

Reconstruction of the Regulation of the Prosecutor's Authority to File a Review of Criminal Cases Decided Acquittable in the Indonesian Criminal Procedural Law System Based on the Values of Justice

Ristu Darmawan; Gunarto; Jawade Hafidz; Isnawati

Law Doctoral Program, Faculty of Law, Unissula, Indonesia

E-mail: tulik1401@gmail.com

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Abstract

The paradox of prosecutors seeking case reviews in acquittals, which contradicts justice values in Indonesia's criminal law system. The purpose of research are: 1) analyze the regulation of prosecutorial authority to request reviews of acquittals based on justice values; 2) identify weaknesses in current regulation; and 3) analyze a reconstruction of the regulation grounded in justice. The research uses constructivist paradigm, the study applies a sociological juridical approach and descriptive research method. Data sources include primary, secondary, and tertiary legal materials to evaluate how legal practices align with justice principles. The results are: 1) The prosecutor's authority to request judicial review of acquittals in Indonesia lacks justice value, as it fails to optimally prioritize prosecutor's proper role; 2) Weaknesses in the prosecutor's authority to seek judicial review include conflicting legal substance, limited structural authority under Article 263(1), and differing public perceptions that lead to inconsistent law enforcement across community groups; 3) Reconstructing the prosecutor's authority to seek judicial review involves norm reconstruction and value reconstruction based on justice within Indonesia's legal system. Value reconstruction ensures prosecutor's authority to seek judicial review of acquittals aligns with justice, while norm reconstruction revises Article 30C(h) of Law 11/2021 and Article 263(1) KUHAP.

Keywords: *Reconstruction; Regulation; Prosecutor's Authority; Judicial Review*

Introduction

Draft Prosecutor's Office as controller investigation that in investigation the controlled and/ or led by the Public Prosecutor, with member the team that comes from from Investigator Police for act criminal general, and investigators besides Police for act criminal special/specific. Monitoring, evaluation and supervision carried out by the Public Prosecutor against the cases that are handled slow and become

arrears investigation as well as to investigations that are optimal and not yet obtained tool sufficient evidence, the Public Prosecutor can do investigation addition or advanced to case.

Prosecutor's Office as One institution government , basically No only Article 24 and Article 25 of the 1945 Constitution (herein after abbreviated to the 1945 Constitution), but also Article 4 Paragraph (1) of the 1945 Constitution , namely that The President of the Republic of Indonesia holds power government according to the 1945 Constitution, this is in line with with Article 19 Paragraph (2) of the Law Number 16 of 2004 concerning The Attorney General of the Republic of Indonesia stated that that the Attorney General is appointed and dismissed by the President.

Certainty law always clash with justice because of the aim of the Public Prosecutor (JPU) is to realize justice in accordance with the goals and ideals of the Indonesian state because Indonesia is a state of law so that justice, benefit and certainty law Can in line between One each other, not the other way around contradictory, although between justice and certainty law No in line will but the priority is justice, because justice is everything. The PK Institute was formed intended for interest convict, not interests of the State or victims, provisions This wise on the basis philosophically, that the state has wrongly criminalized residents who do not sinner who is not can fixed Again with effort law normal. Form accountability that is, the state provides right to convicts and or expert his heir for submit effort law outside normal that is PK not to the state, the state does not Once become a victim and feel disadvantaged. Background or the soul behind provision Article 263 paragraph (1) of the Criminal Procedure Code. Provisions the is the principle of PK, that PK only can submitted to the verdict that sentenced the person who had fixed and PK only may filed by the convict or his heirs.

Decision Court Constitution No.33/PUU-XIV/2016 has confirm effort law outside normal in the form of Judicial Review (PK) becomes right convicts and rights his heirs. Therefore, the prosecutor as prosecutor general not allowed filed a PK. However lately in Revision of Law No. 16 of 2004 concerning The prosecutor's office has approved and ratified become the Attorney General's Law latest arrange authority prosecutor in file a PK.

