CRIMINAL LAW ARRANGEMENTS IN INDONESIA RELATED TO JUDICIAL REVIEW

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Abstract *– Legal remedies for judicial review without being preceded by ordinary legal remedies are a phenomenon that is often and increasingly occurring in Indonesia's justice world. It phenomenon occurs in order to take advantage of legal loopholes. The convict immediately submits a legal remedy for judicial review because, in legal proceedings for judicial review, there is a principle that the sentence imposed must not exceed the original decision. Material justice and truth become a discourse on the application of extraordinary legal remedies for judicial review, thus whether the provisions of Article 263 of the Criminal Procedure Code can be applied to court decisions that have obtained permanent legal force without going through appeals and cassation. This study aims to find out the substance of criminal law arrangements in Indonesia related to judicial review. The research method used is normative legal research, namely research conducted by the author using laws and a conceptual approach, legal material collection techniques using library research, then legal material obtained from library research is analyzed qualitatively. The research results obtained are Judicial Review in principle, an extraordinary remedy for court decisions with permanent legal force (inkracht van gewisjde), aims to provide legal certainty and is formed to address the interests of the convict, not the interests of the state or the victim. Judicial review is regulated in Law no. 8 of 1981 concerning Criminal Procedure Code ("KUHAP") with articles including: Article 263, Article 264, Article 265, Article 266, Article 267, Article 268, Article 269.*

Keywords*: Review; Legal effort; Criminal law.*

INTRODUCTION

In law enforcement, three things must be considered, namely first, legal certainty (*rechssicherheit*), second benefit (*zweckmassigheir*), and third, justice (*gerechtigheit*).[1] It can also be understood that criminal law instruments are more general because the legal process is simpler and younger [2].

Justice and protection of human dignity in law in Indonesia are proven by the existence of a process of inquiry, investigation, prosecution, trial examination, and evidence which is regulated in the Criminal Procedure Code, in the future abbreviated as KUHAP. It Examines criminal cases in the criminal justice system, starting from the investigation, investigation, and prosecution process[3]. To carry out the duties of investigating and investigating criminal acts, the Criminal Procedure Code gives the main role to the Indonesian National Police[4]. Then the court decision is carried out by the judge as a state justice official who is authorized by law to try cases. All of these processes are carried out by upholding justice to uphold the law and fulfilling all human rights in accordance with the laws in force in the Republic of Indonesia.

In enforcing criminal law through the process of criminal procedure, errors can occur in imposing criminal sanction decisions on defendants by using penal means. A judge's decision is not free from mistakes or oversights. Therefore for the sake of truth and justice, every judge's decision needs to be made possible to be re-examined so that mistakes or oversights that occur in decisions can be corrected. Every judge's decision generally provides legal remedies, namely efforts or tools to prevent or correct errors in a decision. The level of public trust in the world of justice is very low due to the rise of the judicial prosecution mafia, which is not balanced with the value of losses or the

[1] Barda Nawawi Arief, 1986, *Penetapan Pidana Penjara dalam Perundang-undangan dalam Rangka Usaha Penanggulangan Kejahatan,* Bandung: Gramedia. p. 35.
[2]Greafik Loserte, HM Said Karim, Amir Ilyas. "Prison Penalty As Additional Crimal Sanction for Substitution in Corruption Case". *Surakarta Law and Society Journal*. Vol. 1. No. 1. Agustus 2018. p. 56.
[3] Suhaema, Syamsuddin Muchtar, Abd. Asis. "Perlindungan Hukum Terhadap Anak Saksi dalam Sistem Peradilan Pidana". *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*. Vol. 7. No. 2. Desember 2020. p. 2.
[4] Andi Tomy Aditya Mardana, Syamsul Bachri, Nur Azisa. "Koordinasi PPNS Bea Cukai dan Penyidik Kepolisian dalam Penyidikan Tindak Pidana di Bidang Kepabeanan". *Hermeneutika*.Vol. 5. No. 1. Februari 2021.

value of fines that is not balanced between one claim and, even though the cases are almost similar, as well as criminal sanctions which tend to be light crimes even though the loss of state finances is very unreasonable.[5]

The definition of legal remedies according to Article 1 Point 12 of the Criminal Procedure Code is the right of the accused or the public prosecutor not to accept a court decision in the form of resistance or appeal, or cassation or the convict's right to submit a request for review in matters and according to the method regulated in law.

Juridically, legal remedies are divided into ordinary legal remedies such as resistance (*verzet*), appeal (*cassation*), etc. Meanwhile, extraordinary legal remedy is an effort against a decision with permanent legal force, in this case, Judicial Review[6]. Rules regarding ordinary legal remedies are contained in Chapter XVII of the Criminal Procedure Code which consists of an appeal examination (*beroep*) and cassation examination (*cassatie*), while the rules regarding extraordinary legal remedies are contained in Chapter XVIII of the Criminal Procedure Code which consists of cassation examination for the sake of law (*cassatie in het belang van de wet*) and review (*herziening*) of court decisions that have obtained permanent legal force (*inkracht van gewijsde*).

