

## LEGAL PROTECTION FOR KITCAR MANUFACTURING BASED ON MOTOR VEHICLE CUSTOMIZATION REGULATIONS IN INDONESIA

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### ABSTRACT

Car designs owned by industrial design owners have exclusive rights to exercise moral rights and economic rights. However, this right has a certain time limit, as long as the product's design is still under the registrant's ownership. This often causes problems related to industrial designs by other parties who are not entitled to the use of similar designs, such as kitcar production practices in Indonesia. The kitcar certification process typically involves several stages that must be passed by the vehicle assembler or manufacturer to ensure that the vehicle meets applicable standards by testing safety and environmental standards. This study aims to find out the legal protection related to industrial design used in the manufacture of kitcars in Indonesia and to find out the regulations regarding kitcar certification in Indonesia. This study uses a normative juridical approach consisting of two sources, namely primary materials and secondary data. The primary material used in this study is laws and regulations. Meanwhile, the secondary materials used are the results of research interviews, expert opinions in books, journals, and articles related to this research. The results of this study prove that kitcar manufacturing activities are not included in violations, as long as the industrial design used is in accordance with applicable provisions and its legality has been regulated in terms of reviews related to legal protection of industrial design and legal certainty regarding kitcar certification. This kitcar activity is not categorized as a violation as long as the industrial design used in its manufacture has expired its protection period and the nature of the design has become public property. So, the industrial design can be used freely. Kitcar needs to follow several stages of testing that have been regulated in legislation. If all stages of testing have been met, the status of the kitcar can be declared legal.

**Keywords:** *Legal Protection, Industrial Design, Kitcar Certification*

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### INTRODUCTION

Industry is known as the process of processing raw materials into goods of high quality so that they can be used as objects of commercial activity. The industrial business is also associated with collaboration skills activities between labor and technology to produce a product with a selling value. Industrial products can consist of goods and services. In addition, industrial activities are also known as similar business groups. For example, the music industry, the construction industry, the textile or clothing industry, and the automotive industry (Rosyda, 2021).

The automotive industry includes designing, producing, and marketing vehicle products. The automotive industry refers to the production of means of transportation. Throughout 1969-1998, the automotive industry began to receive special attention from the government through the creation of regulations to advance this industry. During that time, the government issued many policies that ultimately led to the independence of this sector. Through these various regulations, the automotive industry in Indonesia has increased. This is reflected in the dynamics of the automotive market, economic growth, and consumer purchasing power. The development of automotive technology in Indonesia continues to grow rapidly along with the advancement of world technology (Adnan, 2014).

The development of the automotive industry must be accompanied by an understanding of the protection of Intellectual Property Rights (IPR), especially industrial design protection. Intellectual property rights and industrial design have a deep relationship. Protection of intellectual property rights, especially industrial designs, is becoming increasingly crucial. The protection of industrial design aims to encourage designers to develop their creativity and innovate to produce new designs with uniqueness and originality. The exclusive rights that industrial designs have provide the opportunity for owners to use and utilize their designs, as well as prevent others from exploiting those designs without permission. This then significantly contributes to the creative industry and encourages sustainable economic growth. In addition, this protection also provides an exclusive right for industrial design owners to use and utilize the industrial design, as well as prevent others from using the design without permission. Thus, industrial designs protected by intellectual property rights can provide significant economic value. This can encourage creative industry investment and economic growth (Adz-hiya et al., 2023).

Companies must be proactive by taking advantage of exclusive rights in industrial design protection. This allows the company to continue to innovate in the renewal of original designs and maintain the competitiveness of products in an increasingly competitive market. By protecting their unique designs, companies can maximize economic value and prevent unfair competition from other parties that could harm the company.

Protection of an industrial design that has been registered has a protection deadline regulated in laws and regulations. An industrial design, especially in the automotive sector, has a time limit; if the protection period has expired, the nature of the industrial design changes to public property, and there is no extension of protection for the industrial design (Badar, 2021). This condition provides opportunities for others to innovate using the design, with the aim that the automotive world can continue to grow with the times and technology. This is also done to prevent trade monopolies in the automotive world, because it can affect the sustainability of an automotive industry design and production.

