

The De Jure Legal Research Journal is a quarterly legal magazine (March, July, and November) published by the Law Policy Strategy Agency of Ministry of Law of the Republic of Indonesia, in collaboration with the **INDONESIAN LEGAL RESEARCHER ASSOCIATION (IPHI) (Legalization of Legal Entity of Association: Decree of Minister of Law and Human Rights of the Republic of Indonesia Number: AHU-13.AHA.01.07 Year 2013, dated January 28, 2013)**. This journal aims to serve as a forum and medium of communication, as well as a means to publish various legal issues that are actual and current for Indonesian legal researchers in particular and the legal community in general. In its management in 2024, the De Jure Legal Research Journal involves various parties as stipulated in the Decree of the Director General of Higher Education, Research, and Technology, Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia Number: 177/E/KPT/2024 dated Oktober 15, 2024 concerning the Establishment of a Publishing Team for the De Jure Legal Research Journals Year 2025, with the team composition as follows:

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ADVERTORIAL

Thanks to Allah SWT, the De Jure Legal Research Journal published by the Legal Policy Strategy Agency of the Ministry of Law of the Republic of Indonesia in collaboration with the Indonesian Legal Research Association can be republished Volume 25 Number 3 November 2025.

The publication of the De Jure Legal Research Journal Volume 25 Number 3 November 2025 contains 11 (eleven) articles from various research institutions in Indonesia or academic community. To improve the legal and legislative system, significant improvements to government strategic policies are needed. In connection with this, the editor of the De Jure Research Journal Volume 25 Number 3 November 2025 raised articles including An Integrated Policy Model For Supervisory Punishment Under Indonesia's New Criminal Code; Conflict Between Public Transportation And Local Community Rights in The Sea; The Role of International Humanitarian Law in the Conflict with the West Papua Liberation Army; When Consent Becomes Contested : Comparative Reconstruction of Marital Rape in Indonesian Criminal Law And Islamic Law; Unsecured Loans: Regulatory Inconsistencies and The Path Towards Hybrid Guarantees; Deep Seabed Mining Dilemma: Stipulation Under ISA, the Precautionary Principle, and BBNJ Agreement Challenges; Power Dispersion as a Barrier to Autocratization: The Paradox of Indonesia's Compromised Democracy; The Government Policy as an Effort to Provide Protection for Foreign Refugees; Abandoning the Precautionary Principle in Environmental Licensing: a Comparison of Indonesia with Three Other Countries and a New Evidentiary Mechanism; Illegally Obtained Evidence in Indonesia's Draft Criminal Procedure Code (RUU KUHAP): Exclusionary Rules and the Due Process of Law; Formulation of a Just Land Dispute Resolution Model: Derrida's Deconstruction Approach to the Former Dumai Concession Case. Through these writings, they can contribute ideas that can become reference material in fulfilling the sense of justice and legal protection in society.

We would like to express our thanks to the authors who have trusted the De Jure Legal Research Journal to publish their work. We would also like to express our thanks to peer reviewers who was willing to help, research and correct the author's writings in this publication.

Finally, we would like to express our gratitude to the Head of the Legal Policy Strategy Agency, Ministry of Law of the Republic of Indonesia, and the Association of Indonesian Legal Researchers who have agreed to publish this De Jure Legal Research Journal.

Editor:
Jakarta, November 2025

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Rohmat, Milda Istiqomah, Nurini Aprilianda

An Integrated Policy Model For Supervisory Punishment Under Indonesia's New Criminal Code

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, Page 151-170

The inclusion of supervisory sanctions in Indonesia's new Criminal Code signifies a shift toward non-custodial and rehabilitative forms of punishment, reflecting a broader transition from retributive to corrective and restorative justice. Despite their formal adoption, the regulatory frameworks necessary for their implementation remain underdeveloped. This study examines the normative and philosophical foundations of supervisory sanctions and proposes an integrated legal policy model for their effective application. Employing a normative juridical method supported by statutory, comparative, and conceptual approaches, the research is analyzed within a prescriptive framework. The findings indicate that these sanctions are intended to provide offenders with a second chance through structured oversight and individualized rehabilitation, thereby avoiding incarceration. This study offers a novel insight by presenting an integrated policy model for supervisory sanctions, an approach that has not previously been developed within Indonesia's legal system. The proposed model outlines mechanisms for enforcement, supervision duration, and reintegration programs. By addressing a critical gap in Indonesia's penal system, this research contributes original perspectives and a practical framework for the operationalization of community-based criminal sanctions.