The focus of this research, which then focuses on extraordinary legal remedies, namely Judicial Review. Review, in the future abbreviated as PK, is a legal remedy against a Court Decision that has obtained permanent legal force, except for an acquittal or release from all lawsuits, both decisions of the court of first instance, level of appeal, and decisions of cassation from the Supreme Court. Basically, in a limited legal way, the review of court decisions that have obtained permanent legal force, which is commonly referred to as herziening, is regulated in Chapter XVIII Part Two, Articles 263 to Article 269 of the Criminal Procedure Code.

Judicial review is the right of the convict or his heirs, but in several cases other than the convict or his heirs, the prosecutor can submit a Judicial Review. In criminal justice, only two parties face each other: the Public Prosecutor and the Defendant (with or his legal adviser)[7]. Review is the authority of the Supreme Court, in this case, the Supreme Court does not only examine the application of law (*judex yuris*) but can also examine facts and evidence *(judex factie*) in a case filed.

Article 263, paragraph (2) of the Criminal Procedure Code states that the request for judicial review is made based on:

a. If there is a new circumstance that gives rise to a strong allegation, that if the said circumstance had already been discovered while the trial was still in progress, the result would be an acquittal or an acquittal of all lawsuits or the demands of the public prosecutor could not be accepted or lighter criminal provisions were applied to that case.
b. If in various decisions, there is a statement that something has been proven. However, the matters or circumstances as the basis and reasons for the decision that have been stated have been proven. It turns out to be contradictory to one another.
c. If the decision clearly shows an oversight by the judge or a real mistake.

What is meant by a new situation (novum) is a situation that already existed at the time the trial or examination of the case at the first instance took place. However, due to various reasons, this situation has not been disclosed. This situation was only known after the decision obtained permanent legal force (*inkracht van gewijsde*). So what is new is not the situation but when it is known. This situation already existed at the time the trial took place, even before the criminal case file was filed by the investigator, but it was only discovered from the evidence. The evidence that contains the new circumstances is not new, but evidence that was already in place at the time the trial took place, even before, but was not/has not been submitted and examined before the trial.[8]

The second reason that is used as the basis for a request for review is if in various decisions there are:

1. a statement that something has been proven;
2. then a statement regarding the proven case or situation is used as the basis and reason for a decision in a case;

[5] Syamsul Bachri. "Kewenangan Kejaksaan Terhadap Tindak Pidana Korupsi atas Kerugiam Keuangan Negara". *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*. Vol. 19. No. 1. Juni 2020.

[6] Farangga Harki Ardiansyah, Alfitra, Tresia Elda. " Upaya Hukum Peninjauan Kembali dalam Perkara Perdata (studi Putusan Mahkamah Agung Nomor 118/PK/pdt/2018)". *Journal of Legal Reserch*. Vol. 2. Issue 2. 2020.

[7] Muhammad Ridwanta Tarigan, Madiasa Ablisar, Sunarmi, Mahmud Mulyadi,. "Tinjau Yuridis Upaya Hukum Peninjauan Kembali yang Diajukan oleh Penuntut Umum dalam Perkara Pidana*". Locus Journal of Academic Literatur Review*. Vol. 1. Issue 5. Oktober 2022.

[8] Adami Chazawi, 2011, *Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum dalam Penyimpangan Praktik & Peradilan Sesat,* Jakarta: Sinar Grafika, p. 62.

3. However, in decisions of other cases, the matters or circumstances have been proven to be mutually contradictory between one decision and another.

Yahya Harahap gave an example of the possibility of conflict between civil decisions and criminal decisions.[9] For example, the director of the Yogyakarta Regional Development Bank has sold the land and house as collateral for a loan privately, so this action is against agreements and statutory regulations. According to the agreement, if the debtor does not repay the loan at maturity, the bank can sell the collateral by auction, but the bank director sells the collateral privately. For this action, the Yogyakarta District Court sentenced the director to commit the crime of embezzlement in office as referred to in Article 374 of the Criminal Code.

Then in a civil case, the Yogyakarta District Court stated that the sale made by the bank director was following the agreement and did not conflict with the method of sale determined by law. In such cases, the convict makes it the reason underlying the request for judicial review.

Based on the provisions of Article 263 paragraph (2) of the Criminal Procedure Code, the third reason that is used as the basis for submitting a request for judicial review is if the decision clearly contains or clearly shows the judge's mistake or the judge's mistake.

Under the provisions of Article 197 paragraph (1) of the Criminal Procedure Code, the contents of a criminal court decision must contain 12 parts. Among the 12 sections, ten sections are imperative, and if not published, the decision is threatened with null and void. Therefore, without including one of the ten sections, it is the judge's oversight. However, if it only does not contain two parts, it is not threatened with cancellation by law. Even though the legal consequences are not mentioned as in the ten parts mentioned first, if the two parts of the decision are not published, the decision can be corrected by ordinary legal remedies.

Legal remedies for judicial review without being preceded by ordinary legal remedies are a phenomenon that is often and increasingly occurring in Indonesia's justice world, especially in corruption cases. The existence of corruption in Indonesia, with a reasonably rapid amount accompanied by actors who incidentally are government officials coupled with a large number of unresolved cases, triggers the emergence of progressive laws in corruption crimes in Indonesia[10]. In order to take advantage of legal loopholes, the convict immediately submits a legal remedy for judicial review because, in legal proceedings for judicial review, there is a principle that the sentence imposed must not exceed the original decision. It is different in the case of an appeal or cassation-level decision. In that process, the decision has not yet become final and binding, so it does not rule out the possibility of an imposed sentence exceeding the original decision if the crime is proven.

