of member states of an intergovernmental organization that is a

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registration." See also Article 52 Paragraph (3) of Law No. 20 of 2016 Concerning Marks and Geographical Indications [hereinafter Law No. 20 of 2016].

38 WIPO, 'Hague Guide for Users' (n 7) 11.

39 *Ibid*.

40 Locarno Classification is an international classification under the Locarno Agreement (1968) for the purposes of the registration of industrial designs. See WIPO. Locarno Classification. Retrieved from https://www.wipo.int/classifications/locarno/en/ accessed on 26 May 2020.

41 Rule 18*bis* (1) Common Regulations.

42 WIPO, 'Hague Guide for Users' (n 7) 13.

43 *Ibid*., 13.

44 DJKI. (2017). DJKI Bersama K/L Bahas Rencana Aksesi Hageu Agreement Pendaftaran Desain Industri Internasional. Retrieved from https://dgip.go.id/djki-bersama-k-l-bahas-rencana-aksesi-hageu-agreement-pendaftaran-desain-industri-internasional Accessed on 4 Aug 2020.

45 Article 44 of The Geneva Act.

46 The filing right according to the Hague Act (1960) is only given to nationals of contracting states and persons who, without being nationals of any contracting state, are domiciled or have a real and effective industrial or commercial establishment in the territory of a contracting state. See Article 3 of The Hague Act.

contracting party and the filing right based on habitual residence.[47] Another example of new-added features in the system is regarding the two types of special requirements that may be notified by a contracting party and with which the applicant has to comply to, i.e. special requirements concerning the applicant and special requirements concerning the unity of the design. The latter one is quite interesting and beneficial as the Indonesia Industrial Design Law also contains a requirement of unity of design. It's accorded in Art. 13 of Law No. 31 of 2000 where an application can only be filed for one industrial design or *several industrial designs that constitute a unity of an industrial design or that have the same class*. Therefore, as if Indonesia has notified the fact to the Director General of WIPO, for an applicant who applies for two or more industrial designs included in the same application, those designs have to conform to the same creative concept.[48]

D. Challenges of Adopting The Hague System

With adopting the Hague System, the possibility of the applications flooding from all around the world is increasing. Thus, even though the workloads of the designated state is reduced by the separated roles with the International Bureau as mentioned above, they are challenged with more applications to be examined substantively. Moreover, an office is given only six or twelve months in examining and deciding whether to grant or refuse to protect the designs.[49] The applicable refusal period signifies the period of substantive examination, which is quite disadvantaging for the office of the designated state considering the expected increasing amount of application. Thus, the examiners are challenged to "upgrade" their examining performances in adjusting to the condition. In this case, the role and support of the government, *in casu* Directorate General, are no less important in providing, such as skills training, counseling regarding the technical issues in implementing the Hague System, etc.

Regarding the substantive examination, there is one fundamental weakness in the current Indonesia Industrial Design Law. In the event of no objection filed against the application within the announcement period, Directorate General thereby shall issue and grant the Industrial Design Certificate – at the latest thirty days since the termination of the announcement period.[50] Therefore, there is no substantive examination of the whole application process. In another word, there will be no substantive examination unless there is opposition.[51] The legal framework *status quo* can cause legal uncertainty concerning the "novelty" and the true rights holder of a design.[52] *Firstly*, the applicants might register designs with "bad faith" without the knowledge of the true rights holder. Thus *secondly*, with no knowledge of the applicants' doings, the true rights holder might miss out on the timing to file an objection and so on the substantive examination is excluded which later ended up with the "bad faith" applicants getting their application approved. It seems like the political will was as if to require the rights holder to keep on checking the announcement of the registered

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47 Article 12 jo. Article 13 of The Geneva Act.
48 Article 24 of The Geneva Act.
49 Article 8 Paragraph (2) The Hague Act. See also Article 12 Paragraph (2) The Geneva Act.
50 Article 29 jo. Article 26 Paragraph (2) of Law No. 31 of 2000.
51 Noerhadi, 'The Weak Aspects of the Industrial Design Protection System in Indonesia' (n 2) 118-119.
52 Noerhadi, 'The Weak Aspects of the Industrial Design Protection System in Indonesia' (n 2) 119.

applications and filing objection against them if there is any, but the author personally thinks the substantive examination shall still be undertaken, regardless of having objection or not.

