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Tajuk Rencana

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Edisi kali ini memuat berbagai makalah yang membahas tentang Perlindungan Hak Moral Pencipta dalam Eksekusi Fidusia Royalti Melalui Perspektif Filsafat Justin Hughes; *Preventing Abuse of Trademark Registration Through Speculative Filings in Indonesia*; Desain Undang-Undang Khusus Kekayaan Intelektual Komunal untuk Perlindungan Masyarakat Tradisional; Kerja Sama Kawasan Asia Tenggara Menghadapi Perdagangan Orang dan Penipuan Online; *Reassessing Penal Dominance in Indonesian Narcotics Law Through International Legal Comparison*.

Diharapkan tulisan-tulisan ini dapat berkontribusi untuk menambah pengetahuan pembaca. Akhir kata kami mengucapkan terima kasih kepada Kepala Badan Strategi Kebijakan Hukum, Kementerian Hukum Republik Indonesia yang telah memberikan dukungan dalam penerbitan Jurnal ini. Kami juga berterima kasih kepada para peninjau atas kontribusi mereka untuk meningkatkan kualitas setiap makalah. Kami juga menyambut ide dan saran dalam rangka meningkatkan kualitas jurnal.

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JURNAL ILMIAH KEBIJAKAN HUKUM

BADAN STRATEGI KEBIJAKAN HUKUM
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Protection of Creators' Moral Rights in the Execution of Royalty Fiduciary from the Perspective of Justin Hughes' Philosophy

Anggitariani Rayi Larasati Siswanta, Agustinus Supriyanto

The growth of Indonesia's creative economy offers new opportunities to utilize copyright, particularly royalty income, as a basis for fiduciary guarantees. However, this practice rais-es juridical challenges due to the potential infringement of creators' moral rights, which are perpetual and non-transferable even when royalties are executed as fiduciary collateral. This study aims to analyze the protection of creators' moral rights in the execution of royalty-based fiduciary guarantees through the philosophical perspective of Justin Hughes. The re-search adopts a normative juridical method with conceptual and statutory approaches. Hughes' theoretical framework in The Philosophy of Intellectual Property, which combines Hegel's personality theory and Locke's labor theory, emphasizes that intellectual works em-body the creator's personality and dignity, making them inseparable from their creators even though royalties, as a form of economic rights, are executed because they are encumbered by fiduciary guarantees. The findings reveal that moral rights protection during fiduciary exe-cution can be ensured through the role of Collective Management Institutions as intermedi-aries managing and distributing royalties. These institutions can safeguard moral rights by implementing controlled management by incorporating restriction clauses in fiduciary deeds, maintaining verified royalty data, applying escrow or cessie mechanisms in royalty transfers, conducting post-execution audits, and facilitating mediation in cases of moral rights viola-tions. Accordingly, the fiduciary use of royalties should not diminish the creator's moral rights but instead achieve a balance between creditors' legal certainty and the preservation of the creator's honor and integrity.

Keywords: *Fiduciary, Copyright; Moral Rights; Collective Management Institutions; Royalties.*

Preventing Abuse of Trademark Registration Through Speculative Filings in Indonesia

Brian Valentino Lates Cal Cariver, Mieke Yustia Ayu Ratna Sari

The practice of blocking and speculative trademark applications exploits administrative gaps in the first-to-file system to secure advantages without genuine commercial intent. This article employs statutory, conceptual, case-law, and comparative doctrinal approaches. Drawing on the jurisprudence of the Court of Justice of the European Union, this article shows that bad faith is primarily assessed through intention to use. However, the Indonesian normative framework has not operationalized the notion of "unfair business competition" into objective and verifiable standards, as it lacks measurable indicators to assess the applicant's intent at filing. Consequently, examination remains largely formalistic and reactive, rendering the system vulnerable to speculative applications. This article conceptualizes blocking and speculative applications as manifestations of bad faith and recommends proportionate administrative reforms, including the introduction of an intention-to-use declaration, the development of a red-flag checklist based on operational indicators such as chains of applications, offers to sell, and absence of genuine use, as well as cross-border database verification for early detection. These measures aim to strengthen preventive mechanisms at the registration stage without undermining the first-to-file principle.

