APAA SPECIAL TOPIC REPORT 2026

Country	:	Indonesia
Name	:	1) Risti Wulansari – K&K Advocates
		2) Ardhiyasa Suratman – A&Co Law Office
Date	:	20 October 2026

Anti-Counterfeiting Standing Committee Special Topic

Protection of Product Shapes/Configurations

I. Overview of the Indonesian legal framework

(1) Industrial Design

In Indonesia, product shapes or configuration are primarily protected through industrial design, under Law No. 31 of 2000 on Industrial Designs ("**Industrial Design Law**"). An industrial design is a creation of the shape, configuration, or composition of lines or colours, or a combination thereof, in three-dimensional or two-dimensional form, which gives an aesthetic impression and can be used to produce a product, goods, industrial commodity or handicraft. Protection is obtained through registration with the Directorate General of Intellectual Property ("**DGIP**") and is granted only to a design which is new as at the filing date or the priority date. A design is considered new if, on the filing date, it is not identical to any prior disclosure, whether in Indonesia or abroad (Article 2).

The term of protection is 10 (ten) years from the filing date and is not renewable (Article 5).

The Industrial Design Law provides a limited grace period. Under Article 3, a design is not deemed to have been disclosed if, within 6 (six) months before the filing date, it was:

a. displayed in a national or international exhibition, in Indonesia or abroad, which is official or recognised as official; or

b. used in Indonesia by the designer in an experiment for the purposes of education, research or development.

The grace period does not extend to the commercial launch or sale of the product. Accordingly, once the product has been placed on the market before an application is filed, the design will generally no longer be considered new, and consequently does not entitled to protection through registration obtained.

Proposed new Industrial Design Law

The Government and the House of Representatives ("**DPR**") are currently deliberating a bill to

replace the Industrial Design Law ("**Industrial Design Bill**"). The President submitted the bill to the DPR on 26 August 2025, and the DPR Special Committee commenced the first-level deliberation with the Minister of Law and the Minister of Industry on 19 May 2026. On 1 October 2026, the deliberation was extended by one session period, with the working committee scheduled to discuss the substantive list of issues in November 2026.

Based on public statements by the Special Committee, the issues currently being discussed include the following:

- the title of the bill;
- the system of protection, namely whether design protection should remain based on registration or move towards recordation;
- the definition of novelty, including how to assess whether a design is significantly similar to, or significantly different from, prior designs;
- the scope of the grace period, including a proposal to extend it to researchers, academics and universities, to parties carrying out market research or market testing, and to micro, small and medium enterprises;
- the use of artificial intelligence ("**AI**") in creating designs;
- support for micro, small and medium enterprises, including assistance with registration fees and legal and technical assistance; and
- the economic value of registered designs, including their use as collateral under fiduciary security, and alignment with international registration systems.

(2) Three-Dimensional Trademarks

Law No. 20 of 2016 on Trademarks and Geographical Indications, as amended by Law No. 6 of 2023 on Job Creation ("**Trademark Law**"), includes signs in three-dimensional form within the definition of a mark (Article 1(1)). Product shapes and packaging are therefore registrable in principle, and DGIP has confirmed that the same product may be protected both as a three-dimensional mark and as an industrial design if it meets the requirements of both laws.

A three-dimensional mark must have distinguishing element (Article 20(e)) and must not contain a functional shape (Article 20(g), introduced by the Job Creation Law). The Trademark Law does not define a functional shape. However, according to the DGIP, a shape falls under the category as "functional" if: (i) it is ergonomic, (ii) makes the product more efficient or economical, (iii) facilitates transport or storage, (iv) improves performance or durability, or (v) allows the product to fit or connect with other products.

The DGIP further stated that a shape already protected by a patent cannot be registered as a trademark. This explanation is not binding, but reflects DGIP's examination approach, generally

being adhered to.

The Trademark Law does not expressly recognize acquired distinctiveness as a basis for registering a mark which lacks inherent distinctiveness. The Elucidation of Article 20(e) only provides that a sign is deemed to have no distinguishing power if it is too simple, such as a single line or a single dot, or too complicated so that it is unclear. Based on our experience, DGIP examiners and the Trademark Appeal Commission may, on a case-by-case basis, take into account evidence of use and of registrations in other jurisdictions when assessing distinctiveness, but there is no established standard or evidentiary threshold. Evidence typically submitted includes sales figures, advertising expenditure, market surveys and media coverage in Indonesia, together with foreign registrations for the same shape.

