Booklet & Selected Abstracts

THE 3RD INTERNATIONAL CONFERENCE ON LAW & SOCIETY (ICLS)

Situating Constitutionalism & Democracy in Multicultural Society

2 December 2023

Held and organized by
The Faculty of Law Universitas Jember

Greetings!

Congratulations for the selected abstracts. We are pleased to welcome you all to our conference. Couldn't wait to see and to enjoy your arguments. Anyway, please prepare a **powerpoint** presentation to be displayed during the event. You will also required to do a **confirmation** and **to select your attendancy status** (online/offline participant) through google form **which is due on 29th of November 2023**. If you need assistance, please don't be hesitant to reach our CP. We are more than happy to help.

Warmest regard from the eastern tip of the East Java, Jember
The 3rd ICLS 2023 Committee

Important Dates

23 November 2023 to 29 November 2023
Accepted Abstracts & Confirmation

2 December 2023
Conference Date

2 December 2023 to 2 January 2024
Full Paper Submission

(est) April/May 2024
Published Proceeding

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RUNDOWN THE 3rd ICLS:
Situating Constitutionalism & Democracy in Multicultural Society
2 December 2023

GMT +7	ACTIVITIES	NOTES
07.30 – 08.00	**Preparation and registration**	
08.00 – 08.15	**Opening Ceremony**	
	National Anthem Hymne Universitas Jember Video Profile FoL Universitas Jember	MC
08.15 – 08.30	**Welcoming Remark** Prof. Dr. Bayu Dwi Anggono (Dean FoL Universitas Jember) **Official opening** Dr. Ir. Iwan Taruna (Rector, Universitas Jember)*	MC
08.30 – 10.00	**Plenary I**	
	Interpreting Contemporary Constitutionalism and Democratization in Indonesia and beyond Dr. Nadirsyah Hosen (FoL Monash University) **The Challenges of Multiculturalism in Indonesian Context** Al Khanif, Ph.D (FoL Universitas Jember)	Moderator
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	Break (60 Mins)	
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	Decolonization but at what cost? Analyzing Indonesian new penal code I Gede Widhiana Suarda, Ph.D. (FoL Universitas Jember) **Dynamics and power play in Indonesian Democracy** Dr. Jane Ahlstrand (University of New England)	**MC**
	Closing	
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PANEL 1

Constitutionalism and Democracy in Contemporary Indonesian Multiculturalism

UNVEILING THE CONSTITUTIONAL LANDSCAPE: A CRITICAL ANALYSIS OF NATIONAL STRATEGIC PROJECTS (PSN) IN INDONESIA

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Abstract

National Strategic Projects (PSN) are crucial initiatives in Indonesia's national development, but its implementation requires in-depth evaluation from a constitutional law perspective, especially in the context of emergency situations. This research applies a qualitative approach by analyzing laws, regulations and documents related to PSN, and involves interviews with constitutional law experts and related practitioners. From the results of the research, it is revealed that the implementation of PSN in emergency conditions requires a careful assessment of the division of authority between the central and regional governments. The main issue arises regarding the sustainability of PSN when it stagnates, without any firm regulations regarding who is responsible for these conditions. In the perspective of constitutional law, the implementation of PSN during emergency conditions raises important considerations related to authority, institutions, finance, and supervision between the central and regional governments. Evaluation of urgency is the main focus to ensure the effectiveness of PSN implementation in the midst of emergency situations. Effective coordination between the central and local governments is crucial for the success of PSN in supporting national development. The sustainability of PSN becomes a crucial issue when it experiences stagnation, and clarity regarding responsibility in this condition needs to be addressed through the application of strict rules. This research concludes that urgency assessment and constitutional law perspective have a central role in evaluating the effectiveness of PSN implementation in emergency conditions. Therefore, concrete steps are needed to strengthen coordination between the central and local governments, as well as the establishment of clear rules regarding responsibility for the sustainability of PSN in overcoming stagnation, so that PSN can remain a key pillar in supporting Indonesia's national development.

Key words: National Strategic Projects (PSN), constitutional law, urgency, emergency, implementation

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PUBLIC DISTRUST IN THE POST-TRUTH ERA: REVITALIZING THE MEANING OF FREEDOM IN DEMOCRACIES

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Abstract

Democracy has been a widely debated system in Indonesia since the Old Order era and continues to remain a topic of interest. It is widely believed that democracy is the most effective system for various countries, including Indonesia. Despite Indonesia's extensive history of democratic processes, the interpretation of democracy appears to vary significantly. Democracy, which aims to promote freedom, justice, and welfare, is often misused by different parties to suppress the freedom of others and for personal interests. It is crucial to reiterate why true democracy must always be accompanied by nomocracy, meaning that democracy must go hand in hand with the rule of law. In this context, it is essential to educate the populace on the true meaning of democracy, particularly in the post-truth era, where a lack of understanding can lead to problems. Failure to clarify the meaning of democracy can indeed trigger various issues that can destabilize the country and create public distrust. In a democratic country, freedom is a powerful tool that can be misinterpreted and cause harm to parties with differing opinions. Freedom does not imply that people are free to judge others without legal procedures, spread provocative information, or suppress the ideas of others. For this study, a normative juridical research approach is implemented to formulate recommendations that can revitalize the proper meaning of freedom. Based on the research conducted, both a statutory and conceptual approach are used. Thus, it is critical to echo the true meaning of freedom again, so that Indonesia does not end up as one of the countries that will fail according to the Fund for Peace (FFP) in the Fragile State Index 2023.

Key words: Rule Of Law, Democracy, Human Rights, Freedom

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LEGAL PROTECTION OF SOCIETY: LEGAL IMPLICATIONS OF RADICAL COMMUNITY ORGANIZATIONS IN INDONESIA

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Abstract

Indonesia is a country that has a lot of diversity both ethnicity, culture, race, group. This diversity, will shape the Indonesian nation more advanced, but on the one hand it will also damage the order of life if not maintained properly and can even trigger divisions in Indonesia. Community Organizations (CSOs) are organizations formed by the community voluntarily, based on the same aspirations, wills, and goals to participate in national silence based on Pancasila and the 1945 NRI Constitution. CSOs in Indonesia have been regulated in a law and regulation, namely Law Number 17 of 2013 concerning Community Organizations and then amended as in PERPU Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 which has been passed by Law Number 16 of 2017. CSOs in Indonesia certainly also have advantages and disadvantages. In addition to bringing a positive impact, it also has a negative impact if not managed properly. Basically, an organization that has a good history in Indonesia because it also participated in achieving Indonesian independence, currently the essence of mass organizations is also largely changed by the existence of ideology or other ways of thinking that are not in accordance with Pancasila and the 1945 NRI Constitution. One of the issues in this paper is the first regarding the form of legal protection for the community due to mass organizations that have a radical perspective. The second is about future rules against members of mass organizations who have radical ideas as a result of their dissolution. This action is an effort from governments around the world to reduce radicalism, so that for future regulations the government should also provide its own anticipation about deradicalization in the form of laws and regulations, especially those related to mass organizations. The methodology used in this writing uses normative research. The approach used uses a conceptual approach and a statutory approach.

Key words: Community Organization, Legal Protection, Radicalism, Pancasila

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FREEDOM OF SPEECH: CONSTITUTIONALITY AND CHALLENGES IN INDONESIA'S LEGAL FRAMEWORK

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Abstract

In the current digital era, the manifestation of the right to freedom of speech is obtained by delivering their aspirations through an enormous number of platforms, one of them is the use of social media. However, even if fundamentally everyone has the right to freedom of speech in a democratic country, the attempt to obtain rights to freedom of speech comes with limitations as embodied with duties and responsibilities that each individual holds. Significant challenges persist as freedom of speech in social media is vulnerable to misuse, which raises the government's effort to address issues emerging in social media. Research Question: Based on the elaboration, this research aims to identify factors that promote the challenges in achieving freedom of speech in Indonesia by taking into account the analysis of whether freedom of speech is recognized as derogable rights. Research Method: The research method applied is normative legal research, which is done by analyzing legal reference materials. Summary and Result of discussion: The result of this research indicates that the limitations of freedom of speech are regulated under Article 28 of the 1945 Constitution of the Republic of Indonesia and the emergence of UU ITE. Despite the presence of imposing regulations as an umbrella to regulate matters related to crimes against freedom of speech, such as hate speech and even subversive acts against the state, the ongoing challenge of ensuring freedom of speech is significant as a result of intersection of regulations, several Articles that weaken the quality of democracy in Indonesia and political interests.

Key words: freedom of speech, derogable rights, social media, ITE Law.

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DESIGN OF CONSTITUTIONAL ETHICS TO PREVENTING ABUSE OF POWER

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Abstract

The minimal application of constitutional ethics in state administration has resulted in many practices of abuse of power. Even though the concept of constitutionalism has been put in place to limit power through a strict division and separation of powers between the legislature, executive and judiciary, this division is not followed by adequate ethical guidance in the constitution. This study aims to examine the dynamics of ethical regulations in the constitution of Indonesia and aims to design ethics in the constitution. The problem formulations in this research are 1) The Regulation of constitutional ethics in laws and regulations in Indonesia, and 2) The Formulation of constitutional ethical designs in preventing abuse of power. The research method used is normative legal research with a statute approach, conceptual approach, and case approach. This research is expected to be able to describe the ethical regulations in the constitution that have been and are currently in force in Indonesia to justify the ethical design in the Indonesian constitution. In addition, this study is expected to be able to establish ethical standards for the legislature, executive, and judiciary in the future Indonesian constitution.