Director Executive of the Institute for Criminal Justice Reform (ICJR) Erasmus Napitupulu confirm effort law outside normal PK becomes right absolute for convicts and experts his heirs. There are Constitutional Court Decision No. 34/PUU-XI/2013 which confirms effort PK law can submitted more from once throughout fulfil the requirements set in the applicable law. However, decision the profitable from side convicts and experts his heir. He was of the view in construction justice, may deviate certainty law based on The Constitutional Court Decision No. 34/PUU-XI/2013.

Since DPR approves Attorney's Bill become law, he said, already there is a number of the party that will test in a way material question arrangement authority prosecutor submitting PK to the Constitutional Court. Eras is so normal greeted think, depend from the law makers explained as strong as What limitation prosecutor can submit PK. If you are dissatisfied prosecutor on decision the court that gave rise to injustice for the victim is old argument.

Arrangement authority prosecutor filing PK is regulated in Article 30C letter h of the Attorney General's Law which states, "In addition to carrying out duties and authorities as meant in Article 30, Article 30A, and Article 30B the Prosecutor's Office: ...h. submit review return;". In the Elucidation to Article 30C letter h explains, the proposed PK Prosecutor's Office as form duties and responsibilities answer representing the country in protect interest justice for the victims.

This also includes countries with put authority prosecutor in a way proportional to the same position and balanced or the equality of arms principle with convict or expert his heir in submission of PK. In the explanation of the Attorney General's Law mentioned PK submitted by the auditor coordinated

with Prosecutor's Office. The law limits the PK that can be submitted prosecutor only decision the court stated action defendant proven in a way valid, but No followed with punishment criminalization

Review back by the Prosecutor in case criminal is the paradox that occurs in system law criminal , where practice law the contradictory with legal values and norms as set up in the Criminal Procedure Code.¹ Not yet available strict regulation in the Criminal Procedure Code regarding right prosecutor submit request review back , need a action law For to clarify right prosecutor prosecutor general / prosecutor submit review back that is implied within a number of regulation legislation invitation.²Both in Constitution Number 14 of 1970 which has changed with Constitution Number 4 of 2004 which then changed Again with Constitution Number 48 of 2009, only mention that review return to the decision that has been to obtain strength law still can be submitted by the parties concerned or interested parties. This is also supported by the ³Decision Court Constitution on Decision Number 33/PUU-XIV/2016.

Based on description background behind on interesting for researcher for take title: "Reconstruction Regulation The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure System Based on the Value of Justice".

Research Methods

Writer in study use paradigm constructivism, a paradigm that views that knowledge law that only deal with regulation legislation solely. Law as something that must be done applied, and more tend for No to question mark justice and its usefulness for society. Legal studies and their enforcement only range about what is right and what is not right, what is wrong and what is not wrong and more other forms nature prescriptive.

Approach research used in study This is study law sociological or normal called study *legal sociological*. In research this, law conceptualized as a symptom empirical that can be observed in life real.

Types of research which is used in finish dissertation This is method study of desk riptive analysis , that is study Which done with method research material pustaka (data s secondary) or study law library , then described in the analysis ⁴and discussion.

The types of data used are primary and secondary data. To obtain primary data, researchers refer to data or facts and legal cases obtained directly through field research including statements from respondents related to the research object and practices that can be seen and related to the research object. While secondary data is done by means of literature study. This secondary data is useful as a theoretical basis for the analysis of the main problems in this study.

The analysis method used is method qualitative, is a method research that produces descriptive data analysis , namely what was stated by the respondent in a way written or verbal and also his real behavior researched and studied as something whole.⁵

¹ Pratama , AB, & Jamin, M. (2017). LEGAL ANALYSIS OF IDEAL ARRANGEMENTS FOR REVIEWING CRIMINAL CASES AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 34/PUU XI/2013. Journal of Law and Economic Development, 5(2).

²Diaan, M., & Astuti, SA (2020). The Authority of the Public Prosecutor (JPU) in Carrying Out Extraordinary Legal Remedies (Judicial Review) Reviewed from Criminal Law (Case Study of Djoko Chandra). Pakuan Justice Journal Of Law, 1(2), 60–70.

