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## **Editorial**

Thank Allah SWT's, who has bestowed His grace and gifts upon all of us so that the Editors may publish the first edition of JIKH in March 2023. This edition presents several writings related to legal and human rights policy issues.

This edition includes various papers that discuss how to Strengthen the Position of Penitentiaries in the Integrated Criminal Justice System Through the Prisoner Service Function; LKMN as a Determiner of the Economic Value of Bindings to Music and Song Copyrights as Objects of Fiduciary Warranties; Criminal System Disparity in the Indonesian Immigration Law 2011; Implementation of the 2024 General Election in the perspective of Emergency Constitutional Law; A Concept of the Needs of the Ministry's Internal Policy Agency for the Policy Response to the Formation of BRIN; Arrangements for Sign Language Interpreters in Making Authentic Deeds by Notaries for Deaf Appeasers; Legal Reasoning: How Well-Known Marks are Positioned Through Legal Positivism; Public Service Policy in Immigration that Pays for Non-Tax State Revenue (PNBP).

It is hoped that these writings can contribute to increasing the reader's knowledge. Finally, we would like to thank The Head of the Law and Human Rights Research and Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia who has provided support in the publication of this Journal. We also thank the reviewers for their contribution to improving the quality of every paper. We also welcome ideas and suggestions in order to enhance the quality of the Journal.





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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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### **Strengthening the Position of Correctional Facilities in the Integrated Criminal Justice System through the Function of Prisoner Services**

**Riki Afrizal, Iwan Kurniawan, Fajar Wahyudi**

Changes in the Correctional System in Indonesia are marked by the ratification of Law Number 22 of 2022 concerning Corrections. One of the things that are regulated is regarding the implementation of prison services as a correctional function. This arrangement is of course interesting to analyze because so far correctional facilities have only been synonymous with fostering convicts, which is the final stage in the criminal justice system. Services for detainees at the detention center are related to the ongoing criminal justice process, because juridically the responsibility for detention is still on the law enforcement agencies that carry out the detention. This paper aims to analyze the relationship between the regulation of prison services and the integrated criminal justice system in Indonesia. The discussion and analysis of this research uses a normative juridical method with a legal and conceptual approach, especially regarding the Correctional System and the integrated criminal justice system. The results of the analysis show that there are clear arrangements regarding the implementation of prison services as a correctional function. This is a form of legal certainty and at the same time an affirmation of the existence of correctional facilities as a criminal justice subsystem. As part of the Integrated criminal justice system, correctional facilities do not only work in the final process of the criminal justice process through the function of development prisoners, but also during the work or the on going criminal justice process.

**Keywords:** Strengthening; Correctionals Facilities; Criminal Justice System; Prisoners Services

### **The National Collective Management Institute (LMKN) as an Appraiser Of Economic Value in The Binding of Music and Song Copyrights as Objects Offiduciary Guarantees**

**Sri Handayani, Joni Emirzon, Annalisa Y.**

One of the creations protected by copyright is songs and/or music. Legal protection for them is a necessity in order to create a conducive climate to the development of music industry in Indonesia. In order to facilitate song and/or music writers with better control over their works, they can appoint representatives to regulate the management of their royalty, in this case LMKN (The National Collective Management Institute). Law number 28 of 2014 concerning copyrights regulates that copyright can be used as an object of fiduciary guarantee. However, its use is still hampered by the fact that the economic value of music and song copyrights cannot be determined easily, especially if it is used for fiduciary guarantee. Most banks do not accept it for loan collateral. The objective of this research was to analyze the roles of LMKN as the determiner of the economic values of song and music copyrights for the purpose of binding them for objects of fiduciary guarantee. This normative study uses statutory approach, conceptual approach, analytical approach, and futuristic approach. The determination of the economic values of song and music copyrights can be done by LMKN, a one-stop service institution that collects the royalty of music and song in Indonesia. The National Collective Management Institute (hereinafter briefly referred to as LMKN) as an institution that can provide an appraiser of the economic value of Music and Song Copyrights. The use of SILM (a music and song information system and data center) can help the estimation of music and song's economic value based on the royalty accepted by the art's creator or copyright holder. The amount of royalty can determine the binding of music and song copyrights for the objects of fiduciary guarantee.

