

Perbandingan Penerapan Prinsip Exhaustion dalam Hukum Hak Cipta, Paten, dan Merek Serta Implikasinya Terhadap Ketentuan Impor Paralel Menurut Hukum Indonesia dan Amerika Serikat = Comparison of The Application of The Exhaustion Principle In Copyright, Patent, and Trademark Law and Its Implications for Parallel Import Provisions Under Indonesian and United States Law

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Abstrak

Dengan berkembangnya penerapan Hukum Kekayaan Intelektual dalam pasar, serta meningkatnya perdagangan internasional, muncul dua konsep hukum dalam rezim HKI, yaitu Exhaustion yang merupakan hilangnya hak distribusi barang terkait HKI, serta Impor Paralel, yang merupakan tindakan mengimpor barang terkait HKI masuk ke dalam sebuah negara yang mana HKI barang tersebut telah terdaftar. Terdapat dua bentuk prinsip Exhaustion; National Exhaustion dimana hak distribusi barang hanya hilang di dalam negeri, yang mana jika dilakukan penjualan dari luar negeri maka hak distribusi masih ada dan impor paralel dapat dilarang, dan International Exhaustion dimana hak distribusi barang dimanapun barang dijual dan Impor Paralel diperbolehkan. Dalam Penelitian ini Penulis akan mengkaji prinsip Exhaustion dan Impor Paralel yang dianut oleh rezim Hak Cipta, Hak Merek, dan Hak Paten di Indonesia, hasil penelitian yang ditemukan adalah terdapat kekosongan hukum prinsip Exhaustion serta pengaturan Impor Paralel dalam rezim Hak Cipta melalui UU 28/2014 dan Hak Merek melalui UU 20 2016. Dalam konteks UU Hak Paten secara eksplisit melarang Impor Paralel melalui ketentuan Pasal 160 ayat (1) dengan pengecualian obat-obatan, tetapi masih terdapat ambiguitas prinsip Exhaustion yang dianut apa dalam rezim Paten. Atas berbagai kekosongan hukum tersebut Penulis membandingkan ketentuan Hukum Indonesia dengan Hukum Amerika Serikat dalam ranah Intellectual Property bagi Hak Merek, Hak Paten, dan Hak Cipta untuk menemukan metode terbaik untuk mengisi kekosongan hukum tersebut. Hasil perbandingan dan analisa penulis adalah diperlukanya ketentuan Exhaustion dan Impor Paralel yang tegas dalam Hak Cipta Serta Hak Merek melalui penjelasan yang spesifik kapan terpicunya Exhaustion, dalam konteks Hak Merek juga dapat dicontoh ketentuan Lever Rule AS, bagi UU Hak Paten perlu kejelasan mengenai doktrin Exhaustion untuk memberi kejelasan mengenai kebolehan Post-sale Restriction atau perjanjian pengendalian distribusi setelah penjualan.

.....With the development of the application of Intellectual Property Law in the global market, as well as the increase in international trade, two legal concepts have emerged in the IPR regime, namely Exhaustion, which is the loss of distribution rights of IPR-related goods, and Parallel Importation, which is the act of importing IPR-related goods into a country where the IPR of the goods has been registered. There are two forms of the Exhaustion principle; National Exhaustion where the right to distribution of goods is only lost in the country of origin, which if sales are made from abroad then the distribution rights still exist and parallel imports can be prohibited, and International Exhaustion where the right to distribution of goods wherever the goods are sold and Parallel Imports are allowed. In this study, the author will examine how the principle of Exhaustion and Parallel Imports adopted by the Copyright, Trademark Rights, and Patent Rights regimes in Indonesia, the results of the research found are that there is a legal vacuum of the Exhaustion

principle and Parallel Import arrangements in the Copyright regime through Law No. 28 of 2014 and Trademark Rights through Law No. 20 of 2016. In the context of the Patent Law, it explicitly prohibits Parallel Imports through the provisions of Article 160 paragraph (1) with the exception of medicines, but there is still ambiguity as to what Exhaustion principle is adopted in the Patent regime. For the various legal lacunae, the author compares the provisions of Indonesian Law with United States Law in the realm of Intellectual Property for Trademark Rights, Patent Rights, and Copyright to find the best method to fill the legal lacunae. The results of the comparison and the author's analysis are the need for strict Exhaustion and Parallel Import provisions in Copyright and Trademark Rights through a specific explanation of when Exhaustion is triggered, in the context of Trademark Rights can also be emulated by the provisions of the US Lever Rule, for the Patent Rights Act it is necessary to clarify the doctrine of Exhaustion to provide clarity on the permissibility of Post-sale Restriction or distribution control agreements after sales.