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## **FOREWORD**

Praise and gratitude to Allah SWT for the blessings and guidance, Jurnal Ilmiah Kebijakan Hukum (JIKH) is able to greet its readers again. Prayers and greetings hopefully always devoted to the Prophet Muhammad SAW who has brought mankind from traditional mystical thoughts to the era of modern scientific rationality. Since its first publication in 2007, JIKH has already been published for 1 (one) decade and has become a joy and a challenge for the entire management team.

In Volume 16 Number 1, March 2022, the editorial team has selected 10 articles. This edition contains the results of research articles and legal reviews that are related to the authorities, duties and functions of the Ministry of Law and Human Rights of the Republic of Indonesia in particular and legal reviews/study in general, consisting of: Immigration, Correctional, Intellectual Property Rights, General and Administrative Law Administration and Legal Review. The editorial team always tries to present articles that contain actual problems that become the main tasks and functions of the Ministry of Law and Human Rights. It is expected that there will be discussions on the publication of the writings in this journal. Thus, it contributes to the formulation of policies and their implementation by related parties.

On this occasion, allow us to express our endless gratitude to the Peer Reviewers who have conducted a study, analysis and assessment of the manuscript expediencies to be published in JIKH. We would also like to thank all the authors who have been willing to contribute their thoughts through their articles/writings.

Finally, we hope that the results of research and legal reviews published in this journal can contribute to the development of law and policy in Indonesia. We gladly receive constructive criticism and suggestions as enhancements and improvements of JIKH in the future.

**EDITORIAL TEAM**





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# **JURNAL ILMIAH KEBIJAKAN HUKUM**

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**BALITBANG HUKUM DAN HAK ASASI MANUSIA  
KEMENTERIAN HUKUM DAN HAM R.I**



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**Susi Dwi Harijanti, Mei Susanto, Firman Manan, Muhammad Yoppy Adhihernawan, Ilham Fajar Septian (Constitutional Law Department, Faculty of Law Universitas Padjadjaran, Bandung)**

**Mental and Physical Capability as the Requirement for Indonesian Presidential Candidate: Legal Ratio and the Development of Regulation**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The Third Amendment to the 1945 Constitution has regulated new requirements for presidential candidates. One of which is the requirement to be mentally and physically capable of carrying out the duties and obligations of the presidential office. This research aims to find the reason for formulating norms or legal ratio of the formation of such a requirement. The nature of this research is qualitative research using a normative-empirical and comparative approach. The results reveal several legal ratios of the requirement. First, the requirement is considered important because the president has the highest position within the governmental structures. Second reason refers to the close relation between health and decision-making matters, and the third demonstrates reasonable and justifiable limitations from the perspective of human rights. Comparison with several countries exposes that the requirement is fundamental since the president has dual functions, namely a head of state and a chief of government. This research also exhibits that the legal basis of the requirement is not in accordance with the 1945 Constitution since the existing regulation takes the form of the Decree of the General Election Commission. Therefore, this research recommends the appropriate legal basis to further regulate mental and physical requirements by law which regulates some fundamental principles dealing with such requirements.

