

THE EXCEPTION RIGHTS UTILIZATION STRATEGY TO ENHANCE DEFENDANT'S FREEDOM PROTECTION IN CRIMINAL JUSTICE PROCEEDINGS

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Abstract

The criminal justice must be carried out based on the Code of Criminal Procedure. According to Article 156, paragraph (1), the exception is the right of the defendant to answer the indictment given by the Public Prosecutor. The memorandum of objection must be made well when observing the indictment. If there are weaknesses in the indictment, they must be disclosed in the exception appropriately so that the results are optimal in restoring the defendant's human rights that had been deprived, in the form of freedom if the defendant is detained. The case does not proceed as in the Interim Decision number 1473/Pid.Sus/2017/PN Jkt.Sel. When it wants to continue as a case, the prosecutor must make a new indictment. The goal is to optimize so that the rights of the accused remain protected. That then there are efforts of the public prosecutor is a natural thing. The research method in this study is juridical normative. Data collection by making court decisions is also done through literature research.

Keywords: Criminal; Defendant; Exception; Justice.

A. INTRODUCTION

Indonesia is a rule-of-law country based on Pancasila and the 1945 Constitution, which governs all aspects of Indonesian society.¹ Therefore, effective law enforcement is imperative. Law enforcement aims to realize the essence of good governance, aiming to foster a secure, prosperous, and peaceful society.²

Crime is conduct that the state prohibits due to its potential harm to the state, and in response, the state employs punishment as the ultimate

1 Dwi Wahyono, The Criminal Responsibility By Corporate, *International Journal of Law Reconstruction*, Vol. 5, No. 1, 2021, page.126 – 136

2 Antonius Widodo, Muhammad Hadianto, Joni Wijayanto, The Role Of Indonesian Army (TNI) In Reducing The 2001's Sampit Conflict As National Defense, *IJLR: International Journal of Law Reconstruction*, Vol. 6, No. 1, 2022, page.1-12

remedy.³ As fundamentally understood, Indonesia is a rule-of-law state and adheres to a legal system.⁴ The current criminal law in Indonesia largely derives from the colonial era of the Netherlands. It has been codified in a specific legal code⁵, Unlike the Constitutional Court's procedural law, which is solely based on the Constitutional Court's regulations.⁶ Similarly, in Administrative Court proceedings, it is based on the law and possesses its distinct character.⁷ In essence, substantive criminal law must be enforced along with procedural criminal law based on the legislation.

The criminal procedural law regulation in Indonesia generally refers to the Criminal Procedure Code, which has been in effect since 1981. Within it, a series of regulations are outlined, detailing the procedures through which government agencies, police investigators, public prosecutors, and the judiciary must act to achieve the state's objectives about enforcing criminal law. Therefore, perpetrators of crimes should receive treatment under their human rights, from the initial examination process to the final judgment. This is also related to the principle of 'equality before the law,' ensuring equal standing in the eyes of the law. The consistent implementation of laws is essential to maintaining credibility as a tool for regulating human life in society.⁸

Furthermore, in the criminal procedure stage or the examination process during a criminal trial, there is a process known as an objection made by the defendant.⁹ Legal counsel or the defendant raises this objection in response to the charges brought by the Public Prosecutor. In the prevailing criminal court system, this is called a 'statement of objection.' The statement of objection can be considered a declaration of disagreement by legal counsel or the defendant regarding the allegations made by the Public Prosecutor. The objections that lead to the submission of a statement of objection typically encompass matters about the case's substance. These may include objections related to the competence of a court and objections regarding the indictment *niet ontvankelijke verklaard (NO)*, statement of objection concerning *obscuur libel*.¹⁰

3 Agustri Heriyanto, Erwin O.H., Dwi Atmoko, The Legal Protection For Children As Perpetrators Of The Theft Crime, *IJLR: International Journal of Law Reconstruction*, Vol. 6, No. 1, 2022, page.137-146

4 Sulistiyowati, Disfungsional Proses Dismissal Pada Peradilan Tata Usaha Negara: Studi Kasus Putusan Nomor 41/G/LH/2018/PTUN.PBR, *Jurnal APHTN-HAN*, Vol. 1, No. 1, 2022, page.80 – 91

5 Hanafi Amrani, *Politik Pembaharuan Hukum Pidana*, UII Press, Yogyakarta, 2019, page.31

6 Sulistiyowati, Surajiman, Syarif Polhaupessy, Nurhanudin Achmad, Urgensi Pembuatan Undang-Undang Hukum Acara di Mahkamah Konstitusi, *Jurnal SALAM*, Vol. 10, No. 23, 2023, page.1427 – 1438

7 Sulistiyowati, Disfungsional Proses Dismissal Pada Peradilan Tata Usaha Negara: Studi Kasus Putusan Nomor 41/G/LH/2018/PTUN.PBR, *Op.cit*

