

Jurnal Penelitian Hukum De Jure adalah majalah hukum dengan frekuensi terbitan tiga kali dalam setahun, yaitu di bulan Maret, Juli, dan November yang diterbitkan oleh Badan Strategi Kebijakan Hukum Kementerian Hukum Republik Indonesia, bekerja sama dengan Ikatan Peneliti Hukum Indonesia (IPHI) (Legalisasi Badan Hukum Perkumpulan: Keputusan Menteri Hukum dan Hak Asasi Manusia Nomor: AHU-13.AHA.01.07 Tahun 2013, tanggal 28 Januari 2013). Jurnal ini bertujuan untuk menjadi wadah dan media komunikasi, serta sarana untuk mempublikasikan berbagai permasalahan hukum yang aktual dan terkini bagi para peneliti hukum Indonesia pada khususnya dan masyarakat hukum pada umumnya. Berdasarkan Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi Republik Indonesia Nomor: 177/E/KPT/2024 tentang Peringkat Akreditasi Jurnal Ilmiah Periode II Tahun 2024 tanggal 15 Oktober 2024, menetapkan bahwa Jurnal Penelitian Hukum De Jure mendapat peringkat Akreditasi Jurnal Ilmiah Peringkat 2 (dua) atau Sinta-2 (S2). Dalam pengelolaannya, Jurnal Penelitian Hukum De Jure melibatkan berbagai pihak yang tertuang dalam Keputusan Kepala Badan Strategi Kebijakan Hukum dan Hak Asasi Manusia Nomor: PPH-18.LT.04.03 TAHUN 2024 tanggal 20 Februari 2024 tentang Pembentukan Tim Penerbitan Jurnal Penelitian Hukum De Jure Tahun Anggaran 2025, dengan tim sebagai berikut:

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Badan Strategi Kebijakan Hukum, Kementerian Hukum Republik Indonesia

Jl. HR. Rasuna Said Kav. 4-5 Lantai 7, Kuningan, Jakarta Selatan

Telepon: (021) 2525015, Fax: (021) 2526438

Email:

ejournaldejure@gmail.com

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ADVERTORIAL

Syukur ke hadirat Allah SWT, Jurnal Penelitian Hukum De Jure yang diterbitkan oleh Badan Strategi Kebijakan Hukum Kementerian Hukum Republik Indonesia, bekerja sama dengan Perhimpunan Peneliti Hukum Indonesia dapat terbit kembali Jilid 25 Nomor 3 November 2025.

Penerbitan Jurnal Penelitian Hukum De Jure Jilid 25 Nomor 3 November 2025 memuat 11 (sebelas) artikel dari berbagai lembaga penelitian di Indonesia maupun civitas akademika. Untuk meningkatkan perbaikan sistem hukum dan perundang-undangan, diperlukan upaya perbaikan yang signifikan terhadap kebijakan strategis pemerintah. Sehubungan dengan hal tersebut, redaktur Jurnal Riset De Jure Jilid 25 Nomor 3 November 2025 mengangkat pasal-pasal antara lain *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*; Kontestasi Konsep Persetujuan: Rekonstruksi Komparatif Perkosaan dalam Perkawinan Berdasarkan Hukum Pidana Indonesia dan Hukum Islam; Agunan KUR Tanpa Agunan: Inkonsistensi Regulasi dan Jalan Menuju Penjaminan Hybrid; Dilema Penambangan Dasar Laut: Pengaturan Dalam ISA, Prinsip Kehati-Hatian dan Tantangan Implementasi Perjanjian BBNJ; *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*; Bukti Ilegal dalam RUU KUHAP Indonesia: *Exclusionary Rules dan Due Process of Law*; *Formulation of a Just Land Dispute Resolution Model: Derrida's Deconstruction Approach; to the Former Dumai Concession Case*. Melalui tulisan-tulisan tersebut, mereka dapat menyumbangkan pemikiran yang menjadi bahan referensi dalam memenuhi rasa keadilan dan perlindungan hukum di masyarakat.

Ucapan terima kasih kami sampaikan kepada para penulis yang telah memercayai Jurnal Penelitian Hukum De Jure untuk menerbitkan karyanya. Ucapan terima kasih juga kami sampaikan kepada Mitra Bestari yang telah bersedia membantu, meneliti dan mengoreksi tulisan-tulisan penulis dalam publikasi ini.

Akhir kata, kami menyampaikan terima kasih kepada Kepala Badan Strategi Kebijakan Hukum, Kementerian Hukum Republik Indonesia, dan Himpunan Peneliti Hukum Indonesia yang telah berkenan menerbitkan Jurnal Penelitian Hukum De Jure ini.