**Keywords: legal ratio; mental and physical; the requirement of a presidential candidate; health requirements**

**Rahayu, Kholis Roisah, Diastama Anggita Ramadhan, Leony Sondang Suryani (Diponegoro University, Indonesia)**

**The Effect of the Arrangement to Implement Local Working of Patents on the Policy of State's Responsibility in Fulfilling Public Accessibility Rights to Patent Medicine**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The amendment of Article 20 of Law Number 13 of 2016 concerning Patents through Article 107 of Law Number 11 of 2020 concerning Job Creation raises concern. The public shows concern that their accessibility rights to get medicines in order to fulfill the right to health will be restricted. There is a conflict of interest between Government of Indonesia's obligation to fulfill its citizen's right to access medicine and its commitment to international agreements. This study used a doctrinal approach by analyzing secondary data. Specifically, it analyzed various policies related to the provision of medicines by government as part of its obligations to fulfill the right to health of its citizens. The results of this study conclude that the state's obligation to fulfill the accessibility of patent medicine is carried out through several policies. These policies include the policy on the development of the pharmaceutical industry for medicine raw materials and innovative medicine. There is also the policies on ensuring the safety and efficacy of medicine through medicine registration. The government also fulfills the accessibility of patent medicine through the policies for medicine availability in urgent circumstances with the implementation of patent held by the government (governmental use). In addition, there is also the policy of independence in the use of domestically produced medicine. The policy on the obligation to apply local patent that can be replaced by importing does not really affect the availability of patent medicine. It is because the technological capabilities of the pharmaceutical industry are still limited to the ability to formulate medicine. Indonesian pharmaceutical industry does not yet have the ability for the development of innovative medicine. Furthermore, the government issues various policies and regulations to facilitate the acceptance of qualified generic medicine. It is done to meet the needs of the community, as well as to fulfill the right to health for the community as part of the state's obligations. Indonesia as a country rich in bio-diversity needs mandatory policies for national pharmaceutical companies to develop raw materials for biopharmaceutical medicine.

**Keywords: policy; right to health; patent medicine**

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**Gede Maha Aditya Pramana, Intan Nurkumalawati, Ridwan Arifin (Immigration Polytechnic, Depok)**

**Policy Evaluation on Immigration Electronic Stamp, Biometric Data, and Autogate Machines in the Context of Geopolitics**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

Immigration Border Control (TPI) at Bali Ngurah Rai Airport adopts electronic entry sticker, biometric data collection, and autogate machines called the Immigration Movement Application System (APK). The system is equipped with a scanner that records facial biometric data and fingerprints of foreigners upon arrival. However, there are problems in implementing this system at the related TPI. This study evaluates immigration inspection policies, especially the process of taking biometric data, giving electronic entry stamps, and autogate machines at TPI Ngurah Rai Airport. This research uses qualitative research method with a public policy evaluation approach based on observations and document analysis. The results of this research show that the concept of biometric border control at TPI is not fully relevant to the concepts in the international provisions of ICAO Doc 9303 and ICAO TRIP Guide 2018. The Ministerial Regulation Number 28 of 2018 on Immigration Stamp and Circular Letter No. IMI.1-UM.01.01-5.7755 needs to be evaluated and revised to include four stages of checking with electronic stamps and system synchronization with autogate machines. This immigration clearance model at TPI applies a geopolitical concept that focuses on territorial/regional borders rather than a biopolitical concept that focuses on security risks for individuals.

**Keywords:** electronic stamp; autogate machine; biometric data; geopolitics; biopolitics

**Wilonotomo, Firman Wahyu Fachreza (Immigration Polytechnic, Ministry of Law and Human Rights of the Republic of Indonesia)**

**Implementation of the Clearance Settlement System for International Arrival and Departures of Immigration Juanda Surabaya**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The Juanda Surabaya Immigration Manifest System application is an innovation implemented at the Class I Immigration Office for Surabaya Immigration Checkpoint. The implementation of this policy is intended as a basis for making decisions and evaluating the performance that has been carried out. The manifest system is a clearance process to obtain permits for international departures and arrivals. The clearance process is very vital, especially in the supervisory function on aspects of immigration inspection as the enforcement of state sovereignty. It is considered vital because Indonesian citizens and foreign nationals who will enter or leave Indonesian territory will be filtered through the clearance process .

This research was conducted by implementing George C. Edward III theory which puts forward 4 (four) variables. These variables include communication, resources, attitudes or tendencies (disposition), and bureaucratic structure. A mixed-method of qualitative and quantitative analysis was used for this study. The results obtained are 3.40; 2.04; 3.83 and 3.43;. They show that the manifest system as the completion of the clearance process is a system that can be used as a reference to be implemented at Immigration Checkpoint (TPI), especially at international airports throughout Indonesia.

