

Assessing the Benefits of Judicial Review Without Ordinary Legal Actions in Indonesia

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Abstract

General PK applications are submitted if a mistake is a natural law or mistake because it covers coverage. Opinions and considerations: anything inside a decision can be considered a mistake or an honest mistake without limit. The convict can submit effort PK law without effort law normal because the verdict No can surpass the decision beginning. Carrying out effort PK law without effort law is regular and profitable. This research is normative legal research. Regarding the normative study, there are several approaches, including approach legislation (statute approach), approach concept (conceptual approach), approach analytical (analytical approach), approach case (case approach), and comparative approach (comparative approach). Legal materials are processed deductively, concluding a general problem regarding the concrete situation. Furthermore, the existing legal materials are analyzed to see issues related to the effectiveness of current and future implementation, PK based on errors or mistakes real action without prior ordinary legal action is often filed by convicts because There is a principle that the punishment imposed in the PK cannot exceed the original decision, even though the Supreme Court decision still does There is something different opinion related matter the.

Keywords: *Criminal, Legal Effort, Judicial Review.*

INTRODUCTION

The law works as a protective interest of human beings; to protect man protected t, the law must be held. Implementation of law can take place usually, but it could also be because of violation law the law is violated must enforced. Through enforcement here, the law becomes a reality. In enforcement law, three things must be noticed that is First certainty law (rechssicherheit), second expediency (zweckmassigheir) and third, justice (gerechtigkeit). More from That objective law experience development and change paradigm that leads to its realization objective laws that are just, certain, beneficial, beneficial, peaceful and prosperous, and goals law based on perspective other."

According to the book Legal Terms and Practices issued by the Indonesian Attorney General's Office, a decision is the result or conclusion of something that has been carefully considered and assessed, which can be written or oral. Additionally, some interpret the decision as a translation of the word "verdict," which refers to the outcome of a case examination at a court hearing. Thus, a judge's decision is the final result of the judicial process after case examination, evidence presentation, and assessment through the consideration of the panel of judges to deliver a specific verdict on a case presented in a court session.

When we want to know the extent of the law's effectiveness, first of all, we must be able to measure the extent to which legal rules are obeyed or not obeyed. If any rule law obeyed by some the target is big target his obedience so will said rule relevant law is effective.

Understanding legal efforts according to Article 1 Point 12 of the Criminal Procedure Code refers to the rights of the defendant or the prosecutor to challenge a court decision through opposition, appeal, or cassation. Additionally, it grants the right to a convict to apply for a case review, as regulated by the Constitution. Legal efforts are measures provided by law for individuals or legal entities in specific situations to contest a judge's decision, serving as a recourse for parties dissatisfied with the decision they believe does not fulfil a sense of justice.

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Using penal means does not preclude the possibility of errors in rendering a criminal penalty decision for a defendant in enforcing criminal law through the criminal procedure process. A judge's decision is not immune to mistakes or errors; therefore, for truth and justice, every judge's decision should be reviewed to correct any errors in the decision-making process. Generally, every judge's decision is available for legal efforts, which serve as a means or tool to prevent or correct mistakes in a verdict.

The purpose of effort law is to give parties unsatisfied with the judge's decision a chance to repair or change it. Legal effort aims to ensure justice and truth in legal proceedings, especially in cases where the judge's decision is flawed. The law helps repair wrong choices and ensure that the law is enforced fairly and rightly.

Legal efforts consist of ordinary legal efforts and extraordinary legal efforts. The rules regarding ordinary legal efforts are found in Chapter XVII of the Criminal Procedure Code, which includes appellate examination (*beroep*) and cassation examination (*cassatie*). Meanwhile, the rules regarding extraordinary legal efforts are found in Chapter XVIII of the Criminal Procedure Code, which includes cassation in the interest of law (*cassatie in het belang van de wet*) and judicial review (*herziening*) of court decisions that have obtained permanent legal force (*inkracht van gewijsde*).

