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## EDITORIAL

The Bill on Corrections was ratified into law on July 7, 2022 through the 28th Plenary Meeting of the House of Representatives of the Republic of Indonesia for the Trial Period V of the 2021-2022 Session Year. The ratification of the new Correctional Law will certainly be the starting point in the correctional legal system reform in the future. Various provisions derived from the new Correctional Law will soon be formed by adjusting the content material that has been regulated in this law.

Several substances are contained in the Bill on Corrections, among others: First, strengthening the position of correctional institutions in an integrated criminal justice system; Second, the expansion of the scope of correctional purposes which not only improves the quality of adult prisoners and juveniles, but also provides guarantees and protection for them; Third, reform of principles in the correctional system, enforcement of the rights and obligations of prisoners, juveniles and inmates; Fourth, the implementation of community guidance development programs and services as well as nurture, security and observation; Fifth, the code of ethical behavior of correctional officers as well as guarantees for the protection of the rights of correctional officers in obtaining legal aid; Sixth, the fulfillment of facilities and infrastructure, including IT in correctional institutions.

The discussion of the latest policies of the correctional system will be an interesting theme for practitioners and academics. It will later enrich the development of policy formation and science in the correctional sector. Therefore, *Jurnal Ilmiah Kebijakan Hukum* will also present various research results and thoughts related to the development of policies that will be formed in the correctional sector.

Jakarta, July 2022  
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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**Padmono Wibowo, Ghaneisya Anggareksi, Mulyani Rahayu, Maki Zaenudin Subarkah  
(Polytechnic of Correctional Science, Depok)**

**Resilience Capabilities Of Female Inmates Who Are Covid-19 Survivors In The Pekanbaru  
Women's Correctional Institution**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Resilience is an individual's ability to adapt positively, be able to survive and remain stable and healthy when facing unpleasant and risky conditions, such as Covid-19 pandemic. This study is to describe the resilience ability of female inmates who are Covid-19 survivors at the Pekanbaru Women's Correctional Institution. In addition, this study aims to determine the sources of resilience in female prisoners who survived Covid-19 at the Pekanbaru Women's Correctional Institution to improve the resilience capabilities of prisoners. The research methods used are qualitative approach and descriptive design. Based on the results of the study, it is known that the sources of prisoners' resilience abilities in dealing with Covid-19 originating from self perception is positive thinking, acceptance, self-motivation, others' supports, being diligent in worship and visitation, while those from self efficacy are self-control, looking for solutions, willing to repent, adapting, being independent, being grateful, appreciating time, interpreting life, doing good, and being devoted, while what comes from I Have are the support and the rules. The results of the study also found that there were female prisoners who survived Covid-19 who were Non-Resilient are paranoia, stress, low self-esteem and denials, self-isolation, indifference, fear and pressure, breaking the rules and lack of attention. Therefore, intense efforts need to be made so that non-resilient prisoners have the ability to be resilient in dealing with Covid-19.

**Keywords: resilience; inmates; covid-19; survivors**

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**Publications Of The Identity Of Children In Conflict With The Law On The Official Site Of The Indonesian Supreme Court Decision Directory**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Protection of children's rights in conflict with the law (ABH) is a state obligation. The protection aims to ensure the best interests of the child and to prevent discrimination. As stated in Article 19 of Law Number 11 of 2012, one of the rights is that law enforcement institutions are not allowed to publish the identities of ABH, either in print/ electronic media. However, their identities are still revealed in various Decisions of children's cases. Particularly, their identity is published on the Site of the Supreme Court's Ruling Directory. The purpose of this study is to find out why the Supreme Court Decision Directory Site does not keep the identity of ABH a secret and what are the implications. This research used a socio-legal approach. The results of the study show the management team did not understand their main tasks and rules of protecting the identity of ABH, inconsistency in checking copies of court decisions, ineffective monitoring, and only a handful of people reported the case so this situation is considered normal. The implications of the children's identity disclosure have affected the rights of children, families, and applicable rules that do not provide legal certainty.