Key words: Abuse of Power, Constitutional ethics , executive, judiciary, and legislature.

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LAW AND MORALE IN GOVERNMENT ADMINISTRATION OF INDONESIA

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Abstract

Law and morals are aften stricty separated from each other in the modern thought of the kalsenian model. Howaver, is development shows that law is not always separated from morality. Even morality can be used as the is not always the case. The writing method used in this research is a normative juridical approach using a statutory approach and a conceptual approach. This papers uses the legal normative method, namely an approach based on legal materials by examining concepts, theories, legal principles and legislation, as well as literature related to writing. This papers finds that even in the realm of public law, namely the law of government administration, good morality (geode zeden) is used as the legal basis for the legality of government actions which are positivised in the from of general principles of good government (AUPB).

Key words: Law, Moral, Government, Administration, General Principles of Good Government.

THE INTERLINKAGE BETWEEN RELIGION AND STATE: A COURT DECISIONS' STUDY ON INTERFAITH MARRIAGE

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Abstract

Multiculturalism has the consequence of interfaith marriages. Despite being a country with a diverse society, Indonesia currently lacks laws that govern interfaith marriages. As a result, a court order is required for an interfaith marriage to be protected by the state. On July 17, 2023, the Supreme Court issued Supreme Court Circular Letter No. 2 of 2023, which provides instructions for judges in deciding cases involving applications for the registration of marriages between people from different religions and beliefs. The circular includes a directive that the Court should reject requests for the registration of interfaith marriages. This decision sparked public controversy. The prohibition of interfaith marriages in a diverse society prompts inquiries into the context behind the issuance of Supreme Court Circular Letter No. 2 of 2023, which provides instructions for judges in deciding cases involving applications for the registration of marriages between people from different religions and beliefs. To address the inquiry, the suitable research methodology is a normative technique utilizing a conceptual and comparative approach. Prior to the issuance of Supreme Court Circular Letter Number 2 of 2023, which provides instructions for judges in deciding cases involving applications for the registration of marriages between people from different religions and beliefs, the District Court had granted applications for interfaith marriages with varying ratio deciendi decision patterns over the past decade. Based on this research, objective data suggests a lack of consistency in the court's decision-making processes. There are precedents that favor administrative law, while others favor judges discovering the law from societal values.

Key words*:* Determination, Court, Interfaith, Marriage, SEMA.

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PANEL 2.a.

Legal Framework for The Others: Voices From the Marginalized Groups

(Adat, Disability, Statelessness, Right to be Forgotten, Legal Aid)

ADVANCING JUSTICE IN MULTICULTURAL SOCIETY: THE ROLE OF NATIONAL LAW IN THE PHENOMENON OF COLONG TRADITIONAL MARRIAGES IN THE OSING TRADITIONAL SOCIETY OF KEMIREN VILLAGE, BANYUWANGI REGENCY

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Yazid - Kiai Haji Achmad Siddiq State Islamic University Jember

Abstract

This paper want to explain about study role law national pda phenomenon marriage custom low in society custom Osing village Kemiren Regency Banyuwangi , dimensions marry custom colong in Banyuwangi of course Still take into account law existing customs _ in the middle public custom Osing in Banhuwangi , but also has restrictions with still honor law national , and this paper want to explains the dimensions and areas of law national use _ after law custom Osing No reach matter This . In this paper There is two question important *First* How draft Advincing Justice in Multiculture Society ? and second The Role of National Law in the Phenomenon of Colong Traditional Marriage in the Osing Traditional Community, Kemiren Village, Banyuwangi Regency. ? with approach law empirical and content analysis For explain draft Advincing Justice In Multicultural Society and the Role of National Law in the Phenomenon of Colong Traditional Marriage in the Osing Indigenous Community, Kemiren Village , Banyuwangi Regency , results from study This is First draft Advincing Justice in Multiculture Society and second is The Phenomenon of Colong Traditional Marriage in the Osing Traditional Community, Kemiren Village, Banyuwangi Regency .

Key words: justice, society and marriage colong , osing and banyuwangi.

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THE ROLE OF ADAT LAW ON THE DEVELOPMENT OF LAND LAW IN THE AGE OF INDUSTRIAL REVOLUTION 4.0

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Abstract

Industrial Revolution 4.0 or the term "cyber physical system" currently offers various fields for collaboration between cyber technology and automation technology. This has an impact on national land law which is based on customary law because the role of customary law is very important in the development of Indonesian national law, where There is an Indonesian national culture that reflects the soul and spirit of the Indonesian nation based on Pancasila which then becomes the basis of the state, the nation's philosophy and the basic norms within it. Based on this, this article will examine the role of customary law as the main source for developing national land law in facing the industrial revolution 4.0. The results of the study show that customary law is "Religious Communalistic", where there are many factors for the possibility of individual land control, with personal land rights in accordance with Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, in the revolutionary era Industry 4.0, as well as the workings of customary law institutions in national land law, which are very necessary in meeting the needs of a society that is still simple, this institution hopes to be able to perfect and adapt to the needs of the times and changes in the society it will serve. The development of national land law in the industrial era 4.0 makes people change their views regarding this, because the concept of development of national land law is accelerating and bringing about radical changes in all dimensions. It is hoped that through this application the public can understand and accept the industrial era 4.0, especially in the land sector.

Key words: Adat Law, cyber physical stem, agrarian law

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RIGHT TO BE FORGOTTEN: JUSTICE'S NEW DIRECTIONS FOR THE VICTIMS OF NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGES (NCDII)

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Abstract

Technological developments in multicultural society not only open up to positive opportunities but also have consequences for increasing varied criminal acts committed via the internet. One of them is a victim of Online Gender Based Violence. Cases of Non-Consensual Dissemination of Intimate Images (NCDII) are increasing every year. Restoration of victims, apart from punishing the perpetrator, should be a vital part of the legal protection of victims as a form of achieving justice. One of them is through the concept of the right to be forgotten. Through juridical-normative research with approaches to Statues, Conceptual and Comparative Regulations as well as searching for legal and non-legal materials through literature review, this research aims to answer legal issues regarding the Right to be Forgotten Concept in Article 68 letter g of the Law Number 12 of 2022 about Crimes of Sexual Violence regarding the Recovery of Victims of Non-Consensual Dissemination of Intimate Images as well as the Right To Be Forgotten Application Policy. Article 68 letter g of the TPKS Law regulates the deletion of sexually charged information in cases of sexual violence via electronic media as a fulfillment of protecting dignity and honor as a form of recovery for victims. However, until this research was written, it had not been found regarding its implementation by law enforcement, so there is urgency to implement the application policy by confirming the implementation mechanism within the institution. Thus, researchers recommend the establishment of operational standards related to the implementation of Article 68 letter g, one of which is through Technology Prevention as the basis for establishing software belonging to government institution that is able to ward off negative information from the spread of NCDII.

Keywords: Non-Consensual Dissemination off Intimate Images, Law Enforcement Policy, Legal Protection

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EMPOWERING PEOPLE WITH DISABILITIES IN BUSINESS: A LEGAL REVIEW

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Abstract

This article aims to explore efforts to empower individuals with disabilities (PD) in the business world in Indonesia, with an emphasis on the legal perspective. The main research question is how legal protection and empowerment opportunities can be provided to individuals with disabilities so that they can actively participate in business activities and make meaningful contributions. The writing method employed is the normative juridical research method, utilizing legislative and conceptual approaches to analyze legal issues related to the empowerment of individuals with disabilities. Empowerment of People with Disabilities focuses on legal protection from the government for individuals with disabilities through legal regulations. In addition, it underscores the importance of business entities' initiatives in embracing individuals with disabilities, not only to fulfill legal obligations but also to create an inclusive business environment. While compliance with the law remains crucial, true empowerment emerges when there is active legal support to create an environment that supports the growth and contribution of individuals with disabilities in business. The hope is to discuss the legal implications so that the role of individuals with disabilities can continue to be accommodated in business activities and to promote inclusivity, considering that individuals with disabilities should have equal opportunities in business activities. In conclusion, it highlights the importance of identifying legal rules related to the role of individuals with disabilities in business activities and advocating for a legal framework that supports inclusive practices and a friendly environment for individuals with disabilities, making business a primary driver of inclusivity and justice in the business world in Indonesia.

Key words: empowerment, disabilities, business activities, inclusivity, equal access

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NON-REFOULEMENT PRINCIPLE: ANOTHER LOOK AT THE ERODING STATE'S SOVEREIGNTY?

