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ADVERTORIAL

Gratitude in the presence of Allah SWT, the De Jure Legal Research Journal published by the Indonesian Legal Research Association in collaboration with the Legal and Human Rights Research and Development Agency of the Indonesian Ministry of Law and Human Rights canre-publishVolume 23 Number 3 September 2023.

The publications of the De Jure Legal Research Journal Volume 23 Number 3 September 2023 will contain 8 (eight) articles from various research institutions in Indonesia. To improve the improvement of the legal and legislative system, significant improvement efforts are needed for the government's strategic policies. In this regard, the editors of the De Jure Research Journal in Volume 23 Number 3, September 2023, raised articles including the ideal mechanism of clerical errors resolution in the legislation in Indonesia (comparison with United Kingdom, United States, and Singapore); dynamics of local government policies in providing recognition and protection of customary law communities in Maluku; the state's position as a shareholder of dwiwarna shares in the privatization of state-owned-holding-members-companies; non-muslim submission in Aceh's Qanun Jinayat: deviation or development of the principle of criminal law?; power of the chairman of authority in preparing development plans for Nusantara Capital City; expansion of interpretation of phrase of preliminary investigation stages through systematic interpretation as a solution to prejudicial dispute; periodic principles in general elections: orientation and implications in Indonesia; comparison of criminal provisions in national legislation of deep seabed mining sponsoring countries. Through these writings, they can contribute ideas that become reference materials in fulfilling the sense of justice and legal protection in society.

We deliver thanks to the authors who have trusted the De Jure Legal Research Journal to publish their work. We also express our gratitude to the Bestari Partners who have been willing to help, examine and correct the writings of the authors in this publication.

Finally, we express our gratitude to the Head of the Research and Development Agency for Law and Human Rights, the Ministry of Law and Human Rights of the Republic of Indonesia, and the Indonesian Legal Research Association for agreeing to publish this De Jure Legal Research Journal.

Editor:
Jakarta, September 2023

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Eka NAM Sihombing, Cynthia Hadita

The Ideal Mechanism of Clerical Errors Resolution in The Legislation in Indonesia (Comparison with United Kingdom, United States, and Singapore)

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 273-282

The problem of article clerical error creates multi-interpretation, ambiguity, and obscure in understanding the meaning of the substance of the Article so a mechanism is needed to optimize the authority of the Constitutional Court. This study aims to optimize the Constitutional Court's role in providing a legal interpretation of clerical error. The research method used is normative juridical with a doctrinal approach. The results showed that clerical error resulted in multiple interpretations of the substance of an Article. Thus, a legal interpretation by the Constitutional Court for the clerical error is needed which needs to be optimized for its role as a preventive multi-interpretation of the substance of articles in laws and regulations in Indonesia. For example, there is a newly passed law, so to change an article that is not by the system of changing/revising the law for a long time, so to shorten the mechanism for change/revision it requires legal interpretation in the Constitutional Court.

Keywords: Preventive; Article; Clerical

Nasaruddin Umar, Rustam Magun Pikahulan, Syafa'at Anugrah Pradana

Dynamics of Local Government Policies in Providing Recognition and Protection of Customary Law Communities in Maluku

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 283-298

The problem of protecting and recognizing the rights of Customary Law Communities in Indonesia, including in Maluku, from the perspective of local government policies, is still being underestimated, even though Article 18 B paragraph (2) of the constitution has given recognition and respect to the unity of Customary Law Communities and their traditional rights, However is it that to get recognition of the status of customary villages in several negeri in the districts of Maluku and disputes over the mata rumah parentah still occur frequently. This study raises issues regarding legal protection and problems regarding the recognition of the rights of Customary Law Communities in districts/cities in Maluku by using statutory, conceptual approaches and case studies of court decisions relating to the rights of Customary Law Communities. Based on the results of the study it was found that the Provincial Government had issued a policy to provide customary law protection in Maluku which became the basis for establishing customary villages in Ambon City and Tual City, however, there are still regencies that have not provided recognition in the form of regional regulations for establishing customary villages, such as in West Seram Regency and Central Maluku Regency due to weak local government commitment and juridical problems.