**Keywords: the right of the children; publication of identity; children in conflict with the law; court decisions; juvenile criminal justice system**

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**Anak Agung Gede Duwira Hadi Santosa <sup>1</sup>, I Made Marta Wijaya <sup>2</sup>, Ni Luh Dewi Sundariwati <sup>3</sup>**  
**(<sup>1,3</sup> Faculty of Law, Udayana University, <sup>2</sup>RAH (The House of Legal Experts))**

### **Principles Of Selective Immigration Policy In Relation To Visa Free Entry For Tourism Purposes**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Tourism has an important role in enhancing the economic growth of a country. As a country with growing tourism industry, Indonesia is trying to increase foreign tourist visits by rolling out a visa-free policy. However, the visa-free policy has not yet fully provided benefits. In practice, this policy triggers the occurrence of transnational and international crimes, the rise of illegal foreign workers and the large number of foreigners who abuse their residence permits. The purpose of this research is to analyze the visa-free policy from the perspective of selective policy theory. The research method is normative legal research with a statutory approach and a conceptual approach. The results of the study show that the visa-free policy as contained in Presidential Regulation Number 21 of 2016 is not fully based on the theory of selective policy. In conclusion, the visa-free policy cannot be implemented optimally because the formulation of this policy does not represent the theory of selective policy. Consequently, the implementation of visa-free policy generates various matters that have an adverse impact on Indonesia. In order to overcome this problem, it is urgent to evaluate and improve the visa-free policy and to make this policy truly based on the theory of selective policy. Thus, the visa-free policy will be very selective in choosing and determining countries that can receive a visa-free policy.

**Keywords: tourism; visa-free policy; selective policy theory**



**Al Hafizh Ibnu Qoyyim (TPI Sabang Class II Immigration Office, Sabang)**

### **Overview Of Sabang Class Ii Checkpoint Immigration Office Authority Of Foreign Ship And Solution Effort**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

This study aims to examine the Immigration authority of a foreign ship which was delegated by the Police who were arrested on suspicion of narcotics crimes committed by its crews. The ship entered Indonesian territory with an emergency status in November 2019. The crews and the ship were handed over to Sabang Immigration Office. The crews of the ship were subject to Immigration Administrative Action by being placed in the Medan Immigration Detention Center. Meanwhile, the ship became the responsibility of the Sabang Immigration Office. What is the authority of the Immigration Office against foreign ships for alleged narcotics crimes and what are the efforts made by Sabang Immigration? The qualitative research methodology in this research used data collected from various sources. The results of this study are based on the laws and regulations in force in Indonesia. They include the Immigration regulations which explain that the Immigration Office does not have authority over the ship since it is not in the realm of Immigration investigation. The Immigration Office sought to resolve the ship's problem by actively working with relevant agencies and coordinating with the leadership for instructions and directions.

**Keywords: immigration; police; foreign ship; narcotics**

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**Faizal Kurniawan<sup>1</sup>, Moch. Marsa Taufiqurrohman<sup>2</sup>, Xavier Nugraha<sup>1</sup> (1 Faculty of Law of Airlangga University, Surabaya, 2 Faculty of Law of University of Jember, Jember)**

**Legal Protection Of Trade Secrets Over The Potential Disposal Of Trade Secrets Under The Re-Engineering Precautions**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

The Indonesian Trade Secrets Law Number 30/2000 (ITS Law) postulates exemptions for acts that are not considered infringements to protect trade secrets. One of them is the reverse engineering of other people's trade secrets. The problem is that the ITS Law does not limit the extent to which reverse engineering can be justified. The absence of these limitations also allows attempts to disclose trade secrets under the pretext of reverse engineering. This problem ultimately results in the absence of legal certainty for the protection against trade secret disclosure, which is the sole responsibility of the trade secret owner. This article aims to re-analyze the protection provided by the ITS Law and examine the extent to which the limitations on reverse engineering can be justified in the ITS Law. This article used normative juridical research methods combined with statutory, conceptual, and case approaches. It revealed a paradox in the protection of trade secrets against the possibility of trade secret disclosure. This article concluded that changes are necessary to the ITS Law, specifically by adjusting to the basic principles of IPR protection, limiting the extent to which the reverse engineering of other people's trade secrets can be justified, and adding a "Good Faith" clause in performing reverse engineering actions.

