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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 dou ble spacing and submitted to the Open Journal System (OJS) application at the URL/website: ejournal.balitbangham.go.id

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ADVERTORIAL

GratitudeIn the presence of God Almighty, the De Jure Legal Research Journal published by the Indonesian Legal Research Association in collaboration with the Research and Development Agency for Law and Human Rights of the Indonesian Ministry of Law and Human Rights can re-publish Volume 22 Number 2 June 2022.

The publications of the De Jure Legal Research Journal Volume 21 Number 2 June 2021, will contain 10 (ten) articles from various research institutions in Indonesia.Changes in the new life order have an effect on the development of the digital era as well as strengthening the role of the Research and Development Agency for Law and Human Rights as a Legal and Human Rights Policy Strategy Body for the Governance of Quality Public Policy with Evidence base Policy.

In this regard, the editor of the De Jure Research Journal in Volume 22 Number 2, June 2022, raised articles including:Limiting the President's Power to Declare Emergency: Comparison of France, India, and Indonesia, The Idea of One Term of Office of the President and Vice President in Indonesia, Controversy on Presidential Decrees in a State of Emergency in Indonesia: A Case Study of the Decisions of President Soekarno and President Abdurrahmanwahid; A Critical Review of the Application of State-Owned Enterprises as a State-Owned Enterprise Holding From the Perspective of Anti-Monopoly And Unfair Business Competition; Responsibilities of the Government After the Covid-19 Pandemic With Increasing Social Problems In The Community In An Effort To Restore The World Economy. The three priority issues that Indonesia is fighting for in the G20 Presidency include the global health architecture, digital-based economic transformation, and energy transition. Calling on the whole world to work hand in hand, support each other to recover together and grow stronger and more sustainable.

We deliver thank you to the author who has given the trust to the De Jure Legal Research Journal to publish his work. We also thank the Bestari Partners who have been willing to help, examine and correct the writings of the authors in this publication.

Finally,We would like to thank the Head of the Research and Development Agency for Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia and the Indonesian Legal Research Association who have been pleased to publish this De Jure Legal Research Journal.

Jakarta, June 2022

Editor

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Muhammad Yoppy Adhihernawan, Hernadi Affandi

Limitation of The President's Power to Declare A State of Emergency: A Comparison of France, India, and Indonesia

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 145-162

The state must declare a state of emergency under certain conditions that endanger the safety of the state and society. Limiting the power to the declaration of a state of emergency is essential because this great authority cannot be used according to the President's will, so it is necessary to have restrictive mechanisms so that the President does not misuse the authority to carry out the emergency. However, the Indonesian constitution does not stipulate any restrictions on the powers of the President in declaring a state of emergency. This study aims to determine the dangers of not limiting the President's powers in declaring a state of emergency in the Indonesian constitution by using the arrangements and practices of emergency law in France and India. The approach used in this study is a comparative level that compares the contents of the constitution's text and compares the implementation and history of the constitution. The result of this study is limiting the power of the President in declaring a state of emergency is necessary based on a comparison of arrangements and experiences in France and India. Therefore, Indonesia must restrict the President's power in declaring a state of emergency to its constitution.

Keywords: constitution; emergency; misuse; president; restriction

Sahel Muzzammil, Fitra Arsil

The Idea of A Single Term of Office of The President and Vice President in Indonesia

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 163-174

Limiting the term of office of the head of government is an important prerequisite for realizing a democratic state life. In Indonesia, these restrictions are imposed on the President and Vice President with a term of office of 5 years and after that, they can be re-elected only for 1 term of office. Using the normative juridical method, this study shows that this choice has become a source of debate in other parts of the world, and several presidential countries have chosen different models of restrictions. In Indonesia, it has been revealed that this choice is not based on a deep conceptual debate and empirically has threatened the continuity of a principled election. As a solution, this study offers the application of the concept of a single term of office for the President and Vice President in Indonesia. This research also enriches the study of state administration in the theme of structuring the presidential system.

Keywords: office; term; president

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Aninda Novedia Esafrin, Qurrata Ayuni, S.H., MCDR.

Controversy of Presidential Decrees in A State of Emergency in Indonesia: Case Study of The Decrees of President Soekarno and President Abdurrahmanwahid

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 175-190

The debate of the decrees of President Soekarno and President Abdurrahman Wahid regarding the constitutional and unconstitutional presidential decree in emergency constitutional law continues to be a controversy that does not end until now because it is still being discussed related to the situation. This paper discusses 2 (two) phenomenal decrees related to constitutional or unconstitutional in terms of emergency constitutional law. By using normative juridical research methods. The approaches used are the statutory approach, the conceptual approach, and the historical approach. This paper discusses 3 (three) main findings, among others: First, the Presidential Decree is de facto and de jure motivated by no recognition of political action or legal action; Second, the decree is formally regulated in Article 12 and Article 22 of the Constitution of the Republic of Indonesia because in the 1945 Constitution it is regulated that if the country is in a state of danger, the president can make decisions in accordance with the authority regulated by laws and regulations; and Third, The decree can be said to be unconstitutional because it is not in accordance with the Indonesian constitution. The decree is not regulated by Indonesian legislation so that formation is considered unconstitutional because it cannot be based on law. However, in the emergency constitutional law, this situation becomes normal because the emergency constitutional law does not use legislation as usual when the country is in normal condition.

