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The De Jure Legal Research Journal is a quarterly legal magazine (March, June, September and December) published by the Law and Human Rights Policy Strategy 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 Law and Human Rights Research and Development Agency, Number: PPH-08.LT4.03 Year 2021 dated January 4, 2021 concerning the Establishment of a Publishing Team for the De Jure Legal Research Journals, with the team composition as follows:

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ADVERTORIAL

Gratitude in the presence of Allah Almighty, the De Jure Legal Research Journal published by the Law and Human Rights Policy Strategy Agency, Ministry of Law and Human Rights of the Republic of Indonesia in collaboration with the Indonesian Legal Research Association, has published in Volume 23, Number 4, December 2023.

The publications of the De Jure Legal Research Journal in Volume 23, Number 4, December 2023, contain nine articles from various research institutions in Indonesia. The improvement of the legal and legislative system and 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 4, December 2023, raised articles including interlegality of interfaith marriages *vis a vis* supreme court circular letter number 2 of 2023 on the rejection of applications for registration of interfaith marriages in Indonesia; quo vadis specialised courts in Indonesia within constitutional court decisions confines; legal aspects of state control rights in mining sector after the renewal of mineral and coal law in Indonesia; examining the possibility of transplanting political party financial assistances variation to Indonesian political parties (comparative studies in Colombia, Brazil, South Korea, and Turkey); regulation of fraud in civil code: a comparative study between the Indonesian Civil Code and Netherlands *Nieuw Burgerlijk Wetboek*; disgorgement fund to create corrective justice as a legal protection measure for investors in the capital market. Throughout these writings, they can contribute ideas that become reference materials in fulfilling the sense of justice and legal protection in society.

We thank 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 thank the Head of the Law and Human Rights Policy Strategy Agency, 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, December 2023

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Noer Yasin, Musataklima, Ahmad Wahidi

Interlegality of Interfaith Marriages *Vis A Vis* Supreme Court Circular Letter Number 2 of 2023 on The Rejection of Applications for Registration of Interfaith Marriages in Indonesia

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 389-402

The polemic of interfaith marriages is not a new problem at the legal level in Indonesia, especially with the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 for District Courts to reject requests for registration of interfaith marriages. This has caused pros and cons in the community. The purpose of this research is to elaborate on the impact on the independence of judges and the constitutional rights of marriage actors, as well as the position of SEMA when faced with the rights of interfaith marriages conducted abroad and brought to Indonesia. This research can enrich insights into the discourse of interfaith marriage in Indonesia. This research uses a normative legal research method that relies on primary, secondary, and tertiary legal materials analyzed prescriptively. The results of this study are, First, SEMA can interfere with the independence of judicial power itself, where the Supreme Court is one of the actor of SEMA. Secondly, SEMA impacts the non-fulfillment of the constitutional rights of actors of interfaith marriages to obtain legal certainty, equality before the law, and legal protection. Thirdly, SEMA can trigger smuggling of law in interfaith marriages where the legal consequences must be recognized based on the principles of rights derived from foreign law, the principle of reciprocity, and the principle of comitas gentium. These three principles underlie the inter legality of interfaith marriages, so they have transnational legality. This research recommends that the Supreme Court revoke the SEMA that has been issued.

Keyword: Interlegality; Interfaith Marriage; Marriage Registration

Bagus Hermanto, Nyoman Mas Aryani

Quo Vadis Specialised Courts in Indonesia within Constitutional Court Decisions Confines

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 403-418

In Indonesia, special courts represent a phenomenon of judicial deference which is associated with an independent judicial system and supports the efficient and effective administration of justice. However, the practice in Indonesia shows that there is a need for further discursive research and thinking in the organization of the special justice system in Indonesia, based on internal and external issues in the realization of a special justice order that promotes substantive justice and is based on effectiveness, efficiency, and justice that is based on the needs of legal specificity under the specialized court context. This article utilizes dogmatic legal research based on a statutory approach, a case law approach, and a conceptual approach on a micro-legal research basis to examine the revamping of special courts in Indonesia, including the elaboration of Constitutional Court Decisions relevant to the strengthening of constitutional consolidation in post-reform Indonesia. Furthermore, the findings of this study show that the dynamics of special justice in Indonesia seem to be based on specific needs, international intervention in several cases, and ideas when the 1945 Constitution was amended by strengthening in accordance with conditions and times to achieve substantive justice. Similarly, the failure to build several special courts has become a discourse in recent decades, as various Constitutional Court decisions have directed topics that may be seen in the formation of special courts in the future. These include the existence of electoral and medical courts, which have also emerged as ideas for revamping specialized courts in Indonesia.

Keywords: constitutional court decisions; revamping court; special court

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Andri Yanto, Faidatul Hikmah

Legal Aspects of State Control Rights in Mining Sector After The Renewal of Mineral and Coal Law in Indonesia

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 419-432

The concept of State Control Rights, as constitutionally attributed in Article 33 Paragraph (3) of the 1945 Constitution, constitutes a fundamental paradigm. The dialectics of mining policy formulation in Law No. 3 of 2020, which updated the regulation of minerals and coal, ushered in a series of transitions and consequences for the development of the concept of State Control in Indonesia, particularly concerning the substance of Article 4 Paragraph (2) of Law No. 3 of 2020, which introduced the policy of re-centralization. This research employs a juridical-normative method, utilizing a legislative approach and norm analysis pertaining to the concept of State Control Rights. The findings of this study indicate that, firstly, the formulation of state control in Law No. 3 of 2020 aligns intending to implement the concept of State Control as established by the Constitutional Court's decision, emphasizing the permit system as a replacement for the contract system. Secondly, the centralization of authority over mineral and coal mining does not contradict the concept of State Control, as long as it can optimally generate an ideal and effective mining management system in advancing the prosperity of the people. The objective of this research is to provide a comprehensive overview of the application of State Control Rights in the revision of mining legislation, thereby offering policy insights for the development of substantive and just mining law in Indonesia.

