

JUDGEMENT, LEGAL ATTEMPT AND EXECUTION OF CRIMINAL LAW IN INDONESIA

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ABSTRACT

The judge's decision must be considered correct until there is a higher decision that annuls it. The judge's decision must be based on the principles of real justice not mere procedural justice. the judge's decision must be based on the applicable laws and regulations. Sentencing, legal remedies and execution of criminal decisions have been stipulated in the Criminal Code (KUHP). In the implementation of execution against the defendant, supervision is carried out by the judge. This is to ensure that the implementation is in accordance with the verdict and is carried out properly.

Keywords: Judgement, Legal Attempt and Execution.

INTRODUCTION

The Criminal Procedure Code is a series of material criminal law enforcement processes with the principle of *due process of law* that must be upheld by law enforcement officials in enforcing criminal justice. One of the things regulated in the Criminal Procedure Code is the issue of judges' decisions, legal remedies and execution of decisions.

The judge's decision must be considered correct until there is a higher decision that annuls it. The judge's decision must be based on real justice, not mere procedural justice. In reality, many court decisions are considered not fulfilling the sense of justice. This is due, among other things, to insufficient evidence, so that in the giving a judge's decision based on such insufficient evidence cannot provide a sense of justice for the litigants.

In criminal procedure law, after the court's decision is legally binding, the

execution of the decision on the criminal case is known as execution. there are several stages carried out in the implementation of execution based on the rules and regulations of criminal procedure law.

Regarding the judge's decision and legal remedies against the judge's decision and the execution of the judge's decision, this will be the author's discussion in this article with several discussions and sub-chapters.

RESEARCH METHOD

The research method is an important factor in writing and preparing scientific papers, so that the assessment and analysis of the object of study is carried out correctly and optimally, the research needs an appropriate method, so that it can provide scientific results. The method applied aims to provide scientific research results so that the analysis carried out on the study can be accounted for. Legal research is a process to determine the rules of law, legal principles in order to answer the legal issues faced.¹

This research is legal research, legal research is research to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the norms in the form of orders or prohibitions are in accordance with legal norms (not just in accordance with legal rules) or legal principles.²

The approach to the problem used in this research is a *statutory approach* and a *conceptual approach*. The statutory approach is an approach that is carried out by examining all laws and regulations related to the law with the legal issue under study. This legal approach will open up opportunities for researchers to study whether there is consistency and compatibility between one law and another to obtain appropriate arguments in solving the issues at hand. The *conceptual approach* moves away from views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts and legal principles that are relevant to the issues at hand. Understanding of these views and doctrines is the basis for

¹ Peter Mahmud Marzuki, "*Legal Research*". (Kencana Prenada media., Jakarta, 2001), p. 35.

² Ibid.

researchers in building a legal argument in solving the legal issues at hand.³

RESULTS AND DISCUSSION

1. Judgement

Criminal Judgement, If the charges filed by the public prosecutor have been tested in court and proven and the court is of the opinion that the defendant is guilty, then according to Article 193 paragraph (1) of the Criminal Procedure Code, the court will impose a sentence. However, care must be taken to avoid mistakes that are contrary to the existing law. In determining the verdict, the panel of judges must deliberate. The deliberation is confidential (Article 19 paragraph (1) of the Judicial Power Law).⁴ In a deliberation, there are often different opinions that indicate that the decision was not made in a unanimous decision. This different opinion must be attached to the decision as a *dissenting opinion*. In adjudicating a case, it must go through 3 actions in stages, namely:

- 1) Contesting which means admitting / justifying that an event has occurred that has been submitted and proven before the court.
- 2) Qualifying which means assessing events and applying legal rules against that event
- 3) Constituting which means establishing the law and giving justice to those concerned.

Every decision made by the panel of judges must fulfill the formal and material requirements as stipulated in Article 197 of the Criminal Procedure Code.