Editor:

Jakarta, November 2025

**Kata kunci yang dicatat di sini mewakili konsep yang diterapkan dalam artikel.
Lembar abstrak ini boleh diperbanyak tanpa izin atau biaya.**

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, Nomor 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, Nomor 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, Nomor 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
Kontestasi Konsep Persetujuan: Rekonstruksi Komparatif Perkosaan dalam Perkawinan Berdasarkan Hukum Pidana Indonesia dan Hukum Islam

Jurnal Penelitian Hukum De Jure Volume 25, Nomor 3, November 2025, Halaman 201-218

Pemeriksaan dalam perkawinan merupakan isu yang memunculkan kontestasi terhadap konsep persetujuan dalam hubungan suami-istri. Dalam hukum pidana Indonesia, pemeriksaan umumnya dipahami sebagai tindak pidana yang terjadi di luar perkawinan, sedangkan dalam hukum Islam, hubungan seksual dipandang sebagai bagian dari hak dan kewajiban timbal balik. Perbedaan paradigma ini menimbulkan ketegangan konseptual mengenai batas antara kewajiban, hak, dan persetujuan dalam relasi perkawinan. Penelitian ini berangkat dari kekosongan literatur yang belum secara komprehensif mengkaji keterkaitan antara konsep persetujuan dalam hukum pidana Indonesia dan konsep *ridā* dalam hukum Islam. Kajian yang ada cenderung memisahkan keduanya tanpa menelaah potensi titik temu normatif dan moral yang dapat dijadikan dasar pembentukan hukum. Penelitian ini bertujuan untuk merekonstruksi secara komparatif pemaknaan konsep persetujuan dalam konteks pemaksaan seksual dalam perkawinan menurut hukum pidana Indonesia dan hukum Islam. Metode yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif, melalui analisis terhadap KUHP Lama, KUHP Baru, UU Tindak Pidana Kekerasan Seksual, UU Penghapusan Kekerasan Dalam Rumah Tangga, serta prinsip *fiqh* dan *maqāṣid al-syarī‘ah*. Hasil penelitian menunjukkan bahwa kedua sistem hukum menolak pemaksaan seksual, tetapi berbeda dalam dasar normatif, tujuan moral, dan bentuk perlindungannya. Rekonstruksi komparatif diperlukan melalui reinterpretasi konsep *Ridha* dalam hukum Islam dan penegasan asas kesetaraan dalam hukum pidana nasional, guna memperkuat perlindungan perempuan dalam perkawinan. Temuan ini menegaskan adanya titik temu substantif antara hukum positif dan prinsip Islam dalam menegakkan keadilan, persetujuan, dan martabat individu, sekaligus membuka ruang bagi pengembangan norma hukum yang lebih responsif terhadap korban pemeriksaan dalam perkawinan.

Kata Kunci: Persetujuan; Pemeriksaan dalam Perkawinan; Rekonstruksi Komparatif; Hukum Pidana; Hukum Islam.

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Leny Megawati, T. Subarsyah, Tuti Rastuti

Agunan KUR Tanpa Agunan: Inkonsistensi Regulasi dan Jalan Menuju Penjaminan Hybrid

Jurnal Penelitian Hukum De Jure Volume 25, Nomor 3, November 2025, Halaman 219-232

Penelitian ini dilatarbelakangi oleh adanya ketidaksesuaian antara norma yang menyatakan bahwa kredit Usaha Rakyat (KUR) dengan plafon hingga Rp 100 juta tidak memerlukan agunan tambahan, dengan kebijakan operasional yang masih mensyaratkan agunan pada Bank BRI. Ketidaksesuaian ini menimbulkan disharmoni dan inkonsistensi yang berpotensi menimbulkan sengketa serta menghambat akses pembiayaan bagi UMKM. Pendekatan yang digunakan bersifat *socio-legal research* yang memadukan teknik-teknik penelitian normatif-yuridis dan sosial-empiris. Berdasarkan temuan tersebut, Penelitian ini mengkaji implikasi penerapan agunan tambahan dalam program Kredit Usaha Rakyat (KUR) di Bank BRI, khususnya terhadap pelaku usaha mikro yang memiliki aset terbatas, di mana norma perlindungan konsumen dan keadilan dalam hubungan perbankan belum secara eksplisit mengakomodasi asuransi kredit sebagai jaminan alternatif yang sah dan terstandarisasi, sehingga menimbulkan ketergantungan berlebihan pada agunan fisik seperti tanah, bangunan, atau kendaraan yang justru menyulitkan akses kredit bagi UMKM dengan struktur aset minim dan menimbulkan risiko diskriminatif serta ketidakpastian hukum dalam proses penyaluran pembiayaan, mengancam konsistensi prinsip keadilan dan keterbukaan yang menjadi landasan hukum dalam hubungan konsumen-bank.