In several requests for judicial review, the reason most often used is an oversight by the judge or an obvious mistake because there were no clear definitions and boundaries, so it became the reason for facilitating requests. The legal remedy for judicial review by the convict, because there was a judge's mistake or the judge's mistake without prior ordinary legal remedies, is carried out by the convict with more favorable considerations because there is a binding principle in legal proceedings for judicial review, namely that the sentence imposed may not exceed the original decision.

Regarding Judicial Review without going through Appeal and Cassation, it is known that several convicts have been filed, namely by the Corruption Convict Hamid Rizal, which is based on Supreme Court Decision Number 148 PK/Pid.SUS/2020, in this case, rejected the request for Judicial Review as submitted basically. According to the Judge, Judicial Review through appeal and cassation is inappropriate because without using appeals and cassation, it means the convict has accepted and approved the decision of the panel, so it is no longer appropriate to question the existence of a judge's oversight or a real mistake as the reason in submission for reconsideration.

Another convict who has filed a judicial review without going through appeals and cassation is the convict Basuki Tjahaja Purnama, which is based on the Supreme Court Decision Number 11 PK/PID/2018, where one of the considerations of the Panel of Judges in the Judicial Review Decision states that the Petitioner for Judicial Review did not exercise his right to express objections to the judex facti decision, namely by utilizing appeals, namely by proving that the Petitioner withdrew his appeal against the North Jakarta District Court's Decision, thus, in fact, the Petitioner for Judicial Review has accepted the considerations and injunction of the Jakarta District Court's decision North.

Based on the facts of the 2 (two) Judicial Review decisions that had previously existed regarding the Request for Judicial Review without prior Appeal and Cassation Efforts, which, if related to the definition of Judicial Review based on Article 263 paragraph (1) of the Criminal Procedure Code,

[9] M. Yahya Harahap, 2006, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali,* Cetakan Kedelapan, Jakarta: Sinar Grafika, p. 621.

[10] Muhammad Irwan, Slamet Sampurno Soewondo, dan Julianto Jover Jotam Kalalo. "Hukum Progresif Sebagai Paradigma Hukum Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia." *Societas: Jurnal Ilmu Administrasi dan Sosial*. Vol. 7. No. 1. 2018: 38-46.

which essentially states that Judicial Review as legal remedies against Court Decisions that have obtained permanent legal force except for acquittals or release from all lawsuits, both decisions of courts of first instance, appeal level, and decisions of cassation from the Supreme Court. So that there is an interpretation that it is not appropriate to state that a Review can be carried out after all legal efforts at the first level, the level of appeal, and the level of cassation have been passed.

The consideration of the Constitutional Court in Decision Number 34/PUU-XI/2013 states that philosophically extraordinary legal remedies for judicial review are legal remedies that were born to protect the interests of the convict, in which legal remedies for judicial review are different from appeals and cassation as legal remedies normal. Extraordinary legal remedies for judicial review aim to find justice and material truth.

Justice and material truth, as referred to, become a discourse on the application of extraordinary legal remedies for judicial review, in which the provisions of Article 263 of the Criminal Procedure Code can be applied to court decisions that have obtained permanent legal force without going through appeals and cassation, with consideration or basis for submitting judicial review. one of which is if the decision clearly shows or clearly shows the judge's mistake or the judge's mistake.

RESEARCH METHOD

This study uses normative legal research, namely research conducted by the author using laws and a conceptual approach. The types of data used include primary, secondary, and tertiary legal materials. The technique for collecting legal materials used was library research, then the legal materials obtained from the literature study were analyzed qualitatively.

RESEARCH RESULTS AND DISCUSSION

Laws and regulations are formed to provide certainty for every bearer of rights and obligations to achieve order in a country based on the principle of legal certainty. Legal certainty cannot be separated from written legal norms and is used as a guideline for everyone. According to the law in every statutory regulation, legal certainty also clarifies what things are permissible and what are not. Harmonization is an effort to align, adjust, strengthen, and perfect the conception of draft legislation with other laws and regulations, whether higher, equal, or lower, and other matters outside of laws and regulations.[11]

Laws are made to help people in their daily lives, to resolve interests in social life so that justice and certainty can be obtained in relations with one another and create order in society. The law is required to fulfill the basic value of the law. The three basic values are fairness, usability, and legal certainty.[12] Concerning values in the legal substance system, the law concretizes the value system that applies in society. A condition that is aspired to is the compatibility between the law and the value system.[13]

According to Aristotle in The Ethics of Aristotle, there are 2 (two) theories about justice, namely distributive justice and corrective/commutative justice. Distributive justice is justice that gives everyone a share according to their services, and distribution is not based on equal parts but on balance. Meanwhile, corrective/commutative justice gives everyone the same amount without considering someone's services. Corrective/commutative justice plays a role in the exchange of goods and services regulations, where there is equality between what is exchanged as much as possible. So, corrective/commutative justice dominates the relationship between individuals, while distributive justice mainly controls the relationship between society, especially the state and individuals. Conceptually F. Geny also argues that the purpose of law is justice, and as an element of the notion of justice are social and utility interests. The purpose of the law, for a part, lies in realizing "justice".[14] Then Donald Black defines law as social control of the government, while Lon Fuller's law is "an effort to make human behavior subject to rule administrators".[15] However, even though the law