Keywords: Supervisory Sentencing; Non-Custodial Punishment; Integrated Supervision Model Indonesian Penal Code (KUHP); Restorative Justice

Conflict Between Public Transportation And Local Community Rights in The Sea

Rizal Muchtasar, Heriyanti, Sahrina Safiuddin, La Ode Muhammad Taufiq Afoeli

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, Page 171-188

This study aims to analyze the conflict between public access rights and the rights of local communities on Cempedak Island in managing marine areas. The method used is socio-legal, through an analytical approach to national legal frameworks, doctrines, and case studies. The study results show that this conflict creates a dilemma between the interests of local communities and public access rights. The 1945 Constitution and related regulations provide a legal basis for public access rights, but local communities also have rights set out in policies and regulations. This paper critically presents a model of conflict resolution, regulatory, and resource processes that often ignore local community participation. Evaluations of previous Government policy procedures show a lack of consultation and involvement of local communities and public access in policy processes that can result in gaps and prolonged conflicts. This research emphasizes the need for a participatory-collaborative approach. Innovation is the gradual application of the need for community identification to implement comprehensive methods that integrate positive legal analysis with the social and local communities' cultural realities. Conflict techniques on Cempedak Island actively involve communities in decision-making to encourage sustainability, protection, community interests, and public access rights, ultimately creating new policies and rules.

Keywords: Conflict; Transportation; Community; Rights; Sea

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Muhammad Uchida Sudirman

The Role of International Humanitarian Law in the Conflict with the West Papua Liberation Army

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, Page 189-200

This research examines the application of International Humanitarian Law (IHL) in the conflict between the Indonesian National Armed Forces (Tentara Nasional Indonesia, or “TNI”) and the West Papua National Liberation Army (TPNPB). The main focus is to assess the legal status of TPNPB as a non-state armed actor and examine the extent to which the TNI’s authority in military operations has been in accordance with the principles of proportionality, distinction, and precaution. Using qualitative legal research and conceptual, statutory, and historical approaches, the findings indicate that the conflict in Papua has fulfilled the elements of a non-international armed conflict (NIAC), although it has not been officially recognized by the Indonesian government. In addition, the implementation of TNI’s authority in Military Operations Other Than War (OMSP) is considered to have the potential to violate IHL principles because of its impact on civilians. This research recommends a more consistent application of IHL to ensure the effective protection of civilians in domestic conflicts.

Keywords: Humanitarian; Law; TPNPB; NIAC; TNI.

Mimin Mintarsih, Lukman Mahdami, Ahyar Ari Gayo, Ratna Galuh Manika Trisista
When Consent Becomes Contested : Comparative Reconstruction of Marital Rape in Indonesian Criminal Law And Islamic Law

