



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:

**Supervisor:**

The Head of the Research and Development Board for Law and Human Rights

**Person in Charge:**

Head of Data Management and Information Development Center for Legal and Human Rights

**Directors:**

Secretary of the Research and Development Board for Law and Human Rights;

Head of Research and Development Center for Law;

Head of Research and Development Center for Human Rights;

Head of Center for Research and Development of Policy

**Chairman/Editor:**

Ahyar, S.H., M.H. (Chairman of the Indonesian Legal Researcher Association (IPHI))

**Members of the Editorial Board (Section Editor):**

Marulak Pardede, S.H., M.H. (Economic Law, the Research and Development Board for Law and Human Rights);  
Mosgan Situmorang, S.H., M.H. (Corporate Law, the Research and Development Board for Law and Human Rights);  
Henry Donald Lb. Toruan, S.H., M.H. (Civil Law, the Research and Development Board for Law and Human Rights);  
Nevey Varida Ariani, S.H., M.Hum. (Criminal Law, the Research and Development Board for Law and Human Rights)

Dr. Hardianto Djanggih, S.H, M.H. (Criminal Law, Indonesian Muslim University, Makassar);

Muhaimin, S.H. (Criminal Law, the Research and Development Board for Law and Human Rights)

**Managing Editor:**

Fitriyani, S.H., M.Si.

**Secretary:**

M. Virsyah Jayadilaga, S.Si., M.P.

Lindung Budi Mulyawan, S.H.

**Grammarly and Paper Editor (Copy Editor):**

Mira Sukmawati, S.I.P.

Novzel Ridho Abednego Hasugian, S.I.P.

Amirah Balqis, S.H.

### **Information Technology and Systems:**

Mochamad Arip, S.Kom Harysandy Permana, S.Kom.

Agus Priyatna, S.Kom.

Adi Octavianantara, S.Kom.

### **Peer Reviewers:**

1. Name : Dr. Dilshad Shaik, M.L., M.B.A., Ph.D (Law)  
Institution: School of Law, Sathyabama Institute of Science and Technology  
Deemed to be University, Law- Constitutional Law, Human Rights, Cyber Laws, India
2. Name : Prof. Dr. Hibnu Nugroho, S.H., M.H.  
Institution: Fakultas Hukum Universitas Jenderal Soedirman
3. Name : Prof. Dr. Hartiwiningsih, S.H., M.Hum.  
Institution: Fakultas Hukum Universitas Sebelas Maret
4. Name : Prof. Dr. Muhammad Mustofa, M.A.  
Institution: Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia (Purnabhakti)
5. Name : Dr. Lilik Mulyadi, S.H., M.H.  
Institution: Fakultas Hukum, Universitas Prima Indonesia
6. Name : Dr. Rianto Adi, S.H., M.H.  
Institution: Fakultas Hukum Universitas Katolik Indonesia Atmajaya
7. Name : Dr. Ani Purwanti, S.H., M.Hum.  
Institution: Fakultas Hukum Universitas Diponegoro
8. Name : Dr. Farhana, S.H., M.H., M.Pd.  
Institution: Fakultas Hukum Universitas Islam Jakarta
9. Name : Dr. dr. Trini Handayani, S.H., M.H.  
Institution: Fakultas Hukum Universitas Suryakencana
10. Name : Dr. Tanti Kirana Utami, S.H., M.H.  
Institution: Fakultas Hukum Universitas Suryakencana
11. Name : Muhammad Ali Equatora, A.Ks., M.Si.  
Institution: Program Studi Bimbingan Kemasyarakatan, Politeknik Ilmu Pemasaryakatan

### **Editor's Address:**

Research and Development Board for Law and Human Rights Building,  
the Ministry of Law and Human Rights of the Republic of Indonesia  
Jl. HR. Rasuna Said Kav. 4-5, 7th Floor, Kuningan, Jakarta Selatan  
Telephone: (021) 2525015, Facsimile: (021) 2526438

### **Email:**

[balitbangkumham@gmail.com](mailto:balitbangkumham@gmail.com)

### **PT Pohon Cahaya Printing**

Jalan Tanah Abang 1 No. 11

Gambir - Jakarta Pusat

DKI Jakarta 10160

Phone (021) 30305459

Mobile 08999045858

Email: [info@solusipenerjemah.com](mailto:info@solusipenerjemah.com)

Website: [www.solusipenerjemah.com](http://www.solusipenerjemah.com)

### **Layouter and Printer: PT**

### **Pohon Cahaya Printing**

Jalan Gedung Baru 18 Jakarta Barat 11440

Telephone: (021) 5600111, Fax: (021) 5670340

The editor accepts original actual papers in the field of law in the form of research results from various people, such as: legal researchers, practitioners and theorists, as well as various other people. The papers published are the personal opinion of the researchers, not the opinion of the editor.

