



The De Jure Legal Research Journal is a quarterly legal magazine (March, June, September and December) published by the Law and Human Rights Research and Development Agency of 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 Minister of Law and Human Rights of the Republic of Indonesia 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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**Editor's Address:**

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

**Email:**

balitbangkumham@gmail.com

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## ADVERTORIAL

Gratitude in the presence of Allah SWT, the De Jure Legal Research Journal published by the Indonesian Legal Research Association in collaboration with the Legal and Human Rights Research and Development Agency of the Indonesian Ministry of Law and Human Rights can re-publish Volume 23 Number 1 March 2023.

The publications of the De Jure Legal Research Journal Volume 23 Number 1 March 2023 will contain 10 (ten) articles from various research institutions in Indonesia. To improve the improvement of the legal and legislative system, significant improvement efforts are needed for the government's strategic policies. In this regard, the editors of the De Jure Research Journal in Volume 23 Number 1, March 2023, raised articles including legal protection of tourists in high-risk tourism activities according to consumer protection law; the urgency of regulating injunctions in Indonesian civil procedure bill; the idea of the health omnibus law as a national legal policy to increase public health degrees in Indonesia; problematics of the circular letter as a follow-up to the constitutional court decision; legal protection for child victims of sexual assault in a restorative justice perspective; factual actions on DKPP ethical decision results as objects of examination by the state administrative court; the Authority of Badan Penyelesaian Sengketa Konsumen (BPSK) and Tribunal Tuntutan Pengguna Malaysia (TTPM) in consumer dispute resolution; expansion of defensive and positive legal protection concepts and measures to protect geographical indications as part of communal intellectual property; insecurity to consumer data protection in the eHealth sector; corporate criminal liability in tax crime: an effort to optimize state revenue from the tax sector. Through these writings, they can contribute ideas that become reference materials in fulfilling the sense of justice and legal protection in society.

We deliver thanks to the authors who have trusted the De Jure Legal Research Journal to publish their work. We also express our gratitude to the Bestari Partners who have been willing to help, examine and correct the writings of the authors in this publication.

Finally, we express our gratitude to the Head of the Research and Development Agency for Law and Human Rights, the Ministry of Law and Human Rights of the Republic of Indonesia, and the Indonesian Legal Research Association for agreeing to publish this De Jure Legal Research Journal.

Editor:  
Jakarta, March 2023



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**Nabilah Luthfiyah Chusnida**

**Legal Protection of Tourists in High-Risk Tourism Activities According to Consumer Protection Law**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 001-014

In tourism activities, business actors are required to provide protection to tourists according to the mandate of Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK has regulated that tourists have rights, including security and comfort when traveling, especially in high-risk areas. Security and comfort are then regulated in SOPs which cover human resources, equipment, and services. This study examines how business actors provide legal protection for tourists in diving tourism as high-risk tourism. This study uses a normative legal method by dissecting principles and norms in SOP documents for the diving tourism business actors, and UUPK. The results of this study indicate that arrangements for legal protection and safety of tourists, and the rights of tourists as users or consumers of services in the tourism sector, both have been regulated in UUPK. Business actors also need to pay attention to several aspects in the diving tourism business. However, currently, there are still many business actors that prepare SOPs with exoneration clauses that are detrimental to tourists. Safety and comfort are not guaranteed, causing many victims to die and inappropriate compensation. Efforts to resolve disputes that can be carried out are litigation and non-litigation, however most business actors take non-litigation procedure using the mediation method.

**Keywords: consumer protection; diving; high-risk tourism**

**I Gusti Ngurah Anom Manacika Mahawijaya; Febrilian Dame Nuraldi; Michael Sebastian Chang**

**The Urgency of Regulating Injunctions in Indonesian Civil Procedure Bill**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 015-032

The concept of injunction in common law countries is similar to the concept of provision, confiscation, and provisional determination so that the concept of injunction can be used to complete the deficiencies of provision, confiscation, and provisional determination. This research examines injunction arrangements in common law countries, in this case, the United States and Singapore, which are then transplanted into Indonesian law through the Indonesian Civil Procedure Bill. The research method was carried out normatively and then explained descriptively accompanied by a prescription on how provision, confiscation, and provisional determination should be regulated in Indonesia. Arrangements for provision, confiscation, and provisional determination are still scattered in various laws and even most of the Dutch colonial legacies are used without an official translation. This condition causes legal uncertainty that can be detrimental to justice seekers. The state's efforts in establishing a unique Indonesian civil procedural law can be seen through the Indonesian Civil Procedure Bill. This bill also contains a concept similar to an injunction. The bill, which is expected to eliminate legal uncertainty for justice seekers, still does not specify a concept similar to the injunction in Indonesia.

