



Jurnal Penelitian Hukum De Jure 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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## ADVERTORIAL

The editor would like to give praise to Allah SWT, as 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 the Volume 21 Number 2 June 2021.

The publication of the De Jure Legal Research Journal Volume 21 Number 2 June 2021 will contain 10 (ten) papers from various research institutions in Indonesia. The spread of the corona virus disease 2019 (covid-19) and the changes in the new living order have an effect on the development of the digital era as well as the role of the Research and Development Board for Law and Human Rights as the Think Tank of the Ministry of Law and Human Rights.

In this regard, the editor of the De Jure Legal Research Journal in Volume 21 Number 2, June 2021, presents papers as follows: Adult Age in Marriage in Indonesia, Jurisprudence of State Administrative Courts in The Development of State Administrative Law, Reconstruction of The Juvenile Criminal Justice System and The Giving of Diversion, The Importance of Establishing Functional Position of Corporate Supervisor at The Ministry of Law and Human Rights, Contemporary Fiqh Study: South Korea As A Country of Appearance-Oriented Views on Trend of Cosmetic Plastic Surgery, The Relevance of The Application of The Presidential Threshold and The Implementation of Simultaneous Elections in Indonesia, Enforcement of Law of Copyright Infringement And Forgery With The Rise of The Digital Music Industry, Researching References on Interpretation of Personal Data in The Indonesian Constitution, The Legal Force of Electronic Signatures in Online Mortgage Registration.

We would like to thank the researchers who have trusted the De Jure Legal Research Journal to publish their works. We also thank Mitra Bestari who have been willing to help, examine and correct the papers from the researchers in this publication.

Finally, we would like to thank the Head of the Research and Development Board for Law and Human Rights, Ministry of Law and Human Rights of the Republic of Indonesia and the Indonesian Legal Researcher Association for publishing this De Jure Legal Research Journal.

Editor,

Jakarta, June 2021

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**Aju Putrijanti**

**Jurisprudence of State Administrative Courts in The Development of State Administrative Law**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 161-174

State Administrative Courts is a judicial body that has absolute competence to examine and resolve disputes in the field of state administration. The development of State Administrative Courts (Peratun) jurisprudence is indispensable for the development of state administrative law. The problems studied are the role of jurisprudence in the field of state administrative law and the role of State Administrative Courts in providing access to justice. This research is a normative legal research where primary and secondary legal materials are analyzed qualitatively. The Supreme Court has made efforts to strengthen jurisprudence so that it can support the development of administrative law. Judges' decisions are needed as a source of law. This is because it comes from dynamic legal dispute resolution. Then, jurisprudence can bring about social change for society. The process of making judges' decisions is also faster than the process of drafting laws. The broader absolute competence of State Administrative Courts can provide easy access to justice where the public can file complaints against factual actions of the Government in the field of public law. Jurisprudence as a source of law is indispensable for developing state administrative law by taking into account the development of society, social conditions, legal and political conditions. Jurisprudence produces general principles of good governance so that it can be used for the administration of government wisely.

**Keywords: State Administrative Courts; access to justice**

**Jamilus**

**The Importance of Establishing Functional Position of Corporate Supervisor at The Ministry of Law and Human Rights**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 175-186

The establishment of Functional Position of Corporate Supervisor is one of the priority working programs to be realized at the Directorate General of Legal Administrative Affairs. This is important, not only to implement the government programs, namely simplifying the bureaucracy, but also to optimize the performance of the Ministry of Law and Human Rights. The question is why it is important to establish the Functional Position of Corporate Supervisor at the Ministry of Law and Human Rights. The research method used is normative and empirical legal research with descriptive research characteristics and a qualitative analysis approach. The results showed that the importance of the Functional Position of Corporate Supervisor at the Ministry of Law and Human Rights is based on the mandate of Presidential Regulation Number 13 Year 2018 and Article 138 to Article 141 of Law Number 40 Year 2007, as well as changes in the institutional structure of the Directorate of Civil Affairs. In order for the mandate of Presidential Regulation Number 13 Year 2018 and Article 138 to Article 141 of Law Number 40 Year 2007 to be realized, the Ministry of Law and Human Rights needs to immediately establish the Functional Position of Corporate Supervisor, and also immediately change the organizational structure of the Directorate of Civil Affairs.

**Keyword: Functional Position of Corporate Supervisor at the Ministry of Law and Human Rights**

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**Faiz Rahman, Dian Agung Wicaksono**

**Researching References on Interpretation of Personal Data in The Indonesian Constitution**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 187-200

The discourse on personal data protection has been developed for a long time, even before the advent of internet technology. In the Indonesian context, issues relating to the personal data protection have begun to develop in recent years, responding to the increasingly rapid development of digital technology. Currently the Personal Data Protection Bill is again included in the 2021 Priority National Legislation Program in response to the importance of regulations relating to personal data protection in Indonesia. The fundamental thing that often escapes the discourse on the personal data protection in Indonesia is related to how personal data is positioned in a constitutional perspective based on the 1945 Constitution of the Republic of Indonesia if personal data is considered as something that must be protected. This research specifically answered the questions: (a) how is the conceptual interpretation of personal data? (b) how is personal data positioned in the perspective of the Indonesian constitution? This research is a normative juridical research, conducted by analyzing secondary data obtained through literature review. The results of this research indicated that the conceptual interpretation of personal data is still a growing discourse. As for personal data in the perspective of the Indonesian constitution, it can be seen by looking at the legal-historical aspect in the discussion of the amendments to the 1945 Constitution, especially in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is hypothesized as a reference for personal data protection.