[11] Adi Harsanto, Jubair, dan Sulbadana. "Upaya Hukum Peninjaun kembali dalan Perkara Pidana Pasca Putusan Mahkamah Konstitusi", *Jurnal Katalogis*, Vol. 5 No. 3 Maret 2019, p. 1.
[12] Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: PT Citra Aditya Bakti, p. 19.
[13] Ajie Ramdan. "Kewenangan Penuntut Umum Mengajukan Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi". *JIKH* Volume. 11 No. 2 Juli 2017. p. 190.
[14] D.H.M. Meuwissen. "Teori Hukum". dalam *Pro Justitia*, Tahun XII, Nomor: 2, April 1994. p. 14.
[15]Lawrence M. Friedman, 2001, *American Law in Introduction*, Second Edition, Terjemahan Penerbit, Jakarta: PT. Tatanusa, p. 26.

is prepositioned in this way, the dimensions and dimensions of justice are situational, contextual and casuistic. Because of this, the purpose of the law, which refers to justice, must be reflected in legal provisions. Strictly speaking, the context of justice is "according to law, " meaning what is expressly required by the legislators."[16]

The law aims to achieve justice and benefit and provide legal certainty. One of the goals of the law is to provide benefits to society. Because of that law, the law must be dynamic and in accordance with developments at this time to achieve the intended purpose of the law, which is to benefit society in the context of creating order in social life. In short, it is defined that criminal procedural law is the law that regulates how to maintain or administer material criminal law so that a judge's decision is obtained and how the contents of the decision must be implemented. Likewise J.C.T. Simorangkir put forward the notion of criminal procedural law, namely "procedural law that implements and maintains material criminal law.[17]

Criminal law policy is essentially an "effort to realize criminal laws and regulations so that they are in accordance with conditions at a certain time (ius *constitutum*) and in the future *(ius constituendum*)". The logical consequence is that criminal law policy is synonymous with penal reform in a narrow sense. Because, as a system, criminal law consists of culture (*cultural*), structure (*structural*), and substance (substantive) law.[18] From the perspective of legal politics, criminal law politics seeks to make and formulate good criminal legislation. Positive law regulations here are defined as criminal law legislation.[19] According to Jeremy Bentham, criminal law should not be imposed/used if it is *groundless, needless, unprofitable, or inefficacious*.[20] Likewise, the use of criminal sanctions indiscriminately/indiscriminately/generalizes and is used coercively *(coercively)* will cause the criminal facility to become a "prime threat" *(prime threatener)*.[21]

Punishment contains the following elements or characteristics:

(1) The punishment is essentially an imposition of suffering or sorrow or other unpleasant consequences;
(2) the punishment was given intentionally by the person or body that has it (by the authorities);
(3) the punishment is imposed on someone who has committed a crime according to law.[22]

The aspect of sentencing is the "culmination" of the Criminal Justice System, namely by imposing a judge's decision. Theoretically, in the literature, both according to the scope of the Anglo-Saxon system and Continental Europe, the terminology of criminal justice as a system is relatively debatable.[23] Concretely, the criminal justice system can be studied through approaches to the legal, sociological, economic, and management dimensions as stated by Satjipto Rahardjo's assumptions and descriptions that: "There are several options for studying a legal institution such as the criminal justice system, namely with a legal approach and with a broader approach, such as sociology, economics, and management. From a professional perspective, the criminal justice system is commonly discussed as an independent legal institution. Here we pay attention to the principles, doctrines, and laws governing the criminal justice system. In law, such an approach is called *positivist-analytical*."[24]

According to M. Sholehuddin, the "philosophy of punishment" essentially has 2 (two) functions: First, the fundamental function is as a foundation and normative principles or rules that provide guidelines, criteria, or paradigms on criminal and sentencing issues. This function is formally and intrinsically primary and contained in every teaching system of philosophy. Every principle established as a principle or rule is recognized as a truth or norm that must be upheld, developed, and applied. Second, the function of theory, in this case, as a meta-theory. The philosophy of punishment functions as a theory that underlies and underlies every sentencing theory.[25]