The verdict must meet the following criteria (Article 197 paragraph (1) of the Criminal Procedure Code):

1. Head The verdict reads : “DEMI KEADILAN BERDASAR KETUHANAN YANG MAHA ESA”
2. Identity of the accused
3. Indictment, as per the indictment

³ Ibid pp. 135

⁴ Andi Muhammad Sofyan and Abd.Asis, "Criminal Procedure Law" 3rd print, {Kencana, Jakarta, 2017}, p. 336. 336

4. Complete consideration
5. Public prosecutor's criminal charges
6. Statutory regulations that form the basis of punishment
7. Day and date when the panel met
8. Statement of the defendant's guilt
9. Charging of court costs and determination of evidence
10. Explanation of forged letters
11. Order of detention, stay in custody, or release
12. Day and date of the decision, name of the public prosecutor, the judge who made the decision and the court clerk

If this is not included, then the consequences according to Article 197 paragraph (2) of the Criminal Procedure Code, the decision is null and void.

a. Judgement

1) Acquittal

In essence, an acquittal occurs because the defendant is declared not legally and convincingly proven to have committed a criminal offense as charged by the Public Prosecutor in the indictment.

2) Judgment of release from all charges

In essence, even though the act charged is proven in court, but the act does not constitute a criminal offense, the defendant is acquitted of all charges.⁵

2. Legal Attempt

Article 1 point 12 of the Criminal Procedure Code, explains that legal remedies are "The right of the defendant or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the right of the convicted person to submit a request for judicial review in the cases and according to the procedures regulated in this law. So legal remedies according to Article 1 point 12 of the Criminal Procedure Code above have differentiated between ordinary legal remedies (Chapter

⁵ Pangaribuan, Aristo, et al. "Introduction to Criminal Procedure in Indonesia" (Depok: Rajawali Pers, 2018), p. 327-332. 327-332

XVII) and extraordinary legal remedies (Chapter XVIII), consisting of two, namely:⁶

- a. The ordinary legal remedies are Appeal and Cassation.
- b. Extraordinary legal remedies are Cassation in the interest of the law and Judicial Review of court decisions that have permanent legal force (*herziening*).

a) Ordinary Remedies

Ordinary legal remedies are regulated in Chapter XVII, Part One from Article 233 to Article 243 of the Criminal Procedure Code on appeal hearings, and Part Two from Article 244 to Article 258 of the Criminal Procedure Code on cassation hearings. Ordinary legal remedies are the right of the defendant and public prosecutor not to accept the decision of the district court or the first level (*judex factie*), so that the purpose of legal remedies from the defendant (convict) or public prosecutor is not satisfied or cannot accept the decision⁷, is:

1. To correct mistakes made by previous agencies.
2. For unity in the court.
3. As a safeguard against arbitrary action by judges or courts.⁸

With this legal remedy there is a guarantee, both for the defendant and the public that the judiciary is correct according to the facts and the law as far as possible uniform. For more details, we will describe the ordinary legal remedies, namely the examination of the appeal level and the examination of the cassation level, as follows:

a) Appeal

Appeal examination is a case examination at the level of II or high court, which is the right of the defendant and the right of the public prosecutor to request that the decision of the district court be reviewed by the high court⁹.

Thus, the defendant or the public prosecutor may file an appeal to the Court of Appeal against all decisions of the district court (first instance), except:¹⁰

⁶ See in more detail Article 1 point 12 of the Criminal Procedure Code

⁷ Andi Hamzah, "*Indonesian Criminal Procedure Law*", (Sinar Grafika, Jakarta, 2001), p. 290-290

⁸ M. Yahya Harahap, "Discussion of Problems and Application of KUHAP, Trial Examination, Appeal, Cassation and Judicial Review", (Sinar Grafika, Jakarta, 2017), p. 449-456. 449-456

⁹ Andi Hamzah, Op. Cit. pp. 293-295

¹⁰ Ibid, pp. 292-296

1. Acquittal (*Vrispraak*);
2. Release from any lawsuits concerning the inaccurate application of the law;
3. Court decisions in speedy proceedings (roller cases).