**Keywords: interpretation; personal data; constitution; Indonesia**

**Muhamad Parhan, Mohammad Rindu Fajar Islamy, Ilham Kurnia Gustavakuan, Rizka Ade Purnama, Shakylla Putri Ragiel Utami**

**Contemporary Fiqh Study: South Korea as A Country of Appearance-Oriented Views (외모 지상주의) on Trend of Cosmetic Plastic Surgery**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 201-212

This research attempted to find out the view of Islamic law in modern fiqh studies on plastic surgery and Appearance-oriented views (Lookism) in South Korea. The use of juridical empirical method, or also known as sociological research, aimed to provide an overview of the implementation of plastic surgery in society based on applicable law by analyzing problems in society through secondary data. According to the data from the International Society of Aesthetic Plastic Surgery (ISAPS) in 2019, South Korea was in fifth position as a country that is estimated to carry out the most plastic surgery procedures in the world, 2,571 times (5.1%). This shows that this country has an Appearance-oriented view (Lookism) which is part of the Lookism culture. According to Bio Med Central 2017 data, there was a high ratio of recurrent discrimination rates (OR: 3.70; 95% CI: 2.19-6.27) and 'incident' (OR: 3.10; 95% CI: 2.99-4.83) from 2005 to 2013 against individuals in the age group of 15-24 years.

**Keywords: Appearances-Oriented Views; Contemporary Fiqh; Plastic Surgery**



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**Taufik H. Simatupang**

**Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle)**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 213-222

The problems to be answered in this research are, first, how is the regulation of Islamic family law and marriage in Indonesia, second, how is underage marriage and legal protection for children, third is how to apply the *lex posterior derogat legi priori* principle in determining the adult age for marriage. The research method used is normative juridical research with a statute approach which was analyzed using statutory principles. The results of the research concluded that Islamic family law cannot be separated from the history of the legal system in Indonesia from the time of Dutch colonialism to the present which involved three parties, namely the interests of religion, the state and women. Underage marriage is influenced by economic problems, parental coercion and community culture. Based on the *lex posterior legi priori* principle, the age limit of a child must be seen in the context of what the maturity measure is to be used. If the maturity is for a marriage, then the adult age limit is 19 years, for both women and men. Although in the future it is suggested that further research is needed regarding the financial maturity of men who are married at the age of 19.

**Keywords: adult; marriage; legal principle**

**Nevey Varida Ariani**

**Enforcement of Law of Copyright Infringement and Forgery with The Rise of The Digital Music Industry**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 223-236

The current pandemic situation encourages musicians to be productive in creating digital works such as songs and music so that their creative works can produce moral and economic values. However, infringement and forgery of digital music works are rampant. The issue of royalties is still a problem in the digital music industry in Indonesia, including new challenges to the role of aggregators and Collective Management Organization. The problem of this research is how the enforcement of the law of copyright infringement and forgery is with the emergence of the digital industry. This research used a qualitative method with a normative juridical approach. The results of the research showed that the increasing and complicated law enforcement related to digital music copyright is influenced by regulations such as complaint offense that hindered the law enforcement. The process of coordination and supervision between the Civil Servant Investigator (PPNS) of the Directorate General of Intellectual Property and other law enforcement officers needs to be improved. Law enforcement includes payment of compensation, termination of certain activities that cause harm to creators and owners of related rights, obligation to withdraw from circulation, revocation of business licenses, termination of business activities, and the last resort of *ultimum remedium* in the form of criminal sanctions. Dissemination of information and knowledge regarding IPR law and its derivative regulations including Government Regulation No. 50 Year 2021 carried out by the government is part of the legal protection of the society to increase public legal awareness in the digital era.

