

# Perlindungan Sumber Daya Genetika Terkait Dengan Benefit Sharing Atas Kepemilikan Spesimen Virus Flu Burung Strain Indonesia = Protection on Genetic Resources Relate to Benefit Sharing of Avian Influenza Virus Speciment Strain Indonesia as a Property

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## Abstrak

Tesis ini menggunakan metode penelitian hukum yuridis normatif, yaitu penelitian terhadap bahan-bahan pustaka dan didukung dengan wawancara ahli perlindungan sumber daya genetika, berupa spesimen virus Flu Burung. Penelitian ini bertujuan untuk mengetahui permasalahan dalam upaya perlindungan sumber daya genetika terkait dengan benefit sharing atas kepemilikan spesimen virus Flu Burung strain Indonesia. Beberapa pokok permasalahan adalah apakah spesimen virus Flu Burung sebagai sumber daya genetika memerlukan perlindungan hukum? Bagaimana status spesimen virus Flu Burung dalam konteks kepemilikan oleh Indonesia sebagai negara berkembang? Apakah Perlindungan Hak Kekayaan Intelektual (HKI), khususnya rezim paten dapat melindungi kepemilikan sumber daya genetika? Bagaimana upaya perlindungan sumber daya genetika atas kepemilikan spesimen virus Flu Burung strain Indonesia? Penyelesaian masalah ini adalah perlindungan spesimen virus Flu Burung perlu mendapat perlindungan hukum. Status spesimen Flu Burung dalam konteks kepemilikan oleh Indonesia sebagai negara berkembang, yang dianggap oleh negara-negara maju sebagai public domain, berdasarkan "common heritage of humankind", tetapi berdasarkan CBD, kedaulatan negara membatasi "common heritage of humankind". Oleh karena ketidakmampuan rezim paten untuk melindungi spesimen virus Flu Burung, maka diperlukan upaya perlindungan lain. Dalam melindungi spesimen virus sebagai sumber daya genetika melalui peraturan WHO, peraturan nasional Indonesia dan sistem kontrak, sehingga mendapatkan benefit sharing. Sebagai hasil penelitian dapat disimpulkan terdapat perbedaan nilai dan budaya hukum antara negara maju dan negara berkembang, yang menyebabkan misappropriation dalam penggunaan sumber daya genetika, terkait dengan kepemilikan spesimen virus Flu Burung strain Indonesia.

.....The research method for this study is a law-normative juridical study, by using literature and interview expert, who know the protection of genetic resources, especially in form of avian influenza virus speciment. The aim of this issues of the research to learn complication to protect the genetic resources concern in related to benefit sharing of Avian Influenza virus speciment strain Indonesia as a Property.

There are apparently important complication: Is Avian Influenza virus speciment as the genetic resources need law protection? How is the status of Avian Influenza virus speciment in context property of Indonesia as developing country? Can Intellectual Property Rights, especially patent to protect the ownership of Avian Influenza virus speciment? How to protect genetic resources on ownership of Avian Influenza virus speciment strain Indonesia?

The insistent solved matter: The Avian Influenza Virus Speciment need to be protected with law. The status of Avian Influenza virus speciment in context property of Indonesia as developing country is defined by the developed country as public domain, base on "common heritage of humankind". Convention on Biological Diversity declare that "common heritage of humankind" is restricted by the sovereignty of the country. Due to Patent cannot protect Avian Influenza virus speciment, that why the alternative offer should be provided

as WHO mechanism, contract mechanism, and Indonesian national rules as the effort to protect virus specimen as genetic resources to gain benefit sharing.

The result of the research, there are very different value and cultural of law for developed countries and developing countries, that make misappropriation in use of genetic resources, that connect as owner of Avian Influenza virus specimen strain Indonesia.