Keywords: decree; unconstitutional; state of emergency; controversy

Huta Disyon, Elisatris Gultom

Critical Review of The Implementation of The Making of Soe As A Holding From Anti-Monopoly and Unfair Business Competition Perspective

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 191-204

This study aims to analyze the potential for SOE holdings to violate Law 5/1999. This study was conducted using a normative juridical method because the study was based on library research to obtain secondary data, sourced from primary, secondary, and tertiary legal materials. The specification of the research was descriptive-analytical because the author described the holding of SOE and then analyzed it to see if it has the potential to cause a violation of Law 5/1999. Data analysis using a qualitative juridical method. The results of the study indicated that the process of establishing an SOE holding based on Government Regulation Number 72 of 2016, so far has not been proven to have violated Law 5/1999. However, even though Article 33 of the Constitution of the Republic of Indonesia and Article 51 of Law 5/1999 intend SOE to be able to carry out a monopoly, the establishment of an SOE holding should still be able to guarantee the rights of the public to continue to do business in a healthy manner. The government needs to immediately stipulate regulations regarding governance in holding companies to maintain a competitive, healthy, and non-monopolistic business climate.

Keywords: monopoly; SOE holding; state-owned enterprises; unfair business competition

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Suherman, Wicipto Setiadi, Iwan Erar Joesoef

Government Responsibility Post Covid-19 Pandemic with The Increase of Social Problems in Society

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 205-218

The post-covid-19 pandemic in Indonesia has had a major social impact on society in the form of unemployment and divorce. The problem is whether the government can be held accountable for its policies in the context of overcoming the COVID-19 pandemic which has caused many social impacts on the society. The is study aimed to determine the government's responsibility for increasing social community such as increasing layoffs (PHK) and divorce in the society during the pandemic. The research methodology applied empirical methods. The results were based on the theory of government action, which is an action taken by state administrators in carrying out government duties that cause disputes between the people and the government. In Indonesia, the responsibilities of the government have not been regulated, and in practice, the society is still neglected. Society has surrendered to the consequences of the PPKM policy during the COVID-19 pandemic. Even if there are people who will file a civil lawsuit against the government. This lawsuit against government officials in the civil sector in Indonesia is based on the unlawful acts of the government as regulated in Article 1365 of the Civil Code. The responsibilities of the Government other than in the field of civil law is in the field of state administrative law.

Keywords: government responsibilities; social issues; unemployment and divorce; post covid-19 pandemic

M.Nur Rasyid, Manfarisyah, Sri Maulina

The Decrease of Legislative Functions of The People's Representative Council of The Republic of Indonesia In The Reform Era

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 219-228

The indicator of the running of the legislative body's role is the production of pro-people legal products. However, in the reform era, the role of the People's Representative Council of the Republic of Indonesia has decreased as a legislative body. The decline in the role of the People's Representative Council of the Republic of Indonesia in the reform era was influenced by several factors. It is necessary to examine the factors causeby the weak role of the People's Representative Council of the Republic of Indonesia and also the implications of the Constitutional Court Decision on the Job Creation Act. This study aims to explain the causes of the decline in such a role and to explain the role of the People's Representative Council of the Republic of Indonesia in the formation of the law. This type of research is normative juridical. The results of the study indicate that there has been a weakening of the role of the People's Representative Council of the Republic of Indonesia in the reform era caused by several factors such as the weakening of the political parties' power, the large number of political parties in coalition with the government, as well as the large intervention of the economic elite in political parties and the government, which resulted in a controversy over the formation of Job Creation Act caused by the non-applicability of the principles of the formation of good legislation by legislators at the time of making the law.

