

INTISARI

KONSTRUKSI HUKUM *ACCESS AND BENEFIT SHARING* TERHADAP KOMERSIALISASI PENGETAHUAN TRADISIONAL BERDASARKAN ASAS KEADILAN SOSIAL

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Penelitian ini bertujuan untuk menganalisis peraturan *Access and Benefit sharing* atas pengetahuan tradisional berdasarkan asas keadilan sosial. Selain itu penelitian ini bertujuan untuk mengkonstruksikan hukum yang ideal terkait *Access and Benefit sharing* atas pengetahuan tradisional.

Penulisan ini adalah penelitian hukum normatif yang bersifat preskriptif. Bahan hukum yang digunakan dalam penelitian ini adalah bahan hukum primer dan sekunder yang dikumpulkan dengan teknik studi kepustakaan. Penulis dalam melakukan penelitian ini menggunakan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan perbandingan.

Berdasarkan hasil pembahasan diperoleh kesimpulan, pertama bahwa peraturan hukum mengenai ketentuan *Access and Benefit sharing* terhadap komersialisasi pengetahuan tradisional di Indonesia masih bersifat parsial dan terfragmentasi ke dalam beberapa peraturan yang belum sepenuhnya selaras dengan prinsip keadilan sosial serta mempunyai kepastian hukum serta mekanisme penegakan hukum yang masih lemah. Kedua, dapat dirumuskan konstruksi hukum yang ideal mengenai ketentuan *Access and Benefit sharing* terhadap pengetahuan tradisional di Indonesia harus diupayakan sebagai wujud pengakuan, perlindungan, serta komersialisasi guna meningkatkan kesejahteraan masyarakat pengemban. Konstruksi hukum yang harus dilakukan di antaranya mengkonstruksikan konsep *Access and Benefit sharing* pengetahuan tradisional yang didukung dengan pembentukan Undang-Undang *Sui generis*, amandemen Undang-Undang Paten, pembentukan lembaga tunggal (*National Focal Point*), optimalisasi inventarisasi pencatatan pengetahuan tradisional, dan penguatan peran komunitas adat.

Kata kunci: konstruksi hukum, pengetahuan tradisional, *access and benefit sharing*.

ABSTRACT
LEGAL CONSTRUCTION OF ACCESS AND BENEFIT SHARING
ON TRADITIONAL KNOWLEDGE
BASED ON THE PRINCIPLES OF SOCIAL JUSTICE

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This study aims to analyse the regulations on Access and Benefit sharing of traditional knowledge based on the principle of social justice. This study aims to construct an ideal law related to Access and Benefit sharing of traditional knowledge.

This writing is a normative legal research with a prescriptive nature. The legal materials used in this study are primary and secondary legal materials collected using library study techniques. The author in conducting this research, uses a regulatory approach, a conceptual approach, and a comparative approach.

Based on the results of the discussion, it can be concluded that first, the legal regulations regarding the provisions for sharing access and benefits to the commercialisation of traditional knowledge in Indonesia are still partial and fragmented into several regulations that are not fully aligned with the principle of social justice and have legal certainty and legal protection mechanisms that are still weak. Second, it can be formulated that the ideal legal construction regarding the provisions on Access and Benefit sharing of traditional knowledge in Indonesia must be pursued as a form of recognition, protection, and commercialisation in order to improve the welfare of the community of bearers. Legal developments that must be undertaken include constructing the concept of access to and benefit sharing for traditional knowledge, supported by the establishment of a Sui generis Law, amendments to the Patent Law, the establishment of a single institution (National Focal Point), optimisation of the inventory of traditional knowledge records, and strengthening of indigenous communities.

Keywords: legal construction, traditional knowledge, access and benefit sharing.