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Editorial

The last Criminal Code Bill (RKUHP) discussion in November has been in an agreement between the House of Representatives (DPR) and the government for decision-making through a DPR plenary meeting so that the bill can be passed into law. Through discussions with various parties, the government through the Ministry of Law and Human Rights continues to strive to complete the RKUHP into law. The government hopes that in 2022 the bill can be passed into law.

Legal updates in the criminal field compiled in the Criminal Code will be enforced soon. Its application or implementation will have an impact on various aspects of life and society, both in terms of substance, institutional, and legal culture. The Ministry of Law and Human Rights will play an important role in disseminating information to all parties regarding these changes in criminal law.

The latest arrangements introduced in this law will certainly lead to social engineering, which will be an important and interesting theme for future research, particularly in the field of criminal law. Jurnal Ilmiah Kebijakan Hukum awaits the results of the latest research and thoughts that reflect the novelty of science and the implementation of the latest policies in the field of criminal law, especially for the implementation of the latest Criminal Code.

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

Humanitarian Intervention: Institutional Support From The Ministry of Law and Human Rights of The Republic of Indonesia

Yuditia Nurimaniar, Hilmi Ardani Nasution

Humanitarian intervention is an act of intervention using armed forces for humanitarian purposes. Indonesia as a country that has a role to participate in maintaining world security and order has the potential to carry out humanitarian interventions. The implementation of humanitarian intervention requires in-depth consideration and study. Therefore, this study tries to find out about the aspect of law and human rights institutions in the implementation of humanitarian intervention conducted by Indonesia. The method used is normative research, by reviewing existing regulations that are related to humanitarian intervention. The Ministry of Law and Human Rights based on its structure and function has a major role in the implementation of humanitarian interventions, both in the initial phase of initiation until the initiation of the intervention is approved for implementation. The role of the Ministry of Law and Human Rights needs to be encouraged to be fully involved in the implementation of humanitarian interventions.

Keywords: humanitarian intervention; international law; human rights

Measuring The Quality of Legal Aid Services as The Embodiment of Access to Justice

Oki Wahju Budijanto, Tony Yuri Rahmanto

Since the enactment of Law Number 16 of 2011 concerning Legal Aid, the practice of legal aid services still has several problems including not being able to reach all districts/cities due to the limited number of Legal Aid Organizations that can provide services. This paper aims to describe the implementation of legal aid services and analyze optimal strategies in improving the quality of legal aid services. This study used two approaches, qualitative and quantitative or commonly referred to as the Mix Method. Data collection methods used in this study are surveys, interviews and document studies. The results of the study show that the quality of legal aid services as a manifestation of access to justice can be said to be very good by referring to the results of the assessment on the performance of legal aid organization units and the quality of litigation and non-litigation legal aid services. However, several aspects need attention, namely the information aspects in litigation services and the procedural aspects of non-litigation services. Guided by the results of the study, a strategy is needed to improve the quality of legal aid organization services by increasing access to information to service recipients. Legal Aid providers can use online surveys in evaluating the implementation of legal aid services throughout Indonesia. This strategy is the right step, effective, efficient and in accordance with the pandemic conditions and technological advances.

Keywords: legal aid; online surveys; access to justice

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Fast-Track Legislation Mechanism as an Alternative to The Formation of Legislation In Indonesia

Agnes Fitryantica, Regy Hermawan

The formation of laws and regulations that take a short time to be formulated may have procedural defects in the process of their formation, such as procedural violations, non-implementation of one or several procedures for their formation and insufficient quality of implementation of the procedures for their formation. Consequently, the legislative process in Indonesia leads to poor conditions, causing problems in the formation of laws and regulations. The practice of making laws and regulations in a short period carried out by the legislature seems to apply the mechanism of fast-track legislation. However, this fast process is not in accordance with the positive law that regulates it. Therefore, the mechanism of fast-track legislation is seen as an alternative to the formation of laws and regulations to prevent the practice of forming bad laws and regulations from being repeated continuously. This research is normative juridical research, with a statutory approach and a comparative law approach. This research journal aims to examine the effectiveness of the fast-track legislation mechanism when used as an alternative to the formation of legislation in Indonesia.

