LEGAL WEAKNESS IN LAW NO.32 OF 2000 CONCERNING TATA DESIGN CLEAR INTEGRATED CIRCUITS

Satrianah

165100123P

Fakultas Komputer, 448757193

satrianah.student@umitra.ac.id

Abstract

In the global era, the need for electronic equipment is increasing and year after year. Tools such as radio, television and computers are some examples and electronic products that have become a part and life of everyday people both living in cities and living in rural areas. One of the important components a

nd products is Circuit Housed in a Platform (CHIP). The Integrated Circuit Layout Design Act aims to protect "silicon chips" or "Integrated Circuits" which are the main drivers of technological progress in the past two decades, specifically the computer industry and related technologies. (Tim Lindsey. Atall, 2002, p. 225) In conjunction with Trade Secret laws, industrial design laws, and plant variety laws, the law on integrated circuit layout design or commonly known as Integrated Circuits (IC) was promulgated on December 20, 2000. The four laws were issued with background adjustments

Integrated Circuit Layout Design is a new material in the field of Intellectual Property Rights, where previously the protection of Intellectual Property Rights in Indonesia only included Patents, Trademarks and Copyright. Since December 20, 2000 Integrated Circuit Layout designs have been protected by the birth of Law No. 32 of 2000.

There are some weaknesses in the Integrated Circuit Layout Design Law, these weaknesses include the registration procedure and the start of the period of giving protection. With these conditions the implementation of integrated circuit design protection will be difficult to enforce, for this reason there is a need for improvements in the arrangement of Integrated Circuit Layout Designs.

Keywords: Integrated Circuit Layout Design

A. INTRODUCTION

1. Integrated Circuit Layout Design for Limits and Scope

Law No.32 of 2000 concerning Layout Design of Integrated Circuits provides the definition of Layout Design of Integrated Circuits (Article 1 number 2) and the definition of Integrated Circuits (Article 1 number 1) are as follows: "Layout Design of Integrated Circuits is creation in the form of three-dimensional laying design of various elements, at least one of these elements is the active element, and part or all of the inter-connections in an Integrated Circuit and three-dimensional laying are intended to prepare for the Integrated Circuit ". Integrated Circuits are: "A product in a finished or semi-finished form, in which there are various elements and at least one of these elements are active elements, which are partially or wholly interrelated and formed integrated in a semiconductor material intended to produce electronic functions. " Based on this understanding, it can be seen that something can be said as an Integrated Circuit Layout Design must have elements:

1. Creation in three-dimensional form consisting of electronic elements which contain at least one active element;
2. Is a product in the form of finished or semi-finished;
3. Able to produce electronic functions.

In addition to having to fulfill these elements, a Design of Integrated Circuit Layout that can be given protection must be the original design of the designer, Integrated Circuit

Layout Design is declared original if the design is the independent work of the Designer which means it is not an imitation and other designer work , and when the Layout Design of the Integrated Circuit is made, it is not something that is common to other Designers, meaning that the work must be the result and creativity of the designer which for other designers is an unusual thing. Furthermore, in relation to the Layout Design of Integrated Circuits that cannot be protected, if the Layout Design of the Integrated Circuit complies with Article 3 of the Integrated Circuit Layout Design Law, that is, contrary to the applicable laws and regulations, public order, religion or morality . In general, the rights in intellectual property rights hereinafter abbreviated as HKI adheres to the same protection system, namely the first to file system (who is the first to register him who is entitled) except copyright and trade secret rights. Protection with a first to file system based on an application means that protection will only be given to the person submitting a request for protection in the form of registration of rights, if the registration is received rights will be obtained, while in the copyright protection system, registration does not result in rights since the creation then since that copyright is obtained. Other than trade secrets because it is confidential, it is not known when the birth of the right is known, so there is no provision when protection starts and the period of protection is not limited to when, as long as the secret has not been revealed then the protection is still ongoing. Rights in IPR that adhere to a first to file protection system start from

the date of receipt. The Filing Date is the date on which all administrative requirements for the application have been fulfilled and the works submitted for registration are prohibited from being published before their registration is accepted because at that time there was no legal protection.

