



The De Jure Legal Research Journal literally as Jurnal Penelitian Hukum De Jure is a quarterly legal magazine (March, June, September and December) published by the Research and Development Board for Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, in collaboration with the **INDONESIAN LEGAL RESEARCHER ASSOCIATION (IPHI) (Legalization of Legal Entity of Association: Decree of the Minister of Law and Human Rights Number: AHU-13.AHA.01.07 Year 2013, dated January 28, 2013)**. This journal aims to serve as a forum and medium of communication, as well as a means to publish various legal issues that are actual and current for Indonesian legal researchers in particular and the legal community in general. In its management in 2021, the De Jure Legal Research Journal involves various parties as stipulated in the Decree of the Head of the Research and Development Board for Law and Human Rights Number: PPH-08.LT4.03 Year 2021 dated January 4, 2021 concerning the Establishment of a Publishing Team for De Jure Legal Research Journals, with the team composition as follows:

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## ADVERTORIAL

The editor would like to give praise to Allah SWT, as the De Jure Legal Research Journal published by the Research and Development Board for Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia in collaboration with the Indonesian Legal Researcher Association can publish the Volume 21 Number 3 September 2021 Edition.

The publication of the De Jure Legal Research Journal Volume 21 Number 3 September 2021 Edition will contain 10 (ten) papers from various research institutions and agencies in Indonesia. The change in the digitalization era encourages the role of the Research and Development Board for Law and Human Rights to transform the development of science and technology in the field of law and regulations.

In this regard, the editor of the De Jure Legal Research Journal in Volume 21 Number 3 September 2021 Edition presents papers as follows: The Prospect of The Existence of National Criminal Code In A Democratic State In Indonesia During The Covid-19 Pandemic, The Impact of Enforcement of Corruption Law By The Corruption Eradication Commission After The Ratification of The Latest KPK Law, The Criminal Liability of Corporations As Crime Perpetrators, The Rights To Review Policy Rules In The Perspective of Rule of Law, Restriction of Indonesian Nickel Ore Export Based on The Perspective of Quantitative Restriction Principle In General Agreement on Tariffs And Trade, The Problems of Implementation of Financial Services Authority Regulation No. 11/POJK.03/2020 In Relation To Legal Awareness And Legal Compliance of Bank Mandiri MSME Debtors, and The Application Of Group Social Guidance In The Development of Drug Convicts In Correctional Institutions. Through these papers, analysis and recommendations can be implemented as a solution for the benefit of the community, nation and state.

We would like to thank the researchers who have trusted the De Jure Legal Research Journal to publish their works. We also thank Peer Reviewers who have been willing to help, examine and correct the papers from the researchers in this publication.

Finally, we would like to thank the Head of the Research and Development Board for Law and Human Rights, Ministry of Law and Human Rights of the Republic of Indonesia and the Indonesian Legal Researcher Association for their contribution in publishing this De Jure Legal Research Journal.

Editor,

Jakarta, September 2021

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**Suharyo**

**The Prospect of The Existence of National Criminal Code in A Democratic State in Indonesia During The Covid-19 Pandemic**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 285-298

The Dutch colonial product Criminal Code which has been translated into various versions remains valid in Indonesia, because the plenary session of the House of Representatives of RI for the 2014 – 2019 period which was attended by government elements to ratify Draft Criminal Code to become the National Criminal Code was postponed due to refusal from students and civil society movements. The Covid-19 pandemic as a health and humanitarian disaster that destroyed almost all aspects of human life, throughout the world including in Indonesia with various long-lasting negative impacts, in 2020 until now has thwarted legal development including realizing the National Criminal Code. This research was conducted in a sociological juridical manner, with the issue of whether the Draft Criminal Code would be re-discussed in several articles, and then ratified by the House of Representatives of RI. How to respond to the social action reactions of a group of people who are expected to persist, even though the Draft Criminal Code is re-discussed on a limited basis, and is expected to hold demonstrations and rallies, as well as what are the prospect of the existence of the National Criminal Code in the Covid-19 pandemic era. The government continues to receive and select input or suggestions from various community groups regarding crucial issues. What is certain is that if there is a rejection of the Draft Criminal Code to be ratified, it must be returned to the constitution in force in the Unitary State of the Republic of Indonesia, namely through a judicial review lawsuit at the Constitutional Court of the Republic of Indonesia.