³ Suhariyanto , B. (2015). Flexibility law in decision review returned filed by the prosecutor prosecutor general. Journal Judicial , 8(2), 191–207.

⁴ Ed iwarman , 2010, Monograf , Me t o d o l o g i Study L aw , Medan: P r o g r a m Postgraduate U n i v. Muhammad madiyah Su m a t e r a North , Medan , h l m. 2 4.

Discussion

1. Regulation The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure Law System is Not Yet Based on the Value of Justice

Additions authority prosecutor for submit Judicial Review (PK) as per set up in Article 30C letter h and Elucidation to Article 30C letter h of the Law Number 11 of 2021 concerning Changes to the Law Number 16 of 2004 concerning The Attorney General's Office of the Republic of Indonesia (Attorney General's Office Law) is contradictory with the 1945 Constitution. Thus decided Constitutional Court Panel of Judges in Decision Number 20/PUU-XXI/2023 which was read on Friday (14/4/2023) in the Plenary Courtroom of the Constitutional Court.

Grant application Applicant for completely. Stating Article 30C letter h and Explanation of Article 30C letter h of the Law Number 11 of 2021 concerning Changes to the Law Number 16 of 2004 concerning The Attorney General of the Republic of Indonesia is in conflict with The 1945 Constitution of the Republic of Indonesia and not have strength law bind. Order loading decision This in the State Gazette of the Republic of Indonesia as should be. In the considerations submitted by Constitutional Justice Manahan MP. Sitompul said, the Constitutional Court in consideration law Case Number 33/PUU-XIV/ 2016 affirming that the norm of Article 263 paragraph (1) of the Criminal Procedure Code is a constitutional norm throughout No interpreted differently than PK only can filed by the convict or expert his heirs and not may submitted to decision free and loose from all demands law. In addition, the Court confirm if There is different meanings against the norm of Article 263 paragraph (1) of the Criminal Procedure Code precisely will cause uncertainty law and injustice that actually make it the norm unconstitutional.

Applicant postulate Article 30C letter h and the Explanation of Article 30C letter h of the Attorney General's Law which has given authority to the Prosecutor for filed PK has cause uncertainty law so that contradictory with Article 28D Paragraph (1) of the 1945 Constitution. Moreover, according to Applicant existence fact that in case crimes that have been carried out by the Applicant, the Prosecutor's Office has file a PK even though Applicant has stated free based on PK decision that has been filed by the Applicant so that matter the has cause uncertainty law. In addition, according to Applicant, submission of PK made by the Prosecutor's Office is also based on on the applicable prosecution ebb because the PK was previously submitted by the Prosecutor on PK decision from The Supreme Court acquitted convict and has decided on September 15, 2021. Meanwhile, the norms in Article 30C letter h and the Explanation of Article 30C letter h of the Attorney General's Law enacted on December 31, 2021 so that material The contents of Article 30C letter h and the Explanation of Article 30C letter h of Law 11/2021 are contradictory with Article 28I paragraph (1) of the 1945 Constitution, namely right for No sued on base applicable law ebb.

The Court also considers that Article 30C letter h and the Elucidation to Article 30C letter h of Law 11/2021 are chapter new which was inserted between Article 30 and Article 31 in Law 16/2004, namely in number 27 in CHAPTER III concerning Duties and Authorities Prosecutor's Office. Previously, in Law 16/2004 there was no set up the authority of the Prosecutor to do PK. However, in Article 35 letter d of Law 16/2004 which states, "The Attorney General has duties and authorities: ... d. submit cassation in the interests of law to The Supreme Court in case criminal, civil and state administrative cases", the Attorney General, in this case the Attorney General, has given authority for can submit cassation. With the insertion of Article 30C letter h along with its explanation in the Attorney General's Law means has add authority prosecutor's office, in casu authority for file a PK without accompanied by with clear explanation about substance from giving authority said. According to Court, addition authority the No

⁵ *Ibid.*

only will cause uncertainty law, but also will potential cause abuse authority by the Prosecutor in particular in matter submission of PK against a matter that is actually has stated free or off from all demands law. Moreover, there is fact that related with issue the constitutionality of PK has under consideration Court in Decision Court Constitution Number 16/PUU-VI/2008 and confirmed in Decision Court Constitution Number 33/PUU-XIV/2016.