Judicial Review, abbreviated as PK, is a legal remedy against a court decision that has obtained permanent legal force, except for a judgment of acquittal or dismissal of all legal demands. This applies to decisions from first-level courts, appellate courts, and cassation decisions from the Supreme Court. Essentially, PK legal efforts are limited to court decisions that have obtained permanent legal force and are regulated in Chapter XVIII, Part Two, Articles 263 to 269 of the Criminal Procedure Code.

PK is the right of the convict or their heirs. However, in several cases, apart from the convict or their heirs, the prosecutor can also submit a PK. PK falls under the authority of the Supreme Court, where the Supreme Court not only examines the application of the law (*judex juris*) but can also examine facts and evidence (*judex fact*) in a case filed.

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

strong suspicion that if the situation had been known while the trial was still in progress, the result would be a verdict of acquittal or a decision to be released from all legal charges or the public prosecutor's demands cannot be accepted, or lighter criminal provisions are applied to the case.

If, in various decisions, there is a statement that something has been proven, the things or circumstances as the basis and reasons for the decisions that are stated to have been proven turn out to be in conflict with each other.

If the decision clearly shows a judge's error or a real mistake .

What is meant by a new situation (*novum*) is a situation that already existed when the case was tried or examined at the first level, but for various reasons, this situation has not been revealed. This situation was only discovered after the decision had obtained permanent legal force (*Eintracht vans agewise*). So, what is new is not the situation but the moment it is known. This situation already existed when the trial took place, even before investigators filed the criminal case file, but its existence was only discovered from evidence. The evidence that contains these new circumstances is not new, but rather proof that already existed at the time the trial took place, or even before, but still needs to be presented and examined before the trial.

The second reason used as the basis for a PK request is if various decisions contain:

A statement that something has been proven;

Then the statement regarding the proven proof of the matter or situation is used as the basis and reason for the decision in a case;

However, in other case decisions, the things or circumstances declared proven are contradictory between one decision and another.

Yahya Harahap provided an example illustrating the potential conflict between civil and criminal decisions. For instance, the Director of the Yogyakarta Regional Development Bank sold land and houses that were used as collateral for loans privately, an action contrary to the agreement and statutory regulations. According to the agreement, the bank is entitled to auction the collateral if the debtor fails to repay the loan at maturity. However, the bank director sold the collateral privately. For this action, the Yogyakarta District Court convicted the director of embezzlement in office as stipulated in Article 374 of the Criminal Code.

According to the provisions of Article 263 paragraph (2) of the Criminal Procedure Code, one reason to submit a judicial review (PK) request is if the decision clearly shows an error or mistake made by the judge.

Judges, as humans, are not free from mistakes and errors. Mistakes and errors can occur at all levels of court. Mistakes made by the District Court as a court of first instance can continue at the appellate level, and mistakes at the first and appellate levels do not appear at the cassation level by the Supreme Court. In fact, the appeal and cassation levels aim to straighten out, correct and correct mistakes made by lower courts.

According to Adami Chazawi, error means an unintentional mistake or mistake. The party who made the mistake in this decision was the judge. The mistake/mistake in the decision must be honest, meaning prominent, easy to see or easy to know, without having to scrutinize it or without having to use special powers of thought and reasoning aimed at testing its truth.

Per the provisions of Article 197 paragraph (1) of the Criminal Procedure Code, a court decision in a criminal case must contain 12 parts. Among these 12 sections, there are ten imperative sections, and if they are omitted, the decision is threatened with being null and void. Therefore, not including one of the ten sections would be an error by the judge. However, if it does not contain only two parts, it is not threatened with being null and void. Even though the legal consequences are not mentioned in the first ten parts, if the two parts of the decision in question are not included, the decision can be corrected by ordinary legal measures.

One of the principles inherent in PK legal action is that the punishment imposed must not exceed the original decision; what is permissible is to apply lighter criminal provisions. Regarding this, M. Yahya Harahap provided the following explanation:

"The principles regulated in Article 266 paragraph (3) of the Criminal Procedure Code align with the objectives of the Judicial Review agency, which is to open up opportunities for convicts to defend their interests so that they can be free from wrongdoing in law enforcement. Because this effort provides an opportunity to defend his interests, it would not be appropriate if a means that provides an opportunity to cripple a decision that already has permanent legal force backfires to the detriment of the applicant. "This is different from decisions at the appeal or cassation level; in this process, the decision does not have permanent legal force, so it is still permissible to hand down a decision either in the form of burdening or mitigating the defendant."