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[16] S. Tasrif, 1987, *Bunga Rampai Filsafat Hukum,* Jakarta: CV. Abardin, p. 98.
[17] Andi Sofyan dan Abd. Asis, 2014, *Hukum Acara Pidana Suatu Pengantar*, Edisi Pertama, Jakarta: Kencana Pramedia Group, p. 4.
[18] Terhadap pengertian sistem hukum yang terdiri dari cultural, structural dan substantive dapat dilihat pada tulisan Lawrence M. Friedman dalam Legal Culture and Social Development, p. 1002-1010 dan Law and Society An Introduction, New Jersey: Prentice Hall Inc, 1977, p. 6-7
[19] Barda Nawawi Arief, 1996, *Bunga Rampai Kebijakan Pidana*, Bandung: PT. Citra Aditya Bakti, p. 2.
[20] Ibid. p. 3.
[21] Herbert L. Packer, 1968, *The Limits of the Criminals Sanctions*, California: Stanford University Press, p. 87.
[22] Muladi dan Barda Nawawi Arief, 1984, *Teori-Teori Dan Kebijakan Pidana*, Bandung: PT. Alumni, p. 4.
[23] Kenneth J. Peak, 1987, *Justice Administration, Departement of Criminal Justice*, University of Nevada, p. 25.
[24] Satjipto Rahadjo. "Sistem Peradilan Pidana Dalam Wacana Kontrol Sosial". *Jurnal Hukum Pidana Dan Kriminologi* Vol. I/Nomor I/1998, Bandung: PT. Citra Aditya Bakti, p. 97.
[25] M. Sholehuddin, 2003, *Sistem Sanksi Dalam Hukum Pidana Ide dasar Double Track System & Implementasinya*, Jakarta: PT. Raja Grafindo Persada, p. 81-82.

Integrative punishment contains several dimensions. First, with integrative sentencing, it is hoped that the judge's decision will have a dimension of justice that can be felt by all parties, namely towards the perpetrators themselves, society, victims of criminal acts committed by perpetrators, and the interests of the state. Strictly speaking, the verdict handed down by the judge is a balance of interests between the interests of the perpetrators on the one hand and the interests of the consequences and impacts of mistakes that the perpetrators on the other have committed. Concretely, sentencing is based on the monodualistic principle between the interests of society and individual interests. Thus the sentence imposed by the judge is based on the existence of 2 (two) fundamental principles known in modern criminal law, namely "the principle of legality" (which is a societal principle) and "the principle of culpability" or the principle of guilt which is a human/individual principle. Second, directly or indirectly, either implicitly or explicitly, the judge's decision is not solely based, has a starting point, and only considers juridical aspects (formal legalistic) solely because this starting point does not reflect the values of justice that should be realized by criminal justice. Taking into account non-juridical aspects such as the psychological aspects of the defendant, socio-economic, religious, humanist philosophical aspects, aspects of victim and community justice, aspects of policy/philosophy of sentencing, aspects of sentencing disparities, and so on, it is expected that the verdict fulfills the dimension of justice. Concretely, the judge's decision also considers juridical, sociological, and philosophical aspects so that the justice to be achieved, realized and accounted for is oriented to moral, social, and legal justice. Third, it is hoped that the judge's decision will not only consider the aspects of moral justice, social justice, and legal justice as well as a learning process as a benchmark and prevention for other members of society not to commit crimes. In essence, the judge's decision also contains aspects of retaliation according to the retributive theory and deterrence and self-recovery for the accused (rehabilitation). With such a starting point, the decision handed down by the judge is integrative in that it fulfills the retributive, deterrence, and rehabilitation aspects. Fourth, the judge's verdict also starts from the aspect of the purpose of the punishment which departs from the criminal justice system model, which refers to the "daad-dader strafrecht" namely the balance of interests model, which pays attention to various interests which include the interests of the state, individual interests, the interests of the perpetrators of criminal acts, and the interests of crime victims. Strictly speaking, it is based on a mono-dualistic balance between "public protection," which refers to the "legality principle," and "individual protection," which starts from the "culpability principle." In essence, "public protection" contains the idea of criminal individualization, which has several characteristics in the form of (criminal) responsibility is personal/individual (personal principle), then punishment is only given to those who are guilty (culpability principle; 'no crime without fault') '), and punishment must be adapted to the characteristics and conditions of the offender, this means that there must be leeway/flexibility for judges in choosing criminal sanctions (type and severity of sanctions). Criminal modification (changes/adjustments) in its implementation must be possible[26] As someone who is undergoing a sentence for themselves. It does not mean that a convict loses his rights as a human being.[27]

The law has regulated legal remedies that can be taken if the accused, convict or public prosecutor feels injustice in the judge's decision, especially for the sentencing decision. These legal remedies include ordinary legal remedies, namely appeal and cassation, and extraordinary legal remedies, including cassation for law and review.[28]

Judicial review was formed to address the interests of convicts, not the interests of the state or victims. This provision rests on a philosophical basis that the state has wrongly convicted an innocent citizen that ordinary legal remedies cannot correct. It is unjustified for the state to remain silent in the face of innocent citizens already being punished.[29] The Supreme Court at the Judicial Review level as the Supreme Judicial Body must foster and maintain so that all laws and laws throughout the territory of the country are properly and fairly implemented.[30]

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[26] Lilik Mulyadi, Pergeseran Perspektif dan Praktk dari Mahkamah Agung Republik Indinesia Mengenai Putusan Pemidanaan, https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/pergeseran_perspektif_dan_praktik_dari_mahkamah_agung_mengenai_putusan_pemidanaan.pdf. Diakses pada tanggal 10 Mei 2023.

[27] Rizki Syahputra. "Pelayanan Kesehatan terhadap Narapidana dan Tahanan sebagai Wujud Pemenuhan Hak Asasi Manusia (Studi Kasus Rumah Tahanan Negara Kelas IIB Bangil Pasuruan)". *Justitia: Jurnal Ilmu Hukum dan Humaniora*. Vol. 7 No. 4. 2020.