Keywords: Policy; Customary Law Communities; Regional Government; Recognition and Protection

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Huta Disyon, Elisatris Gultom, Ema Rahmawati

The State's Position as A Shareholder of Dwiwarna Shares in The Privatization of State-Owned-Holding-Members-Companies

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 299-312

According to Government Regulation 72/2016, the formation of state-owned-holding-companies ("SOHC") is accomplished using the transfer mechanism, which transforms State shares in SOEs into equity in other SOEs, resulting in a change in the status of share ownership of holding-member-companies from being owned directly by the State to being owned by the holding company. GR 72/2016 also requires the state to own shares with special rights in holding-members-companies originating from ex-SOE, which can only be owned by the state, known as Dwiwarna shares. Potential issues arise because of the ambiguity of the controlling authority role in managing a SOHC, whether the state still holds it or has been transferred to the parent company, including in terms of selling shares of holding-member-companies. Hopefully, this study will provide the State with legal certainty, benefits, and justice in privatizing holding-member companies. The research methodology used is a normative juridical approach with qualitative normative legal research that relies on secondary data from the library. This study indicates that the State's Controlling Rights are based on state ownership of Dwiwarna shares in holding-member companies originating from ex-SOE, implying that the sale of company shares only sometimes results in reduced state control and ownership. As a result, the sale of series B shares may be accomplished using corporate regulations in line with their respective authorities. Meanwhile, the State must carry out the sale of Dwiwarna shares, per GR 33/2005. The author recommends that the State create a new mechanism for exercising Dwiwarna shareholder privileges so that the implementation of the absolute authority and rights for Dwiwarna shareholders can proceed in an orderly and legal manner.

Keywords: State Controlling Rights; State-owned-holding-companies; Dwiwarna

Mohd. Din, Ali Abubakar, Marah Halim

Non-Muslim Submission in Aceh's Qanun Jinayat: Deviation or Development of the Principle of Criminal Law?

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 313-324

This article aims to provide legal logic for the permissibility of choosing criminal law for non-Muslims who commit criminal acts regulated in the Aceh Qanun Jinayat based on one of the legal principles raised (endorsement) as the basis for establishing norms in the qanun in question, namely the principle of submission which is actually not recognized in criminal law. The research data are several decisions of the Syar'iyah Court in Aceh against violations of the Qanun Jinayat committed by non-Muslims. It is assumed that the decision is a shift in the principles of criminal law. This problem will be analyzed by observing the basic principles of criminal law, including the principles of the application of criminal law and the politics of criminal law. The results of the study showed that from the point of view of the principles of criminal law which is a compelling law, this submission is a deviation, but from a legal-political perspective, because the birth of permissible provisions in qanuns is a political process, where the demand to apply Islamic Sharia which basically only applies to Muslims, then as a softening of the territorial principle non-Muslims are allowed to vote.

Keywords: Punishment; Submission; Qanun Jinayat

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Diani Sadiawati, Rianda Dirkareshza, Wicipto Setiadi Elizabet Devi Permatasari

Power of The Chairman of Authority in Preparing Development Plans for Nusantara Capital City

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 325-340

Preparing development plans for the National Capital City (IKN) of Nusantara is one of the authorities that must be carried out by the Government to ensure the continuity and progress of the State's development in accordance with the mandate of Law Number 3 of 2022 concerning the National Capital City. However, in reality, the formulation of development plans for the new National Capital City still experiences problems related to the Nusantara Capital City Authority (OIKN). Problems with OIKN in preparing development plans for the new National Capital City can come from various factors, such as disharmony of laws and regulations. This study aimed to find out the power of the chairman of authority related to the planning and development of the Nusantara Capital City and the concept of the chairman of authority in preparing the Nusantara Capital City development plans in harmony with the Long-Term National Development Plan. The method used in this study was the Normative Method with interviews and Legislative, Conceptual, Philosophical, and Futuristic approaches which were analyzed in a descriptive-analytic manner and processed qualitatively. The results of the study show that in planning for the development of the national capital city, the chairman of authority has the power to determine the location of the new national capital city according to geographical, social, and economic conditions and to prepare a master plan. However, IKN development plans that are not guided by the Long-Term National Development Plan (RPJPN) as national development guidelines, but are instead guided by the Government's Master Plan (RIP) will create their own problems. The recommendation from this research is to launch a Hybrid Government system followed by the process of integrating the RIP into the 2025-2045 RPJPN so that it becomes the country's grand master plan for the next 20 years.