The editor has the right to reject and to shorten the paper as long as it does not change the contents. The paper can be sent to the editor's address, in a maximum of 30 A4 pages, typed in double spacing and submitted to the Open Journal System (OJS) application at the URL/website: [ejournal.balitbangham.go.id](http://ejournal.balitbangham.go.id)

## TABLE OF CONTENTS

	Halaman
<b>TABLE OF CONTENTS</b> .....	<b>iii</b>
<b>ADVERTORIAL</b> .....	<b>v</b>
<b>ABSTRACT COLLECTION</b> .....	<b>vii</b>
Discontinuation of Corruption Investigation and Prosecution: A Comparison of Indonesia, The Netherlands, and Hong Kong .....	1-16
<b>Ahwan, Topo Santoso</b>	
Juridical Analysis About Cyberbullying Cases By Child Perpetrators Against Child Victims .....	17-32
<b>Joshua Evandeo Irawan, Andrian Nathaniel, Steven Jonathan</b>	
State’s Loses in The Corruption Crimes of Members of The Board of Directors of State-Owned (Persero) or Regional Government-Owned Banks and Their Subsidiaries in The Provision of Credit/Financing.....	33-48
<b>Try Widiyono, Farhana</b>	
Restorative Justice in Child Rape Perpetrators: A Case Study on Perpetrators With Intellectual Disability .....	49-62
<b>Wahyu Saefudin, Rony Aryono Putro, and Sriwiyanti</b>	
Chemical Castration Execution Model Through The Administration of Police Medical Operation.	63-80
<b>Kodrat Alam</b>	
The Existence of A Norm Regarding The Execution of Fiduciary Guarantees After The Issuance of The Constitutional Court Decision Number 18/Puu/XVII/2019.....	81-92
<b>Rosyidi Hamzah, Fadhel Arjuna Adinda</b>	
Legal Protection of Kid Influencers From Child Exploitation.....	93-104
<b>Jody Imam Rafsanjani</b>	
Analysis To The Policy of Delaying The Execution of Those Sentenced To Death is A Violation Of Human Rights .....	105-120
<b>Muhaimin</b>	
Urgency of The Position of District Election Supervisory Body in The Resolution of Disputes Between Participants in The Regional Head Election in Indonesia.....	121-134
<b>Muhammad Yusrizal Adi Syaputra, Mirza Nasution, Herdi Munte</b>	
The Legal Position of Sumang Child According to Customary Law in Kopong Village of East Nusa Tenggara.....	135-144
<b>Evi Djuniarti</b>	

HALAMAN KOSONG

## **ADVERTORIAL**

Praise to Allah SWT, De Jure Legal Research Journal published by the Indonesian Law Research Association in collaboration with the Legal and Human Rights Research and Development Agency, the Ministry of Law and Human Rights of the Republic of Indonesia would re-publish Volume 22 Number 1 March 2022.

The publication of Volume 22 Number 1 of 2022, contained several writings written by researchers and academics which are the result of studies and research that can be material for the development of science and the development of national law.

The publication of the De Jure Legal Research Journal in the March 22, 2022 edition, was published in English. Publishing in English is one of the efforts to achieve Sinta Satu (S1) and international indexation with high repute. In addition, the editor tries to make the published writings are writings related to the same area of law, so that readers will be greatly helped if they need the legal materials needed.

In the publication of this edition, the editor published writings related to the substance of the criminal law field, including Corruption, Cyber Bullying, Restorative Justice, Castration Execution, Fiduciary Guarantees, Child Exploitation, Death Penalty, and Disputed Elections.

Finally, we hope that the publication of the De Jure Legal Research Journal can be useful for readers in adding legal materials related to criminal law.