Filing a judicial review (PK) without preceding ordinary legal actions is increasingly prevalent in the Indonesian justice system, particularly in corruption cases. This practice exploits legal loopholes, as convicts often immediately seek PK, taking advantage of the principle that the penalty imposed in PK cannot exceed the original decision. This differs from the appeal or cassation process, where decisions do not have permanent legal force, thus allowing the possibility of a harsher penalty if the criminal act is proven.

The most commonly cited reason in many PK applications is judicial error or a manifest error due to its broad scope. The rationale and opinions expressed in the verdict are often construed as honest mistakes or errors without clear limits. Convicts find PK's legal action more favourable because of the binding principle that the penalty imposed in PK cannot exceed the original decision.

The mechanism for implementing PK legal efforts without resorting to ordinary legal efforts, based on the grounds of judicial error or manifest error, involves several steps:

Identification of Grounds for PK: The convict or their legal representative identifies specific grounds for the PK application, focusing on judicial error or a manifest error as stipulated in Article 263 paragraph (2) of the Criminal Procedure Code. This includes errors in applying the law, factual errors, or errors in the judge's reasoning.

Preparation of PK Application: A detailed PK application outlines the judicial error or manifest error with supporting evidence and legal arguments. This application must be filed directly with the Supreme Court.

Submission to the Supreme Court^{**}: The PK application is submitted to the Supreme Court without going through the ordinary legal processes of appeal or cassation. This direct submission exploits the legal principle that the penalty in PK cannot exceed the original decision.

Review by the Supreme Court: The Supreme Court reviews the PK application, focusing on the alleged judicial or manifest error. The review process includes legal and factual examination (*judex juris* and *judex facti*).

Issuance of PK Decision: The Supreme Court issues a decision on the PK application. If the judicial or manifest error is established, the Court may modify or overturn the original decision, ensuring that the penalty does not exceed the original sentence.

In essence, the PK legal effort without preceding ordinary legal actions, on the grounds of judicial error or manifest error, is a strategic legal manoeuvre aimed at securing a more favourable outcome for the convict, leveraging the procedural protections inherent in PK proceedings.

RESEARCH METHODS

The type of legal study conducted is juridical normative. This research examines the synchronization aspects of statutory regulations both horizontally and vertically. Additionally, it utilizes legal principles and *in concreto* law, which are correlated and related to the research theme concerning PK legal efforts.

Legal materials have been collected to address the legal issues formulated in the problem statement. Data analysis involves organizing and sorting data into patterns, categories, and fundamental units of description to identify themes and develop working hypotheses suggested by the data. The method of processing legal materials is carried out deductively, concluding general problems to specific concrete challenges.

Furthermore, the existing legal materials are analyzed to assess the problems related to the current effectiveness of implementation and for future considerations. This approach ensures a comprehensive understanding of the legal framework and its practical implications. It allows for a critical evaluation of PK legal efforts and their alignment with legal principles and statutory regulations.

RESEARCH RESULT

Enforcement law (law enforcement) is a business That straightens up norms law and, at the same time, existing values . Spirit is the underlying law (legal spirit) . Regulation the law must be enforced and p This will relate to various dynamics in the manufacturing process legislation (law making process) . Another related side in the manufacturing process regulation legislation is balance, harmony and harmony between awareness implanted laws from above and by the authorities (legal awareness) with a feeling of legal nature spontaneous from the people (legal feeling) .

In enforcement law (law enforcement) , according to Gustav Radbruch , there are 3 elements that must be always noticed that is certainty, law , expediency and justice. Certainty law related tightly with exists guarantee protection to public on action arbitrary purpose For order public . Temporary expediency is To create benefit or utmost happiness for the public . Whereas justice is truth , no take sides, yes insured answer and treat every human in the same position in front of the law (equality before the law) . Certainty law has two meanings. First, general nature rules tell individuals what is possible or what cannot be done. Second, there is security law for individuals from the arbitrariness government because general nature rules allow individuals to know what the state can charge or carry out against them.