As for objectives of submission application The purpose of filing an appeal against a district court decision is:

- a. Examine the decision of the district court (first instance) on whether it is in accordance with the applicable laws and regulations;
- b. For a new examination of the whole case. An appeal hearing is therefore often called a "revision", because it is a new judgment(*judicium novum*).¹¹

An appeal request is submitted to the relevant District Court clerk within 7 days after the verdict is rendered or after the verdict is notified to the absent defendant, then the clerk makes a certificate signed by the clerk and the applicant and then given to the applicant. However, if the time limit has passed without an appeal from either party, it is deemed that the verdict has been accepted, and the court clerk records and makes a deed to that effect and attaches it to the case file. The appeal process is regulated in articles 233-243 of the Criminal

Procedure Code, the procedure is as follows:¹²

a. Appeal

The appeal request is submitted to the CA within 7 days after the verdict is rendered or has been notified to the defendant if he is absent. A certificate is then made, signed by him and the appellant, and a copy is given to both the defendant and the public prosecutor.

b. Withdrawal of appeal

Article 235 of the Criminal Procedure Code states that an appeal may be withdrawn only before the appeal is decided. If the appeal is withdrawn during the hearing, the

¹¹ Ibid, p. 292

¹² M. Yahya Harahap, Op. Cit.

costs of the appeal shall be borne by the appellant and the amount of the costs shall be issued by the court. Cases that have been revoked may not be filed again.

c. Appeal examination

After the request is submitted and received by the CA, a maximum of 14 days from the request, the clerk sends a copy of the District Court's decision and the case file and evidence letter to the CA. A maximum of 7 days before sending the file, the applicant may study the file and at any time may examine the authenticity of the file at the CA. As long as the CA has not yet examined the case, the defendant/legal representative and the Public Works Office may submit an appeal memory or counter-memory.

Minimum of 3 judges. If deemed necessary, the CA may hear the testimony of the defendant or witnesses or the Public Prosecutor himself or herself by briefly explaining in the summons to them what he or she wishes to know.¹⁵¹³

d. Appeal decision

Article 241 of the Criminal Procedure Code stipulates that the CA may decide, uphold, and modify or in the case of annulling the decision of the District Court, the CA may issue its own decision.

b) Cassation

1. Definition of cassation

According to Andi Hamzah, *cassation* actually comes from French, the original word *casser* which means to break down. A judge's decision is canceled in order to achieve judicial unity. In legal terms, cassation is annulment, which is an action of the Supreme Court as the highest supervision of the court decisions of other courts. So cassation itself means annulment/*vernietiging* and can only be carried out by the Supreme Court as the highest supervisor of the actions of other courts (Article 39 of Law No. 48 of 2009 concerning Judicial Power).¹⁶¹⁴

2. Purpose of cassation

Cassation is held with the intention of organizing in the unity of the law, as well as according to Yahya Harahap that the main purpose of the institution of cassation is

¹³ See Articles 233-234 of the Criminal Procedure Code.

¹⁴ Andi Hamzah, Op. Cit. p. 297

an effort to achieve legal unity ". The basis for filing a cassation, as according to Article 244 of the Criminal Procedure Code, that "Against the decision of a criminal case given at the last level by a court other than the Supreme Court, the defendant or the prosecutor.

The public may file a request for cassation examination to the Supreme Court except for acquittals".¹⁵

3. Grounds of appeal

As for the reasons for filing a cassation application, in the Criminal Procedure Code used by the Supreme Court of Indonesia, as stipulated in Article 253 paragraph (1) of the Criminal Procedure Code, namely "Examination at the cassation level is carried out by the Supreme Court of Indonesia at the request of the parties as referred to in Article 244 and Article 249 in order to determine :¹⁶

- a) Whether it is true that a rule of law has not been applied or applied improperly; then the Supreme Court hears the case itself.
- b) If it is true that the manner of trial was not carried out in accordance with the provisions of the law, then the Supreme Court of Indonesia shall issue an order directing the court that decided the case to re- examine the part that was annulled, or on certain grounds the Supreme Court may order the case to be examined by a court of another level.
- c) whether it is true that the court has exceeded its authority. Then the Supreme Court determines another court or judge to hear the case (Article 255 of the Criminal Procedure Code) Similarly, according to Martiman Prodjomidjojo, that "Examination of the cassation level is not a third level examination, cassation is to cancel or solve. Cassation is a legal remedy against decisions given at the highest level by other courts in criminal and civil cases, in order to achieve unity in implementing regulations and laws. Therefore, for the examination of the cassation level, each appeal or review, except for criminal decisions in a speedy examination procedure".

