



The De Jure Legal Research Journal 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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AUTHORS' BIODATA

GUIDELINES FOR WRITING DE JURE LEGAL RESEARCH JOURNAL

ADVERTORIAL

With the praise to Allah SWT, the De Jure Legal Research Journal published by the Indonesian Legal Researcher Association in collaboration with the Research and Development Board for Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia can publish Volume 21 Number 4 June 2021.

The publication of Volume 21 Number year 2021 contains several articles written by researchers and academicians which are the results of studies and research that can be used as material in the development of science and the development of national law.

The publication of the De Jure Legal Research Journal in the December 2021 edition may be the last part of the publication by the Indonesian Legal Researcher Association and the Research and Development Board for Law and Human Rights, because the legal researchers who are currently at the Research and Development Board for Law and Human Rights of the Ministry of Law and Human Rights will be transferred to the National Research and Innovation Agency in 2022. Therefore, on behalf of the Management of the Indonesian Legal Researcher Association, we would like to express gratitude for the cooperation so far.

Finally, we hope that the publication of the De Jure Legal Research Journal can be useful in the development of science, especially in the field of law.

Jakarta, December 2021

Ahyar Ari Gayo

Chairman of the Editorial Board and National Chairman
of the Indonesian Legal Researcher Association

HALAMAN KOSONG

**The keywords noted here are the words which represent the concept applied in article.
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Rianda Dirkareshza, Eka N.A.M Sihombing

Acceleration of Village Welfare Through Bumdes: Disorientation of Implementation of Bumdes Regulations and Policies

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 419-434

Village-Owned Enterprises (BUMDes) do not have legal certainty regarding their form of legal entity and it will make it difficult to meet the hope of all villagers to run businesses together in accordance with their characteristics, potential, and their respective resources. This research aims to provide input and solutions to the government to be able to accelerate the welfare of villages through BUMDes. The method used in this research is literary or library research by using normative juridical approach. In the processing of data, this journal used qualitative and quantitative approach. This research showed the result that there is disorientation in the implementation of BUMDes regulations and policies, such as: first, the incompatibility of village regulations with other laws and regulations. Second, the low community initiative in driving the village economy. Third, the vagueness of BUMDes position as a social and commercial institution. Fourth, policies that have not directed the professionalism of BUMDes. The solution in accelerating village welfare through BUMDes is to provide the flexibility of BUMDes in the form of legal entity as a bridge to be able to enlarge capital in the investment sector.

Keywords: Village-owned, Enterprises; Village Welfare, Legal Entities

Ahyar Ari Gayo

Food Service for Convicts in Correctional Institutions According to Laws and Regulations and Islamic Sharia

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 435-446

The rights of convicts as Indonesian citizens who lost their independence due to criminal acts must be carried out in accordance with human rights. One of them is the right to obtain adequate food and beverage services that meet nutritional and health standards in accordance with the provisions of laws and regulations. In addition, Islamic sharia (law) also regulates the rights of convicts to get good and halal food and drink. This requirement is an order from the Al-Quran and Hadith. The problem of this research is how to organize food according to the provisions of laws and regulations and the provisions of Islamic law. This research used sociological research method. According to the type and nature of the research, the data sources used are secondary data consisting of primary legal materials. The secondary legal materials in this research consist of books, scientific journals, papers and scientific articles that can provide explanations of the primary legal materials. The results of the research found that in practice it was still found in Correctional Institutions that the rights of convicts had not been given in accordance with their rights as citizens. This is caused by several factors, including the lack of understanding of the regulations regarding the rights of convicts contained in the Law and sharia law by correctional Institution officers or even by the convicts themselves. Correctional officers need to be given dissemination regarding their obligation to provide food for convicts in accordance with laws and regulations.