[28] Ani Triwati, Subaidah Ratna Juita, Tri Mulyani, 2015, "Upaya Hukum Peninjauan Kembali dalam Perkara Pidana Pasca putusan Mahkamah Konstitusi". *J. Dinamika Sosbud*, Vol. 17 No. 2. Desember, p. 199.

[29] Yayang Susila Sakti. "Peninjauan Kembali oleh Jaksa Penuntut Umum antara Kepastian dan Keadilan". *Arena Hukum* Volume 7, No. 1. Edisi April 2014, p. 69.

[30] Adi Harsanto, Jubair, dan Sulbadana, op.cit, p. 6.

In accordance with Article 263 paragraph (1) of the Criminal Procedure Code, two meanings can be drawn: first, Efforts cannot be made to review the acquittal, or the decision is released from all lawsuits. Second, judicial review is a legal effort aimed at protecting the interests of the convicted person so that only the convict or his heirs have the right to file a lawsuit.[31]

The reason for submitting a review is because of new circumstances. In various decisions, there are contradictions, and there is a real mistake in the decision. The reason for this review is stated in Article 263, paragraph (2) of the Criminal Procedure Code, which states:

a. if there is a new circumstance that gives rise to a strong allegation, that if the said circumstance had already been discovered while the trial was still in progress, the result would be in the form of an acquittal or an acquittal of all lawsuits or the demands of the public prosecutor could not be accepted or lighter criminal provisions were applied to that case ;
b. if in various decisions there is a statement that something has been proven, however, the matter or circumstances as the basis and reason for the decision which is stated to have been proven, turns out to be contradictory to one another;
c. if the decision clearly shows an oversight by the judge or an obvious mistake.

The existence of a novum or new circumstances which can raise strong suspicions:

1) If the new circumstances were known or discovered and stated during the trial, it could be a factor and a reason for passing an acquittal or an acquittal against all lawsuits or;
2) If this new situation is discovered and known at the time the trial is in progress, it can be a reason and a factor for a decision stating that the demands of the public prosecutor cannot be accepted or;
3) It can be used as a reason and factor for deciding by applying lighter criminal provisions.[32]

In the event that various decisions are contradictory, this can occur if something has been proven and used as a reason for imposing a decision. However, in other cases, the circumstances stated as proven are mutually contradictory between one decision and another. Judges' or judges' mistakes can occur because it is undeniable that judges are human beings who are also not free from wrongness or mistakes.[33]

The decision in review, Article 266 paragraph (1) of the Criminal Procedure Code, states that if the request for review is not in accordance with the reasons specified, then the Supreme Court states that the request for review cannot be accepted accompanied by the reasons. Suppose the Supreme Court is of the opinion that the request for review can be accepted for examination. In that case, if the Supreme Court does not justify the reasons for the applicant, the Supreme Court rejects the request for review by stipulating that the decision for which the review was requested remains valid along with the reasons for its considerations. Furthermore, suppose the Supreme Court justifies the reasons of the applicant. In that case, the Supreme Court annuls the decision for which a review is requested and renders a decision that can be in the form of an acquittal, a decision to waive all lawsuits, a decision that cannot accept the demands of the public prosecutor or a decision by applying lighter criminal provisions. It is as regulated in Article 266, paragraph (2) of the Criminal Procedure Code. It has been previously explained that judicial review is to protect the interests of the convict so that the sentence imposed in the review decision may not exceed the sentence imposed in the previous or original decision.[34]

The enactment of Article 263 of the Criminal Procedure Code regulates extraordinary legal remedies called judicial review. In practice, it still raises controversial opinions.[35] Pros and cons occur from various perspectives of legal experts. In reality, many experts, practitioners, and legal observers believe that the convict and his heirs can submit a Judicial Review. Prosecutors who represent the public, victims of crime, and the state are not entitled to submit a Judicial Review. Formally, prosecutors may not file for judicial review, but based on fairness and balance, prosecutors should have the same rights as convicts or their heirs. In Article 263, paragraph (3) of the Criminal Procedure Code, it can be seen that apart from the convict or his heirs, it turns out that other parties can apply for judicial review, even though this right is not stated explicitly. Because in a criminal trial, only two parties are facing each other, namely the public prosecutor and the defendant or convict, it can be

[31] Budi Suhariyanto, 2012, *Peninjauan Kembali Putusan Pidana Oleh Jaksa Penuntut Umum*, Hasil Penelitian, Mahkamah Agung RI, p.1.
[32] M. Yahya Harahap, 2009, *Pembahasan Permasalahan dan Penerapan KUHAP : Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Jakarta: Sinar Grafika, p. 619.
[33] Ani Triwati, op.cit, p. 203.
[34] Ibid.
[35] Yading Ariyanto. "Hak Penuntut Umum Mengajukan Peninjauan Kembali Dalam Perspektif Keadilan Hukum Di Indonesia". *Artikel Program Magister Ilmu Hukum Universitas Brawijaya, Malang,* 2013. p.8

concluded that the other party is the public prosecutor, therefore the prosecutor has the same rights as the convict or his heir in terms of filing review, prosecutors as representatives of the state, victims and third parties.[36]