The Criminal Code (KUHP) has not yet in a way firm formulate provisions that are concrete or direct give protection law towards victims, for example in matter the fall criminal must under consideration influence act criminal towards the victim or the victim's family. If compared to with the Criminal Procedure Code (KUHAP) already start existence protection of victims in individual, the victim's rights according to the Criminal Procedure Code are regulated in Article 98-101 of the Criminal Procedure Code. In Article This set up about the only one mechanism change losses incurred by the victim (Article 98 of the Criminal Procedure Code) , in matter This merger case lawsuit change loss.⁶

Weakness thoughts and views Criminal Procedure Code This looks too emphasize protection on rights and interest suspects, accused and defendants, will but very less notice efficiency mechanism settlement case criminal That by the authorities themselves justice and the interests of victims of crime criminal or victims of abuse power apparatus enforcer law. ⁷In connection rights procedural crime victims, can refers to the victim's right to submit pretrial to termination investigation and prosecution as known in law positive Indonesia. From the aspect said, ideally in determine prosecution to perpetrator crime need included victims for give his opinion. Likewise in evaluate decision court whether has in accordance with a sense of justice or not yet, requested victim's opinion. With condition opinion the has accepted by the prosecutor prosecutor general in more time short from the deadline submit appeal request.

Law no. 48 of 2009 concerning Power Justice that changes Law no. 4 of 2004 neither Far different that is nature formalistic legal and not notice the interests of the victim. According to Constitutional Court Decision No. 33/PUU-XIV/2016 section 3.11 prohibits the Public Prosecutor from making a Judicial Review Effort: The Judicial Review Effort is based on philosophy return rights and justice someone who believes himself get treatment that is not justice carried out by the state based on judge's decision, therefore That law positive that applies in Indonesia provides right to convict or expert his heir for submit effort law outside commonly called with Review. In other words, the institution The review is intended For interest convict use do effort law outside usual , no interests of the state and the interests of the victim, as effort law outside usually done by convicts , then entitled subject submit Review is only convict or expert his heirs, while object from submission Review is the decision stating the alleged act stated proven and sentenced criminal , therefore That as A draft effort law for interest convicts who feel No satisfied to the decision that has been to obtain strength law still , then decision free or off from all demands law no including to in object submission Review , because decision free or off from all demands law of course profitable convict ; institution Review adopted solely For interest convict or expert his inheritance and things the is essence from institution Judicial review.

Legal remedies according to criminal procedure law differentiated in a way firm in Chapter XVII Article 233 of the Criminal Procedure Code to with Article 258 of the Criminal Procedure Code which regulates about effort law ordinary, and Chapter XVIII Article 259 of the Criminal Procedure Code to with Article 269 of the Criminal Procedure Code regulating about effort law outside normal. Review return in the Criminal Procedure Code is one of the effort law outside regular set in Article 263 of the Criminal Procedure Code to with Article 269 of the Criminal Procedure Code; whereas effort law outside another common one is cassation in the interests of regulated law in Article 259 of the Criminal Procedure Code to with Article 262 of the Criminal Procedure Code.¹ One of the things that becomes

⁶Siswanto Sunarso, *Victimology in the System Justice Criminal Law* , (Jakarta: Sinar Grafika , 2015), pp. 49-50

⁷Romly Atmasasmita , *System Justice Criminal Law: The Perspective of Existentialism and Abolitionism* , (Bandung: Putra Bardin , 1996), p.45.

debate in criminal procedure law moment This is about problem effort law The review that arrived Now This rated Still cause controversy by various circles enforcer law and academics who have not reflect certainty and justice law. While in Law No. 8 of 1981 Article 263 paragraph (1) which reads: That to Decision The court that has to obtain Permanent legal force, except Decision free or off from all demands law, convict or expert his heir can submit request Review of the Supreme Court. This article indicates that review return only can filed by the convict or expert his heirs, while for prosecutor general chapter This close possibility for submit review back, and against decision free and verdict off No can submitted effort law review return.