¹⁵ M. Yahya Harahap, Op.Cit., pp. 539-542

¹⁶ Ibid

The application for cassation in the Supreme Court will be rejected if: (1). the cassation examination of the verdict is acquittal (Article 244 of the Criminal Procedure Code in conjunction with the MARI decision of 19/9/1956 No.70K/Kr/1956); (2). Exceeding the period of time for filing a cassation, which is 14 working days after the verdict is received (Article 245 of the Criminal Procedure Code), therefore it must be calculated more carefully including holidays and the day the verdict is received; (3). Cassation may only be filed once (Article 247 paragraph (4));

(4) the applicant for cassation did not file a cassation memorandum (Article 248 paragraph (1)); (5). not in accordance with the reasons for cassation in Article 253 paragraph (1). In addition, it must pay attention to the formalities of cassation that must be fulfilled, such as: (a) a special power of attorney must be attached, if it is not filed in-person (MARI decision No. 117 K/Kr/1958); (b) there must be a prior decision of the CA (MARI decision No.66K/Kr/1957); (c) it must not be an interlocutory decision (MARI decision No. 320K/Kr/1957); (d) if the application is stamped with a thumbprint, it must be endorsed by an authorized official (MARI decision No. 137/Kr/1961).

b) Extraordinary Legal Attempt

1) Cassation level examination in the public interest

Article 259 paragraph (1) of KUHAP stipulates that the Attorney General may file a one-time request for cassation against all decisions that have obtained permanent legal force from courts other than the Supreme Court, in the interest of the law. In principle, in the practice of administrative procedural justice, the request for cassation in the interest of law is almost identical to the request for cassation in ordinary legal remedies (Chapter XVII Articles 244 to 258 of KUHAP). The only difference is that this type of cassation can be conducted by the attorney general. According to the provisions of the Criminal Procedure Code, cassation in the interest of law is basically submitted by the attorney general to the Supreme Court in writing through the clerk of the district court that has decided the case in the first instance is accompanied by a brief containing the reasons for the request (Article 260 paragraph (1) of the Criminal Procedure Code). Then, the clerk shall deliver a copy of the cassation brief to the interested party (Article

260 paragraph (2) of the Criminal Procedure Code). After that, the chairman of the relevant district court immediately forwards it to the Supreme Court (Article 260 paragraph (3) of the Criminal Procedure Code).¹⁷

Cassation in favor of the law is filed if the decision of the district court is:

1. A rule of law is not applied or applied, not as it should be.
2. Whether the manner of trial was not conducted in accordance with the law
3. The court exceeded its authority¹⁸

Basically, the procedure for filing an appeal for judicial review includes:

1. The request is submitted by the attorney general in writing.
2. The application is submitted to the Supreme Court through the district court clerk.
3. The request is accompanied by a brief containing the reasons for requesting cassation in the interests of the law.
4. That a copy of the minutes shall then be delivered by the clerk of the district court to the interested party.
5. The president of the district court then immediately forwards the cassation request to the Supreme Court.

As for the procedure for examining and deciding cassation in the interests of the law, it is essentially identical to the examination of cassation in ordinary legal remedies. Extraordinary legal remedies, cassation in the interests of the law is intended to achieve unity of legal interpretation by the court. If a doubt or dispute is left to the Supreme Court to decide, the decision of the Supreme Court is taken by the lower judges as a guide. This has no effect on the defendant. So, it is really only for theoretical purposes. It will not harm the defendant (Article 259 KUHAP).¹⁹

1) Judicial review of decisions that are legally binding

Article 263 paragraph (1) of KUHAP stipulates that against court decisions that have

¹⁷ Andi Hamzah, Op. Cit. pp. 302-304

¹⁸ Lilik Mulyadi, "Judge's Decision in Criminal Procedure Law", (Citra Adiya Bakti, Bandung, 2007), h. 243-244.