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Abstract

The endless phenomenon of refugees plus the inability of the United Nations High Commissioner for Refugees (UNHCR) has led to many human rights violations. In fact, in Article 33 of the 1951 Geneva Convention, which is a guideline for UNHCR in carrying out its duties, there is non-refoulement's principle which has been included in jus cogens. This principle means that every country is prohibited from returning refugees to a country where they feel threatened. On the other hand, this principle contradicts the principle of state sovereignty which means that every state has the right to determine who is included in its jurisdiction. Australia, which is a state party to the Convention, has in fact enacted an OSB policy that essentially prioritises state sovereignty over applying the principle of non-refoulement. In this case, Australia has only been criticised by various parties, but no sanctions have been imposed on it. This has an impact on Indonesia, which is not a State party to the convention. Nevertheless, Indonesia is still responsible for the protection of refugees, so sometimes it has a negative impact on Indonesia. The question is that the inability of the 1951 Geneva Convention to bind and provide strict sanctions for convention participants who violate the contents of the convention makes the surrounding countries affected; or indeed the enforcement of human rights for refugees must intersect with state sovereignty. The open hypothesis based on ongoing research is that the application of the principle of non-refoulement is not absolute. No matter what, the state still has the right to uphold the principle of state sovereignty. If indeed the reason for the necessity of applying the principle of non-refoulement is the protection of human rights, then actually a state that applies state sovereignty also enforces human rights, but more specifically on the human rights of its citizens. The principle of state sovereignty also cannot be used as a justification for not enforcing international human rights, the state can provide other assistance. What must be done is to reduce the number of refugees by defusing conflicts from the conflicting parties.

Key words: Refugees, UNHCR, 1951 Geneva Convention, state sovereignty

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RIGHTS CLAIMING FOR THE VOICELESS: BENHABIBIAN VIEW ON MIGRANT CASES IN INDONESIA

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Abstract :

The model of citizenship based on the nation-state today continues to be discussed whether it can survive in an increasingly pluralistic contemporary society. Multiculturalism is formed in the migration traffic and the pace of history that continues to be lived by diverse people from various backgrounds, as well as a form of response to cultural plurality. Pancasila produces a social imaginary through the ideal of unity, strengthening national identity, and recognizing the interests of minority groups as its substance. Through Pancasila, the extreme choice between liberal multiculturalism and cosmopolitanism is moderated. Normatively, Seyla Benhabib in the context of multiculturalism studies also developed a deliberative model of cosmopolitanism with the development of the theory of his predecessor, Habermas. The main question that will be discussed in this article is how the rate of migration becomes the background for the birth of multiculturalism. In addition, in the context of Indonesia, this paper seeks to see the politics of recognition in Indonesia. The model of multiculturalism that will be the focus of study in this study is applied through the politics of recognition, which also embodies that the relationship between society and the state is not a given process, but an unfinished process that is dynamic and unfinished. The elaboration between the politics of recognition, Pancasila and Indonesia's pluralistic culture is expected to develop an appropriate and moderate multiculturalism. Isn't control over a culturally homogeneous model of citizenship difficult to maintain any longer, even if the effort continues of course the most likely option is to be carried out in ways that are undemocratic and problematic.

Key words: Seyla Benhabib, Multiculturalism, Migration, Claim Making

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LEGAL AID IN HIGHER EDUCATION: A PARADIGM SHIFT IN LEGAL EDUCATION TO PRODUCE JUSTICE-MINDED GRADUATES

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Abstract

To question the study of justice is to question the study that is closest to the service of justice, specifically the study of legal aid. So far, justice is the main form of legal objectives, as long as the law has not taken the form of justice, the law can still be said to be blunt. To hone sensitivity to the goal of justice, education in law colleges should no longer think that the factor of justice is only implemented when a student has graduated, or after becoming a legal professional. This paradigm must be changed and no longer emphasise the graduation requirement as if the theory and practice of procedural law is sufficient, and the requirement offered is one of the mandatory requirements of other mandatory requirements, namely the presence of students involved in one legal aid service event, even if only one service. In addition to this requirement being a form of obligation, universities will also be judged as successful in producing graduates who truly aspire to justice based on morals, of course moral justice. This research uses doctrinal research, and its purpose is a form of legal implementation in Indonesian Law Colleges.

Key words: Legal Aid, Law School, Higher Education, Justice

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PANEL 2.b.

Legal Framework for The Others: Voices From the Marginalized Groups
(Women & Children's Rights)

WOMEN FRIENDLY AND CHILD CARE VILLAGES AS AN EFFORT TO PREVENT CHILD LABOR IN THE AGRICULTURAL SECTOR

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Abstract

The challenge currently facing Indonesia is child labor in the agricultural sector. Agricultural land is the center of livelihood for the majority of Indonesia's population, making children work in the agricultural sector. Based on data assessing child labor in Indonesia in the agricultural sector and recommendations from Modelez International in 2020, there are more than 4 million child laborers in Indonesia and 20.7 percent of them are trapped in dangerous work environments or the Worst Form of Child Labor. Strategies to reduce the number of child laborers. including ensuring that the issue of child labor remains in special child protection policies and programs in districts or cities. Developing a women-friendly and child-caring village model as an approach to preventing child labor and coordinating child labor prevention in 4 priority sectors, namely agriculture, fisheries, services and tourism. The purpose of this writing is to determine legal protection for child labor in the agricultural sector, especially in Indonesia and to explain the realization of a women-friendly and child-friendly village model. The result of this paper is the realization of a women-friendly and child-friendly village model that can be used as a model for other villages in Jember district. The recommendation to be achieved is the existence of a pilot village area that is women friendly and cares for children which can be directly developed by the relevant agencies.

Key words: child labor, agricultural sector, women-friendly and child-friendly village models

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ONLINE CHILD GROOMING IN THE DIGITAL ERA: A GROWING THREAT TO THE FUTURE OF CHILDREN

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Abstract

The issue of online child grooming is highly complex, and law enforcement faces a challenge as there is no specific legal framework in place to tackle it. Indonesia National Police reported a success rate of only 50% in resolving cases of online child grooming, which has raised concerns among the community about the ability of law enforcement to handle such cases. The problem is exacerbated by the fact that children often share personal information and photos on social media platforms, which can be accessed by groomers. Online child grooming is a grave crime that violates the rights of children, causing physical, mental, and social harm, and can even lead to post-traumatic stress disorder. To prevent such crimes from happening, it is crucial to establish a legal framework with a preventive spirit. Countries such as Australia and Netherlands have already implemented measures to address this issue. To tackle this problem, a normative juridical research approach was employed to develop recommendations. The research used a legislative, conceptual, and comparative approach to study the problem of online child grooming. It is essential to conduct in-depth research on this issue, as it violates the human rights of children and jeopardizes the future of Indonesia's young generation. The purpose of this research is to seek the underlying problem of online child grooming through the lens of Indonesian criminal law and how it compares to laws in other countries. We expect that the Indonesian government will come up with preventive policies that specifically regulate online child grooming to ensure the protection and safety of children from such crimes.

Key words: cybercrime, online child grooming, comparative law

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THE JUDGE'S PARADIGM IN DECIDING CRIMINAL CASES OF SEXUAL VIOLENCE FROM A VICTIMOLOGICAL PERSPECTIVE

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Abstract

Criminal acts of sexual violence are widespread in society, and the aim of the research is to study and analyze a decision. The research methods used by researchers are normative juridical with case, statutory, and philosophical approaches. The primary legal material is the Sexual Violence Crime Law and Decision Number 72/Pid.Sus/2023/PN.Bau. while secondary materials: books, journals, etc., the interpretation used is grammatical and systematic interpretation. The results of the research show that the paradigm used by the Panel of Judges does not have a victimology perspective, as evidenced by the statement expressed by the victim witness who explained that the defendant was not the perpetrator of a crime of sexual violence, while the actual perpetrator had been appointed by the victim witness based on the photo submitted by the Counselor. The law and the perpetrator are still at large, while the defendant was legally and convincingly found guilty of committing the crime of sexual immorality. Therefore, the Panel of Judges ignored the facts of the trial. Apart from that, the panel of judges did not interpret the victim's witness statement as a stand-alone piece of evidence as regulated in the Sexual Violence Crime Law. So the author's suggestion is that it is important for the judge to have the victim's perspective, in this case, what the victim said is information that must be acknowledged at trial and It is necessary to evaluate the panel that examined and decided the case.

Key words: paradigm, judge, sexual violence, victimology

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RESPONSIBILITIES OF CHILDREN AS PERSONS OF CRIMINAL ACTS WHOSE VICTIMS ARE ALSO MINORS

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Abstract

Children are a trust and gift from Almighty God and are the successors of the nation's ideals. A child has the right to survival and growth and development. Children also have the right to be protected from violence and social discrimination as contained in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Law no. 23 of 2002 concerning Child Protection, Law no. 11 of 2012 concerning the Juvenile Justice System, clearly protects every child's rights. However, what is justice for child victims against perpetrators of criminal acts that are also committed by minors? Can "restorative justice" provide justice for the child who is the victim? This is because children under twelve years cannot be held legally responsible. So what is the role of parents or guardians of children who are in conflict with the law in this case? Because in reality, minors are part of the responsibility of their parents or guardians.