Keywords: Food, Convicts, Islamic Sharia

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Mosgan Situmorang

The Power of Pacta Sunt Servanda Principle in Arbitration Agreement

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 447-458

Pacta sunt servanda is a legal principle that applies universally. With this principle, everyone is expected to carry out an agreement made with other parties voluntarily. To enforce the principle by the court in case of dispute in the implementation of the agreement, it requires conditions that must be met. In the context of an arbitration agreement, it must also meet specific rules stipulated in the Arbitration Law. In practice, there is still disobedience to this principle where the parties who have been bound by an arbitration agreement are still taking the litigation in solving their case. In this research, the problems examined are how the principle of pacta sunt servanda is regulated in the arbitration law and how strong this principle is applied. The method used in this research is normative juridical. Based on the research, it is concluded that the implementation of the pacta sunt servanda principle is regulated in several articles of the Arbitration Law. The pacta sunt servanda principle is not valid absolutely because it is deviated by other laws or legal principles. It is recommended that parties in an agreement shall understand the choice of dispute settlement well including the consequences of such choice.

Keywords: clause; arbitration; pacta sunt servanda

Henry Donald Lbn. Toruan

Problems of Harmonization on The Post-Establishment of Omnibus Law on Job Creation

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 459-472

The government has issued Law Number 11 Year 2020 concerning Job Creation (UUCK) on November 2, 2020. Through this law, around 1,200 articles in eighty laws are simplified into one law that regulates the provisions of the replaced laws. The model of simplifying regulations by combining various laws into a law is called the Omnibus Law. The establishment of the UUCK was a form of simplification of regulations related to the job creation process. The statement of the problem of this research is how to harmonize subordinate regulations into law, which was previously an implementing regulation from a law into a law. The research method used is normative juridical which is descriptive analysis. Law No. 12 Year 2011 as amended by Law No. 15 Year 2019 concerning the Establishment of Laws and Regulations states that harmonization was still in the draft stage. Therefore, no provisions govern the harmonization of regulations in force. If there are overlapped regulations both vertically and horizontally under the law, the settlement mechanism is done through the judiciary, namely the Supreme Court. This research concludes that the settlement of the disharmony regulation is resolved through executive review or analysis and evaluation.

Keywords: Problems, Harmonization and the Job Creation Law.

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Moch. Marsa Taufiqurrohman, Muhammad Toriq Fahri, Robi Kurnia Wijaya, I Gede Putu Wiranata
The Use of Necessitas Non Habet Legem and Wederspunningheid in Law Enforcement For Covid-19 Vaccination in Indonesia

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 473-488

The majority of scientific research in the world agrees that vaccination is a vital instrument that aims to solve the problem of the Covid-19 pandemic. In achieving this goal, the government is trying to ensure that vaccinations run as they should. Even though it is regulated in laws and regulations, the enforcement of vaccination law is not easy to implement. This article aims to examine the formulation of the legal basis that can ensure effective enforcement of vaccination law in Indonesia. By using normative legal research, this study aims to answer several problems. First, is vaccination a right or obligation for every citizen? Second, what are the legal bases that can be used to enforce the vaccination law in Indonesia? Third, what is the state's responsibility for adverse events following vaccination in return for the vaccination obligation? This article provides a view that the principle of emergency reason does not know the law (*necessitas non habet legem*) can be an indicator of a shift in vaccination status which was originally only a right to become obligation. In addition, the *wederspunningheid* article in the Criminal Code (KUHP) regarding resistance to officers carrying out state obligations can be the legal basis for enforcing vaccination law. Furthermore, the enforcement of vaccination law must also go hand in hand with the state's responsibility for adverse events following vaccination. Responsibilities can be in the form of vaccine testing, treatment, care, and court lawsuits if there is a default or unlawful act.

Keywords: *necessitas non habet legem*; *wederspunningheid*; vaccination; covid-19; law enforcement

Diana Yusyanti

**Hospital's Criminal Liability for Patient's Damages Due To Health Service Errors
During The Covid-19 Pandemic**

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 489-506

During the Covid-19 pandemic, many mass media reported various cases of health service errors at hospitals that resulted in material losses, there were even cases of patients dying. The criminal aspect is explicitly stated in the provisions of Article 190 of Law No. 36 Year 2009 and Article 62 and Article 63 of Law No. 44 Year 2009 and Article 46 of Law Number 44 Year 2009 concerning Hospitals where it is stated that hospitals are legally responsible for all losses due to negligence or health service errors. This research used descriptive normative research through a statutory approach, carried out by reviewing all laws related to legal issues that are being handled. In addition, criminal sanctions in Law Number 36 Year 2009 are formulated cumulatively, such as in the case of criminal acts as referred to in Article 190 paragraph (1), Article 191, Article 192, Article 196, Article 197, Article 198, Article 199, and Article 200, accumulated so that the general provisions in Article 30 of the Criminal Code are ineffective, that the maximum sanction if not paid the perpetrators are only subject to a substitute imprisonment of 6 months or 8 months.