Regulation authority prosecutor submit review return to case the sentence that was decided free in system criminal procedure law Indonesia Not yet based on mark justice Because Not yet put forward role prosecutor's office optimally. Based on Invite Number 48 of 2009 Concerning Power Justice Constitution Power Justice is one of laws that also regulate about review back. Good inside Constitution Number 14 of 1970 which has changed with Constitution Number 4 of 2004 which then changed Again with Constitution Number 48 of 2009, only mention that review return to the decision that has been to obtain strength law still can submitted by the parties concerned or interested parties. Article 24 paragraph (1) of the Law Invite Number 48 of 2009 concerning Power Justice mention that : "Regarding the decision that has been to obtain strength law still, the parties concerned can submit review return to Supreme Court , if there is matter or condition certain specified in Law." This article interpreted by the panel of review judges return in the number of case that the parties concerned is besides convicts and experts his heirs, of course the other party is the Public Prosecutor.

2. Weaknesses Regulation the Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Current Indonesian Criminal Procedure System

a. Weakness Aspect Legal Substance

Weakness aspect substance law that is Decision Court Constitution states that Article 30C Letter H is contradictory with The 1945 Constitution of the Republic of Indonesia and not have strength law binding. So, when This is the Prosecutor's Office may submit Review. Government should can ensure realization certainty law, especially to chapter related articles with problem review return especially The Supreme Court as receiving institution submission Review for the future No There is polemic in matter who is allowed for submit Judicial review.

b. Weaknesses of Aspects Legal Structure

Weakness aspect structure law that is in the reality practitioner and expert law as well as poured out in the Criminal Procedure Code, that as appropriate as possible filing a PK is convict or expert his heir based on Article 263 paragraph (1), however other parties who have interest representing the victim and the state, namely the Public Prosecutor, is considered No have authority submit Review. Review is effort law outside usual in the decision that has been powerful law remain in the judicial process level first, appellate level, or level cassation decided by the Supreme Court. Criminal Procedure Code especially Already aged not enough more than 40 years, will but the applicability of Article 263 of the Criminal Procedure Code concerning PK as effort law outside normal in its implementation Still there is obstacles and cause multi-interpretable.

c. Weaknesses of Aspects Legal Culture

Weakness aspect culture law that is cultural components hold a very important role in enforcement law specifically law criminal. There are times when level enforcement law on a very high society Because supported by community culture, for example through participation public participation

is also very high in business do prevention crime, report and make complaint on the occurrence crime in his environment and work The same with apparatus law enforcement in business countermeasures crime, even though component structure and substance No so good and even public No want the formal procedure applied as should be. The influence of legal culture or culture law public about review returned by the Prosecutor's Office namely existence difference perception public to provision legislation, where matter the will cause consequence that enforcement the law is also different between group public certain and groups other communities.

3. Reconstruction Regulation The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure Law System Based on the Value of Justice

a. Comparison Foreign Country Review of Regulations The Attorney's Authority to File Review of Case Criminal Sentences Free

1) United States of America

According to I Dewa Gede Palguna, judicial review in the United States No is activity judicial (trial) standing himself who is special intended only for test constitutionality A law, but rather done in a way together (include) with examination / trial a case. This means that the activity testing constitutional is an activity judicial which is not separate and originated from the litigation process common in courts. In this process, when the judge assesses There is conflicting laws with constitution then at the time that too, at the same time with the litigation process said, the judge conducted a constitutionality test on the law in question.⁸ So that from description judicial review in the United States No can appear so just without there is a trial process or case usual precedent. That is, judicial review in the United States precisely appear from case concrete in court. In other words, judicial review in the United States No one can Constitution submitted direct to Supreme Court of the United States except there is case concrete moreover before. Therefore, that object judicial review testing in the United States No limited only on the law, but rather also includes various regulations, administrative acts, and also state laws, even state constitutions. All of them That can tested if of course considered contradictory with The Federal Constitution (US Constitution) as The Supreme Law of the Land.⁸

Besides that, there is judicial review is carried out through case concrete, namely that which is known with a writ of certiorari where Supreme Court of the United States as court appeal level check case the concrete requested for done review re- (writ of certiorari).