**Keywords:** Appraiser; Copyright, Economic Value; Fiduciary Guarantee; LMKN

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### **Criminal System Disparity in The Indonesian Immigration Law 2011**

**Dista Dewi Rahayu, Ridwan Arifin, Luby Lukman Zakaria**

The Criminal Provisions in Indonesian Immigration Law of 2011 are designed as acts of legislation for preventing transnational organized crimes in Indonesia. This law has existed for more than 10 years and has been no critical evaluation of the immigration criminal provisions. The construction of the criminal system has a non-uniform pattern of penal policy formation. This research employed the doctrinal research method with deductive reasoning that analyzed Articles on immigration criminal provisions from the perspective of Jeremy Bentham's theory of punishment analyzing the quality of criminal Articles. The results indicate that there are reactive and not pre-empting immigration criminal provisions, poor criminal provisions during immigration examinations, disparities in Judge's decisions at courts, varied patterns of punishment and sanctions, and inconsistency of criminal liability arrangements against corporations. Reconstruction of immigration criminal Articles is urged to achieve Bentham's principles and objectives of the law in sentencing. Criminal Articles should be dominated to prevent cross-border crimes during immigration clearance.

**Keywords:** Criminal Disparity; Immigration Law; Criminal Provision

### **A Concept of The Needs of The Ministry's Internal Policy Agency for The Policy Response to The Formation of Brin**

**Willy Wibowo**

The current Government policy that integrates all Research and Development Agencies in Ministries and Institutions demands that these agencies must be transformed. To be able to answer various strategic issues and anticipate demands that come from the internal and external environment is the basis for an organization to organize and evaluate internally. Proposed organizational arrangements in this case must have a clear basis and contain analysis of the various aspects needed. The purpose of this scientific work is to provide a concept for transforming a research and development Agency into an internal Policy Agency to avoid duplication of duties and functions in existing Research Agencies. This study uses the policy review type method which is focused on reviewing documents. The need for an Internal Policy Agency at the Ministries/Agencies level is currently very urgent because of the diverse and complex fields of work and to produce quality policies and can be measured by the Policy Quality Index. There are several suggestions for Ministries/Institutions that will form an Internal Policy Agency, among others, transformation must be based on evidence-based needs.

**Keywords:** Organizational Structure; Government Research and Development Institute; Structuring and Strengthening Organizations; Bureaucratic Reform

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### **Legal Reasoning: How Well-Known Marks Are Positioned Through Legal Positivism**

**Zakki Adlhiyati, Achmad**

Legal protection for well-known mark needs to be examined. Indonesia has tried to conform its legal system with international law, most notably the Paris Convention and the TRIPS Agreement. However, the court's decision indicates that the well-known mark remains unfavourable. This paper aimed to analyse judges' rationale when they rejected a lawsuit against a well-known trademark in Indonesia which was the trademark dispute of "Starbucks" and Pierre "Cardin". This study was conducted using legal research methods and it examined legal materials from judges' decisions and literature review. Therefore, knowing the judge's rationale for dismissing the claim is essential. In the first case, the plaintiff's documented evidence was insufficient to establish the respondent's bad faith, but the judge's justification for rejecting the lawsuit was insufficient either. Meanwhile, in the second case, the judge denied the claim based on *ne bis in idem*, which aims to reach legal certainty, so the judge can lean more toward positivism. The positivism requires clear rules so as not to cause multiple interpretations. However, trademark and geographical indication law does not give complete regulations on well-known marks. As a result, problems and conflicts frequently arise in practice when it comes to the protection of well-known marks.