Certainty law in public is necessary for its uprightness, order, and justice. Uncertainty law will give rise to chaos in society, and every member of the public will do as their heart as well as act as a vigilante. Existence like This makes life in an atmosphere of chaos. The law contains nature rules that, in general, become guidelines for individual acting up in demand in social, good in connection with fellow individuals, or in relationship with the public. Rules that become limitations for the public in burdensome or do action to individuals. There are rules that and implementation rules give rise to certainty law. Approaching legal objectives realistic is certainty law

and expediency law. Positivists more emphasize certainty law. Meanwhile, race functionalists prioritize expediency law. If so, he can state as "summum ius, summa injuria, summa lex, summa crux", which means that harsh laws can injure them, except justice can help him. With thereby, despite justice, No is the only objective law, will but objective the most substantive law is justice.

Placement justice is actually objective the first and main law because matter This in accordance with essence or ontology law That Alone. Laws are made to create order through fair rules, that is, the arrangement of mutual interests contradictory with balanced so that everyone gets as much as possible. Even in history, philosophy law has always given justice a special place as objective law. Law as bearer of justice, according to Radbruch, becomes size for fairness. There is no fairness in the legal system. Not only that, value justice also becomes base from law as law. Thus, justice has its own characteristic normative at a time constitutive for law. Justice becomes base for each law positive and dignified.

In practice enforcement law (law enforcement) often face application matters the law happen collision interests, in one side interest certainty law that boils down to aspects procedural and on the other hand face to face with interest truth and justice which lead to interests general or country. Values of justice and truth No can obtained from its height aspect certainty law, will but determined by factors balance aspect protection law towards victims and perpetrator crime. The more serious the consequences and nature of his crime the more the demands are ample mark justice is a must achieved and exceed from demands mark certainty law, so that you can reach mark more justice, and truth must brave reduce mark certainty law.

Justice as existence law in Justice criminal is an element important in connection with human rights because talk justice in the corner from a human rights perspective then Human rights values are moral norms and means for law For create his ideals protect all people man from misuse and enforcement strength tyranny in the field legal, economic, social and political that applies at the level national nor international. This matters because violation of the rights of the defendant is a common thing. We hear later. That happens when officials in the field of law use their authority too excessively to create justice through methods that give injustice. In Indonesia, conditions generally happen so that maintenance system Justice crime is very far away from ambition Constitution Number 8 of 1981 concerning the Criminal Procedure Law (KUHAP). Alone that is For ensure truth in accordance with humanity.

Enforcement law tightly connected with effort law To defend rights in matter. This is for convict To use ensure exists appreciation to right essential people and enforcement supremacy law (the rule of law) with the best because effort law for somebody done To use interest defence. This matter was expressed by M. Trapman, who stated that the Defendant has subjective considerations in a subjective position, the Prosecutor general has subjective considerations in an objective position, while the judge has considered objective in an objective position.

In the Criminal Procedure Code, efforts law is defined as the right of the defendant or prosecutor general to not accept a decision from court in the form of resistance, appeal, cassation, or right to convict. To submit a PK application in the matter as well as according to the set way Constitution This. Legal efforts as a proper defendant or convict and prosecutor general can be used if a party is not satisfied with the decision given by the court. Because of the effort law, This is right, so right the Can just It can also be used by defendants/convicts and prosecutors general No use right the. However, if the right to submit the effort law is used by defendants/convicts and prosecutors general, then the court must accept it.

By normative, the Criminal Procedure Code differentiates effort law become effort law customary namely appeal and cassation as arranged in Chapter XVII Article 233 of the Criminal Procedure Code up to Article 258 KUHAP and efforts law outside normal that is appeal for interest regulated law in Article 259 of the Criminal Procedure Code to with Article 262 of the Criminal Procedure Code and PK are regulated in Article 263 of the Criminal Procedure Code to with Article 269 of the Criminal Procedure Code. Through effort, available laws that, then in frame realize justice, the parties own right To submit effort law if there is perceived judge's decision. No fair.