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, Page 201-218

Marital rape is an issue that generates contestation over the concept of consent within marital relations. In Indonesian criminal law, rape is generally understood as a crime that occurs outside marriage, whereas in Islamic law, sexual relations are viewed as part of mutual rights and obligations between husband and wife. This difference in paradigm creates conceptual tension regarding the boundaries between duty, rights, and consent within marriage. This study arises from a literature gap, as previous research has not comprehensively examined the interrelation between the concept of consent in Indonesian criminal law and the concept of *riḍā* in Islamic law. Existing studies tend to separate the two frameworks without exploring their potential normative and moral intersections as a foundation for legal development. The study aims to comparatively reconstruct the meaning of consent in the context of sexual coercion within marriage according to Indonesian criminal law and Islamic law. The research employs a normative juridical method with statutory, conceptual, and comparative approaches, analyzing the Old and New Criminal Codes, the Law on Sexual Violence Crimes, the Law on the Elimination of Domestic Violence, as well as *fiqh* principles and *maqāṣid al-syarī‘ah*. The findings reveal that both legal systems reject sexual coercion, yet differ in their normative foundations, moral objectives, and forms of legal recognition. A comparative reconstruction is therefore required through the reinterpretation of the concept of *riḍā* in Islamic law and the affirmation of equality principles within national criminal law, in order to strengthen the recognition of consent in marital relations. These findings demonstrate a substantive convergence between positive law and Islamic principles in upholding justice, consent, and individual dignity, while opening pathways for the development of a more responsive legal framework regarding marital rape in Indonesia.

Keywords: Consent; Marital Rape; Comparative Reconstruction; Criminal Law; Islamic Law.

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Leny Megawati, T. Subarsyah, Tuti Rastuti

Unsecured Loans: Regulatory Inconsistencies and The Path Towards Hybrid Guarantees

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 219-232

This study was motivated by the discrepancy between the norm stating that People's Business Credit (KUR) with a ceiling of up to IDR100 million does not require additional collateral, and the operational policy that still requires collateral at a number of Bank BRI units. This discrepancy causes disharmony and inconsistency, which has the potential to lead to disputes and hinder access to financing for MSMEs. The approach used is socio-legal research that combines normative-legal and socio-empirical research techniques. Based on these findings, this study examines the implications of applying additional collateral in the People's Business Credit (KUR) program at Bank BRI, particularly for micro-entrepreneurs with limited assets, where consumer protection norms and fairness in banking relationships do not explicitly accommodate credit insurance as a valid and standardized alternative guarantee, resulting in excessive dependence on physical collateral such as land, buildings, or vehicles, which actually hinders access to credit for MSMEs with minimal asset structures and creates discriminatory risks and legal uncertainty in the financing distribution process, threatening the consistency of the principles of fairness and openness that form the legal basis for consumer-bank relationships.

Keywords: Collateral; KUR; UMKM.

Adrian Nugraha, Nashriana, Ridwan

Deep Seabed Mining Dilemma: Stipulation Under ISA, the Precautionary Principle, and BBNJ Agreement Challenges

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 233-248

This article examines the role of the International Seabed Authority (ISA) in the governance of deep seabed mining, highlighting the legal and environmental implications arising from the adoption of the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement in 2023. The research employs a normative juridical method through an extensive review of international legal instruments, doctrines, jurisprudence, and scholarly literature related to the United Nations Convention on the Law of the Sea (UNCLOS) 1982, the precautionary principle, and global environmental agreements. The analysis reveals that the ISA's mandate to manage seabed resources as the common heritage of mankind faces significant pressure due to growing scientific evidence of the ecological risks associated with deep-sea mining. Potential jurisdictional and normative conflicts also arise between the ISA and BBNJ regimes, particularly concerning marine protected areas, environmental impact assessments, and access to marine genetic resources. In the context of scientific uncertainty, mineral exploitation may violate the precautionary principle, erga omnes obligations, and the commitments of Sustainable Development Goal 14. Accordingly, this study recommends a moratorium on mining activities, the harmonization of ISA–BBNJ legal frameworks, and the strengthening of implementation of the precautionary principle to ensure the sustainability of deep-sea ecosystems.