Keywords: *Bad Faith; First-to-File; Speculative Trademark Applications; Trademark Registration.*

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Designing a Special Law on Communal Intellectual Property for Traditional Communities Protection

Darwance

Regulations on Communal Intellectual Property (CIP) in Indonesia are scattered across many types of legislation, rather than being contained in a single comprehensive law. This fragmentation of regulations can result in weak legal protection for traditional communities, which are the custodians of most CIP, as well as weak legal protection for the objects of CIP themselves. On the other hand, CIP is sui generis in nature. This research is normative in nature, using a regulatory and conceptual approach. This study offers a proposed design for a specific law regulating the protection of CIP by combining all types of CIP and synchronizing it with other laws related to the issue at hand, including international conventions. Therefore, this study aims to analyze the concept of CIP in several regulations, namely the Copyright Law, the Trademark and Geographical Indications Law, and the Patent Law, to subsequently construct regulations on CIP as an effort to provide optimal legal protection for the intellectual property of traditional communities. In several individual Intellectual Property Rights (IPR) laws, CIP are conceptualized in various ways, which has the potential to hinder the legal protection process, especially for traditional communities that are collective in nature. The protection of traditional communities needs to be strengthened through the drafting of legislation in the form of a law that specifically regulates CIP comprehensively, combining a number of existing regulations with several improvements, as well as synchronizing with several other laws relevant to the issue of communal intellectual property, including international conventions, one of which relates to the position of traditional communities.

Keywords: *Regulation; Communal Intellectual Property; Traditional Communities.*

Regional Cooperation in Southeast Asia to Combat Human Trafficking and Online Fraud

Muhammad Syaroni Rofii

This study aims to analyze the phenomenon behind the high number of cases of Human Trafficking (TPPO) in Indonesia, how criminal networks operate across the ASEAN region exploiting legal and regulatory loopholes to commit online fraud, human trafficking, extortion, and torture, and how the Indonesian government's strategy responds to existing cases within the legal framework and cooperation of the ASEAN region. This research is a qualitative case study research using primary data in the form of in-depth interviews with the Indonesian Ministry of Foreign Affairs, the Indonesian National Police, especially the Police Attachés in Bangkok, Manila, and Kuala Lumpur, as well as migrant activists. Researchers also conducted observations at points that have been the departure and arrival points for victims of TPPO. The results of this study confirm that the problem of TPPO arises as a result of legal disharmony at the regional level and compliance with conventions such as ACTIP in the region is based on voluntary compliance. As a result, law enforcement agencies face obstacles in coordinating agreements because they do not yet have an integrated criminal data system, requiring bilateral cooperation and joint operations that are ad hoc and limited in nature. In conclusion, the problem of human trafficking is very complex and is not only a problem for the central and regional governments in Indonesia but also a problem for the ASEAN region. Therefore, in order to achieve regional resilience in facing this situation, joint efforts are needed in the form of continuous cross-border cooperation within the ASEAN framework.

Keywords: *Human Trafficking, Regional Cooperation, Regional Resilience, Regulation Harmony.*

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Reassessing Penal Dominance in Indonesian Narcotics Law through International Legal Comparison

Gazali Ahmad, Nashriana Nashriana, Henny Yuningsih

Indonesia faces significant challenges in narcotics control, particularly in balancing punitive enforcement with rehabilitation mechanisms. This study adopts a normative legal research approach to compare Law No. 35 of 2009 concerning Narcotics with the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Using statutory, conceptual, and comparative approaches, this study analyzes the regulatory orientation of Indonesia's penal and non-penal strategies, particularly as reflected in the policy framework of the National Narcotics Agency (BNN). The analysis indicates that Indonesian legislation adopts a stringent enforcement model, including the possibility of capital punishment for certain trafficking offenses, whereas international standards emphasize proportionality, international cooperation, and preventive mechanisms. Although national law formally recognizes medical and social rehabilitation, its regulatory orientation remains predominantly enforcement-centered. The study also identifies normative and institutional shortcomings in the coordination between BNN and other agencies, such as the police, the Ministry of Health, and UNODC. It highlights the need for clearer communication frameworks, strengthened rehabilitation pathways, and closer alignment between Indonesia's narcotics legislation and international standards. By reinforcing proportional penal measures alongside structured non-penal mechanisms and enhanced inter-agency and international cooperation, Indonesia may improve the coherence of its narcotics governance framework. A balanced approach that integrates law enforcement with rehabilitation remains essential within a sustainable and legally consistent drug control strat.

