

LEGALITAS PRAKTIK *UPCYCLING* PRODUK BEKAS MEREK TERKENAL: STUDI KOMPARATIF INDONESIA DAN AMERIKA SERIKAT

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INTISARI

Penelitian ini bertujuan untuk mengkaji pertimbangan hukum yang membentuk legalitas praktik *upcycling* produk bekas merek terkenal berdasarkan hukum merek di Indonesia dan Amerika Serikat dengan perhatian khusus pada doktrin *exhaustion* dan *likelihood of confusion* serta mengidentifikasi pelajaran yang dapat diadopsi untuk menyempurnakan kerangka hukum merek Indonesia di masa depan dalam menangani isu tersebut.

Penelitian ini menggabungkan metode yuridis normatif dengan *comparative case-study*. Metode penelitian yuridis normatif dilakukan melalui telaah literatur terhadap data sekunder, seperti perundang-undangan, perjanjian internasional, putusan pengadilan, karya ilmiah, dan pendapat para ahli. Sementara itu, *comparative case-study* mengkaji pertimbangan hukum dalam putusan-putusan sebelumnya dengan menitikberatkan pada penemuan hukum positif, asas dan doktrin yang relevan, penalaran hukum yang diterapkan dalam proses adjudikasi pengadilan, serta analisis perbandingan kerangka regulasi di kedua negara.

Hasil penelitian ini menunjukkan bahwa legalitas *upcycling* produk bekas merek terkenal berdasarkan hukum merek Indonesia dan AS memiliki paradigma yang berbeda. Hukum AS menjustifikasi *upcycling* melalui doktrin *exhaustion* yang dibatasi dengan pengecualian *material difference*. Dalam praktik *upcycling*, pengecualian ini melarang penjualan kembali barang yang telah dimodifikasi tetapi masih menampilkan merek asli apabila perubahan yang dilakukan mengandung *material difference* yang radikal dan berpotensi menimbulkan *likelihood of confusion* pada konsumen. Sementara itu, belum terdapat preseden sengketa merek yang berkaitan langsung dengan *upcycling* di Indonesia. Inkonsistensi antara pengaturan implisit dan penerapan doktrin *exhaustion* serta ketiadaan standar *likelihood of confusion* yang tegas dalam hukum merek Indonesia menyebabkan *upcycling* berpotensi untuk diklasifikasikan sebagai pelanggaran merek. Penelitian ini menyimpulkan bahwa pengadopsian ketentuan *exhaustion* merek serta *consumer-focused confusion test* yang lebih jelas sebagaimana ditemukan dalam hukum AS dapat membantu mewujudkan penegakan hukum merek yang lebih adil di Indonesia sembari mengakomodasi praktik ekonomi sirkular, seperti *upcycling*, tanpa merugikan pemilik merek asli.

Kata kunci: *Upcycling*, Merek, Doktrin *Exhaustion*, *Likelihood of confusion*.

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*THE LEGALITY OF UPCYCLING PRE-OWNED PRODUCTS FROM
WELL-KNOWN BRANDS: A COMPARATIVE STUDY BETWEEN
INDONESIA AND THE UNITED STATES*

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ABSTRACT

This research aims to examine the legal considerations shaping the legality of upcycling pre-owned products from well-known brands under trademark law in Indonesia and the United States, with particular attention to the doctrines of exhaustion and likelihood of confusion, and further identifies lessons that may be adopted to refine Indonesia's trademark law framework in addressing such issues in the future.

This research combines a normative legal method with a comparative case study approach. The normative legal method is conducted through a literature review of secondary data, such as legislation, international agreements, court decisions, scholarly works, and expert opinions. Meanwhile, the comparative case study examines the legal reasoning in previous decisions by focusing on an inventory of positive law, relevant principles and doctrines, the legal reasoning applied in court adjudication processes, and a comparative analysis of the regulatory frameworks in both countries.

The results of this research reveal that the regulation of the legality of upcycling pre-owned products from well-known brands under Indonesian and the US trademark law is based on different paradigms. US law justifies upcycling through the exhaustion doctrine, limited by the material difference exception. In the context of upcycling, this exception prohibits the resale of modified products that still bear the original trademark if the modifications involve radical material differences that could potentially create a likelihood of confusion for consumers. Meanwhile, there has not yet been a trademark dispute precedent directly related to upcycling in Indonesia. The inconsistency between the regulation and application of the exhaustion doctrine, coupled with the absence of a clear standard for likelihood of confusion in Indonesian trademark law, leaves upcycling susceptible to being deemed trademark infringement. The study concludes that adopting clearer exhaustion provisions and a consumer-focused confusion test, as found in U.S. law, may contribute to fostering a more equitable enforcement of trademark law in Indonesia while accommodating circular economy practices, such as upcycling, without harming the rights of the original trademark owners.

Keywords: Upcycling, Trademark, Exhaustion Doctrine, Likelihood of confusion.

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