Appeal examination is inspection matters at level second or High Court. During no appeal case yet decided by the High Court, an appeal can be requested revoked at any time and if the in-depth matter has Already been revoked , a request for appeal in case No can submitted Again . Based on provision Article 67 of the Criminal Procedure Code 3 d,decisions that should not be appealed are requested , namely :

Decision free (vrijspraak) ;

Escape from all demands relevant laws not enough specifically application law ;

Decision court in a quick event (formerly used term case roller).

Apart from what is excluded in Article 67 KUHAP, examination is not pretrial, and an appeal can be requested as follows: Article 83 paragraph (1) KUHAP.

As for effort law, cassation is a right granted to the defendant nor to the prosecutor general . Simultaneously with the right to submit a request appeal granted Constitution to the defendant and prosecutor general, with Alone matter That gives rise to obligation for the official court For accept the request cassation , no There is reason For reject. Is the application accepted or rejected? authority District Court for judge , ultimately become authority of the Supreme Court.

The basis for submission cassation arranged in Article 244 of the Criminal Procedure Code that to decide case punishment given at level final by the court besides from the Supreme Court, the defendant or prosecutor general could submit request inspection cassation to the Supreme Court except to decision free . During case application cassation Not yet decided by the Supreme Court, petition cassation can revoked at any time and in-depth matter Already revoked , request cassation in case That No can submitted Again .

In addition to effort law cassation as effort law normal, as described above, the Criminal Procedure Code also regulates appeal for interest law as effort law outside normal, which is an exception from effort law normal. Decision appeal for interest law No can harm interested party . For interest's sake, the law to all decisions that have been made obtains strength from other courts besides MA. You can submit one application cassation by the Attorney General. The Attorney General can file an application appeal for interest law because of his position in civil or state administration, which is examined and decided by the Court of First Instance or Court of Appeal. To what and why what can proposed by the Attorney General for submit something application appeal for interest law No arranged in the Criminal Procedure Code as well as Regulation Government Number 27 of 1983 concerning Implementation of the Criminal Procedure Code following in provision change Regulation Government Number 58 of 2010 concerning Change on Regulation Government Number 27 of 1983 concerning Implementation of the Criminal Procedure Code and Regulations Government Number 9 of 2015 concerning Change Second on Regulation Government Number 27 of 1983 concerning Implementation of the Criminal Procedure Code the.

Furthermore, that is, effort law outside usual PK decision, and the court still has obtained strength law. PK is one of the roads for repair, and a decision has been made to become still. If repair wants to do so He must fulfil conditions. Namely, There are some circumstances which are subject to the judge's examination, which are not known to the judge if He knows circumstances it will give decision, Besides that, it can also be done based on a decision that clearly shows something as a mistake or a real mistake.

PK or herziening has long been known, i.e at least has There is since in 1848 with promulgation Reglement op de Strafvordering The main goal of PK institutions is to blame or possible negligence . This is carried out by internal judges who examine and try accused persons who do follow criminal procedures. That can be repaired by the MA. PK's decision to criminal offences with the strength law fixed (Eintracht van gewijsde) constitutes effort law outside the normal range of effort law.

The Criminal Procedure Code, as well as a regulation of government implementation, is not arranged explicitly. What do you mean by the decision the court has obtained strength law fixed (Eintracht van agewise)? However, in the Decree of the Minister of Justice Number M.14-PW.07.03 of 1983 concerning Addition Guidelines Implementation of the Criminal Procedure Code, it is mentioned that the decision court stated has a strong law

still if grace time For think has exceeded seven days after the decision court level first and 14 days after decision court appeal level .

The Supreme Court decision submitted PK after the Supreme Court's decision has strong law still. Have strong law still means has read decision trial (verdict) against defendant in front hearing open For general and also marked with has he informed in a way legitimate decision court the to defendant , so since moment That open road For request / submit a PK, OK to decision District Court , High Court and Supreme Court. The PK Institute was formed addressed for interest convict , no interests of the state and victims. Provision This stand on the basics philosophy , that the state has wrongly convicted resident or citizens who do not sinful who is not can repaired Again with effort law normal .