Automotive industry designs that are no longer produced often still have enthusiasts, although not many. This phenomenon creates a secondary market for these vehicles. The secondary market provides accessibility for enthusiasts to purchase, especially in the automotive industry, for the design of automobiles that are no longer

remanufactured. The automotive industry's design limitation factor gives rise to alternatives such as kit cars. Kit cars attract the attention of automotive enthusiasts or collectors who want to own a unique vehicle that fits with their personal reference.

Kitcar refers to the term replica car; the production process is generally carried out by workshop technicians who can assemble kitcars. The kitcar assembly process includes designing a replica of an automotive industry design car that is based on an existing design. Kitcars can reach or even exceed the quality of the original car, depending on the specifics and components used in the kitcar design. However, the manufacture of kitcars can potentially cause infringement of the use of the trademark without the owner's permission for the industrial design they use.

Kitcar is also often associated with social assessment; customized vehicles are considered a symbol of creativity and show economic ability. The resulting car is a tool to show existence and lifestyle. It is common for collectors to buy kitcars just for display because they have high creativity and aesthetic value. The emergence of Kitcar has become a topic of discussion regarding regulations related to industrial design in Indonesia, especially in the automotive sector. This raises questions about the protection of the design used in kitcar assembly. This condition is feared to be used as a loophole for violations of the use of industrial design, especially in the automotive sector, namely by using automotive industrial designs without the consent of the design owner. In Indonesia, some regulations regulate the classification of workshop permits to assemble customized vehicles under the auspices of the authorities. The institution has a role in supervising the production activities of customization workshops regarding safety and environmental standards set by the government. This condition raises concerns about customization workshops that operate without a workshop permit and ensure vehicle owners carry out safety and environmental standard tests. The impact of this can make it difficult to certify and verify kitcars. Therefore, this research was conducted to find out the legal protection related to industrial design used in the manufacture of kitcars in Indonesia and the regulations regarding kitcar certification in Indonesia.

Previous research conducted by Badar (2021) on industrial design protection highlights the importance of intellectual property rights in fostering innovation within the automotive industry. This study, however, primarily focuses on the expiration of industrial design protection and its effects on market dynamics. Similarly, Adz-hiya et al. (2023) explored the significance of intellectual property protection in encouraging sustainable economic growth by focusing on the role of industrial designs in the creative industry. While these studies provide foundational insights into industrial design protections, this research adds a new dimension by addressing the specific challenges and legal gaps in the protection of designs used in kitcars, which are created from the unique or expired designs of original automotive manufacturers. The novelty of this research lies in its exploration of the intersection between intellectual property law and the growing secondary market for custom-designed vehicles in the Indonesian automotive industry.

This research aims to identify the challenges and loopholes in intellectual property protection for automotive designs, particularly in the context of kitcar production. The

findings will provide valuable insights for lawmakers, automotive manufacturers, and enthusiasts in ensuring that intellectual property rights are adequately protected while supporting the growth of the customized vehicle market. Additionally, this research will contribute to the development of policies to regulate the production of kitcars in Indonesia and enhance legal certainty regarding intellectual property in the automotive sector.

## **METHOD**

The type of research in this study is normative juridical, which means that the approach is carried out by examining the approach of theories and concepts concerning the laws and regulations related to this research or the legislative approach. This normative research studies legal systematics, which mainly aims to identify the definitions or bases in law. The primary material used in this study is laws and regulations. Meanwhile, the secondary materials used are the results of research interviews, expert opinions in books, journals, and articles related to this research.

The data analysis in this study was carried out using a qualitative approach, focusing on content analysis to assess and interpret the legal texts, interview transcripts, and secondary literature. Content analysis was used to systematically identify key themes, legal issues, and regulatory gaps concerning the protection of industrial designs in the automotive sector. Additionally, comparative analysis was employed to explore how the legal framework for industrial design protection in Indonesia aligns with international standards and practices.