Keywords: criminal liability; Covid-19 referral hospitals; patients

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Syprianus Aristeus

Transplantation, Legal Adoption, Harmonization of Omnibus Law and Investment Law

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 507-516

The best way in an effort to manage investment is by transplanting, adopting laws, harmonization by making breakthroughs to existing regulations, such as in the case of implementing the Job Creation Law. The Omnibus Law offered by the government as a “practical and pragmatic” solution is a political and legal policy to cut various regulatory barriers, to simplify bureaucracy, to accelerate services, to increase efficiency, to increase competitiveness, and to prevent opportunities for corrupt behavior. The government must evaluate this law (Job Creation) where there is still overlap without regard to regulations. The statement of the problem in this scientific paper is why there is a conflict of interest and regulations that are not in accordance with the laws and regulations? As normative juridical research, this research is based on an analysis of legal norms. The Omnibus Law is a political product. In the process of its discussion, the law resulted from a political process. The government must evaluate this law (Job Creation) where in the process of making it there is still overlap without regard to regulations.

Keywords: Legal Transplantation, Legal Adoption, Omnibus Law

Jeremy Emmanuel Purba

Ratio Decidendi, Agreement, Against The Decision of Ma No. 601K/PDT/2015 in The Case of Agreements That Do Not Use Indonesian

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 517-524

The Supreme Court’s decision in the case of an agreement between investors who enter into an agreement using English is contrary to the agreement of the parties. Changes to the agreement may be detrimental to investors in Indonesia, who must amend the agreement previously made in English. The research method based on the data needed in this research is secondary data obtained through literature study in the form of laws and descriptive analysis, namely analyzing the laws and regulations. The loan agreement between PT. BKP and Nine AM, Ltd. should not be null and void. The judge’s interpretation of a lawful cause is wrong because a lawful cause refers the contents of the loan agreement. The government should be firm in determining a sanction if there is a violation of the law. This is intended so that judges are not wrong in applying regulations so that they do not produce decisions that can harm certain parties.

Keywords: Ratio Decidendi, Judge’s Decision, Agreement, Investment

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Fuzi Narindrani

Legal Protection For Minors as Victims of Sexual Harassment In Indonesia

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 525-540

The news in the mass media regarding sexual harassment against children are increasing day by day so that it is troubling not only families, but also the community. Children are soulmates, family assets, images and reflections of the future that we must take care of well. The implementation of legal protection for child sexual harassment victims in Indonesia has not been fully maximized. This research aims to find out the forms of legal protection for child victims of crime in accordance with the provisions of the laws in force in Indonesia

Keywords: legal protection, minor victims, crime, sexual

Hary Abdul Hakim, Chrisna Bagus Edhita Praja, Hardianto Djanggih

The Urgency on Designing The Legislation for The Use Of Artificial Intelligence in Indonesian Medical Practice

Law Research Journal De Jure, 2021 December, Volume 21, Number 4, Page 541-550

Artificial intelligence (AI) offers the potential for a great improvement in patient care, both in diagnose and disease treatment, and a consequential reduction in healthcare costs, a part of opportunities and challenge are ahead. The use of AI in medicine was significantly developed in some countries. Indonesia as a modern country also has a great change in promoting the use of AI. The study aims to propose on designing the legislation for the use of AI in Indonesian medical practices. The method used in this research is normative juridical approaches with descriptive analysis. The data used are primary legal material namely the Indonesian Penal Code and Law No. 36 of 2009 on Health Law. Meanwhile, the secondary legal material used are books, journals, and other legal documents. The results show that designing the new legislation as the guidance and basis for the use of AI shall give a good impact on the development of health services as practices among other countries. Moreover, Health Act 2009 clearly supported the use of advance technology's product in medicine. Yet, the application of AI facilitates interpretation follows with high accuracy and speed for medical diagnoses.

Keywords: Artificial Intelligence, Health Care Services, Technology, Health Law

HALAMAN KOSONG