A Judicial Review (PK) can be submitted after a court decision has obtained permanent legal force, whether it is a decision from the District Court, High Court, or Supreme Court. According to the provisions of Article 263 of the Criminal Procedure Code, which regulates that for court decisions that have obtained permanent legal force, except for acquittal or dismissal of all charges, the convict and their heirs can submit a PK request to the Supreme Court. From these provisions, it is clearly stipulated that a PK can be submitted for court decisions that have obtained permanent legal force with the exceptions and conditions specified in the article, without any requirement that the court decision must first go through the legal efforts of appeal and cassation.

Therefore, a District Court decision that has obtained permanent legal force can be submitted for a PK to the Supreme Court. Similarly, a High Court decision that has obtained permanent legal force can be submitted for a PK to the Supreme Court without being preceded by cassation efforts. This provision underscores the accessibility of PK legal efforts directly for decisions with permanent legal force, ensuring that the pursuit of justice through PK is not constrained by prior legal processes.

As for the explanation of Article 263 of the Criminal Procedure Code, Martiman Prodjokamidjojo, in his book “ Commentary on the Criminal Procedure Code” above chapter gives, an explanation that is :

Article 263 of the Criminal Procedure Code opens possibility for convict or expert his heir submit PK's request for something decision that has been made powerful law still to the Supreme Court via The District Court decides the thing again , except in matter containing decision liberation (vrijspraak) and or release from all demands law (onslag van alle rechtsvervolging). That matter based that the judge is only man it's just that it's not regardless from mistaken and distant from perfect . In things to be submitted to this MA , if formerly is known or discovered at trial court level First or appellate level , then decision will sounds different from what it says dropped : 1. free ; 2. take off from all demands ; 3. no can accepted ; and 4. implementation provision more criminal light .

Article 263 of the Criminal Procedure Code, provides limitation in a way limitative to things that can submitted as reason a PK request decision that has been made powerful permanent and external reasons chapter the No can accepted .

According to Soenarto Soerodibroto , PK against decision criminal offenses that have been obtain strength law definitely the one that contains it punishment , where No can applied to decision Where accused has released (vrijgerproken). Another definition put forward by Andi Hamzah and Irdan Dahlan is that PK is right convict For request repair decision the court has become fixed , as consequence mistake or judge 's negligence drop the verdict .

Different with effort law normal , then application to effort law outside normal PK has condition certain , namely :

Can proposed and addressed to decision the court has powerful law still .

Can addressed and submitted in circumstances certain , no can submitted to all decision the court has powerful law still , must there is and exists circumstances certain as condition .

Can submitted to the Supreme Court, and examined as well as decided by the Supreme Court as agency first and last .

One of PK's reasons can be submitted if there exists something judge's error or something real mistake. Mistake originates from the word *khilaf*, which means wrong or wrong (which is not intentional). Mistake means mistake or the error is not intentional. The party who did it mistake in decision is a judge. Outside consideration law and command verdict, yes happen the verdict shows something judge's error or something obvious error, caused a number of matter or circumstances in between as following:

The judge made outside decision authority or surpass his authority. For example, the judge dropped decision about follow criminal offense that is not accused in letter indictment. The judge didn't entitled For drop decision to follow criminal offense that is not accused, so decision That null and void.

Court has interpret something norm outside common and known ways in doctrine law. Interpretation something norm in a way free, without base theoretical and beyond logic general.

Decision made on implementation of wrongful justice procedure. For example decision made and read without moreover formerly done discussion between the judges who violated provision Article 182 paragraph (3) KUHAP. Or a verdict read out in court that is not open For general, but rather notified he warned just with method call prosecutor general and defendant facing the judge's chambers. This matter violates Article 195 of the Criminal Procedure Code.

In the decision case criminal Already have strength law still Still can submitted PK during submission the accompanied with conditions in accordance with provisions in Article 263 of the Criminal Procedure Code. Based on Article 263 paragraph (2) of the Criminal Procedure Code, in addition to exists something judge's error or something real mistakes, PK can also submitted if there is circumstances new that gives rise to conjecture strong, that If circumstances That Already known at the time hearing Still progress, results will form decision free or decision free from all demands law or demands prosecutor general No can accepted or to case That applied provision more criminal light.