Keywords: alternative; effectiveness; fast-track legislation

Immigration Biometric Data Exchange Among Asean Member States: Opportunities and Challenges In Legislations

Mohammad Thoriq Bahri

Biometric data can be described as data containing human physical characteristics. They can be in the form of fingerprint data, retina scans, and voice recognition. The application of biometrics for immigration purposes reduce the number of terrorism case and illegal migrants in the European Union (EU) territory and the United States. In 2013, biometric data exchange in ASEAN was made possible with the Bali Process Protocol. By a qualitative research methodology, using the CIPP (Context, Input, Process, and Product) analysis, this research attempts to find the legal obstacles as the main barriers in implementing biometric data exchange in the ASEAN region. This study finds that not all ASEAN countries have laws on personal data protection, which affect the Standard Operating Procedures (SOP) related to how the biometric data will be retrieved, processed, and managed, as well as the actions required if there is a violation of the law related to the SOP. This study suggests that ASEAN can accommodate the EU's framework, by using the General Data Protection Regulation (GDPR) as a single standard in the application of Data Protection regulations for the biometric data exchange system in ASEAN.

Keywords: ASEAN; Bali process; biometric data; data protection; immigration

Corrections (Pemasyarakatan) After Law Number 22 Of 2022: New Principles and Policy Identification Regarding The Functions of Probation and Parole Offices

Iqrak Sulhin

The enactment of Law Number 22 of 2022 concerning Corrections (Pemasyarakatan), which replaces the previous Law Number 12 of 1995, significantly changes the implementation of Correctional functions, mainly the functions carried out by Probation and Parole Offices. If in the 1995 Law Corrections is only referred to as the final part of the Criminal Justice System, the new Law emphasizes the position of Corrections which are more integrated with the entire criminal justice process, so that Correctional functions are carried out at the pre-adjudication, adjudication, and post-adjudication stages. This amendment to the law is also interesting to be studied conceptually, especially to find out what principles are contained in it that form the basis for implementing the functions of Corrections. In line with this, it is also essential to identify what kind of policy changes should be carried out regarding the functions of Probation and Parole Offices in the future with the existence of new principles and differences of provisions in terms of the implementation of corrections functions. By using conceptual analysis methods, particularly policy detection analysis, which is technically carried out in two stages; first, the analysis stage of the content of the law and second, the theoretical coherence analysis stage, this paper comes to two conclusions. First, this paper finds an affirmation of new principles in Law Number 22 of 2022, namely the principle of restorative reintegration, the principle of evidence-based treatments, the principle of individualization, the principle of continuity, and the principle of collaboration. Second, this paper identifies 5 (five) policy changes that need to be made regarding the function of the Probation and Parole Office according to those principles. The policies that must be implemented can be divided into three groups—first, the need for further operationalization of the restorative reintegration concept described by this law. Second, the need for reformulation of various instruments needed in implementing functions, especially social inquiry reports. Third, the need for facilitative strengthening, especially the quantity and quality of probation and parole officers and other facilitative supports.

Keywords: restorative-reintegration; evidence-based; individualization; continuity; collaborative

Expansion of The Discretion Concept Reviewed from Legal Anti-Positivism

Annisa Salsabila

The terms of discretion have been determined finitely in Article 24 of Law Number 30 of 2014 concerning Government Administration. However, the requirement "not contrary to the provisions of the legislation" was removed after the issuance of Law Number 11 of 2020 concerning Job Creation. This paper examines 3 (three) circumstances related to discretion. First, how is the concept of discretion viewed from the government administration? Second, how is the concept of discretion viewed from the school of legal anti-positivism? Third, what are the parameters of the validity of discretion based on the legislation? This study used a normative juridical method with a statutory, conceptual, and philosophical approach to analyze the norm and concept of discretion. The results of the study indicate that in the administrative field, discretion may be contrary to the provisions of the legislation if there is stagnation of government and it is intended for the public interest. Such a concept departs from a critique of legal positivism which leads to many subsequent ideologies including utilitarianism, legal realism to CLS. The parameters of the validity of discretion are formal legitimacy consisting of authority and procedures as well as material legitimacy. This research suggests that there is a need for heightening the control mechanism for the issuance of discretion through the superiors of the administration officials concerned.

