



BRAWIJAYA LAW JOURNAL

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"CONSTITUTIONAL ISSUES AND INDIGENOUS RIGHTS"

JUDICIAL DECISION AND RETHINKING THE CONSTITUTIONAL PRINCIPLES CONCERNING TREATY MAKING POWER AND PROCESS OF THAILAND
Kiarttiphorn Umpai

STATE LIABILITY FOR VIOLATION OF CONSTITUTIONAL RIGHTS AGAINST INDIGENOUS PEOPLE IN FREEDOM OF RELIGION AND BELIEF
Zaka Firma Aditya, Sholahuddin Al-Fatih

THE ANALYSIS OF ISLAMIC ECONOMY IN THE CONSTITUTION OF INDONESIA
Siti Hamidah, M. Bakri, A. Rahmad Budiono, Bambang Winarno

UNRAVELING THE RIGHT TO LIFE IN CASES OF DEATHS RESULTING FROM THE ACTIONS OF STATE AGENTS UNDER THE SYSTEM OF ECHR
Prischa Listiningrum

PHILOSOPHICAL VALIDITY, THEORETICAL, NORMATIVE AND EMPIRICAL PARADIGM OF GENERAL PRINCIPLES OF GOOD GOVERNANCE (AUPB) AS A REVIEW OF PRESIDENTIAL IMPEACHMENT
Nadir, Sudarsono, Jazim Hamidi, Muchamad Ali Safaat

MODEL REGULATION FOR DATA PRIVACY IN THE APPLICATION OF BIOMETRIC SMART CARD
Sinta Dewi

JURIDICAL IMPLICATIONS OF THE LEGAL NORM VOID OF INTERFAITH MARRIAGES IN INDONESIA (A Study on Judge's Considerations)
Kadek Wiwik Indrayanti, Suhariningsih, Masruchin Ruba'I, Nurini Apriliana



PREFACE

Brawijaya Law Journal has once again published its next edition. As we know that Brawijaya Law Journal was established to publish academic papers with various aspects in the field of law, both private and public, ranging from constitutional law to international law.

Following the success of its last year edition, with a transnational perspective, on its first edition of year 2017, the theme of the journal is “Constitutional Issues and Indigenous Rights”. A constitution is a set of fundamental principles or established precedent according to which a state is governed. It is a norm of political and legal system codified as a written document, which includes the formation of the structure, procedures, powers and obligations of state government in general. One of the functions of the constitution is to protect human rights, including the indigenous rights as well as freedom of religion.

This issue can be seen through any aspects. This current edition comprises of seven papers concerning the constitutional rights against indigenous people in freedom of religion and belief, and also the legal implication of the legal void related to interfaith marriages. It follows by a paper analyzing the constitutional principles concerning treaty making power and also the state liability for violation of its constitutional rights against indigenous people. There is also a analysis from an Islamic economy perspective, the right to life under the ECHR, to the model regulation of data privacy.

We are most grateful to our international board of editors as well as our reviewers and the Law Faculty of Brawijaya University in making it possible for this issue to be published.

Dhiana Puspitawati

March 2017

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CONTENT

**JUDICIAL DECISION AND RETHINKING THE CONSTITUTIONAL PRINCIPLES
CONCERNING TREATY MAKING POWER AND PROCESS OF THAILAND**

Kiarttiphorn Umpai, School of Law, National Institute of Development Administration
(NIDA)
1 – 28

**STATE LIABILITY FOR VIOLATION OF CONSTITUTIONAL RIGHTS AGAINST
INDIGENOUS PEOPLE IN FREEDOM OF RELIGION AND BELIEF**

Zaka Firma Aditya, S.H. and Sholahuddin Al-Fatih, S.H., Magister of Law, University of
Airlangga
29 – 58

**THE ANALYSIS OF ISLAMIC ECONOMY IN THE CONSTITUTION OF
INDONESIA**

Siti Hamidah, Doctoral of Legal Science Program, Faculty of Law, Brawijaya University
M. Bakri, Law Faculty, Brawijaya University
A. Rahmad Budiono, Law Faculty, Brawijaya University
Bambang Winarno, Law Faculty, Brawijaya University
59 – 76