The findings from both the primary and secondary data sources were synthesized to offer a comprehensive understanding of the current legal situation regarding the protection of industrial designs used in kitcars and provide recommendations for policy improvements. This approach ensured that the research addressed both theoretical and practical aspects of the legal issues at hand.

## **RESULT AND DISCUSSION**

### **Legal Protection Related to Industrial Design Used in Kitcar Manufacturing in Indonesia**

According to the British Standards Institution, Bruce & Bessant, Cooper & Junginger, the word 'design' is a noun and a verb. The noun often refers to real or unreal artificial outputs created by certain design disciplines: engineering design, product design, fashion design, graphic design, and service design (Na et al., 2017). To realize creativity in nature becomes a tangible form by paying attention to the relationship between good arrangements in accordance with market standards. Industrial Design is defined as art that creates a unique and attractive visual appearance because it consists of two-dimensional, three-dimensional art or a combination of both that produces a product with aesthetic and functional value (Lindsey, 2013).

The understanding of these two definitions is that industrial design is a creative process that produces works as a unique and attractive visual display on a product. Industrial design not only has aesthetic value, but also meets the commercial purpose of

its manufacture. The law defines industrial designers as individuals or groups of people who can produce creativity in the form of industrial design.

A designer to register an industrial design needs to apply by submitting a registration request in writing to the Agency of the Directorate General of Intellectual Property Rights, submitted by the applicant. In submitting an application, if the applicant is two or more people, the representative can sign the application, accompanied by a mutual agreement letter. If the application is made by a party that is not a designer, it is required to include questions with evidence of the rights to the registered industrial design. According to Philip M. Hadjon, legal protection is the protection of position and honor and the recognition of fundamental rights to human beings; the state is obligated to ensure that everyone can access equal and fair legal protection (Maulida, 2018). This theory is related to the importance of legal protection in the context of industrial design protection; this theory includes the period of protection and the rights and obligations of design owners. With clear legal protection for design ownership, design owners can ensure that their rights are protected and prevent the exploitation of industrial design by other parties without the permission of the design owner.

The scope of industrial design rights includes the right of the design owner to prevent violations of misuse of design to use, make, sell, distribute goods that irresponsible other people give industrial design rights. However, there are some exceptions based on Law Number 31 of 2000, Article 9, paragraph (1), in the use of an industrial design can be used for research and educational material as long as the use is still reasonably limited and does not cause losses to the rights holder. This right gives the owner the exclusivity to use, produce, sell, or permit the use of the design to another party within a certain period, even transferring the design to another party. The design may not be copied or copied by a third party without the consent of the owner of the industrial design. The exclusive rights owner has complete control over the use of the design by others.

Law Number 31 of 2000 concerning Industrial Design has many benefits in protecting intellectual property rights, but there are still some weaknesses that can affect the effectiveness of its implementation. There is often a potential risk of conflict regarding industrial design protection in Indonesia, this is because there is no concrete definition in the Industrial Design Law. Some aspects of the design that cannot be listed are not described in detail, which can trigger different interpretations when applying the law. One of the other notable drawbacks is the protection of industrial designs without any extensions. Article 5 of the Law states that 10 years is a protection period for industrial design rights starting with the acceptance of designs (Julianti et al., 2021). However, in the assembly of kitcars, another regulation is stipulated in the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 45 of 2023 concerning Customization of Motor Vehicles, namely in Article 43 paragraph (3) which states that the design that can be used in the manufacture of kitcars is industrial designs that have passed the deadline of 25 (twenty-five) years since production, this is to prevent violations of industrial design protection.