Key words: Child protection, Crimes committed by child, responsibilty

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A STUDY OF POLYGAMY FROM A FEMINIST PERSPECTIVE IN INDONESIA

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Abstract

Indonesia as a multicultural society, pluralism is a necessity. Feminist problems in understanding polygamy is that the dominant society takes a perspective that is easier and more subjectively supportive. The practice of polygamy is clearly regulated in the Law and the Compilation of Islamic Law regarding the permissibility of polygamy with strict conditions. Society's perspective continues to open, not only Islamic feminist thought, liberal feminism is present and influences society's perspective. So the term discrimination and legal injustice towards women appears, because in the issue of polygamy it seems that women are harmed or hurt more than men. The terms gender justice emerged after liberal feminist thought entered and influenced Indonesian society, even though in terms of religious culture it is different. This article aims to review the common thread of perspective that should be the basis of society in dealing with the issue of polygamy. The research method used is literature study with data collection techniques sourced from books and journal articles. This research produces clear principles of justice and legal certainty for women, as well as principles of the usefulness of the practice of polygamy as a final alternative. When good is defeated by bad, polygamy is permitted with the conditions that have been set.

Key words: Polygamy, feminism, justice

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FULFILLMENT OF REHABILITATION FOR CHILDREN AS VICTIMS OF SEXUAL VIOLENCE CRIME

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Abstract

Child victims of sexual violence have rights as stipulated in Article 18 of Law Number 11 of 2012 concerning the Child Criminal Justice System to be fulfilled by Investigators, Social Workers, Community Counselors, Social Welfare Workers, Public Prosecutors, Judges, and Advocates. Although there is no obligation, it is in the best interest of the child. As for the crime of sexual abuse in Decision Number 274/Pid.Sus/2022/PN Jmr, from the investigation stage, prosecution to the court decision, the child has not received legal protection in the form of rehabilitation. Then what if it is connected to John Austin's Positivism Theory and Sadjipto Rahardjo's Progressive Theory and what legal novelty the government wants to do to be more effective in dealing with the problem of child victims of sexual violence. This research uses the approach of legislation, cases, and concepts with the type of normative juridical research. Fulfillment related to rehabilitation with child victims of sexual abuse in Decision Number 274/Pid.Sus/2022/PN Jmr is still not implemented. Investigators, Public Prosecutors and Judges only focus on trying suspects. This is basically according to the Theory of Positivism by statutory regulations, but not by Progressive Theory which does not always refer to statutory regulations and is more concerned with the interests of society. So in the future, there is a need for legal novelty related to the obligation to fulfill mental rehabilitation for child victims of sexual violence and law enforcement officials pay more attention to the rights of child victims of crime so that they can restore their condition as before.

Key words: Child Victims, Fulfillment of Rehabilitation

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PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE THROUGH SOCIAL ENTERPRISE APPLICATION OF CONCEPTS TO MENGAYU INDONESIA

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Abstract

The trend of violence against women in Indonesia shows an increase from year to year, reaching around 457,859 reported cases in 2022 according to data from the National Commission on Violence Against Women. However, it is unfortunate that victims' knowledge about trauma protection and recovery is still inadequate. The patriarchal culture that is still strong in Indonesia also makes it difficult for women to work in marriage, making victims tend to depend on the perpetrators of violence.In 2021, the author recognizes the concept of social enterprise which does not only focus on financial profits, but also on social benefits and women's welfare. Based on this concept, the author created Mengayu Indonesia, a social enterprise that empowers women through job training and providing safe work spaces. This effort continues to be developed to support the recovery of victims of violence. The application of the social enterprise concept can be effective in supporting the recovery of victims of violence by referring to the Sustainable Development Agenda (SDGS) 9 Gender Equality 2030. Law Number 12 of 2022 concerning Crimes of Sexual Violence and Law Number 23 of 2004 concerning the Elimination of Domestic Violence The ladder provides a legal basis, as well as PERMEN No. 2 of 2016 which regulates guidelines for developing home industries to improve family welfare through empowering women. It is important for law enforcement to understand that female victims of violence need more than just legal assistance. Economic and social support is also key in their recovery. In the future, collaboration between the business sector, government and law enforcement agencies will play an important role in creating a safe environment and supporting full recovery for women who are victims of violence.

Keywords: Victim Recovery, Social Enterprise, SDGS 9.

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PANEL 3.a.

Civil Law, Saling Into New Terrain
(Artificial Intelligence, Cyber Commerce, And Auto-Generated Intellectual Property Rights)

IS THE DEVELOPMENT OF ARTIFICIAL TECHNOLOGY A DISASTER IN DISGUISE ? (A LEGAL REVIEW ON THE AI LEGAL FRAMEWORK IN INDONESIA)

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Abstract

The development of Artificial Intelligence (AI) technology has been such a blessing to people in modern era. Most of any aspects in our life has been using AI technology and it is not only provides benefits for many people, in particular it makes life easier for technology users in living their daily lives. Nevertheless, besides giving so many benefits, AI technology has many gaps resulting in the emergence of many criminal acts, in particular cyber scam. In several countries there have been many cases of scams carried out with the help of AI technology but this has not been balanced with adequate legislation to prevent and provide punishment and a deterrent effect on criminals. This is because if laws and regulations are made strict, it is feared that this will kill the creativity of scientists in producing technological innovations. This research uses normative research methods regarding legal protection for victims of cyber scams using AI technology. Furthermore, the author also uses a comparative method by comparing regulations regarding cyber scam, using AI technology in several countries. The conclusion that the author reached after reviewing the laws and regulations in Indonesia is that there are still no regulations that regulate cyber scam specifically and in detail. Therefore, it is necessary to update the laws and regulations in Indonesia that are specific and detailed regarding various cyber crimes in general, and cyber scams in particular.

Key words: Artificial Intelligence (AI), Scam, Cyberlaw

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COPYRIGHT PROTECTION OF AI-GENERATED WORKS: WHEN TOOLS BECOME MAKERS

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Abstract:

Principally, copyright is a works created by human being. Because copyright is born and arise by involving independent intellectual efforts originating from human. However, in fact, currently technological developments have made major progress, such as works can be produced from Artificial Intelligence (A.I.) without human involvement. Deviation from copyright principles in the phenomenon of A.I. is a new challenge in enforcing Copyright based on Law Number 28 of 2014 on Copyrights. There are two key questions need to be addressed, First, is the works produced by A.I. can be protected by copyright? Second, what is the concept of ownership and authorship of copyright for works created by A.I. This research was conducted by using a normative juridical method with statutory approach, conceptual approach, and comparative approach. The results of this research show that the A.I. – Generated Works are not entitled to receive a copyright, because the Copyright Law requires human to be involved in the creation of the works. Furthemore, various countries still do not recognize copyright protection for works created independently by A.I. However, at least in certain cases, when there is a human contribution to the A.I. - Generated Works that is quite significant, then there is the possibility of granting copyright protection for the works. This will embolden human to interact creatively with A.I. systems, which will result in more creative works reaching society.

Keywords: Artificial Intelligence, Copyright, Works

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LEGAL PROTECTION FOR THE COMMUNITY AGAINST DECEPTION BY INFLUENCER SERVICES ON A PRODUCT IN E-COMMERCE

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Abstract

E-Commerce, as a form of online transactions between sellers, buyers, and other related parties, involves the shipment of goods, provision of services, and transfer of rights. The public's preference for E-Commerce is increasing due to its ease and convenience, particularly in terms of time efficiency. The E-Commerce system, being practical and offering greater privacy, serves as an ideal solution for influencers seeking to develop their businesses. The existence of E-Commerce enables influencers to avoid direct meetings with individuals interested in using their products or services. Consumers tend to have a high level of trust in influencers, even in the most intense situations, where their followers can be considered dedicated fans who trust everything the influencer says or does without verifying its accuracy. However, the lack of guarantees for consumers regarding the accuracy of information or experiences conveyed by influencers poses one of the risks of using influencer services. In light of Law Number 27 of 2022 concerning Personal Data Protection and Law Number 8 of 1999 concerning Consumer Protection, the emerging issue is how legal protection can be provided to the community harmed by discrepancies in the exchange value of goods and whether influencers providing inaccurate information about a product can be subjected to sanctions. The research utilized a juridical-normative approach through statutory and conceptual approaches. The study aims to understand how legal protection is afforded to consumers adversely affected by discrepancies in goods concerning exchange values due to fraudulent influencer services and to comprehend the sanctions imposed on fraudulent influencer services. The results indicate the necessity of strengthening legal protection for consumers to address the negative impacts of discrepancies in the exchange value of goods due to influencer fraud. Meanwhile, the legal complexities regarding sanctions on influencers providing inaccurate information underscore the need for legal solutions to maintain integrity and trust in the continually evolving E-Commerce industry. This research provides in-depth insights into the expansion of legal protection in the era of E-Commerce and emphasizes the crucial role of the law in ensuring justice and security for consumers in the expanding realm of online transactions.