Related with "there is circumstances new", according to explanation Article 24 paragraph (1) of the Law Number 48 of 2009 concerning Power Justice mention that is what is meant with matter or circumstances certain such as found it proof new (*novum*) and/ or exists mistake or internal judge's error apply the law. PK's legal efforts from perspective certainty law must studied from rule or PK norms are appropriate with duties, functions and authority of the Supreme Court and their existence restrictions matter. Based on provision law positive, MA is *judex juris*, no nature *judex factie* so MA doesn't inspect evidence and facts. Therefore that is, if MA is in the verdict inspect evidence and facts, then practice thereby has go out from principle law that MA as *judex juris*. Consequence logically application effort relative PK law only can submitted to decision *judex facti*, no to *judex juris*.

Judicial Review (PK) without undergoing ordinary legal efforts is permitted for parties as stipulated by applicable regulations. Based on the provisions of the Criminal Procedure Code, as previously outlined, a PK can be submitted for a court decision that has obtained permanent legal force if certain matters or circumstances are present. PK, on the grounds of such matters or circumstances, can be submitted without being preceded by ordinary legal efforts such as appeal and cassation, but only for decisions that have obtained permanent legal force.

In the author's opinion, the concept of error or manifest error as a basis for PK is very broad. Any considerations and opinions expressed in a decision can be construed as a mistake or manifest error. Similar to the reasons for submitting an appeal, the statute does not detail specifics but emphasizes that the defendant or the prosecutor does not agree with and objects to the handed-down decision.

Submitting a PK after the applicant has undergone ordinary legal efforts (appeal and cassation) indicates that the applicant never accepted the truth of the court's decision. On the other hand, seeking PK without first pursuing ordinary legal efforts, or withdrawing from ordinary legal efforts previously requested, implies that the applicant has accepted the truth of the lower court or appellate court's decision. However, if under such circumstances the applicant then seeks PK, it suggests inconsistency and gives the impression of manipulating the law and the truth.

In accordance with this study's focus on PK by the convict on the grounds of error or manifest error without prior legal action, this condition is chosen by the convict with the consideration that it is more favorable due to the binding principle in PK legal proceedings: the imposed sentence must not exceed the original decision. This is different from the outcomes of appeal and cassation efforts, where the decision handed down may be more severe compared to lower-level decisions.

In addition to the principle that the imposed punishment in PK cannot exceed the original decision, a judge's decision in any case cannot be influenced or pressured by any party. Judges are very independent and impartial in carrying out their duty to adjudicate cases (within the exercise of the judicial function). Judicial independence is a crucial authority attached to individual judges, where they function as the appliers of the Constitution to concrete events, not only substantively but also by providing correct interpretations of the law. This enables judges to freely give judgments and legal interpretations within the framework of resolving concrete legal incidents.

Krishna Harahap opinion that PK submission with the reason for the error or mistake real without prior legal action No can accepted with considerations as following :

The Convict consider the decision District Court handed down to himself not fair; then Convict own rightfully For find more justice in the Court tall ;

That Convict , by law given two opportunities , appeal and cassation , as effort law normal ;

That For find justice, the High Court can inspect return all type existing evidence checked . At level cassation will checked is judex facti has carry out regulation law or there is error in implementation , besides That is method do justice according to Constitution has done as it should or on the contrary ;

That if Convicts who don't use his rights for appeal and cassation basically has accept / acknowledge decision First degree court ;

That review return is effort law outside normal . Rights still given to Convict and expert his heir , after decision have strength fixed law , without limited time , in principle while they find novum , because problem the law Alone Actually has finished ;

That despite Constitution still giving opportunity inspection review return on Judge's error or something the real mistake , is naive , if reason the happened in three-level justice first , appeal and cassation respectively by the Panel of Judges consisting of from 5 (five) different people ;

That in frame utilise gaps law , special in case follow criminal Corruption , phenomenon direct submit application review return without through appeal and cassation often and increasingly often happen . For certainty law and in frame carry out function supervision Supreme Court , then matter This need prevented ;

That phenomenon This happen Because according to provision Article 266 paragraph (3) KUHAP, decision review return No can exceed criminal offenses that have been dropped in decision beginning ;

That a number of decision case corruption in the Court of First Instance prove how light the decisions handed down include , among others : case a quo , where has enforced direct articles Subsidiary , though No indictment Alternative .