Keywords: National Capital City; Chairman of Authority; Planning; Problems

Suwitno Yutye Imran, Abdul Madjid, Apripari

Expansion of Interpretation of Phrase of Preliminary Investigation Stages Through Systematic Interpretation as A Solution to Prejudicial Dispute

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 341-356

This study examined two things; the first is related to the relationship between judicial disputes, legal protection, and the role of the investigator; the second is related to the expansion of the phrase of preliminary investigation stages in the Criminal Procedure Code through systematic interpretation. This study applied normative legal research methods specified on the type of legal research for in-concreto cases. To strengthen the study, a statutory approach, a case approach, and a theoretical approach were used. The results of the study found that the actions of investigators who were limited to carrying out investigations without paying attention to cases that had a direct relationship with the cases being investigated could not yet provide legal protection, because they opened up opportunities for judicial disputes to occur. Speaking of which, judicial disputes need to be avoided through the use of systematic interpretation carried out by investigators in the investigation stages to expand the interpretation of the phrase of investigation stages in the Criminal Procedure Code and its derivative regulations. The systematic interpretation referred to is carried out in a limited manner, by simply reading opportunities for civil lawsuits and state administrative requests from parties involved in the case being investigated. In addition, it ensured the similarity of the parties involved in criminal cases as well as civil cases or state administrative cases in question.

Keywords: Systematic interpretation; Investigation; Prejudicial dispute

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Muhammad Mutawalli, Zulhilmi Paidi

Periodic Principles in General Elections: Orientation and Implications in Indonesia

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 357-374

The general election is one part of the practice of democracy in Indonesia. In this case, the general election is a manifestation of people's sovereignty. In general, the principles of elections include the principles of direct, general, free, confidential, honest, and fair. This study seeks to explore the legal construction related to the periodic principle of general elections which must be held periodically every five years to become a separate principle in elections. The issue of periodization in general elections really needs to be emphasized as one of the principles in general elections as the main basis for creating a cycle of replacement and filling of public positions in the state administration system. This research is a normative legal research with statutory and conceptual approaches. The results of the study confirm that the orientation of legal construction on the periodic principle has actually been expressly stated in the 1945 Constitution of the Republic of Indonesia and is based on a systematic interpretation. In this case, the orientation of the periodic aspect is part of the general election principle which is obligatory and must be implemented. This implies that the principles of general elections include the principles of direct, general, free, confidential, honest, and fair, and must be held periodically for five years. In this case, the periodic principle becomes very important to be recognized and explicitly stated in the general election law as a new principle in the technical implementation of general elections. this has implications for the implementation of elections that are inconsistent and tend to change in each implementation. Whereas in holding general elections, the periodic principle will uniformize the holding of elections simultaneously, both national elections and elections at the regional level by setting forth and affirming in the general election law that periodization is a technical principle in holding general elections in Indonesia.

Keywords: Democracy, General Election, Periodic Principle.

Ratna Galuh Manika Trisista, Farhana, Hamdan Azhar Siregar

Comparison of Criminal Provisions in National Legislation of Deep Seabed Mining Sponsoring Countries

The De Jure Legal Research Journal Volume 23, Number 3, September 2023, Page 375-388

National legislation is the requirement established by the International Seabed Authority (ISA) for each country sponsoring Deep-seabed Mining (DSM) and criminal provisions and sanctions are an inseparable part of it. A total of 38 countries are listed as sponsor countries, while Indonesia, with its potential as a maritime country and member of UNCLOS 1982, has not participated in DSM activities. This article aims to explore and compare the criminal provisions in the national legislation of sponsoring countries that have been approved by the ISA so that the formulation of sanctions in Indonesian national legislation can be illustrated in order to prepare Indonesia's contribution as a sponsoring country for DSM activities in the International Seabed Area. The research method used is normative juridical with a statutory and comparative approach. The research results show that the majority of sponsoring countries in their criminal provisions stipulate criminal sanctions in the form of fines as well as the possibility of imprisonment and several administrative sanctions. Based on the results of this comparative study, it can be concluded that the formulation of sanctions that can be regulated in Indonesian national legislation is a maximum fine of more than 100 billion Rupiah and a maximum prison sentence of not less than 5 years, as well as additional criminal penalties and administrative sanctions in the form of termination or revocation of DSM activity permits, confiscation of profits resulting from illegal DSM acquisition, and compensation for environmental damage caused by DSM activities.

Keywords: Deep-Seabed Mining, Criminal Provisions, National Legislation, Sponsoring Country.