Key words: influencer, E-Commerce, Influencer Services, Product

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APPLICATION OF ARTIFICIAL INTELLIGENCE TECHNOLOGY AS A VEHICLE FOR ACTUALIZING CIVIL LAW SUBJECTS IN INDONESIA

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Abstract

Artificial intelligence technology refers to the simulation of human thinking abilities that can be programmed on various electronic devices. Its function is to imitate the way humans think and act. The presence of artificial intelligence raises questions regarding its position and status in the legal framework, especially in the field of civil law. There are considerations that arise because on the one hand, artificial intelligence can be considered an object, but on the other hand, it can move autonomously like a human. This has sparked debate in determining its status. Therefore, this research will review how artificial intelligence can be used as an extension of legal subjects in Indonesia and the regulations that regulate it. The research method used is juridical-normative with a comparative legal approach, legal history and legislative analysis. The data used is secondary. A qualitative approach is used to analyze and explain data descriptively. The research results show that the development of artificial intelligence is increasingly rapid, but the regulations governing it are still unclear. Artificial intelligence can be considered a legal subject, but this can cause problems if artificial intelligence cannot be held accountable independently. On the one hand, artificial intelligence can be considered an object, so that its owner is responsible according to material law. On the other hand, artificial intelligence can also be considered as a legal subject that has the capacity to make predictions and is the subject of legal study like other legal references. As a developing country, it is important for Indonesia to have legal rules or concepts that form the basis for regulating artificial intelligence.

Key words: Artificial Intelligence, Civil Law Subjects, Legal Actualization.

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LEGAL CERTAINTY IN MAKING AND STORING AI-GENERATED DEEDS IN ORIGINAL

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Abstract

Technological developments in the Industrial Revolution Era 4.0 have influenced various sectors, including the legal sector. Since 2004, The Notary and Electronic Contract has been an important topic at the International Congress of Latin Notaries. The use of artificial intelligence (AI) opens up new opportunities in the efficiency of creating legal documents such as deeds in original. However, the implementation of this in Indonesia is still controversial due to legal uncertainty and overlapping regulations. Article 15 paragraph (3) UUJN regulates that notaries have the authority to certify electronic transactions (cyber notary). However, this is contrary to Article 5 paragraph (4) letter b of the ITE Law which excludes letters and documents that should be made in a notarial deed as valid evidence in the form of electronic documents. Creating and storing deeds in original electronically with AI minimizes the risk of force majeure. The formulation of the problem faced is legal certainty in making and storing original deeds using AI as well as efforts to apply the precautionary principle. The method used is normative juridical with a statutory approach and a conceptual approach. This research discusses First, the implementation of AI in making deeds in original has fulfilled the elements of legal certainty in positive law. Second, proof of the deed in original in paperless form has quite strong power (primafacie). Thus, it is necessary to synchronize the Notary Position Law by redefining deeds in originali and reorienting the authority of notaries in the process of making deeds in originali through AI.

Key words: Legal Certainty, Deed In Original, AI-Generated

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TRANSFORMATION OF INTELLECTUAL PROPERTY RIGHTS IN ERA 5.0: THE ROLE OF ARTIFICIAL INTELLIGENCE IN THE ECONOMIC ANALYSIS OF LAW APPROACH

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Abstract

The Transformation of Intellectual Property Rights in Era 5.0 is becoming an increasingly important research focus as technology develops and the central role of Artificial Intelligence (AI) in driving innovation. Using an Economics Analysis of Law approach, this research proposes to investigate how the role of AI in Era 5.0 influences the evolution of Intellectual Property Rights (IPR) and its impact on the economy. Firstly, the research will investigate how AI contributes to the transformation of IPR. AI's increasing ability to create, analyze, and utilize information creates new challenges regarding copyrights, patents, and trademarks. This analysis will look at the development of AI in producing works of art, discovery processes, and brand identification, as well as its impact on the traditional definition and scope of IPR. Secondly, the research will examine the economic impact of this transformation by utilizing the Economic Analysis of Law approach. This economic aspect involves assessing market efficiency, resource allocation, and the impact on competition. This analysis will explore whether the AI-driven transformation of IPR in Era 5.0 creates or reduces innovation, encourages or inhibits competition, and impacts the distribution of economic benefits. Additionally, the research will explore ethical questions that arise along with the role of AI in IPR. The Economics Analysis of Law approach will assess how regulations and policies can shape an environment that supports AI innovation without compromising the principles of ethics and fairness in intellectual property. By combining economic, regulatory, and ethical aspects, this research aims to provide a comprehensive understanding of the role of AI in the transformation of IPR in Era 5.0, as well as an in-depth view of its impact on economic development and relevant legal policies.

Key words: Intellectual Property Rights, economic impact, economy analysis of law, artificial intelligence

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PANEL 3.b.

Civil Law, Saling Into New Terrain

(Electronic Document, Electronic Transaction, Notary, Economic Institution, Business and Human Rights, Biodiversity)

THE ANALYSIS ON PPAT'S RESPONSIBILITY ON THE THE MAKING OF STATEMENT LETTER OF ELECTRONIC DOCUMENT VALIDITY AND CORRECTNESS

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Abstract

Statement of Validity and Correctness of Documents issued by PPAT can be said to be valid as a deed under a sign and can be used as evidence in court even if the document is in electronic form. This research aims to find out the validity and correctness of electronic documents issued by PPAT as well as the legal protection of PPAT as the person responsible for the validity and correctness of electronic documents. The type of research method used is normative legal research, using library materials or secondary data of a nature. descriptive. The results of the research show that the statement of validity and correctness of electronic documents issued by PPAT is valid and must be the responsibility of PPAT based on the provisions of Article 10 paragraph (4) of the Agrarian and Spatial Planning Government Regulation or National Land Agency Number 5 of 2020 as well as legal protection for PPAT is limited to formal responsibilities only.

Key words: land deed official; responsibility; electronic document.

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LEGAL CONCEPTS AND THE ROLE ELECTRONIC IMPLEMENTATION OF REGULATIONS FOR NOTARY OFFICES IN THE DIGITAL ERA 5.0

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Abstract

Entering the digital era means that notaries must be able to balance and improve their ability to provide the best legal services. The best solution for notaries in facing the challenges of changing times is to implement cyber notary and remote notary, but both are also not immune from clashes with the Indonesian legal system. Indonesia has not implemented it, such as the suitability of the application of remote notary and cyber notary which originate from common law into the Indonesian legal system, namely civil law and the legal challenges that hinder its implementation.

Key words: notaries, cyber notary, remote notary, callenge, digital era.

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THE VALIDITY OF AGREEMENTS IN ELECTRONIC TRANSACTIONS

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Abstract

This study aims to analyze how the problematic law of engagement on an electronic transaction. This paper uses normative research, namely legal research used as a secondary data source or data obtained through library materials by examining research on legal principles, legal sources, legal theories, books and laws and regulations. An agreement can be said to be legal if it fulfills the conditions for the validity of an agreement that has been regulated in the articles in the Civil Code and other related rules. The research states that the current development has noted that electronic transactions have been used and are very developed in society, whether the parties are capable or not legally capable of acting. In the agreement, if it is known that one of the parties is not legally capable, it can be requested to cancel the agreement in court if one of the parties feels disadvantaged.

Key words: Validity, Agreement, Electronic Transaction

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THE FUTURE OF OJK INSTITUTIONS

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Abstract

The institutional concept of the Financial Services Authority (OJK) integrative from upstream to downstream in the financial industry, makes the OJK an institution that prevents the accumulation of capital and legal subjects in the financial industry, so that OJK is able to first detect systemic risk situations in the financial industry that have the potential to result in default (insolvency), and secondly prevent the spread of capital and legal subjects in various industrial instruments finances that are substantially owned by the same person or legal subject (financial conglomeration). With this concept, the OJK is equipped with strong authority, namely the authority to collect fees from the financial industry and to act as investigators, prosecutors, and judges in alleged financial industry crimes. This authority will initially operate ideally in the concept of Law Number 21 of 2011 (which is strengthened by Constitutional Court Decision Number 25/PUU-XII/2014), where the OJK institutional concept is completely independent from any other authority. This concept was later corrected by the provisions of Law Number 4 of 2023 concerning the Development and Strengthening of The Financial Sector (P2SK) which qualified the OJK as and independent state institution with exceptions that are expressly regulated in the provisions of the Law. This shift in concept will have the potential to hamper the initial objective of establishing the OJK, namely to prevent financial conglomeration that have the potential to damage the stability of the financial system. This type of research is normative research with a statutory approach, conceptual approach and comparative approach. It is hoped that the results of this research will serve as guide in drafting OJK regulatory concepts in terms of achieving the goal of preventing financial conglomerations and financial system crises.

Key words: OJK, independent, systemic risk, financial conglomeration.

