

Legal Protection of Intellectual Property Rights Gold and Diamond Jewelry Motives

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ABSTRACT: Gold and diamond jewelry is a work of art born from ideas and human creativity. Haryadi Surya Gemilang Jewelry is a company that designs and produces gold and diamond jewelry. Other companies often copy Jewellery's HSG Gold and Diamond Jewelry designs. It can reduce the level of exclusivity of gold and diamond jewelry. So, it is necessary to provide an adequate description if a lawsuit will be filed. It must be done because Gold and Diamond Jewelry have non-single IPR dimensions, namely Copyright and Industrial Design. One problem in this research is that intellectual property rights can effectively protect gold and diamond jewelry artisans. This type of research in legal analysis is empirical legal research, which focuses more on social facts that exist in society. The conclusion of this research is insights there are things. First, gold and diamond jewelry has artistic value and beauty; second, that gold and diamond jewelry are personal and exclusive; and thirdly, the area of gold and diamond jewelry is not registered, so the fixation aspect is fulfilled. as a condition of obtaining Copyright. Thus, Copyright is an effective IPR to protect gold and diamond jewelry designers.

KEYWORDS: Gold and diamond jewelry, industrial design, copyright aspects

I. INTRODUCTION

Gold and diamond jewelry is one of the things that is currently favored by people, both men and women. Gold and diamond jewelry is a work of art created from ideas, creativity, and the result of human intellect. Gold and diamond jewelry has so many types and designs that are in great demand by many people. However, gold and diamond jewelry designs sometimes have different patterns, shapes, or ornaments.

Haryadi Surya Gemilang (HSG) Jewelry is a gold and diamond jewelry company that

designs and manufactures its own gold and diamond jewelry for sale.

Other companies often copy gold and diamond jewelry designs at HSG Jewelry. It is unfortunate because it will reduce the exclusivity of gold and diamond jewelry. So, providing an adequate description if a lawsuit is filed later, awarding the gold and diamond jewelry design is essential. It is necessary because these gold and diamond jewelry products have a non-single dimension of Intellectual Property Rights, namely Copyright or Industrial Designs.

This research aims to determine which Intellectual Property Rights will effectively protect gold and diamond, jewelry artisans.

II. METHODS OF RESEARCH

In this research method, the type of research chosen is empirical legal research. The main data is primary data, while the secondary data is supporting data with primary and secondary legal materials. The method of Concluding is using the inductive method.

III. RESULT AND DISCUSSION

A. Overview of Copyright and Industrial Design

1. Copyright

According to Law No. 28 of 2014, Copyright is the creator's exclusive right that arises automatically based on the declarative principle after creation is realized in a tangible form without reducing restrictions following statutory provisions.

The object of Copyright is a creation that is already in a tangible form, not still in the form of ideas or concepts; this is supported by L.J. Taylor, who said in his book Copyright For Librarians that what is protected by Copyright is the expression of an idea, so it does not cover the idea itself.

Subjects of copyright law are parties or entities related to Copyright or, more limitedly, parties regulated by statute as parties that carry Copyright or associated rights as part of the object of copyright law regulation.

The elements contained in Copyright are: Exclusive rights of the creator, Arise automatically, Based on the declarative principle, Enforced after a work is created, becomes a work of art.

Copyright is closely related to the creator. The creator can be conventionally classified as a creator, someone who creates a creation for the first time so that he is the first person to have rights as a creator.

The creator is closely related to moral rights and economic rights. Moral rights are rights where the creator has the right to include his name in his work, while economic rights are rights where the creator can obtain financial rights, namely in the form of money.

Indonesia stipulates that copyright protection is given to personal creations by fulfilling originality requirements based on the ability of the mind, imagination, creativity, and in a unique form (fixation).

A creation must be an original creation. The creation must be produced by a person who recognizes the work as his creation. Suppose the creator or author has applied enough knowledge, expertise, and judgment in creating his work. In that case, this is sufficient to meet the nature of originality to obtain a copyright.

2. Industrial Design

Industrial Design is the creation of shape, configuration, or composition of lines or colors, lines, and colors, or a combination thereof that is three-dimensional or two-dimensional in shape and can be used to produce goods, commodities, or handicrafts.