Jakarta, March 2022

Chief Editor

BLANK PAGE

**The keywords noted here are the words which represent the concept applied in article.  
This abstract sheet may be reproduced without permission or charge**

**Ahwan, Topo Santoso**

**Discontinuation of Corruption Investigation and Prosecution: A Comparison of Indonesia, The Netherlands, and Hong Kong**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 1-16

The discontinuation of the investigation and prosecution of corruption crimes is one of the important substances of the amendment to Law No. 19 of 2019 concerning the Corruption Eradication Commission which then led to debates both among academicians and legal practitioners. The discourse focused on the essence and concerns of transactional practices in the process of law enforcement for corruption crimes in the future. By using the legal comparative method, this paper tries to compare the provisions regarding the discontinuation of the investigation and prosecution of corruption crimes in Indonesia, Hong Kong, and the Netherlands. The results of the study show that the provisions regarding the discontinuation of the investigation and prosecution of corruption crimes in the three countries have differences in their arrangements. Normatively, Indonesia and the Netherlands regulate this matter in several articles, while for Hong Kong, although they do not regulate it in an *expressis verbis* manner in the law, the provisions concerning the discontinuation of investigations and prosecutions of corruption crimes are known in their law enforcement practices as seen in the case handling scheme published by the Independent Commission Against Corruption (ICAC). However, the use of the mechanism for terminating the investigation and prosecution of corruption crimes can be seen as a balancing mechanism against the legal process. Regulations regarding the discontinuation of investigations in corruption crimes must be maintained as a control mechanism against the possibility of errors in law enforcement procedures or for other technical reasons.

**Keywords: corruption; investigation; prosecution; comparison**

**Joshua Evandeo Irawan, Andrian Nathaniel, Steven Jonathan**

**Juridical Analysis About Cyberbullying Cases by Child Perpetrators Against Child Victims**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 17-32

This study discusses the legal protection of a child victim of cyberbullying and a child perpetrator. This research raised a case where a child with the initial "Z" who became a victim of cyberbullying from her schoolmate with the initial "S". The research method used is the normative-juridical method: processing legal materials collected through a literature review.

This study aims to determine the applicable law (legal protection) against the child victims of cyberbullying, based on Law No.35 of 2014 in conjunction with Law No.11 of 2008. In terms of the child perpetrator of cyberbullying, the criminal justice system of the children must be based on Law No. 11 of 2012.

The result shows that "Z", the child victim of Cyberbullying, has received positive legal protection in Indonesia based on Article 76C of Law 35/2014, and Article 27 paragraph (4) juncto Article 28 paragraph (2) of Law 11/2012. Child "S" who terrorizes Child "Z" via WhatsApp may be subject to criminal sanctions in accordance to Article 80 paragraph (1) of Law 35/2014 juncto Article 45 paragraph (1) and (2) of Law 11/2008 junctis Article 81 of Law 11/2012. This case criminal sanctions can be imposed on Child "S" with Law 11/2012.

**Keywords: children; cyberbullying; juvenile; diversion**

**The keywords noted here are the words which represent the concept applied in article.  
This abstract sheet may be reproduced without permission or charge**

**Try Widiyono, Farhana**

**State's Loses in The Corruption Crimes of Members of The Board of Directors of State-Owned (Persero) or Regional Government-Owned Banks and Their Subsidiaries in The Provision of Credit/ Financing**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 33-48

Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Eradication of Corruption Crimes provides normative direction that one of the essential things that must be proven in corruption crime is the existence of "State's losses". Members of the Board of Directors of State-Owned Enterprise in the form of bank, in managing of the company, especially in the provision of credit or financing, are very afraid of being accused of corruption crimes. The legal relationship between the State as a legal subject with the companies having status as State-Owned Enterprises (the Persero) is the existence of majority share ownership or controlling shares by the State in limited liability companies with Persero status. Such a legal relationship has been regulated in various applicable laws and regulations that have and are sourced from theoretical and philosophical foundations such as corporate legal doctrines for example the legal doctrine of piercing the corporate veil, the doctrine of fiduciary duty law, and the Business Judgment rule. Some legal problems arise, namely how is the legal relationship of the State with State Enterprises? And can the non-performing credit or non-performing bank financing affect the value of the State's participation in State-owned Bank /Region-Owned Bank? The legal research used in addressing the issues in question is normative legal research, and therefore the results obtained in this legal research are what they should be.