**Keywords: National Criminal Code; democracy; Indonesia; Covid-19**

**Ayu Putriyana, Nur Rochaeti**

**The Impact of Enforcement of Corruption Law by The Corruption Eradication Commission after The Ratification of The Latest KPK Law**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 299-310

2019 was a year full of turmoil for the KPK (Corruption Eradication Commission) due to the revision of the KPK Law after 17 years of the KPK Law being in effect. Despite many rejections, the latest KPK Law was still passed in September 2019 so that it became Indonesia's positive law. Therefore, the statements of the problem in this research are: what is the cause of the KPK Law revision and what is the impact of law enforcement on corruption by the KPK after the ratification of the latest KPK Law. The purpose of this research is to find out the reasons for the revision of the KPK Law and the impact of the implementation of the latest KPK Law. The method used in this research is a normative juridical method with a descriptive qualitative approach. The results of the research indicate that there are several weaknesses of the previous KPK Law which have an impact on the performance of the KPK so that it has not provided maximum results. In fact, regarding the impact of the enactment of the latest KPK Law, it has not given positive results so that it affects the stability of law enforcement for corruption. Therefore, there needs to be a good adaptation for the KPK and all related parties so that the latest KPK Law can run well.

**Keywords: impact; corruption; KPK**

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**Evi Djuniarti**

**The Criminal Liability of Corporations as Crime Perpetrators**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 311-320

In terms of handling corporate crimes that culminate in “sentencing” or “giving punishment”, corruption is referred to as a crime that has caused damage to life. However, this is not mentioned much in criminal law studies. In addition to sentencing, corporations that committed corruption must also return corporate assets to the state. This needs to be considered according to the philosophy of *nature aequum est neminem cum alterius detrimento et injuria fieri locupletioem*. This philosophy means that no one can enrich themselves at the expense and suffering of others. This philosophy changes the source of this doctrinal principle, namely crime does not pay or crime shall not pay into an expression of resistance to crime perpetrators so that they cannot enjoy the results of the crime they committed. The statement of the problem in this paper is how is the philosophy of sentencing corporations that are perpetrators of corruption? This research used secondary data through literature study in the form of laws and descriptive analysis. The imposition of a criminal fine creates implications and juridical problems for corporations that committed corruption. The recommendation of this paper is to build an ideal model of sentencing corporation based on justice.

**Keywords: Corporate liability; Corruptor; Criminal Law**

**Ida Hanifah, Andryan**

**The Rights to Review Policy Rules in The Perspective of Rule of Law**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 321-330

The State of Indonesia is a country based on law, this is as confirmed in Article 1 paragraph (3) of the 1945 Constitution, the State of Indonesia is a rule of law. Policy rules only function as part of the operational implementation of government tasks. This research used normative juridical research method, namely research in which the study refers to and bases on legal norms and rules. The statutory approach was used to look at the issue of the right to review policy rules. The conceptual approach was used to look at the conception of reviewing policy rules in the concept of rule of law. Policy rules are not a type of laws and regulations, the right to review laws and regulations cannot be applied to policy rules. The review of policy rules is more directed at *doelmatigheid* and the touchstone is the general principles of proper governance. The Supreme Court cannot review policy rules. Arrangements are needed to realize the protection for the parties who are harmed due to a policy rule, so that it can be in accordance with the concept of rule of law.