**UNRAVELING THE RIGHT TO LIFE IN CASES OF DEATHS RESULTING FROM
THE ACTIONS OF STATE AGENTS UNDER THE SYSTEM OF ECHR**

Prischa Listiningrum, Student of Master of Laws (LLM) in the University of Edinburgh, the
United Kingdom
77 – 94

**PHILOSOPHICAL VALIDITY, THEORETICAL, NORMATIVE AND EMPIRICAL
PARADIGM OF GENERAL PRINCIPLES OF GOOD GOVERNANCE (AUPB) AS A
REVIEW OF PRESIDENTIAL IMPEACHMENT**

Nadir, Doctoral Candidate at Law Faculty, Brawijaya University
Sudarsono, Law Faculty, Brawijaya University
Jazim Hamidi, Law Faculty, Brawijaya University
Muchamad Ali Safaat, Law Faculty, Brawijaya University
95 – 116

**MODEL REGULATION FOR DATA PRIVACY IN THE APPLICATION OF
BIOMETRIC SMART CARD**

Sinta Dewi, Department of ICT Law, Law Faculty, Padjajaran University

117 – 128

**JURIDICAL IMPLICATIONS OF THE LEGAL NORM VOID OF INTERFAITH
MARRIAGES IN INDONESIA**

(A Study on Judge's Considerations)

Kadek Wiwik Indrayanti, Doctorate Program at Brawijaya University, Malang, as well as a
lecturer at the Faculty of Law at Merdeka University, Malang

Suhariningsih, Law Faculty, Brawijaya University

Masruchin Ruba'I, Law Faculty, Brawijaya University

Nurini Aprilianda, Law Faculty, Brawijaya University

129 - 143

MODEL REGULATION FOR DATA PRIVACY IN THE APPLICATION OF BIOMETRIC SMART CARD

Sinta Dewi¹

¹ Department of ICT Law, Law Faculty, Padjajaran University

Email : sinta@unpad.ac.id

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ABSTRACT

Notwithstanding the foregoing, the use of this technology has raised many concerns with regard to the need of privacy data protection. It is due to the fact that biometrics technology as a powerful identifier brings along personal information that can be traced from different sources to be linked together, and also the ability of third parties to access this data in identifiable form and link to other informations and used this information for secondary uses without the consent of data subject.

Data privacy is considered as fundamental human rights and has been regulated in a number of international instruments as well as regional instruments and has been incorporated into more than 100 national laws. Countries have now recognized data privacy either as explicit constitutional rights, or in the form of comprehensive data privacy law.

This article discusses the extent to which the use of biometric smart card as a tool to examine the identification has been increasingly utilized due to its advantages, such as ability to achieve a high level of accuracy, the system cannot be easily duplicated as well as high level of security, since it involves biological characteristics like fingerprints, iris and DNA. It further explores data privacy model regulation which is intended to regulate and protect data privacy.

This article concludes that data privacy is a legal right regulated and controlled by both international and national instruments, and the use of biometric smart card often viewed as a conflict between the need of security and how far the system protects data privacy. The model of regulation approach, known as hybrid model, is aimed to ensure privacy data protection. Such hybrid model of regulations should combine 4 (four) approaches namely; government regulations, social norms, corporate privacy rules and technical regulations.

Keywords: *data privacy regulation, model, biometrics, privacy policy*

I. INTRODUCTION

As innovations in information technology have enabled previously unimagined forms of collecting, storing, sharing and analyzing data, data privacy has evolved to encapsulate a right to protection of personal data¹. The concept

of data privacy derived from the establishment of rules governing collection and handling of personal data, and implies that individuals have the right to decide whether to engage with society by sharing or exchanging their personal information,

¹ Human Rights Committee general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and

protection of honor and reputation (art. 17).