**Keywords: confiscation; indonesian civil procedure bill, injunction, provision; provisional determination**

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**I Nyoman Bagiastra**

**The Idea of The Health Omnibus Law as A National Legal Policy in An Effort to Increase Public Health Degrees In Indonesia**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 033-046

This study aims to examine the ontological aspects of health promotion in an effort to improve public health status and to analyze the health sector in the General Agreement on Trade in Services. This research also aims to offer the idea of omnibus law health as a national legal policy in an effort to improve public health status in Indonesia. This article uses normative legal research methods using statutory approaches, conceptual approaches, and analytical approaches. The study indicates that the idea of an omnibus law on health as a national legal policy in an effort to improve public health status in Indonesia is a challenge as well as an opportunity. Considering that the health service sector has an important contribution to the sustainable development goals presented by the United Nations, that is, one of the goals of sustainable development is for a healthy and prosperous life. Therefore, it is necessary to revise and harmonize regulations both nationally and internationally which are based on Pancasila values to ensure that the mission is realized to improve public health in a comprehensive manner that is equitable, fair, and affordable and has legal certainty.

**Keywords : alternative policy; health; Indonesia; omnibus law; public**

**Irwansyah**

**Problematics of Circular Letter as Follow-Up to The Constitutional Court Decision**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 047-058

The Constitutional Court's decision is final and binding. It becomes effective as soon as it is pronounced in open. In practice, however, the Constitutional Court's decision is followed by a variety of legal products, including laws, government regulations, and presidential regulations, and some even use circular letters. The method used in this paper is normative legal research. The purpose of this study is to analyze the circular letter as a follow-up to the Constitutional Court's decision. The use of generalized letters in response to a Constitutional Court decision is deemed inappropriate. Because the dissemination is not a legal regulation, it is not necessary to follow the Constitutional Court's decision when considering the law. In an ideal world, the Constitutional Court's decision is followed by legislation.

**Keywords: circular letter; constitutional court; decision**



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**Chepi Ali Firman Zakaria, Ade Mahmud, Aji Mulyana**

**Legal Protection for Child Victims of Sexual Assault in A Restorative Justice Perspective**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 059-070

Sexual violence against child is a global problem today. Although international instruments have been ratified, they do not guarantee the realization of the rights of child victims. One reason is that not all countries' legal systems support victims. The principles of redress for victims of child sexual violence are set out in the United Nations Convention on the Rights of the Child. The Convention recognizes the principle of non-discrimination, the best interests of the child, child survival and development, and values Child opinions. The problem you encountered is related to 1) your security system. 2). Reintegration, psychosocial support, treatment and recovery, protection and support in court proceedings. A model of restorative justice that protects the rights of victims of child sexual violence can use the victim-offender mediation model. This model provides an opportunity for communities to come together and find solutions together when offenders are willing to admit their mistakes and take responsibility according to the needs of the victim's child. The implications of this research are hoped to make a real contribution to the nation by providing better protection for children who are victims of sexual violence and reducing the trauma they experience.

**Keywords: child; criminal; restorative; sexual; victims**

**Raines Wadi, Muhammad Aljabbar Putra, Tarmizi Kabalmay, Muh. Aunur Rafiq Mukhlis**

**Factual Actions on DKPP Ethical Decision Results as Objects of Examination by The State Administrative Court**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 071-086

The Election Organizer Ethics (DKPP)'s Decision in adjudicating Election administrator ethical disputes is final and binding. This raises a problem, that is, if the DKPP decides an ethical dispute deviates from legal provisions, then there is no way to test it. Thus, the author intends to analyze comprehensively regarding, **First**, the final and binding nature of the results of the election administrator ethics trial from the perspective of state administrative law. **Second**, determine the exact form of DKPP authority as the object of testing the authority of the State Administrative Court. This paper uses normative legal research methods and regulatory approaches. There are two conclusions. **First**, the DKPP decision, which has an ethical dimension, is only binding on the enforcement of the code of ethics, while the implementation of DKPP authority is non-binding and becomes the object of the Administrative Court. **Second**, in testing DKPP authority at the State Administrative Court, the touchstone used is the conformity of the ethics trial procedure by DKPP, without including the DKPP Ethics Decision as the object of the lawsuit. This is in accordance with the current government administration legal regime which includes Factual Actions including the exercise of DKPP authority.

**Keywords: factual action; testing; ethical judgment**

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**Ahmad Wahidi; Musataklima; Nur Jannani**

**The Authority of Badan Penyelesaian Sengketa Konsumen (BPSK) and Tribunal Tuntutan Pengguna Malaysia (TTPM) in Consumer Dispute Resolution**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 087-100

The violation of consumer rights is the cause of disputes. Consumer disputes are defined as disputes between the consumers and business actors in which consumers demand compensation due to damage, pollution, and/or because of consuming products sold by business actors. The existing conditions of Malaysian consumers, consumer dispute resolution in Malaysia and its regulations, which are undergoing improvements, are rational reasons for the subject of comparison. The purpose of this study is to explore the factors behind the success of consumer dispute resolution in Malaysia, in this case the Tribunal Tuntutan Pengguna Malaysia (TTPM) from the side of its authority that can be adopted in Indonesia to reconstruct the Badan Penyelesaian Sengketa Konsumen (BPSK) so that it can be more successful in resolve consumer disputes. The results show that TTPM's authority is more specific on dispute resolution and only accepts claims with definite value limitations, while BPSK's authority has no limitations on the value of claims, the limitation on the value of compensation is only in the provision of administrative sanctions to business actors, for parties (business actors) who do not comply with the BPSK decision, the BPSK decision is the initial evidence for carrying out an investigation regarding whether there was a crime in the non-compliance. Meanwhile, non-compliance with the TTPM decision has been considered a criminal act with criminal sanctions of imprisonment and fines.

