

Tinjauan yuridis paten atas jasad renik = Juridical review on patent of microorganism

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Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20459120&lokasi=lokal>

Abstrak

ABSTRAK

Skripsi ini meninjau konsep pemberian paten atas jasad renik berdasarkan Hukum Paten di Indonesia, dengan mengkaji konsep paten atas jasad renik dari beberapa perjanjian internasional seperti Trade-Related Aspects of Intellectual Property Rights TRIPs dan Paris Convention for the Protection of Industrial Property 1883. Pemberian paten atas jasad renik memicu perdebatan karena sifat jasad renik sebagai makhluk hidup yang muncul secara alamiah di alam sehingga kerap dianggap tidak mengandung unsur intervensi manusia di dalamnya. Penelitian ini dilakukan dengan metode yuridis normatif dan menghasilkan penelitian yang berbentuk komparatif deskriptif analitis. Hasil dari penelitian ini menunjukkan bahwa untuk mengklaim paten atas jasad renik seperti bakteri dan virus, seorang inventor harus mengisolasi jasad renik tersebut. Isolasi dianggap sebagai bentuk intervensi atau hasil usaha manusia sehingga jasad renik tersebut tidak lagi murni berasal dari alam. Mekanisme pemberian paten atas jasad renik tidak dapat disamakan dengan invensi lain yang merupakan benda mati, dan membutuhkan perlakuan khusus sebagaimana yang diatur dalam Budapest Treaty on the International Recognition of Deposit of the Microorganisms. Indonesia sendiri masih menghadapi kendala dalam praktik pemberian paten atas jasad renik, karena Indonesia belum meratifikasi perjanjian tersebut.

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ABSTRACT

This thesis reviewed the concept of patenting microorganism based on Indonesian Patent Law, by analyzing the regulation from some international legal agreements, such as Trade Related Aspects of Intellectual Property Rights TRIPs and Paris Convention for the Protection of Industrial Property 1883. There are a lot of debates on patenting microorganism, related to its nature as a living creature, that exists naturally in the nature. People mostly consider that there are no human intervention involved. This research conducted with a normative juridical research method, and resulted a comparative descriptive analysis. The result of this research indicated that to claim patent on microorganism such as bacteria and virus, an inventor have to isolate the microorganism. Isolation is considered as human intervention therefore an isolated microorganism is no longer a product of nature. Microorganism has a different nature than other inventions which usually are an inanimate objects, and it needs a special treatment which is regulated by Budapest Treaty on the International Recognition of Deposit of the Microorganisms. However, Indonesia has not ratified the regulation, so it is still facing some problems associated the practice granting patents for microorganism.