The object of an industrial design is a new or new industrial design that has been registered and is protected. The subject of industrial design law is the designer. A designer is a person who produces industrial design plans. Parties who receive or obtain industrial design rights from designers are also considered subject to industrial design rights.

The elements contained in industrial design are, first, the creation of a shape, configuration, the composition of lines or colors, or lines and colors, or a combination thereof; second, the appearance is new; third, aesthetically attractive; fourth, applied to products that mass-produced

B. Overview of Gold and Diamond Jewelry

Diamonds are diamonds that have been processed by polishing; diamonds themselves are the raw material of diamonds. Gold and diamond jewelry has a very high economic value. The characteristics of gold and diamond jewelry, according to the GIA (Gemological Institute of America), are divided into 4C: Colour, Clarity, Cut, and Carat. GIA is a non-profit organization that conducts research and education in gemology and jewelry arts. 4C can be described as follows:

1. Color

GIA gives the Color scale of a diamond from D to Z, diamonds that have the best quality and are most valuable if the color is more transparent. The D scale is the best color diamond, while Diamonds that have a yellowish to brownish color are included in the Z scale. Diamonds themselves have almost the same color when seen with the naked eye.

2. Clarity

The scale given by GIA in Clarity has 11 grades. In Clarity, Clarity in a diamond refers to the presence or absence of blemishes on the stone. The VS (Very Slightly Included) or SI (Slightly Included) category is a diamond category mainly used to make Diamond Jewelry. The clarity value in Clarity is based on the sum of the sizes and positions of the inclusions and stains, which can be seen with a 10x magnification.

3. Cut

Cut is the most complex thing compared to the other 4Cs and must be done by someone skilled. Cutting or cutting on a diamond is the most influential thing in the Clarity and sparkle of a diamond. Cutting or cutting on a diamond dramatically affects the price of a diamond. Diamonds can be cut into any shape, but diamonds are generally shaped like a round or princess.

4. Carat

The weight of a diamond is determined by the carat of the diamond. Even though a diamond has the same carat as another diamond, the price of the two diamonds can differ; this is, of course, also supported by factors from the other 4C characteristics.

4C is a very important characteristic of a diamond. After the diamond meets the 4C requirements as a reference for the quality of gold and diamond jewelry, the process of making the gold and diamond jewelry begins. The process of

making gold and diamond jewelry consists of several stages:

1. Make a design of the desired gold and diamond jewelry.

At this stage, artisans or designers design gold and diamond jewelry by drawing the desired gold and diamond jewelry designs. From this stage, human creativity and imagination are benefited through an image of gold and diamond jewelry designs'

2. Match the required diamonds to the pre-made gold and diamond jewelry designs.

In this second stage, the way to match the diamonds needed in the gold and diamond jewelry design is to place a loose diamond over the gold and diamond jewelry image design that was made before. It is done to find out whether the loose diamond is suitable to be paired with the gold and diamond jewelry designs made by the designer and to find out the weight of the diamond.

In this stage, matching a loose diamond into a gold and diamond jewelry design is not easy; it requires high artistry to be able to carry out this process because each loose diamond has a different shape; there are even diamonds that are interrelated, so it takes high artistic power in doing this stage.

3. Prepare the gold material, a framework for gold and diamond jewelry.

At this stage, it starts with processing the gold material into a framework, where sometimes the pattern on a gold and diamond jewelry design has different difficulty levels, not to mention when the framework has to be made with several carvings, where the carvings are requested from the customer. In this stage, the creativity of the artisans is needed.

4. I am attaching loose diamonds to the finished gold and diamond jewelry framework.

In this fourth process, when the jewelry frame has been made according to the design, the loose diamonds selected earlier in the second stage are attached to the finished frame.

5. Finishing

In this stage, gold and diamond jewelry undergoes the final process to perfect gold and diamond jewelry. In this process, gold and diamond jewelry is filed, refined, and colored so the results will be more beautiful later.

These stages have elements of creativity, imagination, and experience that make gold and diamond jewelry very special and of high value.