**Keywords: authority; consumer dispute; resolution**

**Taufik H. Simatupang**

**Expansion of Defensive and Positive Legal Protection Concepts and Measures to Protect Geographical Indications as Part of Communal Intellectual Property**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 101-114

The concept of defensive and positive law on Communal Intellectual Property in its development is not sufficient to provide protection for developing countries, including Indonesia, which contain a wealth of living and non-living natural resources. The wealth of these natural resources is often claimed by a foreign nation, either in the form of patents or brands that are economically profitable, without mentioning the source and origin of the discovery. One of them is the claim of a foreign brand which is indicated as geographically originating from Indonesia. This research aimed to offer an idea of the expansion of the protection concept and measures that need to be taken by the government to protect Indonesian Geographical Indications. The method applied in this research was a study of literature sourced from national and international journals through the use of internet media. The results of the study concluded that, First, the defensive and positive legal protection concept that has been known so far requires expansion by adding the protection concept economically in the manner of streamlining a clear management framework from the Regional Government. The said framework must be carried out from upstream to downstream, by ensuring that in the end, the registration of Geographical Indication must be able to prosper the community. Second, the protection of Geographical Indication must be carried out utilizing: Accelerating the collection of data on Geographical Indication nationally, Guiding and supervising the Regional Government to develop local products that have the potential for Geographical Indication, and Establishing special laws.

**Keywords: defensive and positive protection; geographic indication; protective measures**

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**Edy Santoso, Andriana**

**Insecurity to Consumer Data Protection in The eHealth Sector**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 115-130

In Indonesia, the eHealth application has been widely used. It has also been recognized by World Health Organization (WHO) that Information and Communication Technology (ICT) provides a cost-effective and secure value to support various health sectors. The research method uses normative research which more emphasizes the use of positive law and comparisons of law with other countries. Meanwhile, the approach used in this study is a “qualitative empirical”. A primary legal material implementing statutory regulation in the field of Cyber law, and practically discusses how it is implemented in eHealth. This research examines two things in depth. Firstly; Is a “Data breach” committed by the electronic service providers? Secondly; Is a “Data theft” modus operandi achieved by the perpetrator? This study concludes that a “data breach” can occur due to “carelessness” or “bad faith” on the part of the service provider. Thus, bad faith behavior may intentionally process the data for illegal commercial purposes, either by processing it alone or by cooperating with other parties who use the data. Meanwhile, “Data theft” caused by “illegal access” activities there are carried out by the perpetrator, causing data can be changed, damaged, and deleted. Data related to eHealth is included in the category of special data that is protected by the laws and regulations in Indonesia. Thus, service providers should participate in providing data protection efforts by making “self-regulation” and providing training to service users, in an effort to avoid crime under Law Number. 27 of 2022 on Personal Data Protection.

**Keywords: data breach; data protection; data theft; eHealth.**

**Yoserwan**

**Corporate Criminal Liability in Tax Crime: An Effort to Optimize State Revenue from The Tax Sector**

The De Jure Legal Research Journal Volume 23, Number 1, March 2023, Page 131-142

Tax crimes can be committed by taxpayers which include individuals as personal taxpayers and corporate taxpayers as taxable companies. The problem in the enforcement of tax criminal law is the unclear rules regarding corporate criminal liability in tax crimes. This article aims at discussing corporate criminal liability in tax crimes and its application in the investigation and prosecution process. The research uses normative legal research by collecting secondary data. They are primary legal sources and secondary legal sources. The results show that in handling tax crimes, both the investigators and prosecutors are doubtful to process the criminal liability of a corporation. The cause is the lack of clarity in the tax laws. As a result, criminal liability is just addressed to individual taxpayers as material perpetrators, even though the crime occurred within the scope of work of a corporation. Meanwhile, the corporation cannot be held criminally responsible. Thus, the shareholders, cannot also be held criminally responsible. Therefore, it is necessary to amend the current tax laws, so that a corporation can be prosecuted and punished for corporate crime. It is then expected that the compliance of corporations as the taxpayer will increase, and at the same time, tax evasion by corporations could be prevented. Finally, it is hoped that it will increase state revenue from the tax sector.

**Keywords: corporate criminal liability; tax crime; state revenue**