**Keywords: review; policy rules; rule of law**



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**Dewi Analis Indriyani, Zaihan Harmaen Anggayudha**

**Political Party Coup: Anomalies Within The Democratic Party**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 331-344

The Democratic Party dispute raises the view that there is dualism within the Democratic Party. The issue of the Democratic Party Leadership Takeover Movement (GPKPD) led to the dismissal of several of its cadres. The dispute escalated with the holding of the Extraordinary Congress (KLB) in Deli Serdang on March 5, 2021. One of the things which triggered the holding of the KLB by the opposition was the management of Agus Harimurti Yudhoyono (AHY). Apart from being seen as not agreeing with Article 83 paragraph (2) letter b in the 2020 Democratic Party's Articles of Association and Bylaws, the validity of the AHY management along with the preparation of the Articles of Association and Bylaws in 2020 was also questioned by several cadres. In addition, the political dynasty by the Cikeas family was also highlighted. This Democrat Party dispute becomes more interesting to study because the AHY opposition's KLB involves an external party who is a state official. This article is socio-legal study that was carried out textually and critically to laws and regulations and policies. The undemocratic management and election of the general chairman in providing opportunities for other cadres to compete in a transparent and fair manner created internal turmoil that led to the dismissal of several cadres. There are anomalies within the Democratic Party with the increasingly clear Democratic Party as a dynastic party, undemocratic KLB arrangements, to the implementation of KLB which is a structural conflict of the Democratic Party with non-structural collectives.

**Keywords: coup; extraordinary congress; dispute; political party; democratic party**

**Ulang Mangun Sosiawan**

**The Application of Group Social Guidance in The Development of Drug Convicts in Correctional Institutions**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 345-368

Group social guidance is a method of social work that aims to help individuals to improve their social functions through certain experiences within the group so that they are able to overcome the problems they face, whether problems involving themselves, their group and society. In providing guidance for drug convicts, group social guidance tends to be more effective than individual social guidance. The forms of group social guidance carried out in correctional institutions include general education, skills education, mental spiritual development, socio-cultural and work activities. The problems that were studied are how to apply group social guidance for drug convicts, what the benefits of the guidance are and whether there are obstacles it faces. The method used is empirical normative method. The results of the study concluded that (1) Group social guidance for drug convicts is carried out in collaboration with the Wahana Bhakti Sejahtera Foundation which specifically handles drug convicts and it has been running properly, implemented through spiritual group activities, sports, arts, legal awareness and work guidance. (2) Group social guidance activities show good results, as can be seen from the positive self-changes in drug convicts. (3) The obstacles are the limited infrastructure for development, drug convicts' laziness in following guidance, the lack of application of values and the lack of active participation of the officers as social workers in conducting guidance. It is recommended to add facilities and infrastructure for medical therapy and social rehabilitation for convicts who are ex-drug users.

**Keywords: group social guidance; development; convicts**

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**Muhammad Arif Agus, Ari Susanto**

**The Optimization of The Role of Correctional Centers in The Indonesian Criminal Justice System**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 369-384

The purpose of this research is to examine and analyze (1) the role of Correctional Centers in the Criminal Justice System in Indonesia; and (2) the Optimization of the Role of Correctional Centers in the Criminal Justice System in Indonesia. The research method used is a normative juridical approach. The results of the research concluded; (1) Correctional Centers in the juvenile criminal justice system and in the adult criminal justice system both have a role, but the role of Correctional Centers in the adult criminal justice system has not been optimized as in the juvenile criminal justice system, and it tends to be discriminatory. (2) The optimization of the role of Correctional Centers in the Criminal Justice System in Indonesia needs to be carried out, because by optimizing the role of Correctional Centers, especially Correctional Research on adult cases, it will eliminate discrimination in treatment between children and adults and Correctional Research can be used as a reference for law enforcers. As a recommendation, it is suggested that in the Criminal Law Reform in Indonesia, both related to the renewal of the Criminal Procedure Law Code (KUHAP); the Criminal Code (KUHP); as well as the Corrections Law, the discrimination in making Correctional Research on juvenile cases and adult cases should be abolished, because it has no value of justice. The equalization of treatment related to Correctional Research will optimize the role of Correctional Research and also other law enforcers in achieving the value of justice in Indonesia.

