

Tinjauan yuridis pembatasan hak cipta di Indonesia terhadap ketentuan exception and limitations dalam TRIPS agreement dan hukum hak cipta anggota WTO lainnya = Juridical review of copyright exceptions and limitations regulation in Indonesia to exception and limitations regulation in TRIPS agreement and other WTO members

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Abstrak

Ketentuan pengecualian dan pembatasan hak cipta dalam TRIPS Agreement membebaskan anggota untuk membuat pengaturannya sendiri, dengan syarat memenuhi tiga syarat dalam Pasal 13 TRIPS Agreement. Hal ini menimbulkan perbedaan pengaturan diantara anggota WTO. Skripsi ini hendak menjawab permasalahan mengenai pengaturan, penerapan dan keselarasan ketentuan pengecualian dan pembatasan hak cipta di Indonesia, anggota WTO lain dan TRIPS Agreement. Metode penelitian yang dilakukan adalah yuridis-normatif dengan menganalisis norma-norma hukum dan penerapannya. Hasil penelitian ini menunjukkan bahwa terdapat dua ketentuan pengecualian dan pembatasan hak cipta yang berbeda diantara anggota WTO.

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Agreement membuat ketentuan three step test yang bersifat terbuka sebagai penengah dari perbedaan tersebut. Ketentuan pengecualian dan pembatasan yang berdasarkan doktrin fair use, maupun fair dealing perlu memenuhi ketentuan three step test. Indonesia sebagai penganut fair dealing memiliki beberapa ketentuan pembatasan hak cipta yang tidak sesuai dengan TRIPS Agreement, yakni ketentuan Pasal 43 huruf C, E dan Pasal 49 ayat (2) UU Hak Cipta.

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Exception and limitations regulations in TRIPS Agreement give leniency for contracting members, to regulate their own exception and limitations as long as they are in accordance to the three conditions in Article 13 of TRIPS Agreement. This has caused differences in regulations among WTO members. This thesis answers matters regarding regulations, applications and conformity of exception and limitations of copyright in Indonesia, WTO members and TRIPS Agreement. This research is conducted using juridical-normative method by analyzing legal norms and their implementation. The result of this thesis shows that there are two different doctrines used in exception and limitations regulations among the WTO members, fair use and fair dealing. TRIPS Agreement regulates an open-ended wording regulation called the three step test to intermediate the difference. Both exception and limitations regulations based on fair use and fair dealing must fulfill the three step test. Indonesia as a fair dealing adherent has a few copyright limitations that are not in accordance to TRIPS Agreement. They are article 43 C, E and article 49 (2) Indonesia Copyright Act.