The relationship between the period of protection of industrial design without extension of time and the phenomenon of the automotive industry in Indonesia has close relevance, especially in the reuse of vehicle designs that may have expired their protection period. One of the phenomena that occurs in the Indonesian automotive industry is the existence of kitcar-making activities. Kitcar is the product of production by a certain workshop with skills in reassembling an old car design that is no longer produced to suit individual needs or desires. The assembled components can be based on the workshop's choice or at the buyer's request. Regulation of the Minister of Transportation Number PM 45 of 2023 concerning Customization of Motor Vehicles provides a framework for vehicle customization, the law stipulates that workshops must submit an application for customization workshop certification to the Directorate General, this is done to ensure that customization is carried out by an accredited workshop and in accordance with the set technical specifications. Compliance with this regulation aims to maintain the safety and quality of customized vehicles and ensure that assembly is carried out in accordance with the standards that must be met.

Kitcar allows its buyers to own cars based on personal preference to satisfy their sense of self-satisfaction over their attraction to vehicles. In general, kitcar buying and selling activities are carried out through verbal communication from person to person, such as classic car fans or car modification communities. Exchanging aspirations and information between buyers and kitcar builders is an important part of creating a unique innovation (Raven & Pinch, 2003). The interconnectedness of individuals in collecting classic cars encouraged the development of kitcars, which were once popular in their time but are no longer produced. Although the vehicle may still be available, the price can reach fantastic figures. In addition, the driving factor for the workshop in assembling kitcars is a combination of hobbies developed into creativity and innovation to realize business opportunities in the automotive sector.

The development of kitcars that occurred in Indonesia is supported by the kitcar phenomenon, which enlivens the Indonesia International Motor Show (IIMS) automotive exhibition; this activity is a form of appreciation as well as an introduction to the public related to replicas of kit cars made by the automotive industry. In this case, it is pointed out that Kitcar is starting to be known to the public. The increasing development of kitcars is inseparable from the regulations that regulate kitcar assembly activities (Ferdian, 2024). The Regulation of the Minister of Transportation Number PM 45 of 2023 concerning Customization of Motor Vehicles states that the automotive industry's design can be used freely if the 25-year deadline has passed. Meanwhile, international industrial design regulations regulate legal protection for industrial designs used in the manufacture of kitcars, namely those that have passed the 20-year deadline. This provision provides protection for the product of the design in carrying out export or import activities, which is an administrative action in completing the provisions for criminal or civil protection. (Djumhana, 1999).

Industrial design regulations state that a design no longer registered with the Agency of the Directorate General of Intellectual Property Rights becomes public

property, so that the public can use and even innovate the design without the need to ask permission from the previous design owner. This kitcar activity is not categorized as a violation because the exclusive rights to the design used are no longer valid. On the other hand, if the kitcar making activity is carried out using industrial designs that are still under legal protection without obtaining the approval of the design owner, then the act can be said to violate Intellectual Property Rights regulations, especially in industrial design. This can be detrimental to the design owner, as his exclusive rights to the design have been infringed. The exclusive rights owned by the design owner aim to prevent losses caused by the exploitation of the design without the owner's permission; the design owner can take legal action to protect their rights. If it is proven that a violation has occurred, the legal settlement has been regulated in Article 54 paragraph (1) Number 31 of 2000 concerning Industrial Design, the Article stipulates that the perpetrator of the violation can be sentenced to a criminal penalty of up to 4 years in prison and/or a fine of up to Rp.300,000,000 (Three Hundred Million Rupiah). In connection with these provisions, the process of making kitcars also regulates the use of brands. If it turns out that in the process of making it, the workshop technician attaches the trademark without the agreement of the trademark owner, then this action violates the provisions that have been regulated in the Trademark Law.