C. Content Intellectual Property of Gold and Diamond Jewelry Designers.

Gold and diamond jewelry designs contained in HSG Jewellery are divided into two types:

1. Gold and Diamond Jewelry Designs that are requested by consumers themselves

In this type of gold and diamond jewelry design, the consumer or customer has brought a design idea they want to make into diamond jewelry. Usually, the consumer or customer brings a photo or image they want to make into diamond jewelry and then shows it to HSG Jewelry. After that, parties from HSG Jewelry will redesign the design ideas brought by the consumer or customer. In this type of design, the principle is made by order; the design of the diamond jewelry will be made when there is a request from the consumer or the customer himself.

2. Gold and Diamond Jewelry Design Designed by HSG Jewelry has become Gold and Diamond Jewelry.

In this type of gold and diamond jewelry design, all gold and diamond jewelry design ideas are from HSG Jewelry. The owner of HSG Jewelry has created his own gold and diamond jewelry designs, produces his own gold and diamond jewelry, and sells it in the form of finished gold and diamond jewelry so that customers or consumers only have to choose the gold and diamond jewelry they want.

The diamonds used by HSG Jewelry in making gold and diamond jewelry designs, both requested and those made by HSG Jewelry themselves, all use loose diamonds, which will later be self-produced into gold and diamond jewelry.

For the types of gold and diamond jewelry designs requested by consumers or customers, HSG Jewelry also accepts that some consumers or customers might get jewelry design ideas at other diamond shops because gold and diamond jewelry designs are universal, and everyone can imitate them. Designs of gold and diamond jewelry, except for logo designs owned by official agencies or logo designs from companies with their characteristics in gold and diamond jewelry design.

HSG Jewelry does not have unique characteristics in making a design. HSG Jewelry frees every consumer or customer to design gold and diamond jewelry according to the wishes of the consumer or customer. If a consumer or customer

wants to make a pre-existing or pre-made gold and diamond jewelry design, HSG Jewelry will accept it. Still, in making the design, there will definitely be differences from the previously made designs. HSG Jewelry will add different variations to each of its diamond jewelry designs

Every gold and diamond jewelry sold by HSG Jewelry has a different level of exclusivity. When a customer wants a similar design, HSG Jewelry can make the diamond jewelry design by adding a slightly different variation to the previous diamond jewelry design, so that there is a difference in the design of the gold and diamond jewelry and maintain the exclusivity of the gold and diamond jewelry.

HSG Jewelry has also experienced several acts of imitation of gold and diamond jewelry designs by consumers or customers of HSG Jewelry. One example of imitation experienced by HSG Jewelry is a customer or consumer who asks HSG Jewelry to make a gold and diamond jewelry design in the form of a ring.

Parties from HSG Jewelry have designed the ring according to the customer's or consumer's wishes. Still, the price offered is costly because the ring's design is quite complicated and has a high level of difficulty and creativity from the craftsman or designer because there are many carvings in the ring design.

Ultimately, the consumer wanted to avoid making a ring at HSG Jewelry, but the consumer captured the ring's design through a photo. It turned out that the consumer brought the design made by HSG Jewelry to a gold and diamond jewelry artisan or designer elsewhere and asked to make it according to the design that has been made by HSG Jewelry, of course, with a lower price and a quality that is far below HSG Jewelry.

Designers or craftsmen/artisans of gold and diamond jewelry, judging from the types of designs in HSG Jewelry, are parties to HSG Jewelry itself. The designs in HSG Jewelry, whether requested or designed directly by HSG Jewellery, are all still made by HSG Jewellery. Moreover, gold and diamond jewelry designs made at the request of consumers or customers are usually still in the form of photos or rough drawings, so parties from HSG Jewelry will redesign the gold and diamond jewelry.

An effective intellectual property right used to protect gold and diamond jewelry craftsmen is Copyright because the elements contained in this Copyright are in harmony with the elements contained in gold and diamond jewelry craftsmen.