The use of the First to file System in the protection of the Integrated Circuit Layout Design Implicit in Article 9 of the Integrated Circuit Layout Design Law, which states that: "The Layout Design Right of the Integrated Circuit is given on the basis of the Application"

2. Procedures for Registration of Integrated Circuit Layout Designs

As a follow up to Article 9 of the Integrated Circuit Layout Design Law, Article 10 through Article 22 contains the Procedures for Registration of Integrated Circuit Layout Designs. Briefly, it can be explained the registration of Integrated Circuit Layout Design consists of several stages:

1. Meeting Requirements

a) Requests are submitted in writing using Indonesian, for which forms have been provided by the Integrated Circuit Layout Design Office;

b) Application is signed by the Applicant or his Proxy.

1) Application must include, among others:

- date, month, and year of application letter;
- the name, full address, and nationality of the Designer;
- name, complete address, and nationality of the Applicant;

- name and full address of the proxy if the application is submitted through proxy; and

- the date of first being commercially exploited if it has been exploited before the Application is submitted;

- a copy of a picture or photo and a description of the Integrated Circuit Layout Design being applied for registration;

- special power of attorney, in the event that the Application is submitted through Proxy

- a statement that the Layout Design of the Integrated Circuit being applied for registration is his property;

- Requests can only be submitted for one Integrated Layout Design.

2. Administrative Examination (Formil Examination)

The Directorate General checks the completeness of administrative requirements as referred to in Article 3, Article 10 and Article 11 of the Application (see fulfillment of requirements No.3). In this stage, if all requirements are complete, the date of receipt will be given, if the requirements are still lacking, they will be given time to fulfill these requirements with the consequence that the application is deemed withdrawn if the requirements have not been fulfilled within the specified period.

a. Granting of rights within a period of no more than 2 (two) months as of the fulfillment of the requirements of the Directorate General to issue a Integrated Circuit Layout Design Certificate.

b. Announcement of applications that have fulfilled the requirements referred to in Article 3, Article 10, and Article 11, the Directorate General announces

them in the Official Gazette of Integrated Layout Designs or other facilities. Other facilities include storage media such as CD Rom and Optical Disk

For applicants whose applications are accepted, they will receive protection from the Integrated Circuit Layout Design Rights. The period of protection for 10 years from the date of receipt or since the first time the Layout Design of Integrated Circuits has been commercially exploited anywhere. What is meant by commercial exploitation is "made, sold, used, used, or circulated of goods in which there are all or part of the Integrated Circuit Layout Design in relation to profit-making transactions". (Explanation of Article 4 of the Integrated Circuit Layout Design Act). Weaknesses in the protection of Integrated Circuit Layout Design Integrated Circuit Layout Design Laws are instruments that can be expected to provide effective and comprehensive protection in the IPR field in general and the Integrated Circuit Layout Design in particular. To achieve this goal, it can be measured by researching at the normative and implementative level. This section will describe some weaknesses in the Integrated Circuit Layout Design Act. These weaknesses will clearly bring further consequences to the implementation and norms contained in the Integrated Circuit Layout Design Law. These meanings and consequences must be interpreted in the context of "law enforcement" (Budi Riswandi and M. Syamsudin, 2004, p. 58) and Integrated Circuit Layout Design Law, meaning that they

can be ensured in law enforcement against the Integrated Circuit Layout Design Law will experience ineffectiveness. There are two weaknesses contained in the Integrated Circuit Layout Design Act from a normative perspective, namely:

a. The basis for granting protection In Article 4 of the Integrated Circuit Layout Design Law it is said that:

1) Protection of Integrated Circuit Layout Designs is given to Rightsholders from the very first time the design is exploited commercially anywhere, or from the Filing Date;

2) In case the Integrated Circuit Layout Design has been commercially exploited, the application must be submitted no later than 2 years from the date of the first exploitation.