If from results inspection it turns out reasonable so Supreme Court of the United States cancel case and the decision The Supreme Court a quo has the effect to the law that was made base when submit lawsuit or application , namely influence interpretation and application related laws throughout the United States.⁹ Writ of certiorari almost similar with concrete review in Germany, where judicial review is carried out after There is case concrete moreover previously in court normal , but in Germany the Court Constitution No to cut off case concretely but only judicial review of the law temporary case concretely still decided by the court judge normal.

2) Malaysia

Federal Court is court the highest in Malaysia (similar The Supreme Court at the same time Court Constitution in Indonesia), which has the authority to judge in level final all case seduction (appeal) that

⁸ Jimly Asshiddiqie, Testing Models Constitutional in Various Countries (Jakarta: Sinar Grafika, 2010)

⁹ Robert Longley, "What Is a Writ of Certiorari?: The Definition, Application, and Examples of This Legal Term," ThoughtCo, 2021, <https://www.thoughtco.com/definition-of-writ-of-certiorari-4164844>

becomes authority and has decided by the Court Seduction, includes case criminal and civil. Court this is also authorized for to judge dispute authority between government fellowship with the state, conducting a judicial review of the regulations low from Constitution to law, even conduct a material test Constitution to constitution (Perbatasan Malaysia). All decision This Federal Court must be followed by more courts low in accordance with the doctrine of “stare dicicis or binding precedent.” The Court Seduction is court appeal level in Malaysia (similar High Court in Indonesia) as separator (intermediary) between High Court and Federal Court. Court Seduction This authorized for to judge in all appeal level the decision that became authority High Court in case criminal and civil.

High Court is court appeal level (such as High Court in Indonesia) for matters Court Low which is seduced (compared), and is also court level first (like District Court in Indonesia) for matters certain, such as things that are threatened punishment fine more from RM1,000.00. A person who does not satisfied to decision The High Court may to appeal to Court Seduction, but No on the contrary. Because of its hierarchy. one level below Court This appeal. The High Court authorized for to judge all case criminal and civil which are not involving Islamic law and the Sharia Court, which was courted (compared) from Court Low like in matter dispute marriage between husband and wife; bankruptcy; drugs; maintenance child; will; accident Then cross; cancellation contract; dispute between owner and tenant.

3) Germany

Judicial review in Germany, known as with two types , namely , Abstract Norm Review and Concrete Norm Review , both of which both abstract review and concrete review in a posteriori review framework , namely testing Constitution after Constitution the enacted , ¹⁰and important For known that the abstract review that applies in Germany only can proposed by certain state organs only. While individual No given right for submit testing type This. Mechanism testing constitutional which can accessed by individuals is concrete review mechanism, will but matter that too must be submitted by a court judge (judicial referral of constitutional question). In Germany, individuals can submit through constitutional complaint mechanism (verfassungsbeschwerde) which feels rights constitutional has violated by action official or public bodies. In the testing of abstract norms carried out in Germany, it is submitted by the Parties (state organs), namely (1) the Federal Government; (2) the State Governments ; and (3) 1/4 of the members of the Bundestag.¹¹

In addition to testing abstract norms (abstract norm review), the Court The German constitution also has authority testing the concrete norms called with the term concrete norm review, namely testing against regulatory norms legislation that has been approved / already applicable after There is handover from the trial judge general or in other words testing Constitution started from case concrete in progress walking in court.¹²

In the concrete review mechanism, a case originally from justice general. Submission by judicial body general That new can happen after the parties litigated or court judge ordinary court to judge that law the underlying law case the in doubt its constitutionality. ¹³When the handover or the concrete review application Already conducted, trial case the must postponed until existence decision Court Constitution about constitutionality the law being requested testing. With thus through second mechanism testing Good abstract review and concrete review, according to Erhard Blankenburg, Germany has now show himself as a stable democratic country with its established legal state pattern.