Keywords: international seabed authority, deep seabed mining, BBNJ Agreement, precautionary principle, UNCLOS

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Muhammad Mutawalli Mukhlis, Muhammad Saleh Tajuddin, Wiranti

Power Dispersion as a Barrier to Autocratization: The Paradox of Indonesia's Compromised Democracy

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 249-266

This article examines the persistence of Indonesia's democratic system as a constitutional state (*negara hukum*), where popular sovereignty operates within the limits of the 1945 Constitution (UUD 1945). Although recent tendencies, such as the expansion of executive authority, electoral narrowing, media consolidation, and suppression of dissent, have weakened democratic quality, these developments have occurred within Indonesia's distinctive constitutional framework, which combines democratic principles with Pancasila-based constitutional supremacy rather than liberal-constitutional doctrines. . Using a qualitative approach with descriptive-comparative analysis, this study draws on primary sources such as government policy documents and secondary materials, including academic journals and books, covering developments from 1999 to 2024. The analysis highlights two primary factors limiting autocratization: the redefinition of power distribution through the mechanisms of checks and balances and decentralization following the post-1998 constitutional reforms, and the continuous elite competition that prevents monopolization. Indonesian elites, while undermining democratic institutions to protect their privileges, remain committed to limited democracy as a framework for regulating elite rivalries. The constitutional design with term limits, separation of powers, and decentralization creates structural barriers against executive dominance. Furthermore, elite self-interest in maintaining political competition outweighs incentives for autocratic consolidation. Although civil society and public opinion contribute to resistance against backsliding, elite calculations are decisive. Thus, Indonesia's experience demonstrates that elite-driven democracies can endure gradual democratic decline without collapsing into authoritarianism, provided that competition remains institutionally guaranteed and power remains dispersed. This dynamic ensures a stable yet compromised democratic system, shaped more by pragmatic elite interests than by normative democratic commitments.

Keywords: autocratization; constitutional democracy; democratic backsliding; elite competition; power dispersal

Zainuddin, Ismail Koto

The Government Policy as an Effort to Provide Protection for Foreign Refugees

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 267-276

As part of its responsibility to address refugee-related issues, Indonesia enacted Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad. This study is more in-depth than previous studies because it focuses on more specific legal regulations at the presidential regulation level. This provides the legal basis for the protection of foreign refugees in Indonesia and serves as the official guideline for managing asylum seekers and international refugees. This regulation is more operational, for example, shelter mechanisms such as shelter, accommodation and health and education, as well as basic services, and coordination with UNHCR/IOM, but does not provide formal legal status for refugees. One implementation is the relocation of asylum seekers from Immigration Detention Centers (Rudenim) to temporary shelters, thus enabling the provision of basic needs, which is facilitated and funded by the International Organization for Migration (IOM). The main differences between the international obligations of ratifying conventions and domestic authority through Presidential Regulations lie in their source, binding nature, and implications for the legal status and rights of refugees specifically. This regulation is seen as an alternative to ratifying the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, which Indonesia has not yet ratified. Presidential Regulation Number 125 of 2016 outlines several important provisions, including key definitions, detention mechanisms, shelter procedures, and protection measures for asylum seekers and refugees. This regulation consists of 45 articles detailing the coordination mechanism between government agencies in managing refugees. Based on Article 2 paragraph (1), the handling of asylum seekers and refugees is carried out through cooperation between the central government and the United Nations (UN).

Keywords: Policy; Government; Refugees; Foreign Nationals.

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Ajie Ramdan

Abandoning the Precautionary Principle in Environmental Licensing: a Comparison of Indonesia with Three Other Countries and a New Evidentiary Mechanism

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 277-290

Law Number 6 of 2023 concerning Job Creation revises Law Number 32 of 2009 by decriminalising Article 102 and merging it with Article 109. They have been changed from conduct offences to result-based offences. This study uses a normative legal research method combined with a comparative study using a statute research approach, which is used to analyse, explore, and review changes to Article 109. The findings of this study explain that because of revision of those articles, criminal sanctions cannot be imposed if someone or entities do not have environmental permits until environmental damage has already occurred. A study of the UK, the Netherlands, and Sweden shows those countries apply the precautionary principle by penalising the actions of entities that do not have environmental permits as conduct criminal offences. A comparison will be made between this and the environmental laws of Indonesia. Currently, to enforce Article 109 of Law Number 32 of 2009, prosecutors will need to employ the same proof method as that used for criminal offences as stipulated in Articles 98, 99, and 100. The novelty of this research is that the change from conduct offences to result-based offences have the potential to damage Indonesia's environment. This will be scientifically proven in this article. The decriminalisation of Article 102 and the amendment of Article 109 of Law Number 32 of 2009 not only change the system of proof in cases of environmental permit violations, namely through scientific evidence, but also constitute a disregard for the precautionary principle.

