

**JURNAL HUKUM *Ius Quia Iustum***  
**Fakultas Hukum**  
**UNIVERSITAS ISLAM INDONESIA**  
**No. EDISI KHUSU Volume 18, Bulan OKTOBER 2011**

**Penulis : Emmy Latifah**

**Judul : Liberalisasi Perdagangan Jasa Penerbangan Melalui Kebijakan *Open Sky* dan Implikasinya Bagi Indonesia**

***ABSTRACT: The research problems are: first, implementation of open sky policy in the frame of flight service trade liberalization based on Act No. 1 of 2009 on Flight; second, the implication of enactment of open sky policy for Indonesia in the frame of flight service trade.***

***This research is empirical legal research. The data used is primary and secondary data which are analyzed using editing analysis style technique later.***

***This is caused by many factors which are: the government's lack of preparation in protecting domestic flight industry by not providing clear regulation in determining tariff, the operator's lack of preparation in conducting flight service, the lack of facility in pursuing open sky. There is economical, social, defense and security implication from the application of open sky policy for Indonesia. However, the most significant implication from these impacts is economy defense, and security implication.***

***Key words : Trade liberalization, flight service, open sky policy.***

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**Penulis : Hasbir Paserangi**

**Judul : Penetapan Perlindungan Hukum Hak Cipta *Software* Program Komputer di Indonesia**

***ABSTRACT: The problem in this research is on how far Act No. 19 of 2002 on Copyright reflects the principles provided in TRIPs. Can this Act on Copyright be in synergy with the structure and legal culture of Indonesian society in order to create a legal system which can generate justice, benefit, and legal certainty? How is the form of copyright enforcement in computer software can create an effective legal protection. This is a normative legal research using some approaches which are statute approach, conceptual approach, and comparative approach. While empirical legal research uses sociological approach.***

***The result of this research shows that principles and provisions in TRIPs related to copyrights had been adopted in Act No. 19 of 2002 on Copyright. The concept of Intellectual Property Right is not yet in synergy optimally with culture and legal awareness of Indonesian society. Legal enforcement procedure on copyright in various countries has some similarities which generally includes private procedure and criminal procedure and administrative procedure.***

***Key words : Legal protection, software, copyrights.***

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**Penulis : Ridwan Khairandy**

**Judul : Landasan Filosofis Kekuatan Mengikat Kontrak**

***ABSTRACT: The problems of this research are: First of all, the influence of freedom of contract paradigm toward the binding forces of contract principle; secondly, the philosophical basis of the binding forces of contract principle. To discuss those problems, this research uses normative and comparative philosophical-juridical-normative approach. This research is a literary research, the legal matters are analyzed qualitatively using normative and juridical approach. This research concludes: First, under the influence of freedom of contract or freedom of will paradigm, the basis of system of law in justifying the basis of binding forces and performance of contract are obtained; Second, the sanctity of contract is one of the teachings followed by classic theory of contract law as a direct result of freedom of contract. The philosophical basis of binding forces in Islamic Law is derived directly from Al Quran.***

***Key words : Philosophical basic, freedom of contract, binding force.***

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**Penulis : Abdul Aziz Hakim**

**Judul : Kejanggalan Impeachment Kepala Daerah di Era Pemilihan Langsung**

***ABSTRACT: The focus of this research is on the conformity of head of local government impeachment mechanism regulated in Act No. 32 of 2004 and Act No. 12 of 2008 with direct democracy system and the impeachment mechanism of head of local government in Indonesia after the enactment of Act No. 32 of 2004 and Act No. 12 of 2008.***

***This research used normative juridical approach by focusing on philosophical approach. To complete the research matters, primary, secondary and tertiary legal matters method is used. The legal materials are qualitatively analyzed.***

***The research result concludes that impeachment of kepala daerah in direct democracy era needs to be re-designed because it is not in accordance with concept of regional autonomy and the principles of legislation formation. On top of that it is to avoid centralistic system which is contradicted with the essence of decentralist system and not in line with decentralization values in the context of unitary in impeachment system.***

***Key words : Head of local government, impeachment, direct election, local government.***

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**Penulis : Ni'matul Huda**

**Judul : Penyelesaian Sengketa Pemilihan Bupati Bengkulu Selatan di Mahkamah Konstitusi**

***ABSTRACT: Constitutional Court decision annulling Head of District of South Bengkulu and asking for re-election creates polemic in society. This research discusses: First, the competency of Constitutional Court annulling the election result of South Bengkulu; Second, the consistency of Constitutional Court decision in granting applicant's request.***

***This research is a normative research using case approach to see the basis of judge's consideration in regional election dispute of South Bengkulu.***

***This research concludes that: (a) Normatively, Constitutional Court has no competency in annulling regional election result, however because there is a juridical defect in the practice, Constitutional Court annul it; (b) There is inconsistency in Constitutional Court decision in deciding the winner of re-election after the Constitutional Court decision in regional election of South Bengkulu.***

***Key words : Dispute resolution, head of district election, constitutional court.***

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**Penulis : R. Nazriyah**

**Judul : Konsep Kemandirian Penyelenggara Pemilihan Umum  
(Kajian terhadap Putusan Mahkamah Konstitusi No.  
81/PUU-IX/2011)**

***ABSTRACT: That one of the requirement to be and Board of Election Supervisory member is to resign from political party at the time of registration. The regulation is assumed contradicted to Constitution because it may hamper the independency of Election Committee. Therefore judicial review on that Act was submitted to Constitution Court. How is the consideration in deciding the judicial review request of Article 11 (i) and Article 85 (i) of Act No. 15 of 2011.***