The judicial review of Article 263 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code was submitted to the Constitutional Court and decided in 2016 by decision Number 33/PUU-XIV/2016 stating that Article 263 paragraph (1) of the Criminal Procedure Code cannot be interpreted another because different interpretations of norms will lead to legal uncertainty and injustice which make it unconstitutional. For this reason, the Constitutional Court needs to emphasize that for fair legal certainty, the norms of Article 263 paragraph (1) U No. 8/1981 become unconstitutional if interpreted differently.[37]

In its development, Law no. 11 No. 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia ("UU No. 11/2021"), Article 30C regulates the duties and powers of the prosecutor's office which among other things is submitting a Judicial Review. In the explanation of Law no. 11/2021 outlines that the review by the Prosecutor's Office is a form of the Attorney's duties and responsibilities representing the state in protecting the interests of justice for victims, including for the state, by placing the Prosecutor's authority proportionally in an equal and balanced position (equality of arms principle) with the rights of the convict or his heirs to submit a review. The review submitted by the auditor is coordinated with the Attorney General's Office. The prosecutor can conduct a review if in that decision an act that was charged has been proven but not followed by a conviction.

The principles underlying the Judicial Review are the principles of justice, expediency and certainty as well as the decisions of the Constitutional Court with the principles of ne bis in idem, speedy administration of justice and lites finiri opertet must be consistent and not limit each other. Judicial review is a convict's attempt to seek justice, and the limitation on submitting Judicial Review regulated in Article 268 paragraph (3) of the Criminal Procedure Code where judicial review can only be carried out once is a form of the principle of legal certainty (lites finiri opertet). However, let's look closely at the Judicial Review regulations. It will be felt that the principle of legal certainty limits the principle of justice, so that the principles of justice and legal certainty will clash. A sense of justice for the convict has not been achieved, while the principle of ne bis in idem in judicial review is the object the previous Constitutional Court decision was in line with the provisions of Article 76 paragraph (1) of the Criminal Code. The submission for judicial review under the principle of speedy administration of justice or fast, simple and low-cost trials was in line with the provisions of Article 268 paragraph (3) of the Criminal Procedure Code.[38]

Constitutional Court Decision No. 34/ PUU-XI/ 2013 examines the material norms of Article 268 paragraph (3) of the Criminal Procedure Code against the norms of Article 1 paragraph (3), Article 24 paragraph (1), Article 28A, Article 28C paragraph (1), and Article 28D paragraph (1) The 1945 Constitution of the Republic of Indonesia as the examiner. Constitutional Court in Decision No. 34/ PUU-XI/ 2013 states Article 268 paragraph (3) of the Criminal Procedure Code concerning PK applications for a decision can only be made once, contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force if it is not interpreted "unless new evidence is found (novum) based on the use of science and technology (science and technology)."[39]

Based on this Decision, it means that the provisions of Article 268 paragraph (3) of the Criminal Procedure Code become invalid if it fulfills the requirements of finding a novum relating to the use of science and technology and technology. Advances in information technology have a good influence on the rapid acquisition of information from around the world[40]. These requirements are based on Article 28C paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which contain the right for everyone to benefit from science and technology, the right to fair legal certainty and equal treatment before the law. . which is used as the testing norm of the Constitutional Court Decision No. 34/ PUUXI/ 2013. The provisions are related to the argument for the application in the form of a review filed if a novum is found based on science and technology developments which, when the case was examined, had not been utilized or had not been

[36] M. Jordan Pradana, Syofyan Nur, Erwin. "*Tinjauan Yuridis Peninjauan kembali yang Diajukan oleh Jaksa Penuntut Umum Terhadap Putusan Lepas dari Segala Tuntutan Hukum". PAMPAS: Journal of Criminal* Vol. 1 No. 2, 2020. p. 145.
[37] Ibid.
[38] Ibid.
[39] Shanti Dwi Kartika. "Peninjauan Kembali lebih dari Satu Kali, antara Keadilan dan Kepastian Hukum". *Info Singkat Hukum Pusat Kajian, Pengelolaan Data dan Informasi (P3DI) Sekretarian Jenderal DPR RI*, Vol. VI No. 06/II/P3DI/Maret, 2014. p. 2.
[40] M Syukri Akub. "Pengaturan Tindak Pidana Mayantara (cyber crime) dalam Sistem Hukum Indonesia". *Al. Ishlah: Jurnal Ilmiah Hukum*. Vol. 21. No. 2. November 2018.

found. On this basis, Constitutional Court Decision No. 34/ PUU-XI/ 2013 is conditionally constitutional.[41]

In its legal considerations, the Constitutional Court believes that the extraordinary judicial review aims to find justice and material truth. Justice is not limited by time or formality provisions that limit Judicial Review can only be filed once. Therefore, the court supposed to protect human rights does not limit Judicial Review to only once. According to the Constitutional Court, limiting judicial review has closed the process of seeking justice and truth. It is due to the possibility that after the review was submitted and it was decided that there was a substantial novum that had not been found at the time of the previous review. In addition, the principle of every case must have an end related to legal certainty. However, this principle cannot be applied rigidly (rigid) for justice in criminal cases by only allowing a one-time review, while on the one hand, it is found that there is a novum.[42]