(3) Copyright

Law No. 28 of 2014 on Copyright ("**Copyright Law**") protects works of applied art, namely works which apply art to a product to give an aesthetic impression in fulfilling practical needs (use of pictures, motifs or ornaments on a product). Protection arises automatically without registration. Voluntary recordal with DGIP nevertheless creates a presumption of authorship, is processed quickly through DGIP's automatic approval system, and is required for Customs recordation.

Works of applied art are protected for 25 (twenty-five) years from first publication, and objects whose shape is intended solely for functional needs are excluded. As copyright does not require novelty, it remains available after the product has been commercialized, and the same shape may also be registered as an industrial design.

Proposed amendment to the Copyright Law

On 12 March 2026, the DPR approved a bill to amend the Copyright Law as a DPR-initiative bill ("**Copyright Bill**"). The bill underwent public consultation in May 2026 and remains subject to change. Under the consultation draft, works generated by AI without human intellectual involvement are not protected, while works with human creative contribution are. Comments on the draft have focused on:

- the absence of a definition or measurable threshold for human creative contribution;
- uncertainty as to whether the AI developer, the operator or the user owns the copyright;
- DGIP's inability to verify human contribution under the current recordal system, which involves no substantive review; and
- the unresolved treatment of copyrighted works used as AI training data.

II. Study Point 1: Protection under copyright law, unfair competition laws and/or passing-off doctrines

(1) Copyright

A product shape may be protected as a work of applied art, provided that it gives an aesthetic impression and reflects the author's distinctive and personal character, which is the originality standard under the Copyright Law.

However, purely functional shapes are excluded under Article 41(c) of the Copyright Law. Shapes such as the beverage bottles, armchair, bag and watch illustrated in the Committee's paper may, in principle, be recorded as works of applied art, while the protectability of shapes or features which are largely dictated by technical function, such as the mechanism of a cube puzzle, is more doubtful. As copyright recordation is not substantively examined, the validity of the copyright will only be tested if the recordation is challenged or the copyright is enforced.

(2) Unfair competition

Indonesia does not have a specific unfair competition law protecting product shapes or configurations. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition governs antitrust matters, is enforced by the Business Competition Supervisory Commission, and does not address the imitation of products.

Article 500 of Law No. 1 of 2023 on the Criminal Code ("**New Criminal Code**"), which came into force on 2 January 2026 and replaced Article 382 bis of the former Criminal Code, criminalizes any person who commits a fraudulent act to mislead the public or a particular person in order to establish or expand his business, if the act may cause loss to his competitors. The offence carries imprisonment of up to 2 (two) years or a category III fine (currently IDR 50 million). The provision could in theory capture imitation of a product shape which misleads consumers, but it is rarely invoked in IP enforcement practice.

(3) Passing off

Indonesia is a civil law jurisdiction and does not recognise passing off as a cause of action. In addition, as Indonesia adopts a first-to-file system, unregistered marks are generally not protected, except for well-known marks.

As alternative course, rightsholders may rely on Article 1365 of the Indonesian Civil Code ("**Civil Code**"), under which any unlawful act which causes loss to another person obliges the person at fault to compensate that loss. The concept of an unlawful act has been interpreted broadly to include acts contrary to propriety and the duty of care in society. A rightsholder may therefore argue that the imitation of its product shape, intended to take advantage of its reputation and to mislead consumers, constitutes an unlawful act. The rightsholder must prove the unlawful act, fault, loss and causation.

Such a claim must be filed with the District Court, and not with the Indonesian Commercial Court.

III. Study Point 2: Enforceability through administrative, civil, or criminal actions

Although this Study Point concerns copyright, unfair competition and passing off, we also refer below to the remedies available under the Industrial Design Law and the Trademark Law for comparison – being the relevant laws under Indonesian legislation.