Keywords: Agunan; KUR; UMKM.

Adrian Nugraha, Nashriana, Ridwan

Dilema Penambangan Dasar Laut: Pengaturan Dalam ISA, Prinsip Kehati-Hatian dan Tantangan Implementasi Perjanjian BBNJ

Jurnal Penelitian Hukum De Jure Volume 25, Nomor 3, November 2025, Halaman 233-248

Artikel ini mengkaji peran Otoritas Dasar Laut Internasional (International Seabed Authority/ISA) dalam tata kelola penambangan dasar laut, dengan menyoroti implikasi hukum dan lingkungan pasca-adopsi *Biodiversity Beyond National Jurisdiction Agreement* (BBNJ) tahun 2023. Penelitian ini menggunakan metode yuridis normatif melalui telaah terhadap instrumen hukum internasional, doktrin, yurisprudensi, dan literatur ilmiah terkait *United Nations Convention on the Law of the Sea* (UNCLOS) 1982, prinsip kehati-hatian, serta perjanjian lingkungan global. Hasil analisis menunjukkan bahwa mandat ISA untuk mengelola sumber daya sebagai *common heritage of mankind* menghadapi tekanan signifikan akibat meningkatnya bukti ilmiah mengenai risiko ekologis penambangan dasar laut. Potensi konflik yurisdiksi dan norma antara rezim ISA dan BBNJ juga muncul, khususnya terkait kawasan konservasi, penilaian dampak lingkungan, dan akses sumber daya genetik laut. Dalam konteks ketidakpastian ilmiah, eksploitasi mineral berpotensi melanggar prinsip kehati-hatian, kewajiban *erga omnes*, dan komitmen *Sustainable Development Goal* 14. Oleh karena itu, penelitian ini merekomendasikan moratorium penambangan, harmonisasi rezim hukum ISA–BBNJ, serta penguatan implementasi prinsip kehati-hatian demi keberlanjutan ekosistem laut dalam.

Keywords: otoritas dasar laut internasional; penambangan dasar laut; perjanjian BBNJ; prinsip kehati-hatian; 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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Lembar abstrak ini boleh diperbanyak tanpa izin atau biaya.

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

Bukti Ilegal dalam RUU KUHAP Indonesia: *Exclusionary Rules dan Due Process of Law*

Jurnal Penelitian Hukum De Jure Volume 25, Nomor 3, November 2025, Halaman 291-308

Artikel ini mengkaji peran Otoritas Dasar Laut Internasional (International Seabed Authority/ISA) dalam tata kelola penambangan dasar laut, dengan menyoroti implikasi hukum dan lingkungan pasca-adopsi *Biodiversity Beyond National Jurisdiction Agreement* (BBNJ) tahun 2023. Penelitian ini menggunakan metode yuridis normatif melalui telaah terhadap instrumen hukum internasional, doktrin, yurisprudensi, dan literatur ilmiah terkait *United Nations Convention on the Law of the Sea* (UNCLOS) 1982, prinsip kehati-hatian, serta perjanjian lingkungan global. Hasil analisis menunjukkan bahwa mandat ISA untuk mengelola sumber daya sebagai *common heritage of mankind* menghadapi tekanan signifikan akibat meningkatnya bukti ilmiah mengenai risiko ekologis penambangan dasar laut. Potensi konflik yurisdiksi dan norma antara rezim ISA dan BBNJ juga muncul, khususnya terkait kawasan konservasi, penilaian dampak lingkungan, dan akses sumber daya genetik laut. Dalam konteks ketidakpastian ilmiah, eksploitasi mineral berpotensi melanggar prinsip kehati-hatian, kewajiban *erga omnes*, dan komitmen *Sustainable Development Goal* 14. Oleh karena itu, penelitian ini merekomendasikan moratorium penambangan, harmonisasi rezim hukum ISA–BBNJ, serta penguatan implementasi prinsip kehati-hatian demi keberlanjutan ekosistem laut dalam.

Keywords: Batal Demi Hukum; Bukti Elektronik; Due Process; Exclusionary Rules; Chain of Custody.

**Kata kunci yang dicatat di sini mewakili konsep yang diterapkan dalam artikel.
Lembar abstrak ini boleh diperbanyak tanpa izin atau biaya.**

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