The legal certainty guaranteed in the Criminal Procedure Code should be understood by not being able to set aside the value of justice and material truth, which is the goal of examining a crime so that for the provision of review in a criminal case, it should be allowed more than once. According to the author, more than one review can guarantee legal certainty for justice seekers (convicts) with the understanding that convicts can seek and prove material truth so that a just legal certainty is obtained. In addition to providing legal certainty, more than one review can provide benefits and justice as the goals to be achieved in criminal procedural law. The law has uses or benefits for society, and the purpose of the law, especially the criminal procedural law, is fulfilled. According to Gaius Lumbuun, the decision of the Constitutional Court is a wise and prudent decision in seriously understanding the purpose of the law, which must provide legal certainty, benefit, and justice.[43] Extraordinary legal remedies aim to find justice and material truth without being limited by time limits. The existence of a one-time review limitation has markedly limited the search for justice (by the convict) so that it is contrary to the principle of justice, which the perpetrators of judicial power uphold based on Article 24 of the 1945 Constitution. In this case, the legal certainty sought is fair legal certainty, namely legal certainty. Who does not ignore the value of justice. If procedural justice ignores or sacrifices substantial justice, then substantial justice takes precedence.

Moreover, the Constitutional Court adheres to progressive law, prioritizing substantive justice rather than procedural justice. However, this should not mean that the Constitutional Court ignores procedural justice. When procedural justice holds substantial justice hostage, substantial justice takes precedence.[44]

In progressive law, which is the idea of Satjipto Rahardjo, it tries to focus on the human interest in legal products. Thus, humans are composed at a central point of law, so their happiness, well-being, sense of justice, and so on become the center of legal concern.[45] Whatever the law does, it cannot ignore that humans are at the center so that we understand 'the law for humans and not vice versa.[46]

In addition to this, the Supreme Court Circular Letter No. 10 of 2009 concerning Submission of Requests for Judicial Review ("SEMA No. 10/2009") also stipulates that if in an object of a case, there are two or more decisions for judicial review that conflict with one other, both in civil cases and criminal cases. Among them was a request for review, which was accepted by the court of first instance, and the file was sent to the Supreme Court. From the provisions of the circular letter, it can be said that for two or more decisions for review of the same case, where the decisions conflict with one another, an application for review may be submitted again. Thus, the Supreme Court has previously regulated the arrangement regarding review requests more than once on the same case through SEMA No.10/200.[47]

In this regard, the laws and regulations have stated clearly and unequivocally that a judicial review can only be submitted once. This provision is contained in Article 400 Chapter XI Review of Civil Procedure Regulations (S. 1847-52 jo. 1849-63), Article 66 paragraph (1), and Article 70 paragraph (2)

[41] Ibid.
[42] Ibid.
[43] Anggi Kusumadewi, Syahrul Ansyari, " MA: MK Buat Putusan Bijaksana Soal Peninjauan Kembali",(http://nasional.news.viva.co.id/news/rea d/486796-ma--mk-buat-putusan-bijaksana-soal peninjauan-kembali. Diakses pada tanggal 10 Mei 2023.
[44] Arief Hidayat, "*Konstruksi Ideal Pelaksanaan Peninjauan Kembali Berdasarkan Putusan Mahkamah Konstitusi*", Seminar Nasional diselenggarakan oleh Program Doktor Ilmu Hukum Fakultas Hukum Unnisula Semarang, 31 Januari 2015.
[45] I Gede A.B Wiranata, 2006, Hukum Progresif Versus Pembangunan Hukum (Sebuah Pencarian Model)" dalam Satjipto Rahardjo, *Membedah Hukum Progresif*, Jakarta: Kompas, p. 265.
[46] Satjipto Rahardjo, 2006, *Sisi Lain dari Hukum di Indonesia,* Jakarta: Kompas, p. 34.
[47] Ani Triwati, Subaidah Ratna Juita, Tri Mulyani, Ibid. p 206-207.

of Law no. 14 of 1985 concerning MA as amended by Law no. 5 of 2004 and Law no. 3 of 2009 (UU MA), and Article 268 paragraph (3) of the Criminal Procedure Code. It means that if these provisions are violated, there will be a disregard for the law or acts against it (*onrechtmatig daag*). In addition to these principles, the principle of justice and the principle of equality before the law must also be observed, as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Factually before there was a decision by the Constitutional Court, the Supreme Court, through SEMA No. 10/2009 has provided an opportunity for litigants to conduct judicial review more than once for cases with conflicting court decisions

CONCLUSION

Judicial review is in principle an extraordinary remedy for court decisions that have permanent legal force (*inkracht van gewisjde*), aims to provide legal certainty and is formed to address the interests of the convict, not the interests of the state or the victim, so that the sentence imposed in the review decision may not exceed the sentence that has been imposed in the previous decision or the original decision. Judicial review is regulated in Law no. 8 of 1981 concerning Criminal Procedure Code ("KUHAP") with articles including Article 263, Article 264, Article 265, Article 266, Article 267, Article 268, Article 269. There are three reasons for requesting PK based on Article 263 paragraph (2) KUHAP: the fact that there was a novum, the fact that there were conflicting decisions, or the fact that there was an oversight/real mistake by the panel of judges.

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