Besides, the "no opposition no substantive examination" principle in the local registration itself is contradictive with the main role of the designated state in the Hague System – which is to conduct the substantive examination to the international applications. According to Art. 3 para. (1) TRIPS, "*Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property…*" – thus the "no opposition no substantive examination" at the local level is not accorded to the "national treatment" principle as stipulated in the Art. 3 of TRIPS. Hence, in amending the existing Industrial Design Law, the government shall also put attention to this mentioned issue so the modified legal framework shall be able to accommodate both the national and international registrations accordingly.

As a comparison, see how the substantive examination of marks registration is regulated in the existing Law No. 20 of 2016 Concerning Marks and Geographical Indications. Following the had been satisfied minimum formal requirements with a given filing date, the applications would be published in the mark gazette for two months and any party may file an opposition within the period of publication.[53] Thereby the formality so far is no different from the local registration of industrial designs. What makes the difference is in the marks' registration, a substantive examination is bound to be carried out both in the event of there is opposition or no opposition.[54] It is also stipulated clearly in Art. 12 para (1) Government Regulation No. 12 of 2018 Concerning International Registration of Marks Based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.[55] Meanwhile, in the industrial designs' registration, a substantive examination is only to be conducted if there is opposition to the registrations.

As to how it is explained before, the absence of the grant of protection statements within the applicable refusal period might don't bring any legal consequences to the applicants. But in the meantime, they are required to wait for as long as six or twelve months in uncertainty. Instead of being notified for the grant of protection, they probably need to wait until the end of the refusal period to know for sure whether the protection is granted or not – by using the notification of refusal as a parameter.

The Hague System and the Madrid System have a similarity in which they are not quite convenient for the applicants to obtain information regarding the designated state's substantive examination. Researching won't be easy as the applicants don't interact with any of the local agents from the designated state.[56] Meanwhile, it's another case in the patent registration through the PCT System. As there is a "national phase" under the PCT System, it is allowed for the designated office to

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53 Article 13 Paragraph (1) jo. Article 14 jo. Article 16 Paragraph (1) Law No. 20 of 2016.

54 Article 23 Paragraph (2) jo. Paragraph (3) Law No. 20 of 2016.

55 The substantive assessment shall be undertaken toward International Registrations, either having objection or not having objection.

56 Hidayati, Nurul, and Naomi Yuli Ester S. (2017). Urgensi Perlindungan Merek Melalui Protokol Madrid (Trademark Protection Urgency Through the Madrid Protocol). Jurnal LEGISLASI INDONESIA, 14(2), 181.

require non-resident applicants to be represented by an agent or to have an address for service in the country.[57] While in both of the Hague and Madrid Systems, it may relieve the applicants from additional local agent fees, but in the PCT System, the applicants may obtain more trusted and useful information regarding the substantive examination. Therefore, the possibility of the application being accepted is thus getting higher. Even though it isn't obligated to use local agents' service in the Hague System, but the applicants may consider this "pricey" option for a certain level of assurance of getting the application approved.

Strengthening the intellectual property system can improve the developing countries' ability to promote exports of the products they produce.[58] The international registration system, *in casu* the Hague System, is meant to provide greater protection for local designers in the globalization era. It is also meant to boost more local creativity and innovation in the future. While it is potentially cost-saving with no translation costs neither local counsel expenses needed[59], the level of protection of the designs depends on the financial capability of the design owners in paying other needed costs. According to the Rule 12 (1) Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement, the international application shall be subject to the payment of a basic fee, a publication fee, and in respect of each designated contracting fee, either a standard or an individual designation fee.[60] Besides, the payments shall be paid in Swiss Franc (CHF), which has a much higher value comparing to Indonesia Rupiah (IDR).[61] These indicate that the Hague System would be quite expensive for design owners who belong in the middle to lower incomes class. Thus, the Hague System might be only benefiting those who are more capable financially while many other local designs might are left weak-protected. The government shall consider the possibility of providing incentives for local designers and/or applicants (e.g. small and medium-sized enterprises/SMEs or known as *Usaha Mikro, Kecil, dan Menengah*/UMKM in Indonesia) in order to develop the local industries capability to be able to compete in the global market.