These provisions indicate that there is a difference between the registration system of Patent, Trademark and Industrial Design with the protection system adopted by the Integrated Circuit Layout Design Law even though they actually require requests in the protection system (protection with a first to file system). In the First To File system a work that is valid / being requested for protection (submitting an Application) is generally not published before registration is accepted. The risk of publication before being granted a registration application is that the party concerned cannot file a claim if the work is used by another party and will also result in the death of a new value in the work so that registration will likely be rejected. Based on Article 4

of the Integrated Circuit Layout Design Act publications in the form of commercial exploitation of Integrated Circuit Layout Designs that have not been registered do not cause the death of the right to submit an application for registration. The law continues to provide an opportunity to apply for registration to Integrated Circuit Layout Design works that have been commercially exploited (sold, used, circulated for the purpose of obtaining profits) with conditions no later than 2 years after exploitation of the Integrated Integrated Circuit Layout Design must be registered. Under these conditions, the determination of the start of the period of protection is based on the date of first exploitation for those who exploit before registering, while those who directly apply for registration without exploitation are based on the date of receipt. This situation is very advantageous for the designer of the Integrated circuit layout, because with the exploitation the designer will first know how the market responds to the product, if the response is good and profitable, the opportunity to apply for registration is taken, so that protection will be obtained. This kind of thing was not obtained for inventors who filed patents and designers in Industrial Design, they had to register before marketing their inventions and their design products, but not necessarily acceptable to the market, so that many of them did not benefit from the invention and design of their products remembering to apply for registration requires not a small fee, especially in patent protection, there is an annual fee that must be paid annually without seeing whether the

patent is sold in the market or not. The weaknesses of the above provisions are what if there is the same Integrated Circuit Layout Design from different designers then the first designer exploits before he registers then the second designer immediately registers without exploitation first, where the second designer registration time is in the second period (two) years after the exploitation of the first designer in which the first designer was still able to apply for registration. For this reason, illustrations are given as follows: A and B make the same Integrated Circuit Layout Design even though among them do not know each other and each does not imitate anyone's design. A on June 2, 2000 sold his work at an exhibition. Then on August 14, 2001 A submitted a registration for the work. But on December 18, 2000 B submitted an application for an Integrated Circuit Layout Design work similar to that of A. Who will be accepted for registration considering A still has the right to apply for registration for 2 years from June 2, 2000. It is unfortunate for the case described above The Integrated Circuit Layout Design Law does not provide a solution.

b. Registration procedure

The second weakness in the Integrated Circuit Layout Design Law lies in the registration procedure, where in the registration procedure there is no substantive examination, even though the conditions for receiving an Integrated Circuit Layout Design are original (actually / truly made by the person) work. if there is no substantive examination, how can it be known whether the work is original or not In

the absence of a substantive examination it is possible to receive 2 or more works of the same Integrated Circuit Layout Design. The weakness of the registration procedure also occurs in the Industrial Design registration procedure, seen in the absence of substantive examination if there is no objection from the third party in the announcement process. Even though in reality, there might be no objections to an announcement regarding the industrial design application, because the information was not received evenly. As a result, with a mechanism like this often the IPR Directorate General "missed" in giving industrial design rights. Industrial Design which according to the Directorate General of Intellectual Property Rights has fulfilled the provisions of the Industrial Design Law (has an element of novelty), but in reality the industrial design that has been granted its rights is no longer a new industrial design. In a situation like this it is very clear that legal protection against expected industrial design will also be ineffective. (Budi Riswandi, M.Syamsudin, 2004, 61). Seeing what happens in industrial design, this can also occur in Integrated Circuit Layout Designs.

B. CONCLUSION

Based on this description, it can be estimated that the protection of Layout Design of Integrated Circuits will not work as expected, namely providing legal protection to guarantee the rights and obligations of Designers and keeping unauthorized parties from misusing the Right to Layout Design of Integrated Circuits and to form the

flow of technology transfer is very important to stimulate the creative activities of designers to continuously create original designs (General Explanation of the Integrated Circuit Layout Design Law). There is no provision as to who will be given protection if there are 2 (two) registrations for the same Integrated Circuit Layout Design within 2 years after commercial exploitation, where one has commercially exploited the other directly submitting registration without exploitation first, this situation will make it difficult for the Director General of Intellectual Property Rights to determine who has the right to apply for registration and who will be given protection. Then seeing that there was no substantive examination in the registration procedure, it was ensured that the Director General of Intellectual Property Rights would receive a lot of registration of works of non-original Integrated Circuit Layout Designs. With the weaknesses inherent in this Law, it would be better if the Law could be revised and more in-depth studies need to be carried out to be adjusted to the real conditions in the field that are not in accordance with what is regulated by the Act.

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