Industrial design is not adequate protection for artisans or designers of gold and diamond jewelry because the elements in industrial designs need to follow gold and diamond jewelry, where the elements in industrial design are not suitable, namely the elements of industrial design objects. The element of novelty or new is one of the essential elements in an industrial design, indeed in a gold and diamond jewelry design, each design has an element of novelty, meaning that each design in HSG Jewelry is not the same or similar to other designs, but in fact, experienced by HSG Jewellery the design they had made was imitated. A customer took the design, and the customer made the design in an absolute form.

The novelty or new element in industrial design is seen from the imitation experienced by HSG Jewelry, so from this element, industrial design is not an effective IPR to protect gold and diamond jewelry designs. In practice, gold and diamond jewelry designs that have been made have never been registered with the Directorate General of Intellectual Property Rights as a condition for protection through industrial designs. If there is no registration, gold, and diamond jewelry designs will not be protected automatically. So, from these facts, the element of novelty or new in industrial design still needs to be fulfilled.

The protection provided by industrial design is also used for mass-produced goods or technology, meaning that these goods are produced in large and large quantities. It is incompatible with gold and diamond jewelry produced by HSG Jewellery, where the production of gold and diamond jewelry at HSG Jewellery is only done once.

In Court Decision NO. 010 PK/N/HaKI/2005 concerning industrial design also states that when an item does not meet the elements contained in the industrial design, it is difficult to obtain protection. In this case, it was stated that the defendant had been proven to have no element or value of novelty in the goods that the defendant created. The court decision is a guideline whereby when a gold and diamond jewelry design turns out to have similarities, there is no novelty or new element. Industrial designs cannot get protection, especially if the copy has been legally registered on the General Register of Industrial Designs of the Directorate General of Intellectual Property Rights.

Copyright has elements following gold and diamond jewelry artisans or designers, so Copyright is an effective IPR used to protect gold and diamond, jewelry craftsmen or designers.

The exclusive right of the creator, the first element of this Copyright, is in line with the

research results, namely that a gold and diamond jewelry design made at HSG Jewelry is exclusive, where the designer or craftsman can only make designs from gold jewelry. The diamond is one-time and cannot be repeated on subsequent orders.

This exclusive right is, of course, also included in the moral rights and economic rights that exist with the designer, where the moral rights are attached to the gold and diamond jewelry designer because he is the one who makes it and not necessarily that other people can make the same design as that made by the existing designer. At HSG Jewelry, the economic rights are, of course, the designer gets royalties from the designs he makes.

Arise automatically in this second element, the exclusive rights owned by the creator of this Copyright arise automatically without having to be registered first. Artisans or designers of gold and diamond jewelry have exclusive rights to the designs of gold and diamond jewelry they create directly without having to be registered or keep records. It is also supported in Law No. 28 of 2014 concerning Copyright in Article 64 paragraph (2); the basis is that recording work is not required for obtaining Copyright. Registering a creation is only optional.

Based on the declarative principle, which means that when the design made has been approved by the consumer or customer and is ready to be made into works, this declarative principle is fulfilled, meaning that parties from HSG Jewelry and parties from consumers or customers have declared that they agree with the design of gold and diamond jewelry and soon the work will be done in a tangible form

The next element is applied after creation is transformed into a work of art, which is essential. The thing that is protected by Copyright is the subject of the Copyright, as well as works of art produced from the subject of the Copyright. It means that when a gold and diamond jewelry design is manifested in an actual form into a gold and diamond jewelry work of art, then, directly and automatically, the subject who makes the gold and diamond jewelry design, namely the designer or craftsman, gets legal protection in the form of Copyright without having to be registered. It relates to the three elements discussed earlier.

Copyright is the right Intellectual Property Right (IPR) used to protect gold and diamond jewelry designers or craftsmen because the elements contained in Copyright are exact and very suitable to protect gold and diamond, jewelry craftsmen or designers.

IV. CONCLUSION

Based on the results of the research and discussion as described above, there are three basic things, namely: first, gold and diamond jewelry as works in the field of art, works in the form of jewelry that have artistic value and beauty, second, that gold and diamond jewelry are made manually. Personal and exclusive, not made in large quantities; third, the work is not registered with the Directorate General of Intellectual Property Rights, so the fixation aspect is fulfilled as a condition for obtaining copyrights. So, intellectual property rights that can effectively protect gold and diamond jewelry designers are copyrights

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