**Keywords: optimization; correctional center; system; justice; criminal**

**Mompang Panggabean, Benny Hutahayan**

**The Problems of Implementation of Financial Services Authority Regulation No. 11/Pojk.03/2020 in Relation to Legal Awareness and Legal Compliance of Bank Mandiri MSME Debtors**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 385-396

The spread of Corona Virus Disease 2019 has disrupted the economy so that it has an impact on increased bank credit risk due to decreased performance and capacity of debtors in fulfilling credit or financing payment obligations. The Financial Services Authority (FSA) issued FSA Regulation No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of COVID-19 so that the pandemic does not have an impact on the domestic economy, including MSMEs. The goal is to provide credit relaxation for customers affected by Covid-19. This research aims to examine the effect of Legal Substance and Legal Awareness on the legal compliance of MSMEs as customers of Bank Mandiri. This research used a questionnaire as the research instrument. The questionnaire was used to measure the variables of Legal Substance, Legal Awareness and Legal Compliance. The data analysis used is the SEM GSCA approach using the GeSCA application. The results of the analysis showed that legal substance and legal awareness have a significant effect on legal compliance. The legal analysis of the substance of FSA Regulation Number 11/POJK.03/2020 in Indonesia for Bank Mandiri MSME debtors is the originality of this research.

**Keywords: legal awareness; legal compliance; MSME; debtor**

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**Mimin Mintarsih, Lukman Mahdami**

**The Legal Status of Mut'ah Marriage in Indonesia**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 397-408

Mut'ah marriages with contract marriages bring a dilemma to society. The society views that this is *halal* (lawful) and legal, but in essence it does not carry out rights and obligations. The problem of this paper is how do civil cases (of mut'ah marriage) get legal certainty so that the logic of "urgent" becomes a status that can protect the rights and dignity of married couples in Indonesia? The purpose of this paper is to analyze the status of mut'ah marriage law so that it does not become a political contribution in Indonesia. The research method used is normative juridical. The result of this research is that in relation to the basis for practice of mut'ah which is considered an emergency, it is clearly contrary to Islamic law because the real aim and purpose of marriage are permanent. Mut'ah actually destroys human civilization and ethics or implies bad faith. The harm will befall the offspring. Children who are born have no legal certainty because they are considered children born of adultery. This research concludes that mut'ah is contrary to the basic provisions of the Material Law of the Religious Courts on Marriage which strictly prohibits mut'ah marriages (Article 2 paragraph 2 of Law No. 1 Year 1974 concerning marriage), the criminal sanctions are regulated in the Draft Law on the Religious Courts of Marriage Article 39 because it is not recorded and Article 144 concerning sanctions against the perpetrator, and the marriage is null and void by law.

**Keywords: mut'ah marriage; status; marriage law**

**Doan Mauli Tua Siahaan, Ibrahim Sagio, Evi Purwanti**

**Restriction of Indonesian Nickel Ore Export Based on The Perspective of Quantitative Restriction Principle in General Agreement on Tariffs and Trade**

Law Research Journal De Jure, 2021 September, Volume 21, Number 3, Page 409-418

This research aims to find out whether the policy of restriction of Indonesia's nickel ore export is in accordance with the rules of international economic law. The quantitative restriction policy on Indonesia's nickel ore exports has drawn criticism from the European Union. The reason is that Indonesia's actions in carrying out quantitative restriction on export of nickel ore are considered to violate one of the principles in the General Agreement on Tariffs and Trade, namely the principle of prohibition on quantitative restriction. This principle is contained in Article XI: 1 of the GATT. This research used literature review, namely by collecting and analyzing literature that is closely related to the problem that is the focus of this research. The data was analyzed using analytical descriptive technique, so that it can analyze Indonesia's export restriction policy with juridical provisions in international trade law, especially in the General Agreement on Tariffs and Trade (GATT). The results of the research indicated that Indonesia's actions are in accordance with Article XI: 2(a), which regulates the exception to Article XI: 1, with certain conditions which constitute a dispensation to the principle of quantitative restriction. Indonesia's nickel ore export restriction is also implemented to protect the environment in order to prevent scarcity and to encourage the battery industry in Indonesia to boost the economy. Therefore, the Indonesia's policy can be justified by international law.

**Keywords: GATT; Quantitative Restriction; nickel ore; nickel export**

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