Keywords: discretion; positivism; public interest

Public Participation After The Law-Making Procedure Law of 2022

Fahmi Ramadhan Firdaus

Constitutional Court Decision No. 91/PUU-XVIII/2020 affects Law no. 11 of 2020 concerning Job Creation. More than that, the Constitutional Court's decision seems to portray the fundamental problems of the law-making process that must be corrected immediately. These problems are, first, the Omnibus method in Law no. 12 of 2011 concerning the Establishment of Legislation. Second, procedural error and a change in the text after the mutual agreement. Third, ignoring meaningful public participation in the formation of laws. This research will focus on correcting the Constitutional Court to the process of law formation to prioritize meaningful participation, not just a mere formality. The legislators then followed up the Constitutional Court's notes by revising Law no. 12 of 2011 concerning the Establishment of Legislation for the second time become Law no. 13 of 2022, one of the substances of which is to change the provisions of Article 96, which contains the regulation of public participation in the formation of laws. The formulations of the problem raised in this study are: what is the meaning of meaningful public participation in the construction of rules based on the Constitutional Court Decision No. 91/PUU-XVIII/2020, and what is the ideal arrangement in Law no. 12 of 2011 concerning the Formation of Legislations to accommodate meaningful participation in the formation of laws. This study found that Law no. 13 of 2022 cannot accommodate meaningful participation because it is still a right and not an obligation. Then legislators must create information technology-based tools that help increase meaningful participation in law-making.

Keywords: public participation; law making; formal review; constitutional court

Law Enforcement of Unregistered Marriage Practices In Indonesia Lawrence Meir Friedman's Legal Effective Perspective

Harry Pribadi Garfes

Unregistered marriage is an endless problem with non-optimal law enforcement. Meanwhile, the massive impact of unregistered marriage is dangerous and this practice is not committed by one or two people but involves many parties. This research aims to describe parties involved in unregistered marriages and their respective roles. In addition, it provides information regarding unregistered marriage regulations and sanctions and determines law enforcement for the parties involved. This normative research used case approach and statutory approach. The data collection technique is documentation and the analysis technique is deductive and inductive. The results of this study found several parties involved in unregistered marriages. These parties are: first, main actors such as illegal rulers, husbands, and wives or marriage guardians. Second, parties who participate, such as marriage witnesses, brokers, and jockeys. Unregistered marriages are regulated in chapter 1 paragraph (2), chapter 3 paragraphs (1 and 2) of Law no. 32/1954 concerning the enactment of Law no. 22 of 1946 concerning registration of marriages, divorces, and reconciliation in all regions outside Java and Madura, the sanctions are contained in chapter 4 and chapter 45 paragraph (1) letter (a) PP No. 9/1975 concerning the Implementation of Law no. 1/1974 on marriage. Law enforcement against the perpetrators of unregistered marriages has not been optimal.

Keywords: legal effectiveness; law enforcement; unregistered marriage

Penal Mediation As A Medical Dispute Settlement for Hospital Malpractice Cases in Indonesia

Sirman Dahwal, Zico Junius Fernando, Ria Anggraeni Utami

Penal Mediation is an alternative form of case settlement that originates with the idea of restorative justice. Seeing a large number of medical personnel being convicted in malpractice cases (primum remedium), mediation in dispute settlement for malpractice cases in hospitals becomes the concept of victim protection, harmonization, and overcoming rigidity/ formality in the applicable system. Therefore, the purpose of this study is to find solutions to avoid the adverse effects of the Criminal Justice System with the concept of mediation as an effort to resolve malpractice cases in the future. This paper used normative legal research or library research with a statute, conceptual, and comparative approach. The nature of the research used in this study is descriptive-prescriptive. The author used content analysis. The findings of this study are meant to provide an alternative solution to punishment which should be a last resort (ultimum remedium) from law enforcement in the form of non-litigation settlement through mediation.

Keywords: hospital; malpractice; mediation; non-litigation.

The Challenges of The Indonesian Government in Eliminating Gender Bias Practices: The Perspective Of Kinship Systems In Indigenous Peoples And Regulations

Rodes Ober Adi Guna Pardosi, Ahmad Fathony

Gender bias is a condition that indicates the existence of a preference for one of the socially and culturally constructed traits inherent in men and women. Gender differences in treatment harm certain genders. The losses mentioned are related to family and social status contexts. This paper is a normative study using a normative-legal approach, focusing on legal discrimination and observing gender practices in regulation through indigenous kinship systems and literature research. This paper aims to examine gender bias practices, and government efforts to prevent and overcome gender bias practices in Indonesia. Sexist practices are found in Indigenous peoples' lives, regulations, and government policies. Government efforts to prevent and control include ratification of international regulations and ratification in the form of legal instruments. However, other measures are needed from a prevention perspective such as: Political involvement of governments in socialization in the form of an improved understanding of indigenous peoples, the revision of rules that may lead to gender-biased practices, and the formulation of better regulations to address gender bias practices.

Keywords: Gender; Policy; Regulation