E. Conclusion

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57 Article 27 Paragraph (7) of the Patent Cooperation Treaty jo. Rule 51bis.1 of the Regulations under the Patent Cooperation Treaty.

58 Goans, Judy Winegar. (2003). *Intellectual Property and Developing Countries An Overview*. Washington: USAID. Page 6.

59 Lukyanenko, Natalya, and Yuri Pylnev. The Hague System for the International Registration of Industrial Designs is Now Available in Rusia. Retrieved from https://s3.amazonaws.com/documents.lexology.com/0a55c147-3280-4695-9921-d1f7b509c81e.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1590237135&Signature=MN9GTBifaYxFSGIDz0e%2BCT4zEaQ%3D accessed on 25 May 2020.

60 See Article 7 Paragraph (2) of The Geneva Act: "*Any Contracting Party whose Office is an Examining Office and any Contracting Party that is an intergovernmental organization may, in a declaration, notify the Director General that, in connection with any international application in which it is designated, and in connection with the renewal of any international registration resulting from such an international application, the prescribed designation fee referred to in paragraph (1) shall be replaced by an individual designation fee,…*" Currently, the contracting parties which have designated individual fee for the international applications consist of African Intellectual Property Organization (OAPI), Canada, European Union, Hungary, Israel, Japan, Kyrgyzstan, Republic of Korea, Republic of Moldova, Russian Federation, and the United States of America. See WIPO. (2020). Individual Fees under the Hague Agreement. <https://www.wipo.int/hague/en/fees/individ-fee.html> accessed on 25 May 2020.

61 As on May 23rd of 2020, 1.00 CHF values 1.029500 USD while 1.00 IDR values 0.000068 USD. Converted online at <https://www.x-rates.com/calculator/?from=IDR&to=USD&amount=1> on 23 May 2020.

Conclusively, the Hague System brings multiple benefits to both the contracting states and applicants, e.g. (i) simplified procedures with one office, one language, and one currency payments; (ii) no prior national application obligation; (iii) designated state is exempted from the need to execute formal examination, as it had been done by the International Bureau in prior; (iv) the protection is granted even in the event of an absence of its statement, as long as there was no refusal within the applicable refusal period; and most importantly (v) the Hague System supports the global trade in the globalization era by securing legal protection to industrial designs.

However, the concerns that may arise out from the system, i.e. (i) increasing application prediction with the "not very long" substantive examination duration; (ii) legal uncertainty and contradiction which arise from the "no opposition no substantive examination" principle in the current Indonesia industrial design law; (iii) uncertain waiting period for the applicants; (iv) the disadvantages of no interaction with local agents; and (v) it's quite pricey for applicants from the middle to lower incomes class – shall still be taken into account by the government of Indonesia before adopting and implementing the Hague System. The government may consider providing skills training, counseling regarding the technical issues in implementing the Hague System, or other related topics to the examiners and the possibility to provide incentives for local designers and/or applicants who are less-privileged in the case of expensive fees coming from the system. Regarding the upcoming revised Industrial Design Law, the government may consider to repeal the "no opposition no substantive examination" principle and undertaking the substantive examination regardless there is an or no opposition. It's to ensure legal certainty and national treatment accordingly. As to how the current Marks and Geographical Indications Law adopted the Madrid System, the revised Industrial Design Law shall adopt the Hague System accordingly and shall later regulate the technical provisions in the implementing regulation, i.e. a Government Regulation.

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