#### **Arrangements Regarding Kitcar Certification in Indonesia**

Along with developments in the demand for motor vehicle customization in Indonesia, the Ministry of Transportation has finally issued the Minister of Transportation Regulation Number PM 45 of 2023 concerning the Customization of Motor Vehicles. This regulation regulates various essential aspects related to vehicle customization in Indonesia and aims to provide legal certainty and ensure the safety of users of customized vehicles. In Article 1 of the Regulation of the Minister of Transportation above, it is stated that vehicle customization is the process of significantly changing the physical and technical aspects of the vehicle in the structure, material, or engine of the vehicle to create a unique appearance and performance according to personal preferences. Previously, there was no regulation that could present a standard definition of kitcar; the definition in the article can be considered to include kitcar. This is because both definitions involve changes to the technical and structural components of the vehicle in order to meet individual needs or preferences. Kitcar not only qualifies for customization but also provides an opportunity to express creativity and innovation towards industrial design in the automotive world. The regulation can be an initial guide and adequately accommodate the limitations contained in the previous regulation while still meeting the most important elements in the technical requirements and feasibility of the vehicle.

Workshops that have the authority to customize are workshops that have special qualifications, adequate technical understanding, and have obtained certification from the Directorate General of Land Transportation. Article 45 of the Regulation of the Minister of Transportation has regulated the requirements that must be met to get approval as a customization workshop. The article establishes classification criteria for workshops that

carry out customization, including technical requirements, labor qualifications, equipment, occupational safety, and safety facilities that must be owned by the workshop. Workers in customization workshops are required to have appropriate technical competencies, ensure that customization is carried out by trained and experienced professionals, and guarantee that the workshops meet safety and quality standards, regardless of the type of vehicle they make. Customization is carried out by adjusting and modifying the design of vehicles that have passed the 25-year deadline to suit individual needs or preferences; this aims to prevent violations of industrial design protection.

The Ministerial Regulation stipulates that the certification of customization workshops must be carried out as a legality of the activities of a customization workshop, as well as one of the document requirements for testing the roadworthiness of the customized vehicles. This is an obstacle to the implementation of the regulation in the field due to the lack of socialization from the government regarding the regulation to business actors, especially small and medium-scale workshops. So, several customization workshops were established before the regulation was issued, but have not been certified. As a result, many workshop owners feel confused because they do not understand the certification procedure and are worried that it will affect the workshop's operational activities.

Justice, certainty, and the usefulness of law are the characteristics of the existence of law, according to Gustav Radbruch. The creation of the law aims to uphold justice, legal certainty, and integrate the community's needs. Legal security is a very important need of the community; the hope for the formation of a new law can be fulfilled if legal certainty is implemented. Thus, certainty and justice are the essence of the law, and the formation of law is the realization of the principles of justice, which are the basis for human demands to be fulfilled (Donardono, 2007). This opinion also aligns with Immanuel Kant's statement that human property rights are based on human and natural rights. This property ownership does not depend on positive law. However, positive laws are needed to protect this ownership (Mahfud, 2023).

This theory is related to the importance of legal certainty in the context of motor vehicle certification; this theory includes the certainty of rights and obligations for vehicle owners. With clear legal protection for vehicle ownership, vehicle owners get legal certainty on the roadworthiness of their vehicle. A professor at Stanford University, Lawrence M. Friedman, argues that "legal certainty" is not only based on the content of the law but is also supported by how the process of making, enforcing and applying the law itself (Halilah & Arif, 2021). Then, the principle of legal certainty requires that the law applicable to vehicle certification be clear and that there is no legal ambiguity. The principle of legal certainty can guarantee the legality of the kitcar, and the owner can understand their rights and obligations over the vehicle.

Motor vehicle certification in Indonesia refers to the testing and assessment process to ensure that the vehicle meets the safety and feasibility standards set by laws and regulations, these tests must be met before the customized vehicle is operated on the road. Every customised vehicle needs to follow some important steps to ensure that it meets the



safety and feasibility standards set. Motor vehicle testing is a process that must be carried out with the aim of maintaining driving safety for all users, in which there are a series of activities to test and/or inspect parts or components of motor vehicles. The Roadworthiness Testing and Motor Vehicle Certification Center (BPLJSKB) operates as a technical implementation unit (UPT) under the auspices of the Directorate General of Land Transportation, has the authority to implement type tests including several stages of physical testing in order to meet technical requirements and roadworthiness, this test can be carried out on several parts of the vehicle or carried out completely (Gaikindo, 2019).