Keywords: Contract of Work; Licensing; Minerba; Mining; State Control Rights

Garuda Era Ruhpinesthi, Muhammad Hamzah Al Faruq

Examining The Possibility of Transplanting Political Party Financial Assistances Variation to Indonesian Political Parties (Comparative Studies in Colombia, Brazil, South Korea, and Turkey)

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 433-454

There are variations in political party Financial Assistances in various countries with various implications, both positive and negative. Besides, there are problems with political parties in Indonesia which in literatures are suspected to be related to the regulation of political party Financial Assistances. This research focuses on answering two research problems. First, what are the implications for the regulation of various models of Financial Assistances for political parties in Colombia, Brazil, South Korea, and Turkey referring to the aspects of free and fair elections, democratic politics, and corruption index? Second, how is the possibility of legal transplantation of political party Financial Assistances in order to solve the problems of political parties in Indonesia? This research is socio-legal research that analyzes secondary data. The results of this study show two results. First, it shows that the law in four countries have different implications, which there are three notes namely that i) countries that are quite good in the aspect of free and fair elections are South Korea, Brazil, and Colombia, ii) the four countries are not good enough in the aspect of democratic politics, iii) countries that are quite good in the aspect of corruption index is South Korea. Second, it shows that there is the possibility of legal transplantation which there are three notes: i) there is a constant and dynamic variable regulation of political party Financial Assistances in Indonesia, ii) the problem of political party Financial Assistances in Indonesia is in the democratic politics and corruption index which means need to transplant several aspects, iii) there is a possibility of transplanting variations in political party Financial Assistances as long as certain conditions are fulfilled.

Keywords: Political Party; Financial Assistances; Legal Transplantation

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Ariyanto

Regulation of Fraud in Civil Code: A Comparative Study Between The Indonesian Civil Code and Netherlands *Nieuw Burgerlijk Wetboek*

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 455-472

A person who commits fraud will move something as if something happened and was right but the act does not correspond to reality. The purpose of this study is to examine the elements of Fraud in Article 1328 of the Indonesian Civil Code and examine the regulation of fraud (*bedrog*) in the civil code in the Netherlands. This research is a Normative Legal Research which is legal research carried out by examining library materials or secondary data. Normative legal research is also called doctrinal legal research. The results indicated that the explanation of the definition of fraud (*bedrog*) has been regulated in Article 1328 of the Civil Code, but the substantial understanding has not been regulated in Article 1328 of the Indonesian Civil Code, fraud in Dutch civil law is regulated in article 3:44 *Nieuw Burgerlijk Wetboek*. The recommendation that the author can note is that as one of the countries adopted by Indonesia, it is appropriate for Fraud to get elaboration and technical procedures to identify Fraud as a defect of will. Bedrog is defined by definition as an act in which a party entices another party to take certain legal actions by, among others: making false and deliberate statements; deliberately not disclosing the fact that it should be mandatory to disclose, and intentionally withholding or providing incomplete information. The formulation of the definition in the NBW should be a reference in the renewal of the Civil Code related to *Bedrog*.

Keywords: *Bedrog*; Fraud; *Nieuw Burgerlijk Wetboek*

Marsinta S.T. Simanjuntak, Garry Gaven

Disgorgement Fund to Create Corrective Justice as A Legal Protection Measure for Investors in The Capital Market

The De Jure Legal Research Journal Volume 23, Number 4, December 2023, Page 473-482

Disgorgement Fund is the repayment of funds obtained through illegal or unethical business transactions, imposed on violators by courts. Legal protection for capital market investors in Indonesia is not yet effective and optimal. There is no easy way to claim compensation for losses in the capital market because investors consider losses as an investment risk. This article aims to analyze the implementation of disgorgement funds and disgorgement fund practices to realize corrective justice as an effort to protect the law for capital market investors in Indonesia. The method used is normative legal research, using primary and secondary legal sources. Data analysis techniques use conceptual methods and statutory approach methods. The results of the analysis show that OJK issued disgorgement fund regulations as an effort to improve investor protection and law enforcement in the capital market through POJK No. 65/POJK.04/2020 and SEOJK No. 17/SEOJK.04/2021. The regulation of the disgorgement fund mechanism still needs improvement to prevent violators from enjoying illegal profits, recover investors' losses, and take preventive measures against future violations. The Directorate of Sanctions Determination and Capital Market Grievances at OJK emphasizes that the order for disgorgement of funds is not a lawsuit from the investor through remedial action, aligning with the principle of corrective justice, where all parties have equal rights to seek redress. Tighter supervision should be implemented by OJK to prevent legal violations while ensuring equity in the restoration of rights and the effectiveness of the legal system in dealing with disputes in the capital market.

Keywords: corrective justice; capital market; disgorgement fund; investors; legal protection