**Keywords: intellectual property rights; trade secret; reverse engineering; disclosure of trade secrets; legal certainty**



**Sendee Theresia Suriadiningrat, Fitra Deni (Universitas Satya Negara, DKI Jakarta)**

**Copyright Legal Protection for Portrait on Trademark (Analysis on Cassation Decision Number 52K/PDT.SUS-HKI/2021)**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Legal Protection within the scope of Copyright includes the protection of 2 (two) basic rights, Moral Rights and Economic Rights. The goal is that there are restrictions so anyone cannot use other's Copyrights commercially without permission from the Creator or His Heirs. In the case of the use Mrs. Meneer's Portrait in Trademark without written permission of the Heirs, it becomes debate whether the legal protection of the Portrait remains under the Copyright Law, or its Exclusive Rights have been lost because it falls within the scope of the Trademark Law. The research method used is normative juridical, by reviewing related laws and regulations, and conducting literature studies. The approach is carried out with Cassation Verdict No. 52 K / Pdt.Sus-HKI / 2022. The research concludes that the legal protection of Portraits in Trademarks remains based on the Copyright Law which adheres to the principle of Automatic Protection, so that the Exclusive Rights of the Creators remain. However, the Judge in His consideration determined the plaintiff's legal standing was not based on copyright principles. Based on this case, it is necessary to review the Copyright Law related to the principle of Automatic Protection of the Heirs in order to create justice and legal certainty.

**Keywords: legal protection; copyright; portrait; trademark**

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**Asep Kurnia<sup>1</sup>, Vita Nurul Fathya<sup>2</sup> (1Human Resources Agency of Indonesian Ministry of Law and Human Rights, Depok Polytechnic of Immigration, Depok)**

**Covid-19 Mitigation Strategy In Higher Education Institutions: A Qualitative Study At Indonesian Immigration And Correctional Science Colleges**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Covid-19 Pandemic is a global issue affecting higher education institutions, including colleges for future government officials like the Polytechnics of Correctional Science and the Polytechnics of Immigration. To present a research article regarding this issue, the qualitative method and the interview technique were used for this purpose. The data were collected based on interviews with actors involved in mitigating Covid-19 in those Polytechnics. As the result of interviews, several strategies for Covid-19 mitigation are obtained. They include strengthening the role of leadership in finding solutions in uncertain conditions, campus zoning, providing quarantine and self-isolating facilities, conducting tracing, testing, treatment, and other health protocols. In addition, the Covid-19 mitigation strategies also include implementing virtual learning methods during pandemics and providing access to anti-virus medicines, vitamins, and other kinds of supplements for employees and students. The campus management also conducts mitigation strategies by accompanying students during isolation, educating students and staff about self-protection from the virus, establishing a campus task force to organize mitigation activities, and also conducting coordination with other stakeholders. Overall, the research shows that the Covid-19 mitigation strategy in Poltekim and Poltekip campuses is quite effective. However, improvements in several areas are needed in the future. Regarding the strategy for Covid-19 mitigation in higher education institutions, the authors recommend several proper prevention strategies such as increasing the number of rooms and facilities to accommodate classes with health protocols and agreeing on a common perception among stakeholders about the learning, coaching, and methods of treatment in these colleges.

**Keywords: strategy; covid-19; higher education**

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**Edward James Sinaga (Center for Policy Research and Development Law and Human Rights Research and Development Agency Ministry of Law and Human Rights, Republic of Indonesia, Jakarta)**