Testing at BPLJSKB includes various stages, which begin with the pre-test stage, which is a stage with vehicle inspection, including vehicle data adjustment, visual review, observation of the brake system, steering tools, and wheels, to determine the permissible weight. Furthermore, the vehicle mechanical test stage includes exhaust emission test, headlight test, speedometer test, horn test, and front wheel brake test. In the implementation of testing on kitcars, the test items used are the same as vehicles in general, only several parameters are more expanded. This is done because some aspects of the design used have not met the current standards, so the tests still follow the standards that were in accordance with safety provisions when the design was issued. However, these tests still have safety standards and pay attention to environmental safety standards. This aims to ensure that the vehicle meets technical requirements and roadworthiness, including safety and environmental sustainability aspects.

After the test is carried out, if the test results are declared passed, it is followed by the verification stage, then the verification results are input into the Vehicle Test Management Information System (SIMANUK) (Klaten, 2022). If a vehicle does not pass the first test, the test can be repeated 2 (two) times on components that are declared not to pass in meeting the requirements in the previous test. Then, for the testing agency, they must make a certificate stating that the vehicle type test was not passed, providing feedback containing information about the reason for not passing the test. If after 2 (two) re-type tests are still declared unpassed, the application is rejected, and it is necessary to apply for a complete type test again. After the vehicle undergoes testing and is declared passed, BPLJSKB will issue the Type Test Certificate (SUT) required for the legality of the vehicle. Then, the certificate can be used as one of the documents to obtain a Vehicle Number Registration Letter (STNK).

The legal basis for making STNK is based on Law No. 22 of 2009 concerning Road Traffic and Transportation. STNK is a proof of registration and identification issued by the Indonesian National Police and functions to ensure the completeness of motor vehicles moving on the highway. Kitcar generally uses donors from vehicles with the exact dimensions as the previous vehicle, which already has a Vehicle Number Certificate (STNK). The STNK will be physically inspected before customization. This inspection aims to record the frame and engine numbers as the basis for the legality of the new vehicle. After the inspection process is completed, the customization process can be carried out in accordance with applicable regulations, so that the customized vehicles still meet the legal, safety, and roadworthiness aspects. This is an important foundation in

legitimizing costumed vehicles as part of legitimate and safe traffic. So that in making the kitcar, it does not issue a new STNK, but uses an STNK that was issued before.

## CONCLUSION

Industrial design, as a result of a creative process focusing on aesthetic, functional, and commercial value, is protected under Indonesian law, specifically Law Number 31 of 2000. This law grants exclusive rights to a design for a period of 10 years, after which it becomes public property. The legal framework also applies to kitcar production, governed by Ministerial Regulation Number 45 of 2023 concerning Vehicle Customization. Kitcar production involves using existing vehicle parts, subject to vehicle certification, with safety and environmental standards prioritized during the testing phase. If a kitcar meets the required standards, it progresses to verification; if not, it is retested. This regulation provides essential protection for industrial design in the automotive sector, ensuring that kitcar production adheres to safety and legal standards, while also safeguarding intellectual property rights.

There is a need for detailed technical guidelines for vehicle customization, especially regarding safety standards and the homologation process, to create a clearer framework for kitcar production. The insurance industry also needs policies that address the implications of kitcar customization, including the insured value and risk assessment. To address the low public awareness of these regulations, it is crucial to intensify socialization and educational efforts targeting the automotive community and kitcar workshops, utilizing digital platforms and collaborating with relevant stakeholders. Regular monitoring and quality assurance are essential for certified workshops to ensure compliance with safety standards. Establishing expert working groups will help improve enforcement, implementation guidelines, and supervision mechanisms. Collaborative efforts from the government, kitcar industry players, and the broader community will contribute to the effective implementation of PM 45 of 2023, ensuring safe and legally compliant vehicle customization practices.

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