**Keywords:** implementation; manifest system; clearance; immigration check point; immigration

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**Slamet Sampurno Soewondo, Kadarudin (Faculty of Law Hasanuddin University, Makassar)**

### **Problem Analysis of Working Refugees in Makassar City**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The refugee problem in Makassar City happens to the working refugee. Some of them work as barbers in a barbershop and as construction workers. The refugees who work are often caught in raids conducted by the Makassar immigration detention center (Rudenim) as a part of supervisory duties. By working, refugees are found guilty of violating the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016. This paper contains an analysis of the questions that arise regarding the problems of working refugees. For example, what are the rules that refugees must obey? What are the forms of supervision for refugees in Indonesia? What are the main problems experienced by refugees that caused them to violate the prohibition to work? The purpose of writing this paper is to find out the regulation that must be obeyed by refugees and the form of supervision for them who temporarily stay in Indonesia. In addition, this paper also aims to analyze the forms of violations committed by the refugees. This study used qualitative approach to analyze primary and secondary legal materials. The results of the study show that one of the rules that must be obeyed by refugees who temporarily stay in Indonesia is the prohibition of doing any activities to earn wages. The form of supervision is carried out by re-examining the identity and documents of refugees and asking for information as outlined in the examination official report. As a suggestion regarding the management of refugees, the Makassar Rudenim can do refugee monitoring more intensively and provide reporting space for citizens who have information related to violations committed by the refugees.

**Keywords: problems; refugees; work; form of supervision**

**Niken Subekti Budi Utami, Octa Nadia Mellynda (Faculty of Law Gadjah Mada University, Yogyakarta)**

### **Conjugal Visit: Juridical Review of the Fulfillment of Inmates' Rights in the Correctional Perspective**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

Imprisonment as a loss of independence should only limit the inmates' freedom of movement in a correctional institution. This interpretation rises a discourse that the fulfillment of other rights of inmates must be guaranteed, including the right to fulfill their sexual needs. A term that is known globally in order to fulfill this right is called a conjugal visit. This study seeks to describe the urgency and prospects of conjugal visit for inmates in Indonesia. In addition, this study aims to provide an overview of the arrangement and implementation of conjugal visit. This legal research was normative legal research supported by the results of interviews with resource persons. The data obtained from the literature research were analyzed descriptive-qualitatively with a legal systematic approach and legal comparison. The results of this study indicate that sexual needs are one of the human rights. They are the inmates' basic needs that must be fulfilled. The failure to fulfill these basic needs will have a negative impact both physically and psychologically. Based on the theory of basic human needs, the rules of international law, namely the Nelson Mandela Rules and the Bangkok Rules, as well as national law, namely the Republic of Indonesia Law Number 36 of 2009 concerning Health, conjugal visit can actually be implemented in Indonesia with clear legal bases in Indonesian law. Establishment of regulations regarding conjugal visit is done by comparing practices in other countries and aligned with the Legal System Theory. These countries have similar backgrounds to Indonesia and have implemented conjugal visit, namely Pakistan, Turkey, and Saudi Arabia.

**Keywords: sexual needs; inmates; fulfillment of rights**

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**Diana Silfiani (Faculty of Law University of Indonesia, Jakarta)**

**Song and Music Information Systems as a Protection of Song Copyrights in Indonesia**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The Indonesian government issues Regulation Government Number 56 of 2021 concerning Management Royalty Right Create Song and or Music as well as Regulation of the Minister of Law and Rights basic Man Number 20 of 2021 concerning Regulation Implementation Regulation Government Number 56 of 2021 concerning Management Royalty Right Create Song and or Music as regulation implementation from Law No. 28 of 2014 concerning Right Create. One points urgent from second regulation the is mandate formation and development System Information Song and or Responsible music answer on administration and management royalty right create on songs and music used by users as a system integrated information. System Information Song and or Music is one effort government for give protection law on right create songs and music owned by creator. This post will use method study qualitative with approach descriptive comparing evaluation existence System Information Song and or Relative music new in Indonesia with practice international, in Thing this is United States of America as a country with industry music largest and commercialization. right create digital song has been recognized by wide.