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THE ROLE OF NOTARIES IN SUPPORTING THE NATIONAL BUSINESS & HUMAN RIGHTS STRATEGY

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Abstract

One of human needs is to improve the quality of life. Increased economic development, for example, is marked by the growth of business actors in society, whether newly established or those that are developing. Business actors can create new jobs, accelerate the pace of industry, provide technological innovation, and can also create cross-border markets. However, despite the many benefits provided by its existence in building the country's economy, business actors as profit-oriented parties have the potential to violate human rights, which is feared to have an impact on the wider community. Notaries as one of the state officials who are under the auspices of the Ministry of Law and Human Rights and have a role and authority in the process of establishing a company, have a strategic position to participate in the National Human Rights Strategy in accordance with Presidential Decree No. 60 of 2023. Where the application of human rights values in business activities by business actors has a positive impact on the business world. The theoretical urgency expected from this research is to provide scientific input for the development of Legal Science in Indonesia, and the practical urgency to make it easier for business actors, stakeholders and policy makers to formulate and by developing a Business and Human Rights Risk Assessment (PRISMA) application.

Keywords: Economic Development, Technological Innovation, Human Rights, Role of Notaries

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EXECUTION OF OBJECTS OF DEPENDENT RIGHTS FOR JUSTICE AND PROTECTION OF HUMAN RIGHTS

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Abstract

Implementing the execution of mortgage rights at auction usually in practice often creates problems if the object of the mortgage right being implemented turns out to still be inhabited, in this case PMK Number 213/PMK.06/2020 states that the object of the mortgage right is still inhabited, then vacating the land or building is the responsibility of the winner. auction. Carrying out the execution of the object of mortgage rights means that the losing party is forced by the court to carry out the court execution because he does not want to carry out the execution voluntarily. The Mortgage Rights Law states that creditors have the right to sell Mortgage Rights objects without the debtor's permission. Execution of the object of the mortgage right creates injustice for the auction winner whose object is still inhabited, while the human rights of every debtor are entitled to justice in the execution of the object of the mortgage right through a court decision. The problem formulation of this research is: (1) what are the characteristics of the execution of mortgage rights objects?, (2) how is the execution of mortgage rights objects fair and does not violate human rights? And (3) What is the legal protection for debtors who execute their mortgage objects through a court decision? The method used in this research is normative juridical, using a statutory and regulatory approach and a contextual approach. The results of this research in implementing mortgage rights at auction must of course use the principle of justice for both parties and of course do not violate human rights for debtors who exercise their mortgage rights.

Key words: Execution, Mortgage Right, Human Rights Protection

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ENGAGING THE NAGOYA PROTOCOL: AN URGENT NEED TO REGULATE ACCESS BENEFIT SHARING TO PROTECT TRADITIONAL HERBAL MEDICINE IN INDONESIA

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Abstract

This research examines the protection of traditional medical knowledge in Indonesia within the existing intellectual property framework and its implications for indigenous communities. Focusing on two main issues, the study firstly analyzes the repercussions of unauthorized knowledge extraction on traditional medical knowledge and the role of access benefit sharing and prior informed consent regulation in safeguarding it. For instance, the case of Shiseido, a Japanese cosmetic company, highlights the adverse effects of such actions. The existence of the Convention on Biological Diversity and the Nagoya Protocol on access benefit sharing to provide and international legal framework that aims to prevent misappropriation on the use of genetic resources, such as traditional herbal medicine. The findings indicate that the Indonesia has not yet created a regulation that could protect traditional herbal medicine from misappropriation, even though Indonesia has ratified Convention on Biological Diversity and the Nagoya Protocol. With the result, indigenous communities did not receive fair benefits from the utilization of traditional herbal knowledge by external entities.

Key words*:* Traditional herbal medicine, Access benefit sharing, Prior informed consent

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PANEL 4.a.

New Criminal Code, New Adventure
(Unlawfulness, Death Penalty, Anti-Corruption, Democracy)

POLICY OF UNLAWFULNESS IN THE NEW NATIONAL CRIMINAL CODE LAW THAT ENSURES JUSTICE IN A MULTICULTURAL SOCIETY

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Abstract

This exposition aims to elucidate the policy of unlawfulness in the new National Criminal Code Law within the backdrop of Indonesia's multicultural milieu. Furthermore, it analyzes how this policy of unlawfulness correlates with attaining justice. Unlawfulness, as a salient aspect, assumes paramount importance, as only criminal acts imbued with this unlawfulness are proscribed and subject to penal sanctions. The policy dictating the criteria of unlawfulness for criminal acts within the criminal legal framework profoundly influences the administration of justice. The problem formulations in this discourse are: (1) How does the policy of unlawfulness in the new National Criminal Code Law align with a multicultural society? (2) Does the policy of unlawfulness in the new National Criminal Code law embody juridical principles of justice? These problem formulations undergo analysis utilizing a juridical method incorporating a statute, conceptual, and historical approach. The analytical outcomes of this exposition are as follows: (1) The policy of unlawfulness in the new National Criminal Code Law is not exclusively predicated on the appraisal of legal statutes (formal unlawfulness) but also on the assessment of legal norms inherent in society (substantive unlawfulness). This policy harmonizes with the multicultural societal fabric. (2) The formulation of the policy of unlawfulness in the new National Criminal Code Law encapsulates juridical principles of justice, albeit its execution leans towards prioritizing legal certainty, consonant with the prevailing dominance of legal positivism.

Key words: Policy, Unlawfulness, National Criminal Code, Justice, Multiculturalism

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THE FORMULATION OF DEATH PENALTY IN ERADICATION OF THE CRIMINAL ACT OF CORRUPTION

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Abstract

The death penalty for corruption cases in Indonesia is still a very dilemmatic. The implementation of the death penalty is often questioned and even becomes a prolonged polemic. Empirically there is not a single death penalty for corruption cases. Whereas the case of corruption is a serious problem that requires progressive steps. Although several countries have abolished the death penalty in their national legal provisions, Indonesia still maintains the death penalty for reasons of national legal interest. Therefore one of the efforts to eradicate corruption cases in Indonesia by implementing the death penalty as a repressive and preventive measure. Obstacles in the application of the death penalty stumble on the phrase "certain circumstances" which is still a juridical problem. It is necessary to formulate the death penalty from the political perspective of criminal law to develop a mechanism for implementing the death penalty to ensure legal certainty and legal justice. The policy basis for the formulation of criminal law is the implementation of elections to achieve proportional results of criminal legislation in the sense of completing fair and useful provisions. The politics of criminal law seeks to create criminal regulations that are in sync with the situation at a certain time and take into account future conditions. The focus of the problems studied in this thesis are: 1) Why until now the death penalty in corruption cases has never been carried out in Indonesia? How is the formulation of the death penalty in the Anti-Corruption Law from a policy perspective on the formulation of criminal law? The aims of this study are: 1) To find out the factors that capital punishment in corruption cases has never been carried out in Indonesia until now. 2) Knowing the formulation of the death penalty in the Anti-Corruption Law from a policy perspective on the formulation of criminal law. The type of research used is normative juridical research which puts the law as a building norm system, with a statutory, conceptual, and comparative approach because the researcher analyzes in-depth the substance of the law which is connected to empirical facts. The results of this study include 1) Several factors have never applied the death penalty to corruption cases due to several things. First, there are differences in understanding by law enforcement officials regarding the views on capital punishment and human rights. The two articles that contain the death penalty in the Tipikor still have multiple interpretations because they do not explicitly regulate the death penalty. 2) The formulation of the death penalty in the Anti-Corruption Law is very likely to be carried out under empirical facts in society as well as the death penalty in Indonesia is still a positive law. The formulation of the death penalty is one of the efforts to eradicate the practice of corruption. Because apart from being a repressive measure, the death penalty is also a preventive measure. This means that the goal of criminal law, namely the deterrent effect, can also be achieved.

Key words: Death Pinalty, Corruption Law, Criminal Law Formulation

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CRITICAL REVIEW OF POLITICAL CRIMINAL LEGAL POLICY NEW CRIMINAL CODE AGAINST CRIMINAL ACTS OF CORRUPTION IN INDONESIA

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Abstract

Corruption in legal terminology is categorized as an extraordinary crime, which is contained in the explanation in Law Number 30 of 2002 concerning The Corruption Eradication Commision, and as amended by Law Number 19 of 2019 concerning the second Amendment to the Law Number 30 of 2002 concerning The Corruption Eradication Commision. Various law enforcement effort to eradicate criminal acts of corruption have been carried out both in terms of preventing and taking action against perpetrators of corruption, however, corrupt practice in Indonesia still accur and are increasing. In fact, this extends not only to government administration at the executive, legislative and judicial levels, but also to the lowest government administration, the village level and often involves the involvement of private parties and corporations. Starting from the above, related to the inclution of criminal acts of corruption in the new criminal code, Indonesian Corruption Watch through of press release, dated 15 December 2022, regarding of ratification the draft criminal code made critical notes. first, the loss of the special nature of criminal acts of corruption; second, duplication of articles on main criminal acts (core crimes) regulated in the criminal code with the original law; Third, it does not include provisions regarding additional penalties in the form of payment of replacement money; Fourth, it has the potential to hamper the process of investigating corruption cases. In line with this, it becomes important to examine the political direction of criminal law policy in the new Criminal Code towards criminal acts of corruption, so that in the future the implementation of the new Criminal Code does not further alienate society's hopes and sense of justice.