¹⁰Basic Law 1949 (German Federal Constitution), nd; Danielle E. Finck, “Judicial Review: The United States Supreme Court Versus the German Constitutional Court,” Boston College International and Comparative Law Review 20, no. 1 (1997).

¹¹Basic Law 1949 (German Federal Constitution).

¹²Basic Law 1949 (German Federal Constitution).

¹³ Jimly Asshiddiqie and Ahmad Syahrizal , Justice Constitutions in 10 Countries, 2nd ed. (Jakarta: Sinar Grafika , 2012).

b. Reconstruction of Regulatory Values The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure Law System Based on the Value of Justice

Reconstruction desired value achieved in study This is that regulation authority prosecutor submit review return to case the sentence that was decided free in system Indonesian criminal procedure law which was previously Not yet fair now based on mark justice

c. Reconstruction of Regulatory Norms The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure Law System Based on the Value of Justice

Prosecutor's Office as One institution government , basically No only Article 24 and Article 25 of the 1945 Constitution (hereinafter abbreviated to the 1945 Constitution), but also Article 4 Paragraph (1) of the 1945 Constitution , namely that The President of the Republic of Indonesia holds power government according to the 1945 Constitution, this is in line with with Article 19 Paragraph (2) of the Law Number 16 of 2004 concerning The Attorney General of the Republic of Indonesia stated that that the Attorney General is appointed and dismissed by the President.

Certainty law always clash with justice because of the aim of the Public Prosecutor (JPU) is to realize justice in accordance with the goals and ideals of the Indonesian state because Indonesia is a state of law so that justice, benefit and certainty law Can in line between One each other, not the other way around contradictory, even though between justice and certainty law No in line will but the priority is justice, because justice is everything. The PK Institute was formed intended for interest convict, not interests of the State or victims, provisions This wise on the basis philosophically, that the state has wrongly criminalized residents who do not sinner who is not can fixed Again with effort law normal. Form accountability that is, the state provides right to convicts and or expert his heir for submit effort law outside normal that is PK not to the state, the state does not Once become a victim and feel disadvantaged. Background or the soul behind provision Article 263 paragraph (1) of the Criminal Procedure Code. Provisions the is the principle of PK, that PK only can submitted to the verdict that sentenced the person who had fixed and PK only may filed by the convict or his heirs.

Based on description above, then presented reconstruction table such as:

Table 5.1. Summary of Regulatory Norms The Attorney's Authority to File Review of Case Criminal Sentences Freedom in the Indonesian Criminal Procedure Law System Based on the Value of Justice

No.	Construction	Its weaknesses	Reconstruction
1.	Constitution Number 11 of 2021 Concerning Changes to the Law Number 16 of 2004 Concerning Attorney General of the Republic of Indonesia Article 30 c Letter h In addition to implementing duties and authorities as meant in Article 30, Article 30A, and Article 30B of the Prosecutor's Office: h. submit review return	Not yet fair	Reconstruction Constitution Number 11 of 2021 Concerning Changes to the Law Number 16 of 2004 Concerning The Attorney General's Office of the Republic of Indonesia, in Article 30 c Letter h, with add words to independent and based on mark justice , so that reads : Article 30 c Letter h In addition to implementing duties and authorities as meant in

			Article 30, Article 30A, and Article 30B of the Prosecutor's Office: h. submit review return in a way independent and based on mark justice
2	Criminal Procedure Code (KUHP) Article 263 Verse 1 To decision the court that has to obtain strength law remain , except decision free or off from all demands law , convict or expert his heir can submit request review return to Supreme Court	included yet prosecutor prosecutor general	Reconstruction of the Criminal Procedure Code (KUHP), in Article 263 Paragraph 1, with add prosecutor prosecutor general, so that reads: Article 263 Verse 1 To decision the court that has to obtain strength law remain , except decision free or off from all demands law, prosecutor prosecutor general , convict or expert his heir can submit request review return to Supreme Court

