

Kebijakan pemberitahuan dan penghapusan (notice and takedown) sebagai sebuah kewajiban hukum untuk melakukan pencegahan pengumuman dan perbanyakan ciptaan yang melanggar hak cipta di internet = Notice and takedown policy as a legal obligation to prevent unlawful publication and dissemination of copyrighted works on internet / Badiah Sutianty

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Abstrak

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Amanat Article 7 TRIPs bahwa perlindungan dan penegakan hak-hak kekayaan intelektual harus berperan dalam mempromosikan inovasi, transfer dan penyebaran teknologi yang saling menguntungkan baik bagi produser maupun pengguna teknologi serta bersifat kondusif bagi kesejahteraan sosial, ekonomi, maupun kesetaraan hak dan kewajiban, telah diadopsi dalam pasal-pasal WCT, WPPT dan Beijing Treaty untuk menyediakan adequate legal protection and effective legal remedies. Amerika Serikat telah mewujudkan amanat tersebut dengan merumuskan mekanisme notice and takedown dalam Digital Millennium Copyright Act (DMCA 1998). Mekanisme tersebut telah diadopsi oleh mayoritas ISP dalam menyelenggarakan situs-situsnya, termasuk oleh Heerapa Rif di Indonesia. Hal ini terjadi karena Indonesia belum memiliki mekanisme perlindungan hak cipta di media internet dalam UUHC. Karenanya pemerintah Indonesia telah merumuskan RUU HC yang diantaranya memasukkan upaya perlindungan hak cipta di media internet. Studi ini mencoba menjelaskan perbedaan kebijakan perlindungan hak cipta dalam media internet antara kebijakan notice and takedown dalam DMCA dengan pengaturan dalam RUU HC. Perbedaan-perbedaan tersebut diharapkan menjadi masukan bagi pemerintah atas mekanisme pemberitahuan dan penghapusan dalam pembahasan RUU HC.

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ABSTRACT

Article 7 TRIPs mandated that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation, to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic welfare, and to balance of rights and obligations, has been adopted in articles of WCT, WPPT and the Beijing Treaty to provide adequate legal protection and effective legal remedies. The United States has been implementing the mandate through Digital Millennium Copyright Act (DMCA) 1998 which establishes a mechanism for notice and takedown policy. This mechanism has been adopted by a large majority of ISPs globally for their websites, including by some ISPs in Indonesia. To date, adoption of notice and takedown policy has not been a mandatory requirement in Indonesia since it does not have a copyright protection mechanism related to Internet media in its Copyright Act (UUHC). Hence the Indonesian Government has formulated the newly proposed Copyright Act which include copyright protection in the internet media. This study attempts to explain the differences between copyright protection policies in the DMCA notice and takedown policy with the newly proposed Indonesian Copyright Act. The findings herein are expected to be considered by the Indonesian Government in its consideration of notice

and removal mechanism in the proposed Copyright Act.