Keywords: the precautionary principle, environmental permits, comparison, scientific proof

Nazhif Ali Murtadho

Illegally Obtained Evidence in Indonesia's Draft Criminal Procedure Code (RUU KUHAP): Exclusionary Rules and the Due Process of Law

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 291-308

Ketiadaan ketentuan eksplisit mengenai *exclusionary rules* dalam RUU KUHAP berisiko mengakibatkan pemanfaatan bukti yang diperoleh secara melawan hukum, merusak *due process*, mencederai praduga tak bersalah, dan menurunkan legitimasi peradilan; penelitian ini bertujuan menganalisis integrasi prinsip *due process* dan konsep "*unlawful legal evidence*" ke dalam RUU KUHAP serta merumuskan redaksional dan mekanisme operasional yang aplikatif. Metode yang digunakan adalah penelitian yuridis doktrinal dengan pendekatan perundang-undangan, konseptual, komparatif, dan kasus; bahan primer dan sekunder dianalisis tekstual, komparatif, dan deduktif dengan inventarisasi bahan hukum. Temuan menunjukkan penerapan *exclusionary rules* di Indonesia masih sporadis karena kekosongan norma dan perbedaan istilah antara "alat bukti" dan "barang bukti", mekanisme praperadilan belum mampu uji substantif, enam elemen *due process* belum diatur secara eksplisit, dan bukti elektronik memerlukan kepastian prosedural pasca-Putusan MK 20/PUU-XIV/2016. Kesimpulannya, RUU KUHAP harus memuat klausul *exclusionary rules*, definisi "*unlawful legal evidence*" dan konsep 'batal demi hukum', memperkuat kewenangan Praperadilan/Hakim Pemeriksa Pendahuluan, mensyaratkan *chain of custody* dan sertifikasi forensik digital, serta menetapkan sanksi dan kompensasi; rekomendasi meliputi harmonisasi redaksional, pedoman yudisial, pelatihan aparat, dan pengawasan independen untuk mengembalikan integritas pembuktian dan menjamin perlindungan HAM.

Keywords: Batal Demi Hukum; Chain of Custody; Due Process; Electronic Evidence; Exclusionary Rules.

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Husendro

Formulation of a Just Land Dispute Resolution Model: Derrida's Deconstruction Approach to the Former Dumai Concession Case

The De Jure Legal Research Journal Volume 25, Number 3, November 2025, 309-326

Dumai City is an area with land concession permits for oil and gas companies, including PT. Chevron Pacific Indonesia. These extensive and long-term land concession permits often conflict with local (indigenous) communities, urban development, and population growth. Although the company's concession period has expired and the land must be returned to the government, land claims, disputes, and conflicts remain unresolved. Therefore, a just, holistic, and human rights-based resolution will be a fundamental element of this resolution. The research method used is a normative empirical one with data sources obtained from field observations and interviews with various stakeholders, including the government and local communities. This paper will focus on how Jacques Derrida's concept deconstructs the settlement of the former Dumai concession case by dissecting the dominant legal narrative that supports ownership, concession claims, revealing the contradictions and power structures inherent in the land tenure system. This paper proposes alternative dispute resolution models, such as conciliation, based on different principles, future justice, and openness to plural legal subjects. Through Derrida's deconstruction and conciliation efforts, various alternative justice-based concession land solutions will be formulated for corporations (PT. CPI), local (indigenous) communities, citizens, local governments, vertical agencies, business actors, including law enforcement options.

Keywords: participatory action research, land policy reform, human rights-based approach, deconstruction, land concession oil and gas, agrarian law