¹⁹ S.M. Amin, "Procedural Law of the District Court", (Pradnya Paramita, Jakarta, 1981) p. 121

obtained permanent legal force, except for acquittal or release from all charges, the convicted person or his heirs may submit a request for review to the Supreme Court. The provisions of Article 264 paragraph (3) of the Criminal Procedure Code and Article 268 paragraph (1) and paragraph (3) of the Criminal Procedure Code, it can be recapitulated that the Review of Court Decisions that Have Obtained Permanent Legal Force, its scope includes:²⁰

- 1) The review of a court decision that has obtained permanent legal force can be carried out by the convicted person or his/her heirs.
- 2) The review of court decisions that have obtained permanent legal force can only be carried out against decisions of the district court, high court, and Supreme Court that impose punishment and have obtained permanent legal force.
- 3) Judgments of acquittal/vrijspraak and judgments of acquittal/onslag van alle rechtsvervolging are not subject to judicial review.
- 4) Requests for judicial review are not limited to a time period.
- 5) A request for judicial review of a judgment does not suspend or stop the execution of the judgment and can only be made once.

Article 263 paragraph (2) of the Criminal Procedure Code states that a request for judicial review is made on the basis of :²¹

- 1) If there are new circumstances that give rise to a strong suspicion, that if the circumstances had been known while the trial was still ongoing, the result would have been a verdict of acquittal or a verdict of acquittal from all charges or the prosecution's charges are inadmissible or a lighter punishment is applied to the case.
- 2) If in various decisions there is a statement that something has been proven, but the things or circumstances as the basis and

²⁰Lilik Mulyadi, Op-cit, hlm. 249-256

²¹ M. Yahya Harahap, Op.Cit., pp. 614-622

reasons for the decision that are stated to have been proven, turn out to have contradicted one another.

- 3) If the verdict clearly shows a judge's mistake or a clear error.

3. Implementation of Court Decisions

The Criminal Procedure Code regulates only 7 articles on the execution of court decisions, namely Articles 270 to 276 of the Criminal Procedure Code. These articles regulate:

- a. Execution of court decisions by prosecutors (Article 270 of the Criminal Procedure Code)
- b. Implementation of death penalty (Article 271 KUHAP)
- c. Consecutive execution of punishment, if the convict is sentenced to consecutive similar punishment (Article 272 KUHAP)
- d. The execution of a fine shall be within one month, except for a verdict of a speedy trial which must be paid immediately, the payment of the fine may be extended for a maximum of one month in the event that there are compelling reasons (Article 273 paragraph (2) of KUHAP).
- e. Regulation of evidence seized for the state (Article 273 paragraphs (3) and (4) of KUHAP)
- f. Implementation of compensation decisions to other injured parties (Article 274 of the Criminal Procedure Code)
- g. Implementation of conditional punishment (Article 276 of KUHAP).^{24 22} Furthermore, Article 270 of the Criminal Procedure Code stipulates that the implementation of court decisions that have obtained permanent legal force is carried out by the prosecutor, for which the Registrar sends a copy of the decision letter to him. In line with the provisions of Article 270 of the

²² Andi Hamzah, Op.Cit., p. 311

Criminal Procedure Code, it is also explained in Article 36 paragraph (1) of Law Number 4 Year 2004 concerning Judicial Power that the execution of court decisions in criminal cases is carried out by the prosecutor, this is an authority given absolutely by law in the execution of criminal cases.

The implementation of the decision is supervised by the judge so that the implementation is in accordance with the ruling and is carried out as much as possible and does not exceed it which can harm the convicted person. This supervision is recorded in the partnership register after the prosecutor sends the news of the implementation of the decision to the court. This supervision also applies to conditional punishment, supervision is carried out to observe the criminal on his behavior. The results of the supervision and observation are submitted and reported to the president of the court on a regular basis.²³

CONCLUSIONS

Based on the description and explanation above, it can be concluded that the imposition of verdicts, legal remedies and execution of criminal decisions have been stipulated in the Criminal Code (KUHP). In the implementation of the execution of the defendant, supervision is carried out by the judge. This to ensure that the implementation is in accordance with the ruling and is carried out as appropriate.

²³ See in more detail Articles 278-283 of the Criminal Procedure Code and their explanations.

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