Closing

Conclusion

Regulation authority prosecutor submit review return to case the sentence that was decided free in system criminal procedure law Indonesia Not yet based on mark justice Because Not yet put forward role prosecutor's office optimally. Based on Invite Number 48 of 2009 Concerning Power Justice Constitution Power Justice is one of laws that also regulate about review back. Weakness aspect substance law that is Decision Court Constitution states that Article 30C Letter H is contradictory with The 1945 Constitution of the Republic of Indonesia and not have strength law binding. Weakness aspect structure law that is in the reality practitioner and expert law as well as poured out in the Criminal Procedure Code, that as appropriate as possible filing a PK is convict or expert his heir based on Article 263 paragraph (1), however other parties who have interest representing the victim and the state, namely the Public Prosecutor, is considered No have authority submit Review. Review is effort law outside usual in the decision that has been powerful law remain in the judicial process level first, appellate level, or level cassation decided by the Supreme Court. Weaknesses aspect culture law that is cultural components hold a very important role in enforcement law specifically law criminal. Reconstruction desired value achieved in study This is that regulation authority prosecutor submit review return to case the sentence that was decided free in system Indonesian criminal procedure law which was previously Not yet fair now based on mark justice. Reconstruction of regulatory norms authority prosecutor submit review return to case the sentence that was decided free in The Indonesian Criminal Procedure Law System is based on mark justice in law Number 11 of 2021 Concerning Changes to the Law Number 16 of 2004 Concerning The Attorney General's Office of the Republic of Indonesia, in Article 30 c Letter h of the Criminal Procedure Code (KUHP), in Article 263 Paragraph 1

References

A. Magazine / Journal Scientific

Basic Law 1949 (German Federal Constitution), nd; Danielle E. Finck, "Judicial Review: The United States Supreme Court Versus the German Constitutional Court," *Boston College International and Comparative Law Review* 20, no. 1 (1997).

Diaan, M., & Astuti, SA (2020). The Authority of the Public Prosecutor (JPU) in Carrying Out Extraordinary Legal Remedies (Judicial Review) Reviewed from Criminal Law (Case Study of Djoko Chandra). *Pakuan Justice Journal of Law*, 1(2), 60–70.

Pratama, AB, & Jamin, M. (2017). LEGAL ANALYSIS OF IDEAL ARRANGEMENTS FOR REVIEWING CRIMINAL CASES AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 34/PUU XI/2013. *Journal of Law and Economic Development*, 5(2).

Robert Longley, "What Is a Writ of Certiorari?: The Definition, Application, and Examples of This Legal Term," *ThoughtCo*, 2021, <https://www.thoughtco.com/definition-of-writ-of-certiorari-4164844>

Suhariyanto, B. (2015). Flexibility law in decision review returned filed by the prosecutor prosecutor general. *Journal Judicial*, 8(2), 191–207.

B. Book

Ediwarman, 2010, *Monograph, Methodology Legal Research*, Medan: Program Postgraduate Program of Muhammadiyah University of North Sumatra, Medan.

Jimly Asshiddiqie, *Testing Models Constitutional In Various Countries* (Jakarta: Sinar Grafika, 2010).

Jimly Asshiddiqie and Ahmad Syahrizal, *Justice Constitutions in 10 Countries*, 2nd ed. (Jakarta: Sinar Grafika, 2012).

Romly Atmasasmita, *System Justice Criminal Law: The Perspective of Existentialism and Abolitionism*, (Bandung: Putra Bardin, 1996).

Siswanto Sunarso, *Victimology in the System Justice Criminal Law*, (Jakarta: Sinar Grafika, 2015).

Regulation Legislation

Criminal Code.

Criminal Procedure Code.

Constitution Number 11 of 2021 Concerning Changes to the Law Number 16 of 2004 Concerning Attorney General of the Republic of Indonesia.

Website

Review of #General Principles of PK" (Online), (http://wikipedia.org/wiki/Review_of_General_Principles_of_PK accessed 11 July 2024).

<http://diqa-butar-butar.blogspot.com/2011/09/teori-teori-keadilan.html> accessed 29 June 2024.

<http://kartikarahmah2406.wordpress.com/2012/12/02/teori-keadilan-sosial> . Accessed June 29, 2024.