(1) Civil

A rightsholder may file a civil claim for damages and/or cessation of the infringing acts with the Commercial Court on the basis of copyright infringement (Article 99 of the Copyright Law), industrial design infringement (Article 46 of the Industrial Design Law) or trademark infringement (Article 83 of the Trademark Law). Each of these laws also provides for a provisional injunction, which allows the rightsholder, upon providing sufficient evidence and a guarantee, to request the Commercial Court to order the cessation of the infringing acts and the seizure of infringing goods before the main claim is filed. Commercial Court decisions may only be appealed by way of cassation to the Supreme Court, without an appeal to the High Court.

A claim based on Article 1365 of the Civil Code falls outside the jurisdiction of the Commercial Court and must be filed with the District Court. A claim which combines IP infringement with a general unlawful act claim risks being declared inadmissible, so the two claims must generally be brought separately before the competent courts.

(2) Criminal

The Copyright Law, the Industrial Design Law and the Trademark Law each provide criminal sanctions, as follows:

- **Copyright**: infringement of economic rights, including reproduction and distribution, for commercial use is punishable by imprisonment of up to 4 (four) years and/or a fine of up to IDR 1 billion, and piracy by imprisonment of up to 10 (ten) years and/or a fine of up to IDR 4 billion (Article 113). Except for piracy, where the parties are known and located in Indonesia, the parties must first attempt mediation before criminal charges are pursued.
- **Industrial design**: infringement is punishable by imprisonment of up to 4 (four) years and/or a fine of up to IDR 300 million.
- **Trademark**: use of an identical mark is punishable by imprisonment of up to 5 (five) years and/or a fine of up to IDR 2 billion, and use of a mark which is similar in essence by imprisonment of up to 4 (four) years and/or a fine of up to IDR 2 billion.

All of these offences are complaint-based offences, so that investigations can only be initiated upon a complaint from the rightsholder (Article 120 of the Copyright Law, Article 54(3) of the Industrial Design Law and Article 103 of the Trademark Law). Investigations are carried out by the police or

by DGIP civil servant investigators (*Penyidik Pegawai Negeri Sipil* or "**PPNS**").

Based on our experience, the police and PPNS generally require a registration or recordation certificate as the basis of a complaint and will request an opinion from a DGIP expert. Complaints founded on imitation of a product shape alone, without the use of the rightsholder's mark or label, are less readily accepted than complaints concerning counterfeit marks, as the assessment of similarity is more subjective. Complaints are more likely to proceed where the rightsholder holds a design registration or a copyright recordation certificate for the shape.

(3) Administrative

DGIP does not have the authority to impose administrative sanctions, such as fines or seizure, against the imitation of a product shape. DGIP, through its Directorate of Investigation and Dispute Resolution, offers mediation between the rightsholder and the alleged infringer, which is commonly used as a first step before litigation or a criminal complaint.

IV. Study Point 3: Precedents

While there are reported decisions concerning the enforcement and cancellation of industrial designs over product shapes, based on our review of the Supreme Court decision directory and publicly available commentary, we have not identified any reported decision enforcing a product shape on the grounds of copyright infringement, unfair competition or passing off.

V. Study Point 4: Customs and e-commerce platforms

(1) Customs

As described in our 2025 Special Topic Report on the Customs System, border measures in Indonesia are governed by Government Regulation No. 20 of 2017 and Ministry of Finance Regulation No. 40/PMK.04/2018. Customs recordation is available only for registered trademarks and recorded copyrights, and not for industrial designs.

The practical consequence is significant for the present topic. A product shape which is protected only by an industrial design registration cannot be enforced at the border, whereas the same shape recorded as a work of applied art, or registered as a three-dimensional mark, can be recorded with Customs.

Customs does not take ex officio action over unrecorded rights. Since Customs officers rely on the identification guidelines submitted with the recordation, products which imitate a shape without bearing the rightsholder's mark are more difficult to identify. Rightsholders should therefore provide detailed guidelines describing the distinctive features of the shape.

In practice, several three-dimensional marks have been recorded with Customs, and Customs has

taken enforcement action on the basis of such recordations against goods imitating the shape and configuration of the recorded products, including shaving razors. Ideally, however, the three-dimensional mark should be recorded together with the corresponding word and device marks, as Customs officers more readily identify suspected goods by reference to the brand name and logo.

(2) E-commerce platforms

Government Regulation No. 80 of 2019 on Trading Through Electronic Systems and Minister of Trade Regulation No. 31 of 2023 require e-commerce operators to provide a complaint mechanism and to remove illegal content upon notification. In addition, under Articles 54 to 56 of the Copyright Law, a rightsholder may report infringing content to the Minister of Law, who may recommend that the Minister of Communication and Digital Affairs close the infringing content or access to the electronic system.