Something similar can happen too seen in Decision Reconsideration of name Ir. Basuki Tjahaja Purnama alias Ahok as Applicant . The panel of judges chaired by Artidjo Alkostar in consideration the law convey as following :

Applicant Judicial Review in fact No mean it use his rights For state he objected on decision judex facti that is with utilise effort appeal law , proven Applicant /Ir. Basuki Tjahaja Purnama, MM alias Ahok has unplug application the appeal on Decision North Jakarta District Court Number 1537/ Pid.B /2016/ PN.Jkt.Utr as Deed Revocation Request for Appeal Number 19/ Akta.Pid /2017/ PN.Jkt.Utr juncto Number 1537/ Pid.B /2017/ PN.Jkt.Utr dated May 23, 2017, and application Applicant the has accepted by the DKI Jakarta High Court accordingly Determination Number 117/Pid/2017/ PT.DKI.Jkt June 13 , 2017, with thereby Actually

Applicant Judicial Review has accept considerations and warnings Decision North Jakarta District Court Number 1537/ Pid.B /2016/ PN.Jkt.Utr . the .

In contrast to the typical process, the Judicial Review (PK) decision involving Patrialis Akbar highlights a significant deviation. The panel of judges, chaired by Andi Samsan Nganro, accepted the PK application even though the case had obtained permanent and binding legal force at the first court level, without the filing of an appeal or cassation. By accepting the PK, the panel of judges also reduced the corporal punishment from 7 years to a lower sentence by 1 year compared to the decision handed down by the Panel of Judges at the Central Jakarta Corruption Court.

In his petition, Patrialis Akbar presented three reasons: the existence of new evidence (*novum*), contradictions, and errors or manifest mistakes in the verdict. The panel of judges, in their considerations, justified the reason that there was an error or manifest mistake in the verdict while not justifying the other reasons submitted by the applicant.

This case illustrates that a PK can be accepted under certain conditions even if ordinary legal efforts, such as appeal or cassation, were not pursued. The decision emphasizes the flexibility and scope within the PK process to address and rectify judicial errors or manifest mistakes, ensuring that justice can be served even post-verdict..

According to Bambang Widjojanto , as long as decision Already powerful law still so convict Can submit PK. Decision District Court or level First Can stated powerful law still if second split party or No There is the submitting party effort law until the specified time limit end .

PK as effort law outside normal different with appeals and cassation which constitute effort law normal . Conditions that become condition can he took effort law normal beside correlated the desired material truth achieved , also related to formal requirements , namely grace time certain after he knows something judge's decision by the parties formally .

Legal effort outside normal aim find justice and material truth . Justice No can limited time or provision formality For submission effort law outside normal like PK, because it is very possible exists substantial *novum* new found during the previous PK Not yet found . Searchers justice (*justiciabelen*) is greatly desired the case filed to court can decided by a professional and competent judge high moral integrity so that can give birth to no decision just contain aspect certainty law (justice procedural) , but also dimensional legal justice, moral justice and social justice remember justice that's become objective main thing to do achieved of the settlement process dispute in court .

As is known, together function of criminal procedural law is To seek and obtain or at least approach the complete truth from something case following criminal so that application law criminal can with precise and honest to a or the group that did deed criminal That . More firmly again, Van Bemellen states that function of criminal procedural law is To look for truth , gift confirmation by the judge, and implement verdict . Outline giving certainty law become focus main in implementation criminal procedural law That myself , so the judge's decision will be taken is the right decision then will done implementation (execution) by the prosecutor so that created something order , tranquility , peace , justice and prosperity in public .

CONCLUSION

In its implementation , often happen that convict request PK with reason exists mistake or mistake real without preceded effort law normal . That matter because exists binding principle in effort PK law i.e the sentence imposed No can exceed decision beginning . Provision thereby different with effort law normal both appeal and possible appeal the decision handed down more heavy compared to decisions at lower levels . In various the decision , the Supreme Court still different in its implementation that is is allowed PK application is submitted with reason exists mistake or mistake real without preceded effort law normal.

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