Keywords: *BNN; drug trafficking; narcotics control; penal and non-penal approaches.*

Kata kunci yang dicatat di sini mewakili konsep yang diterapkan dalam artikel.
Lembar abstrak ini boleh diperbanyak tanpa izin atau biaya.

Perlindungan Hak Moral Pencipta dalam Eksekusi Fidusia Royalti Melalui Perspektif Filsafat Justin Hughes

Anggitariani Rayi Larasati Siswanta, Agustinus Supriyanto

Kemajuan ekonomi kreatif di Indonesia membuka peluang penggunaan hak cipta, khususnya royalti, sebagai objek jaminan fidusia. Pada praktiknya, terdapat persoalan yuridis karena adanya potensi pelanggaran hak moral pencipta yang bersifat abadi dan tidak dapat dialihkan meskipun royalti dieksekusi karena dibebankan jaminan fidusia. Penelitian ini bertujuan untuk menganalisis perlindungan hak moral pencipta dalam eksekusi jaminan fidusia atas royalti melalui perspektif Justin Hughes. Metode yang digunakan adalah yuridis normatif dengan pendekatan konseptual dan perundang-undangan. Analisis yang dilandaskan pada teori milik Hughes dalam tulisannya yang berjudul The Philosophy of Intellectual Property yang memadukan antara teori kepribadian Hegel dan teori kerja Locke, menegaskan bahwa karya intelektual mencerminkan kepribadian dan kehormatan pencipta sehingga tidak mungkin dapat dipisahkan dari penciptanya meskipun royalti sebagai bentuk hak ekonominya dieksekusi karena dibebani jaminan fidusia. Hasil penelitian menunjukkan bahwa perlindungan hak moral dalam eksekusi fidusia royalti dapat diwujudkan melalui peran Lembaga Manajemen Kolektif sebagai pengelola dan penyalur royalti. Lembaga Manajemen Kolektif dapat memastikan agar hak moral tetap diakui dengan melakukan pengelolaan terkontrol melalui pencantuman klausul pembatasan pada akta fidusia, pendataan kas royalti, mekanisme escrow dan cessie dalam distribusi royalti, pengawasan dengan audit pasca-eksekusi, dan penyelesaian sengketa melalui mediasi apabila terdapat pelanggaran hak moral pasca-eksekusi. Dengan demikian, penerapan fidusia atas royalti tidak mengikis hak moral pencipta, melainkan menyeimbangkan antara kepastian hukum bagi kreditur dan penghormatan terhadap martabat pencipta.

Kata Kunci: Fidusia, Hak Cipta; Hak Moral; Lembaga Manajemen Kolektif; Royalti.

Desain Undang-Undang Khusus Kekayaan Intelektual Komunal untuk Perlindungan Masyarakat Tradisional