**Keywords:** Pierre Cardin; Starbucks; Well-Known Mark

### **Policy for Increasing PNBP in Public Services in The Immigration Sector**

**Raden Natanegara Kartika Purnama, Muhammad Arief Adillah, Cahyoko Edi Tando**

One of the non-tax revenues in Indonesia is generated by services at Immigration Sector which is currently showing significant changes and activities. Public services provided to all citizens must be excellent and in line with the needs of the community itself. This study used a Systematic Literature Review (SLR) with PRISMA Method which also searched for articles using Scopus and ScienceDirect database because those have good reputable nationally and internationally by academics. The study resulted in 2 (two) policies in Immigration through analysis of the results of the search for the article. The first is to improve developing immigration services and the latest innovations from digital Immigration and to promote a humanist approach and accountability for its services and ease of access given. Moreover, monopoly on human resources at Immigration is currently carried out in vital cooperation due to national security and state policy especially related to intelligence analysis. Meanwhile, cooperation with other parties is limited to providing space, education in terms of increasing human resources, and cooperation to exchange information with certain parties. The conclusion of this study led to 2 research results, which are policies to improve services and policies to strengthen immigration. The suggestions for future research are in-depth field research using qualitative or quantitative method on immigration agencies and other contributive factors to state revenue.

**Keywords:** excellent service; human resources; immigration; public service

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## **Arrangement Of Sign Language Interpreters in The Creation of Authentic Deeds by Notaries for Deaf People**

**Ida Ayu Putu Kurnia Pradnyadewi, I Gusti Agung Mas Rwa Jayantiari**

The writing aims to analyze the arrangements of sign language interpreters in making authentic deeds by Notaries for deaf people in Indonesia, analyze relevant arrangements on these issues for the provision of sign language interpreters by Notaries for deaf people in the future. The benefits of writing provide juridical understanding related to the arrangement of providing sign language interpreters in making authentic deeds by Notaries for deaf people in Indonesia and providing scientific contributions in the dimensions of Notary Law. The void of norms underlies writing using normative types of legal research through statutory and comparative approaches analyzed with descriptive, comparative, argumentative, and prescriptive techniques. The results showed that the authority of Notaries to make authentic deeds is contained in Article 15 paragraph (1) of the Amendment Notary Position Law. The arrangement is intended for those with non-disabled conditions only because it contains a clause “self-explanatory.” Based on a comparative study of the Amendment Notary Position Law with the Japanese Notary Law, the Amendment Notary Position Law has not regulated the provision of sign language interpreters for deaf people, while the Japanese Notary Law has regulated sign language interpreters. Solving the urgency of this problem by formulating the arrangement of sign language interpreters in the Amendment Notary Office Law by adopting the provisions contained in the Japanese Notary Law.

**Keywords:** Authentic Deed; Sign Language Interpreter; Notary; Deaf People

## **Relevance of The Postponement of General Elections in 2024 in the Perspective of Emergency State Law**

**Denis Kurniawan**

Discourse on postponing the elections in 2024 was circulated amid the ongoing Corona Virus Disease 2019 (Covid-19) Pandemic, which conceptually could be classified as a civil emergency in Indonesia. The discourse was brought up by a certain group of political elites and received various responses in the community, from those who approved it to rejected the idea. This paper describes the implementation of the 2024 election in the context of emergency constitutional law, as a branch of scientific study of constitutional law which discusses the state when it is faced with abnormal conditions, aka emergencies due to dangers that threaten the continuity of the nation and state. This paper uses normative legal research conducted using a statutory and conceptual approach which will later assess whether the postponement of the election can be justified from the point of view of emergency constitutional law, and by looking at the implications of the current danger of Covid-19 supported by policies that there is from the government, as well as the election management body itself, namely the General Elections Commission.

**Keywords:** Implementation; General Elections; State of Emergency