### **Implementation Of Regulatory Policy In Government Agency**

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

Legal reform is a necessity. Regulatory arrangement is one aspect of the legal reform program within the framework of national legal development. Regulation is the solution and foundation of law enforcement and government policies, thereby creating legal certainty and order and providing benefits to the community. However, regulation is an obstacle to development due to overlapping regulations, hyper regulations, conflicts of interest and authority. It can be seen that there is a judicial review of existing laws in the Constitutional Court and 1,765 regional regulations have been canceled. The legal reform program is carried out based on the Regulation of the Minister of Administrative and Bureaucratic Reform concerning the Road Map for Bureaucratic Reform 2020-2024. The regulation mandates the need to create a Legal Reform Index to measure the success of Legal Reform. This research was conducted to provide an overview of regulations and the formation of regulations as well as the implementation of regulatory policies for Government Agencies. This research is juridical-empirical and used a qualitative approach. From the results of this study, it was found that there are regulations in Indonesia that require amalgamation, simplification, and revocation. Considering this situation, legal reform is needed. This determination is seen from the Legal Reform Index. Policy Measurement of the legal reform index is useful for ensuring the quality of good laws and regulations following the principles, rules and objectives of the ideal formation and arrangement of laws and regulations.

**Keywords: legal reform; regulatory arrangement; success variable**



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**Samuel Hamonangan Simanjuntak, Lita Tyesta A.L.W. (Master of Law Faculty of Law  
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**Procedural Justice or Substantive Justice: Review of Constitutional Court Decision Number:  
91/PUU/XVIII/2020**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

The formal test application of the Omnibus Law of Job Creation through the Constitutional Court Decision Number:91/PUU-XVIII/2020, in its statement the Constitutional Court declared its unconstitutional conditional. The Constitutional Court decision was made because considering the need to balance the formal and the strategic objectives of the establishment of the Job Creation Law, the formal condition is procedural justice while the strategic objective is substantive justice. The decision raised the question of whether the verdict was oriented to procedural justice or substantive justice. Research question of the study was what is the Orientation of Justice of the Constitutional Court Decision Number:91/PUU-XVIII/2020? This study is on normative law research. The postpositivism paradigm used a qualitative approach through the in concreto study of and court behaviour. The results of the study are the Constitutional Court Decision Number:91/PUU-XVIII/2020 through its considerations, opinions and verdicts in the main application oriented to procedural justice. It can be concluded that The Decree of Constitutional Court Decision Number:91/PUU-XVIII/2020 is oriented to procedural justice. The study recommends, in line with the principle of justice of John Rawls, the basic legal values of Gustav Radbruch and the social justice value of Pancasila and the 1945 Constitution of the Republic of Indonesia, formal test on Omnibus Law of Kob Creation should have been rejected, and made substantive justice orientation of the Constitutional Court Decision Number:91/PUU-XVIII/2020.

**Keywords: Constitutional Court decision Number: 91/PUU-XVIII/2020; procedural justice;  
substantive justice**

**Asmadi Syam (Banda Aceh District Attorney Office, Banda Aceh)**

**Measuring The Concept Of Restoration in Criminal Justice System**

Jurnal Ilmiah Kebijakan Hukum, Volume 16, Number 2, July 2022

Regarding the restoration concept such as restorative justice, alternative dispute resolution, circle sentencing, and *ishlah*, Indonesia's Criminal Justice System is not yet familiar with this concept. Generally, the concept of restoration is not known in Criminal Procedure Law (KUHAP) which adheres to the principle of legality. Based on this situation, it is interesting to study the concept of restoration, especially the functionalization of restoration concepts and the readiness of the Indonesian Criminal Justice System to implement the restoration concept. This research used a qualitative research method that discusses the concept and implications of restoration associated with the applicable rules or principles. The results show that the restoration concept, such as alternative dispute resolution, circle sentencing, and *ishlah*, is a concept that prioritizes the interests of the parties involved, namely the principle of win-win solution and recovery. This concept has long been practiced by the community, especially indigenous peoples and in the Criminal Justice System. It has been functionalized to resolve criminal cases that meet the requirements of both the level of investigation and prosecution as a way of resolving criminal cases. The implications of these concepts on the Indonesian Criminal Justice System are deviations from the principle of legality in the KUHAP. However, these implications are logically acceptable to the community in the framework of equitable and definite legal manifestations. It is recommended that the mechanism for implementing the restoration concept, such as alternative dispute resolution, circle sentencing, *ishlah*, can be included in the Draft Criminal Procedure Code (RKUHAP). Thus, in the implementation, the restoration concept can be juridically and formally accepted as a principle of the Indonesian Criminal Justice System.

**Keywords: concept; criminal; functionalization; implications; restoration**