Keywords: legislative body; job creation act; constitutionality

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Satria Rangga Putra, Sujatmiko

Reviewing Constitutional Court Decision Number 91/Puu-Xviii/2020 Regarding Formal Review of Job Creation Act: A Progressive Law Perspective

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 229-242

The Constitutional Court Decision Number 91/PUU-XVIII/2020 states that the Job Creation Act has a formal defect and must be corrected within 2 (two) years since the decision was pronounced. The a quo decision created a discourse in the community regarding the enforcement status of the Job Creation Act. This paper tried to review constructively using the perspective of progressive law and judicial proportionality in finding solutions and balances. This paper used a normative juridical research method, with a conceptual, case, and legislation approach. Progressive law in Satjipto Rahardjo's perspective has four criteria. The first has a big goal in the form of human welfare and happiness. Second, contains very good human moral content. Third, progressive law is a "liberating law" which includes a very broad dimension that does not only move in the realm of practice but also theory. Fourth, it is critical and functional, because it does not stop reviewing existing deficiencies and finding ways to improve them. Meanwhile, the principle of proportionality emphasizes the alignment of goals to be achieved, rational relationships, steps that must be taken, and the feasibility between the benefits obtained in realizing the goals to be achieved and the losses suffered against constitutional rights. Based on this explanation, it can be concluded that the Constitutional Court Decision Number 91/PUU-XVIII/2020 is in line with the concept of progressive law and tried to find out a middle way through a judicial proportionality approach by considering the smallest potential loss from the issuance of the decision.

Keywords: Formal Review; Job Creation Act; Progressive Law; Proportionality

Taufik H. Simatupang

Initiating The Concept of Sui Generis of The Legal Protection of Communal Intellectual Property in The Philosophy of Science Perspective

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 243-256

This study aims to answer how the protection of Communal Intellectual Property rights in Indonesia and how the concept of sui generis can be applied from the perspective of the philosophy of science. The research method used is a doctrinal legal research method with an approach to legislation, legal concepts, and theories through literature search. The results show that until now Indonesia has recorded and documented the Communal Intellectual Property, both by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights and the Directorate General of Culture of the Ministry of Education and Culture. Including the recording and registration of Intangible Cultural Heritage to UNESCO. However, legal protection of Communal Intellectual Property cannot be carried out optimally considering that several laws and regulations governing Communal Intellectual Property, especially those related to Traditional Cultural Expressions, are not in harmony with one another, besides that no law specifically regulates this Communal Intellectual Property. On the other hand, considering the problems that are not easy to regulate, considering intellectual property protection which is individual protection while Intellectual Property Rights are communal. Therefore, Indonesia needs to immediately regulate the protection of Communal Intellectual Property in the form of law through the idea of the sui generis concept.

Keywords: Sui generis; communal intellectual property; science philosophy

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Adis Nur Hayati

Juridical Study on Cooperative Legal Entity Bankruptcy Submissions By Its Member

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 257-270

The Covid-19 pandemic resulted in several cooperatives failing to pay and made many of their members file bankruptcy petitions against their cooperatives, this condition then caused opposition from several parties. Therefore, this paper aims to examine the issue of filing for bankruptcy of a cooperative legal entity by its member with questions: 1) how is the legal construction of Indonesian cooperative bankruptcy, 2) whether the permissibility of filing a bankruptcy petition against cooperatives by its member is in line with the characteristics of Indonesian cooperative legal entities. The method used is normative juridical research. The results show 1) Law no. 37 of 2004 and Law no. 25 of 1992 do not regulate restrictions on legal subjects who can file for bankruptcy against cooperatives. Therefore, the cooperative itself, members of the cooperative, and other creditors have the right to file for bankruptcy against the cooperative. 2) The filing of a petition for bankruptcy of a cooperative by its member (who is a creditor) is not in accordance with the characteristics of Indonesian cooperatives, considering that each of cooperative members is the owners of the cooperative itself and the main basis for the operation of cooperatives is the principles of kinship and democracy. Thus, it is concluded that the filing of a petition for bankruptcy of a cooperative by its member (who has a position as a creditor) is valid but is not in accordance with the characteristics of the legal entity of Indonesian cooperatives. Therefore, the government is advised to review the terms and restrictions on legal subjects who can petition for bankruptcy against cooperatives.

Keywords: cooperative; bankruptcy; law

Penny Naluria Utami

The Role of Community Counselor in Handling Child Clients in Class I Correctional Center of Medan

Law Research Journal De Jure, 2022 June, Volume 22, Number 2, Page 271-284

The existence of laws against children must be considered and must be led to be more responsible for themselves, because children are different from adults. Children are teenagers, human resources, and have the potential to continue the life of the nation and state. The child client is then guided to improve himself and his behavior in the existing reality, with the aim of changing his lifestyle, and assisted in behavioral restructuring, especially for clients with severe personality problems that take a long time to resolve. In other words, probation officers can educate a child client about the rejections they will face when receiving changes or feedback from others, while encouraging them to motivate themselves, accept their situation, and change what the child client is going through. Another important thing that must be done in dealing with child client is to involve the family of the child to participate in the process of handling the child who violates the law.

Keywords: handling; community counselor; child client