Key words: Political Criminal Legal Policy, New Criminal Book, Anti-Corruption Law

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LEGAL AXIOLOGY FOR LEGAL REGULATIONS THAT LIVE IN SOCIETY IN THE NEW CRIMINAL CODE

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Abstract

The provisions of Article 2 of the Criminal Code regulate that criminal acts can be imposed on a person as long as they are not regulated according to the Criminal Code and are regulated according to the legal provisions that exist in society. The aim of this research is to find legal certainty regarding the legal regulations that exist in society and their regulations. The type of research used is normative legal research using several approaches, namely the statutory and regulatory approach, the conceptual approach, and the comparative approach, while the data source used is primary data, namely, primary legal materials, secondary legal materials, and secondary legal materials. The research results show that the legal regulations that exist in society need to be studied empirically so that the regulations can be more concrete. Apart from that, in determining the legal procedures and criteria that exist in society, it is necessary to consider the legal principles of customary law, namely magical-religious, concrete, communal, and cash. This is an important legal principle in the formation of government regulations so that it can provide legal certainty in the legal arrangements that exist in society.

Key words: Legal Axiology; Living Law; Customary law; Customary Crime

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DEMOCRACY AND PREVENTIVE CRIMINAL LAW

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Abstract

During the past decades, the criminal law of many liberal democracies has taken a "preventive turn." This term was coined to describe the increasing importance that is attached to the preventive function of criminal law, i.e., preventing crime before having to react to it. The criminal law is preventive if it prevents acts prohibited by law. Recent criminal legislation has, however, been marked by the prevalence of purely pre-inchoate offences. These offences seem to be feared to precede disadvantageous behaviors even before the opportunity to perform their duties, and as a result they are referred to as pre-inchoate offenses. This article Identifying risks worthy of punishment is crucial to ensuring the legitimacy of pre-inchoate offences. This article used normative legal research whose analysis inventoried and identified several laws and regulations on preventive criminal law in Indonesia with particular criteria. This article showed the availability of early state intervention in itself is not a reason to criminalise pre-inchoate offences. Insofar, the most common justification for criminalising pre-inchoate offences is reducing the risk that completed crimes will be committed by allowing early state intervention. The key to this surprisingly criminal justice system was democracy. From the point of view of democracy, the enforcement of these offences serves to protect rights of personhood, of formal agency, rights that are the precondition of the civil liberty that is essential to democratic citizenship.

Key words: Pre-inchoate offences, Preventive Criminal Law, attempts, democracy

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POLICY ON THE SANCTION OF REVOCATION OF CERTAIN LICENCES IN ADDITIONAL CRIMINAL SANCTIONS

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Abstract

The enactment of the Criminal Code aims to regulate the balance between public or state interests and individual interests, between legal protection of perpetrators and victims of criminal offences, between elements of legal acts and mental attitudes, between legal certainty and justice, between written law and laws that live in society, between national values and universal values, and between human rights and human obligations. Article 66 of the Criminal Code provides sanction of revocation of certain licence as one type of additional punishment as a sanction given in the imposition of criminal sanctions. The additional punishment in the form of licence revocation is imposed to perpetrators and assistants of criminal offences who commit criminal offences related to the licence owned. The revocation of the permit is carried out with several considerations including: a) the circumstances accompanying the criminal offence committed, b) the circumstances accompanying the perpetrators and assistants of the criminal offence, and c) the relationship between the ownership of the permit and the business or activity carried out. The literature review method is used in this article to strengthen the development of additional criminal sanctions, especially related to the revocation of certain licences as one of the sanctions in the Criminal Code. Whereas a permit is a decision that contains a written legal action from a state administrative official based on the applicable laws and regulations, causing legal consequences for persons or civil legal entities that are final, concrete, and individual. A permit as a government instrument in performing a legal action can be cancelled in 2 ways, namely the revocation of KTUN (permit) by a state administrative official and revoked due to a PTUN judge's decision. The sanction for revocation of certain licences in the KUHP has implications for the authority of the Administrative Court Judge as the authorised party in deciding cases related to the issuance of Administrative Court decisions that are contrary to the applicable laws and regulations and contrary to the general principles of good governance. The revocation of certain licences before the enactment of the new Criminal Code became the authority of the State Administrative Court Judge, this is what then developed the idea that after the enactment of the new Criminal Code, it will switch from the State Administrative Court to the District Court or can be done in both courts.

Key words: Licences Revocation, Additional Criminal Sanction, Administrative Law, Criminal Law

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PANEL 4.b.

New Criminal Code, New Adventure
(Restorative Justice, Penal Mediation, Legal Psychology)

RESTORATIVE JUSTICE APPROACH ON THE ENFORCEMENT OF CRIMINAL LAW

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Abstract

The crime rate in Indonesia today is not heading towards a better direction, but on the contrary. Crime is actually getting increased and innovating along with the development of the times. Moreover along with the growth of science, the term restorative justice is introduced which prioritizes mediation that is expected to provide true justice for victims and perpetrators of crime, as well as society as a whole. The restorative justice approach itself actually restores the ultimum remidium function where other efforts should be taken before using criminal law. The problem of this research is how the implementation of law enforcement in the settlement of criminal offenses through restorative justice approach. The type of research used in this research is normative research. This research shows that restorative justice is a way of resolving cases through an out-of-court legal process that aims to achieve justice that emphasizes the restoration of the conditions of the perpetrator and victim. Restoration is defined as restoration to the victim as well as the perpetrator. So it is not only the victim who is restored. This process can make the relationship between the victim and the perpetrator harmonious again and there is no mutual resentment. By resolving cases through restorative justice, law enforcement which has been using a retributive approach will then switch to a restorative approach in building a more advanced criminal law system in the future. To realize the restorative justice system requires cooperative efforts from the community and the government to create a condition where victims and perpetrators can recommend their conflicts.

Key words: Criminal Law, Restorative Justice.

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THE IMPLEMENTATION OF PENAL MEDIATION IN THE SETTLEMENT OF TRAFFIC ACCIDENT CASES THAT CAUSE VICTIMS.

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Abstract

The high imprisonment sanction has an impact on correctional institutions that experience overcapacity. This is because the judiciary is still not optimal in applying restorative justice, especially in cases of traffic accidents that cause victims, which can actually be resolved through restorative justice mechanisms. One of the forms is through penal mediation between the perpetrator and the victim and/or the victim's family. This research aims to examine the weaknesses of several basic considerations of judges in imposing criminal sanctions on perpetrators of criminal traffic accidents that cause victims. What are the basic considerations of judges in imposing criminal sanctions for perpetrators of traffic accidents that cause victims? 3. How is the orientation of punishment for perpetrators of traffic accidents that cause victims through penal mediation in the future? The results of this study are expected to be an evaluation material in providing input for judges so that in adjudicating cases of traffic accidents that cause victims can prioritize restorative justice so as to provide a sense of justice for the perpetrators and victims. This research uses juridical-normative research with a statue approach, conseptual approach and case study approach.

Key words: Penal Mediation, Traffic Accident Settlement, Judge's Decision

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IMPLEMENTATION OF RESTORATIVE JUSTICE IN INDONESIA

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Abstract

In practice, resolving cases using litigation does not always go according to what the Indonesian people hope and aspire to. because resolving cases using litigation in the current traditional criminal justice system actually creates new problems, for example, punishment patterns that are still retaliatory in nature, causing a backlog of cases, not paying attention to the rights of victims, not in accordance with the principles of simple justice, long processes, complicated and expensive, solutions are legislative and rigid, do not remedy the impact of the crime, do not reflect justice for society and so on. even though the law was created in essence to provide justice and benefits for humans which are reflected in the values of Pancasila. Legal officers tend to use their sectoral egos in handling criminal acts. Legal officers often take advantage of legal loopholes in resolving disputes outside of court for personal interests. Restorative justice is a way of resolving cases through a legal process outside of court which aims to achieve justice which emphasizes restoration of the condition of the perpetrator and victim. Recovery is defined as restoration to the victim and also the perpetrator. So it is not just the victim who is restored. This process can make the relationship between the victim and the perpetrator return to harmony and there will be no mutual grudges. From this description, the author uses two problem formulations. Firstly, has the implementation of restorative justice been successful in the context of law enforcement in Indonesia? Second, how can implementation that guarantees restorative justice be improved for fairer results in law enforcement? For the research method, the author uses the nomative research method. Where normative research examines existing data sources from books, journals, or previous research. The conclusion from this research is that restorative justice has not yet been created as expected and there are still many causes that make restorative justice not work as desired. Apart from that, to realize restorative justice, improvements are needed from all parties.

