

UTILISASI KARYA CIPTA OLEH *GENERATIVE ARTIFICIAL INTELLIGENCE*
DALAM PROSES *TRAINING DATA* BERDASARKAN PRINSIP *FAIR USE*:
STUDI KOMPARASI INDONESIA DAN AMERIKA SERIKAT

Oleh:

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis pertimbangan penerapan prinsip *fair use* dan *lesson learned* terkait penerapan prinsip *fair use* dalam konteks utilisasi karya cipta oleh *generative AI* pada proses *training data* berdasarkan regulasi hak cipta yang berlaku di Indonesia dan Amerika Serikat.

Penelitian ini menggabungkan metode yuridis-normatif dengan *comparative case-study*. Metode yuridis-normatif pada penelitian dilakukan dengan studi pustaka serta identifikasi terhadap bahan-bahan kepustakaan mengenai penerapan prinsip *fair use* dalam konteks perlindungan hak cipta. *Comparative case-study* dilakukan dengan mengkaji pertimbangan pengadilan kasus AS terdahulu. Pemilihan beberapa putusan pengadilan AS dilandasi atas kesesuaian kasus yang paling mendekati dengan lingkup *generative AI*, yaitu terkait digitalisasi karya cipta di internet.

Hasil penelitian ini menunjukkan pertimbangan penerapan prinsip *fair use* dalam konteks utilisasi karya cipta oleh *generative AI* pada proses *training data* berdasarkan hukum Indonesia dan AS memiliki paradigma berbeda. Pengaturan prinsip *fair use* di Indonesia mengadopsi konsep *exhaustive list* dan diatur dalam Pasal 44 ayat (1) UU HC. Indonesia menitikberatkan pada keseimbangan manfaat ekonomi antara pencipta dan pihak terkait yang lebih lanjut hadirnya hak ekonomi tersebut diimplementasikan dalam Permen Royalti. Belum terdapat preseden kasus pengadilan *fair use* di Indonesia. Sementara itu, pengaturan prinsip *fair use* di AS mengadopsi konsep *illustrative list* dan diatur dalam US Code, Title 17, Section 107. Terdapat 4 (empat) parameter prinsip *fair use* yang diatur dalam regulasi AS dan digunakan sebagai pedoman umum bagi pengadilan. Secara regulasi, terdapat fleksibilitas dalam menerapkan prinsip *fair use* di AS sehingga pengaturan tersebut cukup adaptif dalam merespon berbagai kasus dalam ranah hak cipta, khususnya yang melibatkan teknologi seperti *generative AI*. Meski belum adanya kasus yang diputus secara spesifik pada hak cipta dan *generative AI*, telah terdapat beragam kasus di ranah digitalisasi dan kaitannya dalam penerapan *fair use* di AS sehingga dapat dianalisis pola pertimbangan pengadilan AS dalam kasus yang melibatkan hak cipta dan sarana teknologi.

Kata kunci: *Artificial Intelligence*, Hak Cipta, Teknologi, *Fair Use*.

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*UTILIZATION OF COPYRIGHTED WORKS BY GENERATIVE ARTIFICIAL
INTELLIGENCE IN THE DATA TRAINING PROCESS BASED ON
FAIR USE PRINCIPLES: A COMPARATIVE STUDY OF
INDONESIA AND THE UNITED STATES*

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ABSTRACT

This research aims to determine and analyze considerations for applying fair use principles and lessons learned regarding the application of fair use principles in the context of the utilization of copyrighted works by generative AI in the data training process based on copyright regulations in Indonesia and the United States.

This research combines normative juridical methods with comparative case-study approach. The juridical-normative research method is carried out by reviewing literature and library materials. Meanwhile, comparative case study is carried out by examining court considerations in previous cases. The selection of several US court decisions was based on the suitability of the cases closest to the scope of generative AI, especially in digitization of copyrighted works on the internet.

The results of this research found that the consideration of the fair use principles application in the context of utilization of creative works by generative AI in the data training process based on Indonesian and US laws have a different paradigm. The regulation of fair use principles in Indonesia adopts the exhaustive list concept and is regulated in Article 44 paragraph (1) of Copyright Regulation. Indonesia focuses on balancing economic benefits, and further the presence of these economic rights is implemented in the Royalty Ministerial Regulation. There is no precedent for fair use court cases in Indonesia. Meanwhile, the regulation of fair use principles in the US adopted an illustrative list concept and is regulated in US Code, Title 17, Section 107. There are 4 (four) parameters of fair use principles in US regulations as a general guideline for courts. There are flexibilities in applying fair use principles so that these regulations are quite adaptive in responding to various cases in the realm of copyright, especially those involving technology, such as generative AI. Although there have been no cases that have been decided specifically on copyright and generative AI matters, the pattern could be identified by studying cases in the realm of copyright in digitalization and technology cases.

Keywords: Artificial Intelligence, Hak Cipta, Teknologi, Fair Use.

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