**Keywords: state losses; state enterprises; corruption; board of directors**

**Wahyu Saefudin, Rony Aryono Putro, and Sriwiyanti**

**Restorative Justice in Child Rape Perpetrators: A Case Study on Perpetrators With Intellectual Disability**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 49-62

The main role of probation officers is implementing restorative justice for the juvenile. However, a rape perpetrator with intellectual disability will encourage a different approach. Therefore, this study aims to explain how the application of restorative justice by probation officers on youth offenders with intellectual disabilities. The method used in this study is an empirical normative method. Primary legal materials were obtained through interviews with probation officers tasked with assisting in the investigation, prosecution, and examination in court, to assist in implementing decisions. Another source of legal materials was also obtained through the document of community research. Finally, secondary legal materials were obtained from various sources such as legislation, library books, and scientific journals. The results show three primary points. First, probation officers have realized restorative justice through their role in community research and mentoring. Second, probation officers provide recommendations for the rehabilitation of offenders. Third, probation officers reinforce other law enforcers such as police, prosecutors, and judges to conduct psychological diagnoses to ensure the child's condition. However, this study also finds that not all law enforcers can understand and handle children with intellectual disabilities.

**Keywords: youth offenders; intellectual disability; probation officers; restorative justice**



**The keywords noted here are the words which represent the concept applied in article.  
This abstract sheet may be reproduced without permission or charge**

**Kodrat Alam**

**Chemical Castration Execution Model Through The Administration of Police Medical Operation**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 63-80

Prosecutors as executors of court decisions are required to be able to be anticipatory in the process of law enforcement against sexual violence crimes following medical doctors' refusal to be involved in the execution of chemical castration. This study aims to find a model of chemical castration execution that can be applied through the administration of police medical operation (Dokpol) which combines the roles and positions of medical doctors and law enforcers simultaneously to support the implementation of police duties. The statements of the problem are set to find answers to the questions: Should the execution of chemical castration imposed by the court always be carried out? And can chemical castration be carried out through the implementation of police duties? The research method used is a normative juridical method. The availability of resources of police medical operation who have competence in the health sector is expected to be a solution for prosecutors to prepare chemical castration executors in accordance with the provisions required in Article 9 letter b of Government Regulation No. 70 of 2020, in order to achieve legal certainty regarding the implementation of the Mojokerto District Court decision whose execution is planned to take place in 2031.

**Keywords: castration; policy; chemical; medical; sexual**

**Rosyidi Hamzah, Fadhel Arjuna Adinda**

**The Existence of A Norm Regarding The Execution of Fiduciary Guarantees After The Issuance of The Constitutional Court Decision Number 18/Puu/XVII/2019**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 81-92

The issuance of the decision of the Constitutional Court Number 18/PUU-XVII/2019 on January 6, 2020, caused a change in the execution pattern of Fiduciary Guarantee objects. The issuance of this Constitutional Court decision was not accompanied by creating a new norm regarding the execution pattern of Fiduciary Guarantee objects. It brings legal uncertainty and ambiguity in executing Fiduciary Guarantee objects. Therefore, the statements of the problem in this paper are how is the pattern of execution after the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019? And how is the existence of new norms after the Constitutional Court Decision Number 18/PUU-XVII/2019? The research method used is the normative legal research method. The pattern of execution of Fiduciary Guarantee objects after the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019 experienced ambiguity and obscurity because the contents of the Constitutional Court's decision were only general norms. The existence of new norms after the Constitutional Court Decision Number 18/PUU-XVII/2019 is necessary to support legal certainty in executing objects of Fiduciary Guarantee.

**Keywords: execution; fiduciary; guarantee; new norm; effectiveness**

**The keywords noted here are the words which represent the concept applied in article.  
This abstract sheet may be reproduced without permission or charge**

**Jody Imam Rafsanjani**

**Legal Protection of Kid Influencers From Child Exploitation**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 93-104

Advances in information technology and improvements to internet network infrastructure make it easier for everyone to work and obtain information. There has been an adaptation of marketing techniques using influencer marketing, so the influencer profession is known. Unfortunately, to get marketing targets aimed at children, kid influencer services are a form of influencer marketing. Children are considered unable to make decisions about themselves. The roles of various parties are needed so that kid influencers can avoid acts of exploitation because the use or direction of children's energy as kid influencers sacrifices children's development both emotionally and physically. This article is to find out the fulfillment of children's rights so that they can live, grow, develop, and participate optimally by human dignity and protection from violence and discrimination. This article uses a normative juridical approach, analyzed qualitatively. Based on literature study regarding legal protection, Indonesia ratified the United Nations Convention on the Rights of the Child with the Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child; Amendment to the 1945 Constitution by including Article 28B Paragraph (2); and Law Number 23 of 2002 concerning Child Protection. It is hoped that all related parties will prioritize programs that protect children from exploitation in the implementation of all Child Protection instruments.