Keywords: Restorative Justice, Law, Crime

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RESTORATIVE JUSTICE AS A RESOLUTION FOR MINOR CRIMES

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Abstract

The law has moved quickly and has been sharper regarding legal cases involving small people when it concerns the interests of big people, including those with power. However, if there is a case involving or suspected perpetrators of big and powerful people, then the law seems to be paralyzed and dull. Apart from requiring legal certainty and justice, legal settlements must also have beneficial value. Criminal law reform must be carried out with a policy approach, because it is essentially part of a policy step or policy (ie part of legal politics/law enforcement, criminal law politics, criminal politics and social politics). Criminal justice is not just seen as a crime prevention system, but is seen as a social problem that is the same as crime itself. The implementation of criminal sanctions needs to be linked to human development policies that want to shape Indonesian people as a whole. The use of criminal sanctions imposed on violators must be in accordance with civilized human values. Apart from that, criminal law is used to raise the offender's awareness of human values and social values. Prioritizing peace through deliberation to reach consensus is an integral mechanism in people's lives in Indonesia. Legal reform in Indonesia cannot be separated from the objective condition of Indonesian society which upholds religious legal values in addition to traditional law, so it is necessary to explore legal products that are sourced and rooted in cultural, moral and religious values. Resolving ordinary crimes with minor motives can be achieved through penal mediation, called a restorative justice approach, which focuses on the direct participation of the perpetrator, victim and the community in interpreting the crime. Restorative justice is also a new framework of thinking that can be used in responding to criminal acts for law enforcers and workers in Indonesia.

Key words: Restorative Justice, Minor Crimes, Criminal Resolution

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THE CONTRIBUTION OF LEGAL PSYCHOLOGY IN THE DEVELOPMENT OF INVESTIGATIVE METHODS

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Abstract

The development of law is needed to adjust the conditions of society and make law its function, namely as a social control of people's lives, if legal development is not carried out then the law cannot overcome problems that occur in society which will then have an impact on the social order of the community itself. Legal development is needed not only in one aspect but in all aspects of law, such as in the legal process, one of which is investigation, there are often obstacles that arise in the investigation which then have an impact on law enforcement itself, development is needed in the investigation process so that the cases handled can be resolved so that law enforcement efforts can be realized. Development that can be done in the investigation process can be by using criminal profiling methods that emphasize the psychological condition of criminal offenders, this method in addition to aiming to assist law enforcement in uncovering a case is also an effort to prevent the same crime from happening again. The criminal profiling method is used in America, Britain, Canada and Australia, all four countries use the method to deal with certain crimes that are felt to require the help of the method. The realization of legal development requires assistance from various other sciences so that legal development can be achieved from various aspects.

Key words: Legal Psychology, Criminal Investigation, Criminal Profiling

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PANEL 5

When Law Mingled with Alghoritm: Cyber Crimes in Cyber Universe

THE RISE OF ALGORITHMIC JUSTICE: IDEOLOGY AND POWER OF ARTIFICIAL INTELLIGENCE IN JUDICIAL SYSTEM

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Abstract

This article aims to unfold discrimination and bias in Artificial intelligence. Artificial intelligence is used in many fields, such as education, research, trading, and businesses like Amazon or social apps like Facebook, YouTube, etc. It raises ethical, legal, and societal considerations that require careful examination and regulation. However, it has recently been practiced in law and governance, especially in the judiciary system. Integrating Artificial Intelligence in judicial systems is an attempt to improve justice's competence, effectiveness, and quality. This article used ideology critique to uncover the bias ideology behind the legal practice of Artificial Intelligence in the justice system. This study showed that the algorithm used in legal practice has legal formalism to construct legal logic and how formalism and particular ideology are inscribed and woven into the mathematics of legal and governance algorithms. In this study, Basic principles for AI operation, such as fairness, transparency, explicability, human control, accountability, and trustworthiness, are analyzed as ideological litmus tests. Furthermore, the problem with AI legal reasoning is misinterpreted that AI is considered autonomous and self-sufficient. The legal logic that has been embedded in the Algorithm of AI apps in a judicial system, such as COMPASS in the United States and ONE-STOP in China, cannot be separated from power and ideology that have bias and discrimination.

Key words: Artificial Intelligence, Algorithm, Judiciary system, ideological machine.

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RETHINKING "JUSTICE" IN THE AGE OF DIGITAL: A STUDY OF CYBER BULLYING IN SOCIAL MEDIA RESTORATIVE JUSTICE PERSPECTIVE IN INDONESIA

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Abstract

This paper try want to give description about How draft justice to frequent cases of cyber bullying happens on social media with approach restorative justice perspective in Indonesia. Social media day This full with elements of bullying and this is object laws that must be finalized and discussed to search for road the law , in this paper want to discuss about *First* draft Rethinking " Justice " In The Age Of Digital ? and *second* is Cyber Studies Bullying on Social Media Perspective Restorative Justice in Indonesia ? with approach content analysis For explain draft Rethinking " Justice " In The Age Of Digital and also Cyber Studies Bullying on Social Media Perspective Restorative Justice in Indonesia , then results study This is *First* explain and describe draft Rethingking " Justice " In The Age Of Digital and second is Cyber Bullying on Social Media Perspective Restorative Justice in Indonesia .

Key words: justice, cyber bullying , restorative justice and Indonesia .

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DIGITAL FORENSICS AS A POLITICAL SUPPORTER OF CRIMINAL LAW AT THE APPLICATION STAGE OF ARTICLE 27 PARAGRAPH (2) OF THE ITE LAW

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Abstract

Digital forensics is a branch of forensic science that focuses on finding digital evidence. Prayudi & Ashari define digital forensics as the science or method of obtaining, collecting, protecting, reviewing, interpreting and presenting digital evidence for criminal law enforcement purposes. In Indonesia, there are cases where the process of finding evidence uses digital forensics, one of which is a corruption case. Then related to the handling of online gambling that occurs in Indonesia, the government has carried out legal politics through penal suggestions, namely the provisions of Article 27 Paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. (ITE Law). However, the application stage of this article is not yet optimal, this is because it is difficult to collect electronic evidence to prove the perpetrator's actions, while the proof process must be carried out. The use of digital forensics to support the application stage of Article 27 Paragraph (2) of the ITE Law is the focus of this writing. Viewed from the criminal law aspect, the application of digital forensics is very useful in being able to find digital evidence of online gambling crimes so that later the perpetrator can be held accountable for his actions. Apart from that, investigators should be required to apply digital forensics in online gambling criminal cases in order to obtain very strong evidence to prove the perpetrator's actions.

Key words: Digital Foresic, Interpretation Of Law, Legal Politics, Cyber Law

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Rethinking Justice in The Digital Age: The Law of Confiscation of Assets in the Concept of Progressive Law

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Abstrak

Lex semper dabit remidium "law will always be the cure", however law enforcement's strategy hasn't yet adhere to the value of justice. Asset confiscation is a form of punishment applied to someone who is proven to have committed a criminal act which functions as taking over control and ownership of an asset originating from the proceeds of crime. However, Indonesia does not strictly regulate asset confiscation without punishment. There are several urgencies that are fundamental problems, one of which is that according to Indonesia Corruption Watch (ICW) data, asset recovery has not yet become a law enforcement strategy. This needs to be considered in the implementation mechanism so as not to lose assets and be free from misuse. One way is to examine it through the concept of progressive law. This research examines the urgency of regulating asset confiscation without punishment? How to optimize the implementation of asset confiscation to create progressive law? This research uses a normative juridical method, namely examining complete data obtained through primary, secondary and tertiary legal materials. The results of this research are that there are regulations regarding confiscation of assets without punishment, which are not strictly regulated only through criminal proceedings. This is an urgent problem because the development of crime will become more complex, it is possible that there will be misuse of mechanisms in prosecution, the construction of criminal law has not placed confiscation of assets as part of the importance or efforts to reduce the crime rate in Indonesia. Then, to optimize the implementation of asset confiscation, it is necessary to increase scientific capacity equally for stakeholders and law enforcement, there is a need to optimize and actualize fair law enforcement, adequate legal instruments so that there is no legal vacuum in implementing the law.

Key words: justice, asset confiscation, progressive law

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RETHINKING THE CONCEPT OF LAW ENFORCEMENT, VALUES AND JUSTICE IN POST-MODERN INDONESIAN MULTICULTURAL SOCIETY

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Abstract

The concept of the value of justice in law enforcement in Indonesia's multicultural society is embedded in the philosophy that lives among society. The value of justice is a perspective of balance and equality as part of the legal philosophy school of thought. The existence of a multicultural society that has diverse social and cultural backgrounds is the basis for the formation of law enforcement called customary law. Values, norms, justice and customary law are the soul and ideals of the people which are built on the basis of social history and legal needs. This research aims to examine the Concept of Law Enforcement, Values and Justice in Post-Modern Indonesian Multicultural Society with two main problem formulations, namely first, how is law enforcement implemented in Indonesia's multicultural society? Next, how can the values that live among society influence the laws that apply in Indonesia? This research is doctrinal legal research using statutory and conceptual approaches. There are two types of legal materials used, namely primary legal materials and secondary legal materials. The results of this research are that law enforcement in a multicultural society has many challenges which cause legal norms to not achieve the overall legal objectives, namely justice, benefit and legal certainty. The values that live in society encourage dynamic reform of formulations in law enforcement. The conclusion in this research is that the concept of the value of justice cannot be interpreted from just one perspective because law is a value that lives and grows among society. Law enforcement needs to pay attention to whether the applicable norms to be implemented are still relevant to the development of people's lives.

Keywords: Value of Justice; Norms, Law Enforcement; Multicultural

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