Darwance

Pengaturan tentang Kekayaan Intelektual Komunal (KIK) di Indonesia menyebar di banyak jenis peraturan perundang-undangan, tidak berdiri sendiri dalam satu undang-undang khusus yang komprehensif. Terfragmentasinya regulasi ini dapat berakibat pada lemahnya perlindungan hukum terhadap masyarakat tradisional, yakni kelompok yang menjadi pengemban sebagian besar KIK, berikut perlindungan hukum terhadap objek KIK itu sendiri. Di sisi lain, KIK bersifat sui generis. Penelitian ini bersifat normatif dengan pendekatan peraturan perundang-undangan dan konseptual. Penelitian ini memberikan sebuah tawaran desain undang-undang khusus mengatur tentang perlindungan KIK dengan mengkombinasikan seluruh jenis KIK dan sinkronisasi dengan undang-undang lain yang memiliki keterkaitan dengan isu a quo, termasuk konvensi internasional. Oleh sebab itu, penelitian ini bertujuan untuk melakukan analisis terhadap konsep KIK pada beberapa regulasi, yakni UU Hak Cipta, UU Merek dan Indikasi Geografis, dan UU Paten, untuk selanjutnya mengkonstruksi regulasi tentang KIK sebagai upaya perlindungan hukum yang optimal terhadap bagi kekayaan intelektual masyarakat tradisional. Pada beberapa undang-undang Hak Kekayaan Intelektual (HKI) yang bersifat individual, KIK dikonsepsikan secara beragam sehingga berpotensi menghambat proses perlindungan hukum, lebih-lebih bagi masyarakat tradisional yang bersifat kolektif. Perlindungan masyarakat tradisional perlu diperkuat melalui penyusunan peraturan perundang-undangan berbentuk undang-undang yang secara khusus mengatur tentang KIK secara komprehensif, dengan memadukan sejumlah regulasi yang sudah ada sekarang dengan beberapa penyempurnaan, serta sinkronisasi dengan beberapa undang-undang lain yang relevan dengan isu kekayaan intelektual komunal, termasuk konvensi internasional, salah satunya berkaitan dengan posisi masyarakat tradisional

Kata Kunci: Regulasi, Kekayaan Intelektual Komunal, Masyarakat Tradisional.

Kata kunci yang dicatat di sini mewakili konsep yang diterapkan dalam artikel.
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Kerja Sama Kawasan Asia Tenggara Menghadapi Perdagangan Orang dan Penipuan Online

Muhammad Syaroni Rofii

Penelitian ini bertujuan untuk menganalisis fenomena dibalik tingginya kasus Tindak Pidana Perdagangan Orang (TPPO) di Indonesia, bagaimana jaringan kejahatan bekerja lintas kawasan ASEAN memanfaatkan celah hukum dan regulasi untuk melakukan penipuan online, perdagangan manusia, pemerasan hingga penyiksaan, dan bagaimana strategi Pemerintah Indonesia dalam merespons kasus yang ada dalam kerangka hukum dan kerja sama kawasan ASEAN. Penelitian ini merupakan penelitian kualitatif studi kasus dengan memanfaatkan data primer berupa wawancara mendalam dengan pihak Kementerian Luar Negeri Indonesia, Kepolisian Republik Indonesia khususnya Atase Kepolisian di Bangkok, Manila dan Kuala Lumpur, serta aktivis migran. Peneliti juga melakukan observasi di titik-titik yang selama ini menjadi titik keberangkatan dan kedatangan para korban TPPO. Hasil penelitian ini mengonfirmasi bahwa persoalan TPPO muncul sebagai akibat dari adanya disharmoni hukum di tingkat kawasan dan kepatuhan pada konvensi seperti ACTIP di kawasan berbasis pada voluntary compliance, akibatnya dalam urusan koordinasi aparat penegak hukum memiliki kendala karena belum memiliki sistem data kriminal terintegrasi sehingga mengandalkan kerja sama bilateral dan operasi bersama yang sifatnya adhoc dan terbatas. Sebagai kesimpulan, bahwa persoalan TPPO sangatlah kompleks dan tidak hanya menjadi masalah Pemerintah pusat dan daerah di Indonesia tetapi juga menjadi masalah kawasan ASEAN, oleh sebab itu guna mencapai ketahanan kawasan menghadapi situasi tersebut diperlukan usaha bersama dalam bentuk kerja sama lintas batas secara berkesinambungan dalam kerangka ASEAN.

Kata Kunci: Kejahatan Lintas Batas; Tindak Pidana Perdagangan Orang; Kerja Sama Kawasan; Ketahanan Kawasan; Harmonisasi Regulasi.