In October 2021, DGIP, the National Police and major marketplace operators entered into a cooperation under which the operators committed to prohibit the sale of counterfeit goods and to remove IP-infringing products from their platforms. The major platforms operate their own notice and takedown programmes, which generally require the rightsholder to submit a registration or recordation certificate and to identify the infringing listings.

Based on our experience, takedown requests founded on a trademark registration or a copyright recordation certificate are processed more readily than requests founded on shape alone. Requests based on a design registration are accepted by the major platforms, but reviewers find it more difficult to assess similarity of shape than identity of marks, and sellers may file counter-notices claiming that their product is a different design.

VI. Study Point 5: Strategic approaches after commercialization

We recommend the following approaches:

a. **Before launch (for future products)**: file the industrial design application before any disclosure, and consider filing multiple applications covering variants of the product. If the product will be displayed at an exhibition before filing, diarise the grace period, noting that market testing and sales are not covered under the current industrial design law.
   As Indonesia adopts a first-to-file system and does not require use before filing, the rightsholder may alternatively also seek protection by filing a three-dimensional mark application for the shape before launch, together with an application for the shape combined with the word mark or logo as a fall-back. Since a trademark application becomes publicly accessible shortly after filing, which may constitute a prior disclosure destroying the novelty of the design, the industrial design application should be filed first or on the same day.
b. **At launch**: record the copyright in the product shape as a work of applied art with DGIP. Recordation is inexpensive, does not require novelty, and is processed quickly since it is a mere

administrative process. It also enables Customs recordation and supports takedown requests to e-commerce platforms. However, the protection is subject to the exclusion of functional shapes and to a 25 (twenty-five) year term.

c. **After launch**: continue building evidence of use, namely sales figures, advertising expenditure, market surveys, unsolicited media coverage and registrations in other jurisdictions. If the three-dimensional mark application is refused for lack of distinctiveness, this evidence may support an appeal to the Trademark Appeal Commission or a new application. If no three-dimensional mark application was filed before launch, consider filing the shape in combination with the word mark or logo, which is more likely to be accepted, while noting that the scope of protection will then focus on the combination. The product packaging and labels may also be registered as device marks.

d. **Defensive measures**: monitor the DGIP official gazettes for design and trademark applications filed by counterfeiters over the rightsholder's own shape, which is a recurring problem in Indonesia given the first-to-file system. Such applications can be addressed through objections and oppositions during the publication period, or through cancellation actions on the grounds of lack of novelty (for designs) or bad faith (for trademarks).

e. **Contractual measures**: impose confidentiality and non-use obligations on manufacturers, distributors and other parties who have access to the product before launch, to prevent leakage of the design.

VII. Study Point 6: Difficulties in enforcing three-dimensional marks and design rights

(1) Three-dimensional marks

Even where a three-dimensional mark is registered, the following difficulties may arise:

- the scope of protection is confined to the shape as registered and depicted in the label, so that an imitator may avoid infringement by modifying the shape; and
- infringement analysis in Indonesia is founded on similarity in principle, which the Trademark Law describes as similarity caused by dominant elements which create an impression of similarity in form, placement, method of writing, combination of elements or sound. This test has been developed for word and device marks and is not well developed for shapes.

(2) Industrial designs

In enforcing a registered industrial design, the following challenges should be anticipated:

- the defendant would typically counterclaim for cancellation of the design on the ground of lack of novelty, relying on the rightsholder's own commercialization of the product before the filing date;

- since novelty is assessed by reference to whether the designs are "identical", imitators may argue that minor modifications result in a different design, and the courts have applied the test inconsistently; and
- design rights cannot be recorded with Customs, and the 10 (ten) year term cannot be renewed.

(3) Evidentiary burden

In all of the above proceedings, the rightsholder bears the burden of proving its rights and the infringement. The opinion of a DGIP expert carries significant weight, both in the joint examination of goods suspended by Customs and as expert evidence in court proceedings and criminal investigations. Rightsholders should therefore prepare a detailed comparative analysis of the genuine and imitating products, supported by evidence of the date of creation and first disclosure of the shape.

***