***This research is normative in form of prescriptive research. The used approaches are legislation approach and case approach. The data used in this research is secondary data. The source from secondary data already covers primary, secondary, and tertiary legal materials.***

***The result of the research shows that according to Constitutional Court, in Article 11 (i) and Article 85 (i) of Act No. 15 of 2011 as long as the phrase "to resign from the political party membership at the time of candidate registration" is contradicted to Article 22E (5) of Constitution so long as not interpreted as "at least in period of 5 years has resigned from the political party membership at the time of registering as candidate."***

***Key words : Independency, constitutional court, election committee.***

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**Penulis : M. Syamsudin**

**Judul : Rekonstruksi Perilaku Etik Hakim dalam Menangani Perkara Berbasis Hukum Progresif\***

***ABSTRACT: The research problem is on how existing condition of ethical behavior if judge in handling cases in court and reconstruction of ethical behavior of judge based on progressive law. This research included in non-doctrinal legal research tradition through sociological approach. The data collected through interview, observation, and document study which is analyzed through interactive model from Matthew B. Miles and A. Michael Haberman. Data validation is conducted through source and method triangulation. The research result shows that judge behavior in handling case in court is influenced by orientation value adopted by the judge. Orientation value carved in the soul and psychological realm of the judge significantly determines judge's orientation in handling case. Judge will choose values based on prioritized matters in life. Fact shows that there are three types of judge's orientation in handling case which are material oriented judge (materialist), benefit oriented judge (pragmatic) and ideal law oriented judge (idealist).***

***Key words : Reconstruction, judge profession ethic, progressive law.***

\* Penelitian Hibah Bersaing yang dibiayai oleh Direktorat Penelitian dan Pengabdian pada Masyarakat (DP2M) Dikti tahun 2011.

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**Penulis : Akhmad Khisni**

**Judul : Peran Ijtihad Hakim Peradilan Agama Bidang  
Hukum Kewarisan dan Kontribusinya Terhadap  
Hukum Nasional**

***ABSTRACT: The issues raised in this study are: The form and legal considerations, the methods and the role of ijtihad as well as the contribution of the judge ijtihad decision of religions courts in the field of inheritance law in Islamic Law Compilation (KHI)aganise the national law from the influence of muslim community life of Indonesia. The research method using a normative approach and the paradigm of constructivism, with the object research of jurisprudence of the high supreme court of Republic Indonesia and the verdict as the primary source of qualitative data analysis. It is verdicted that: A daughter (as the inheritor) who acts hijab toward the inheritance provider's biological brother gets all of the inheritance from the inheritance provider. This verdict seemingly confronts article 176 of Islamic Law Compilation which says:"on anly daughter alone gets a half of the inherence ...". The verdict is the result of Ijtihad in attempt of catching the ruh (soul) or maqashid al-syari'ah in order to promote justice with a legal justification that the provider's brother is not in responsibility for providing his niece money and other needs. It is also because of the change in social structure in farm of "family structure" which is widely known in modern Indonesian family as "nuclear family" consisting of father, mother, and children excluding relatives. This type of family structure has become more standard and socially accepted. In other words, nuclear family is a more modern model in Indonesian modern society.***

*Key words : Ijtihad, judge, inheritance law, national law.*  
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**Penulis : Fajri Matahati Muhammadin**  
**Rizky Wirastomo**  
**Tata Wijayanta**

**Judul : Peran Hambatan Aksesibilitas Masyarakat Terhadap Hak Keadilan Perdata\***

***ABSTRACT: The problems of the research are first, whether accessibility to juridical institution is a human right. Second, whether society accessibility to juridical institution is enough as consequence of human rights. This empirical-normative research uses primary and secondary data. The research concludes that the right of accessibility on private justice is a human right which must be guaranteed by government. This matter has been clearly regulated in international law and national law of Indonesia. However, society suffers access obstacle over private justice especially in low-valued dispute.***

***Key words : Justice, private dispute, accessibilty,***

\* Laporan Penelitian yang didanai oleh Unit Penelitian dan Pengembangan Fakultas Hukum Universitas Gadjah Mada Yogyakarta (2011)

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**Penulis : Mukmin Zakie**

**Judul : Pengadaan Tanah Untuk Kepentingan Umum  
(Perbandingan antara Malaysia dan Indonesia)<sup>1</sup>**

***ABSTRACT: Land is a basic capital for human's life. As a basic capital, land has two functions: productive function and non-productive function. The needs of land use often clashed with each other since the amount of land is limited, in other side population grows rapidly. For the sake of development, every state in the world needs land. The development is related to land and needs land. During the practice of development, the program might clashed with the land which right already attributed or the land has already been possessed by person or legal entity. As the strategy to obtain that land, government uses the term of public interest. This research is a comparative research between Indonesia and Malaysia in providing land for public interest. The problem in this research is how the regulation take over the land and the concept of public interest in Indonesia and Malaysia.***

***The result of the research shows that there is deviation of the meaning of public interest in both state which generates different perception in society related to land providing. Even so, land providing for public interest has already expressed into legislation in both states.***

***Key words : Land providing, public interest, legislation,***

<sup>1</sup> Penelitian/riset ini didanai oleh Direktorat Penelitian Dan Pengabdian Masyarakat (DPPM) Universitas Islam Indonesia Jogjakarta, 2011.