**Keywords: system information song and or music; digital rights manager; royalties; rights create song and or music**

**Yulita Dwi Pratiwi (Master of Law Airlangga University, Surabaya)**

**Principle of Horizontal Separation in Registration of the Former Western Rights Land as the Object of Afwezigheid**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The Job Creation Law affects some policy changes in agrarian sector. For instance, the promulgation of Government Regulation No 18 of 2021 (GR 18/2021) regulates that former western rights land are adjusted to state land. However, some former western rights land have not been converted until now. It results in legal uncertainty over the land status, especially land or building juridically belong to the person declared absent (afwezigheid) yet owned by legal subjects. This study aims to analyze the land rights registration of former western rights land after the Job Creation Law. Besides, it analyzes the implementation of horizontal separation principle in the land rights registration of former western rights land and buildings, that are the object of afwezigheid. This study is legal research applying statute, historical and conceptual approaches. Based on the study, people who possessed former western rights land are the main priority in applying for land rights regarding to GR 18/2021 article 95. Meanwhile, those who only occupy the land and building have to get afwezigheid court decision of the former western rights land owner. Afterwards, they follow the object buying process with the principle of horizontal separation through Probate Office and submit land rights application at the land registry office.

**Keywords: state land; absence; horizontal separation principle; probate office**

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**Junaidi Abdillah (Law and Human Right Research and Development Agency, Indonesia)  
An Analysis of Electronic Services Quality in Intellectual Property Using Gap Analysis and  
Importance Performance Analysis (IPA) as Public Service Quality Improvements**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

This study measures the quality of Intellectual Property (IP) service accessed through websites (e-services) as the main characteristics of services. It is conducted by reviewing the expected service and the perceived service of service users. The research used an instrument adapted from the E-GovQual model and which was modified according to the characteristics of IP e-services. The calculations and analysis of this study was carried out using gap analysis and importance performance analysis (IPA) techniques on 404 user ratings through online surveys. The results of this research show that the quality of IP e-services implementation has not fully met the needs and expectations of users (96% conformity level or 100%). The main cause of gap in the quality of IP e-services today is caused by gap in the dimensions of support for the public (citizens support; gap score -0.29) and efficiency (efficiency; gap score -0.26). In terms of the IP service standard policy, several important components have not been fully and clearly regulated, both in the delivery process and in the management of services organized electronically. As a priority aspect, building public trust and confidence need to be improved. The supports to the users through information, interaction and transactions are needed to be optimized. Improving service standard policy is a strategy that DGIP needs to consider in meeting the current needs for a better quality of IP e-service.

**Keywords: public service quality; e-government; intellectual property; DGIP**

**Zaihan Harmaen Anggayudha, Jody Imam Rafsanjani (The National Research and Innovation  
Agency, Jakarta)**

**Information and Technology-Based Policy Strategy for Monitoring and Evaluation of  
Government Agencies with Corruption-Free Zone/ Serving and Clean Bureaucracy Zone  
Status**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 1, March 2022

The Integrity Zone Development is the government's attempt to reform its bureaucracy. It is considered successful when the work unit within the Ministry/Agency can achieve the status of Corruption Free Zone (WBK)/ Serving and Clean Bureaucracy Zone (WBBM). In order to maintain this status, the work units entitled as WBK/ WBM must maintain their quality by doing regular monitoring and evaluation. However, the monitoring and evaluation related to WBK/ WBM status in the Ministry of Law and Human Rights have not been performed optimally. Therefore, an attempt and strategy are needed to optimize the implementation of the monitoring and evaluation. This paper aims to determine the implementation and challenges of the work unit monitoring and evaluation with WBK/ WBM status within the Ministry of Law and Human Rights. The primary data were collected through interviews and library research. The result of this study shows that the monitoring and evaluation at the Ministry of Law and Human Rights has not been fully implemented. It can be optimized by considering the challenges faced by Internal Assessment Team. It is suggested to revise and prepare a regulation related to technical instruction for Integrity Zone Development at the Ministry of Law and Human Rights.

**Keywords: monitoring and evaluation; integrity zone development; information technology**