**Keywords: copyright; industry; music; digital**

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**Mustafa, Suhaimi, Darmawan**

**Effort to Fulfill Female Convicts' Rights to Health And Clothing at Sigli Class Iib Correctional Facility for Women**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 237-242

Article 14 Paragraph (1) letter d of Law Number 12 Year 1995 concerning Corrections. The right to health services and the right to adequate clothing are often neglected and have not been fully implemented properly. The purpose of this research is to find out and explain the fulfilment of the rights to health and clothing of female convicts at the Sigli Class IIB Correctional Facility for Women. This research method is an empirical juridical method by using a descriptive analysis approach. The results of the study showed that the fulfilment of the rights to health and clothing has not been implemented optimally pursuant to what is mandated by law, and Article 14 Paragraph (2) of Government Regulation Number 32 Year 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates. To ensure optimal health services, at least one doctor must be provided. However, in this case it is not yet available at the Sigli Class IIB Correctional Facility for Women. One of the efforts made by the correctional facility is to collaborate with the local government to check the health of correctional inmates at least 1 (one) time in 1 (one) month and it is recorded in a health card. As for clothing need, it has been given partly to female convicts, but has not been given in full due to the lack of budget given to the Sigli Correctional Facility for Women. The responsibility of the state is to finance the fulfilment of the rights that have been regulated in the law, for example in the provision of health and clothing rights in a Correctional Facility, the facility shall have at least a doctor, nurses, clinics and medicines sufficient to support health facility in the Correctional Facility or Detention Center.

**Keywords: fulfilment; health and clothing rights; female convicts**

**Zainuddin, Rahmat Ramadhani**

**The Legal Force of Electronic Signatures in Online Mortgage Registration**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 243-252

The legal force of electronic signatures in online mortgage registration activities is an important subject to study. Because basically the legal problems of electronic mortgage registration are also related to the validity of electronic signatures of persons who are not present before an LDO. Another issue that is important to study regarding the electronic signature in question is regarding the time limit of 7 (seven) days to register the Deed of Grant of Mortgage to the Land Registry Office. If it exceeds that time limit, the deed in question becomes null and void and it also causes sanctions against LDO. The research method used is normative juridical legal research that focused on two problems, namely; How is the legal force of electronic signatures in online mortgage registration? What are the legal problems of online mortgage registration? The results of the research showed that the Regulation of the Minister of Agrarian and Spatial Planning/the Head of National Land Agency Number 9 Year 2019 concerning Electronically Integrated Mortgage Services substantially has a tendency to contradict some of the regulations above it. Therefore, there is no detailed data protection relating to the securities registered in the electronic mortgage registration. Ignoring the time limit of 7 (seven) days will also result in administrative sanctions up to the dismissal of the LDO who neglect their duties.

**Keywords: signature; electronic; mortgage**

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**Muhaimin**

**Reconstruction of The Juvenile Criminal Justice System and The Giving Of Diversion**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 253-266

Children are not to be punished but to be given guidance and development, so that they grow and develop as completely normal, healthy and intelligent children. Sometimes children experience situations that make them commit illegal acts. Even so, children who break the law are not worthy of punishment, let alone put in prison. Law Number 11 Year 2012 concerning Juvenile Criminal Justice System demands a reorientation of the purpose of punishment which has an impact on the operation of the Juvenile Criminal Justice System. The formulation of the objectives of restorative justice and diversion mechanisms which are recognized as mechanisms for handling crimes committed by children demands that the performance of the criminal justice sub-system change its orientation. The problem of this research was how the construction and reconstruction of the giving of diversion are. This research used descriptive analysis method and normative juridical approach. Children are part of citizens who must be protected as a generation to continue the leadership of the Indonesian nation. The current ideal construction for children who are in conflict with the law applies the Law of Juvenile Justice System where children aged 7 years can be given diversion in the trial process. Article 21 of the Law of Juvenile Criminal Justice System and Government Regulation No. 65 Year 2015 concerning Guidelines for the Implementation of Diversion, children under 12 years of age who commit/are suspected of committing a criminal act shall then be returned to their parents and include them in education, coaching, and mentoring programs in government institutions or Social Welfare Organizing Institutions in institutions in charge of social welfare.

**Keywords: justice system; juvenile criminal; diversion; restorative justice**

**Rizki Bagus Prasetyo Febri Sianipar**

**The Relevance of The Application of The Presidential Threshold and The Implementation of Simultaneous Elections in Indonesia**

Jurnal Penelitian Hukum De Jure, 2021 June, Volume 21, Number 2, Page 267-284

This research is intended to discuss the relevance of the application of presidential threshold and the implementation of simultaneous general elections in Indonesia. The concept of simultaneous general elections is the implementation of legislative and executive elections which are carried out simultaneously. The implementation of the first simultaneous general elections in Indonesia was motivated by a request for a judicial review of Law Number 42 Year 2008 concerning the Election of the President and Vice President. The Constitutional Court issued the Constitutional Court Decision Number 14/PUU-IX/2013 with the decision granting part of the request which later gave birth to the implementation of simultaneous elections in Indonesia starting in 2019. However, from the various articles that were reviewed, there was one article that was not decided by the Constitutional Court, namely regarding the presidential threshold. The Constitutional Court is of the opinion that the regulation regarding the presidential threshold is an open legal policy for the legislature. This paper is a normative legal research, with conceptual approach and statute approach to find answers to existing problems. The research source used is secondary data consisting of primary legal materials and secondary legal materials as explanation for primary legal materials. From the results of this research, it was found that the simultaneous elections and the presidential threshold were not compatible. On the one hand, the presidential threshold aims to simplify the number of parties.

**Keywords: relevance; simultaneous general election; presidential threshold**

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