**Keywords: legal protection; kid influencer; child exploitation**

**Muhaimin**

**Analysis To The Policy of Delaying The Execution of Those Sentenced To Death is A Violation of Human Rights**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 105-120

Human rights are basic rights of the human being that exist and are a gift of Almighty God. Human rights are also natural rights that therefore cannot be revoked by other human beings. Indonesia is one of the countries that still apply the death penalty in its positive law where the unlawful acts are considered an extraordinary crime that endangers the lives of the nation and the State. The discourse of Indonesia as a country that has the philosophy of Pancasila until now can cause pro and con problems, because there are still many among legal experts and human rights activists as well as the public who question it because of differences and views, among others. The statement of the problem in this scientific paper is "How is the policy related to the death penalty in human rights seen from the current positive legal regulations?" The method used in this study is a normative juridical method. Seeing so many convicts with sentenced to death who have not been executed, it can be said that the State has committed human rights crimes (against convicts with sentenced to death), because they have served the sentence for the 2<sup>nd</sup> (second) time, namely the Imprisonment and Death Penalty. The implementation of Restorative Justice is possible to be executed as a legal breakthrough, where it becomes a solution to avoid human rights violations that can occur within the time of the delay of the death penalty. The National Commission for Human Rights (the Komnas HAM) as a representative of the Government is expected to be more aggressive in protection efforts.

**Keywords: human rights; dead execution delay; legal breakthrough**

**The keywords noted here are the words which represent the concept applied in article.  
This abstract sheet may be reproduced without permission or charge**

**Muhammad Yusrizal Adi Syaputra, Mirza Nasution, Herdi Munte**

**Urgency of The Position of District Election Supervisory Body in The Resolution of Disputes Between Participants in The Regional Head Election in Indonesia**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 121-134

The ad hoc position of the District Election supervisory body will have an impact on actions to carry out the functions and duties of the District Election supervisory body during the election of regional heads. This study aims to determine the urgency of the position of the District Election supervisory body in the formation of effective supervision in the Pilkada and to find out the Mechanism of Dispute Resolution between Election Participants by the District Election supervisory body in the election of regional heads. This study uses a normative juridical research method, with secondary data and a conceptual approach. The data were analyzed qualitatively. The result of the first study is that the decision of the Election supervisory body an ad hoc institution is binding but still limited and not final because the aggrieved party can file a lawsuit to the State Administrative High Court. The mechanism for resolving disputes between participants in the Pilkada organizers by the District Election supervisory body is regulated technically through Election supervisory body Number 2 of 2020. Disputes between participants are carried out on the principle of the quick and simple, same-day to achieve legal certainty and benefit in regional head elections.

**Keywords: supervision; district; election; supervisor; regional; head election**

**Evi Djuniarti**

**The Legal Position of Sumang Child According to Customary Law in Kopong Village of East Nusa Tenggara**

The De Jure Legal Research Journal, Volume 22, Number 1, March 2022, Page 135-144

The existence of *Sumang Child* for the people of Kopong Village, Sikka Regency, East Nusa Tenggara is a “disgrace” for his extended family, so based on local customs, the parents as well as the child must be expelled from the village, after going through the customary procession. Children born from unexpected relationships do not have rights either from the family of the 2 (two) parents or based on the provisions of national and international law. The formulation of the problem in the writing of this paper is “How is the Position of *Sumang Child* seen from Customary Law and State Law? This research is secondary data obtained through literature studies in the form of laws and descriptive analysis. Custom is a very sacred ritual for the people of Kopong village, Sikka Regency, East Nusa Tenggara, especially regarding ceremonies for the existence of *Sumang Child* and the parents that cannot be delayed or avoided. When viewed from the existence of the Child Protection Law and other regulations, this does not occur in the protection of the child and his parents.

**Keywords: *sumang child*; customary law; customs; state law**

BLANK PAGE