8 Wandu, The Ideal Arrangement Of Legal Protection For Informal Sector Workers In The Perspective Of The Principles Of Legal Certainty, Justice, And Expediency, *IJLR: International Journal of Law Reconstruction*, Vol. 7, No. 2, 2023, page.141 – 163

9 Article 156 paragraph (1) Criminal Procedure Code

10 Tommy Terry Sorongan, Eksepsi dalam KUHP dan Praktek Peradilan, *Jurnal Lex Crimen*, Vol. 5, No. 4, 2016, page.123 – 130

In reality, an exception stems from applying the presumption of innocence principle, which states that, until a verdict is in force, the defendant is initially considered not guilty.¹¹ On the other hand, the indictment prepared by the Public Prosecutor is often based on the Examination Report, which constitutes a comprehensive series of examinations conducted by investigators. Consequently, a legally defective Examination Report can automatically lead to the creation of a legally defective indictment as well. Such a scenario allows legal counsel and the defendant to raise objections by submitting a statement of objection. The exception is a crucial instrument in the criminal justice process, representing not only the inherent rights of the defendant but also serving as a means to rectify the demands of the Public Prosecutor that may deviate from the prescribed procedures as they should be. If the exception is granted, the process must be terminated.¹²

For comparison in another article, the main issue raised is the review of decision number 31 / Pid.Sus-TPK/2022 / PN.Smg concludes that the contents of the exception, because the contents of the indictment are vague or unclear, cannot be determined individually. That the weakness of the indictment as a reason for the indictment *obscur libel* or can be interpreted as vague or unclear. However, this article does not explain how to make an excellent exception to refute an indictment.¹³ This article explains that the prosecutor changed the indictment not according to the provisions of the law. Then, this article further explains the importance of exceptions in convincing judges to optimize the protection of the rights of the accused. Weaknesses in the indictment are maximized as the basis for mentioning the indictment should be canceled or at least unacceptable, which is difficult to interpret or unclear.

B. RESEARCH METHODS

The type of research used is normative legal research with a qualitative research approach. According to Soetandyo Wignjosoebroto, doctrinal legal research is research on laws conceptualized or developed based on the doctrine adopted by the developer.¹⁴ In the context of this study, the positivist School of law was chosen because of its relevance to the problems discussed. This research focuses on the analysis of legal material containing normative rules. Such legal material consists of primary and secondary.¹⁵ Doctrinal legal research uses several approaches, including

11 *Ibid*

12 Rivaldy Edwell Moningka, Olga A. Pangkerego dan Susan Lawotjo, Pertanggungjawaban Pidana Pelaku Penyebaran Video Bermuatan Asusila Ditinjau Dari Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Lex Crimen*, Vol. 10, No. 6, 2021, page.102 – 112

13 Ridwan Antonius Manurung, Pelaksanaan Eksepsi Oleh Penasehat Hukum Dalam Proses Pemeriksaan Perkara Pidana Korupsi Di Pengadilan Negeri Semarang Dalam (Putusan: 31/Pid.Sus-TPK/2022/PN.Smg), *Dinamika Hukum*, Vol. 14, No. 2, 2023, page.210 – 236

14 Soetandyo Wignjosoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya*, Elsam-Huma, Jakarta, 2002, page.147

15 Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, page.86.

the statute, case, and conceptual approaches. This study specifically focuses on the approach to the case of Interim Decision number 1473 / Pid.Sus/2017/PN Jkt. Sel. Meanwhile, the data collection techniques carried out are through the study of documents or literature on secondary data in the form of primary, secondary, and tertiary legal materials that are analyzed in a descriptive qualitative manner.

C. RESULTS AND DISCUSSION

Criminality is an act committed by individuals, groups, or communities that disrupt society.¹⁶ Criminality can also be equated with criminal acts. A criminal act is an action that goes against the law and societal norms, and the community generally disapproves of it.¹⁷ When a criminal offense occurs, criminal procedure must be enforced. It is necessary to enforce this because there is criminal liability. Criminal liability is closely related to the criminal act committed.¹⁸ The principle of the act and its perpetrator, which is based on what is done and who does it, provides clear regulations for criminal acts and criminal liability.¹⁹ Law enforcement is an endeavor to enhance order and legal certainty within the community.²⁰ Indonesia has several general regulations regarding human rights.²¹ This includes regulating law enforcement without infringing upon these human rights. However, its current implementation has not reduced the crime rate.²²

Despite the high crime rate, the rights of suspects or defendants must not be violated. According to Article 54 of the Criminal Procedure Code, for the sake of defense, a suspect or defendant is entitled to legal assistance from one or more legal counsel during the entire examination process under the prevailing criminal procedural law. This is an integral part of the suspect's rights and an essential element of the criminal justice process.

Punishments that can be imposed consist of principal and additional penalties. Principal penalties include the death penalty, imprisonment, detention, fines, and suspension of rights. Additional penalties encompass the revocation of certain rights, forfeiture of specific assets, and the

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- 16 Aisyah Chairani P, Ineke Kristin Dwi Astuti, Natalia Panjaitan, Sri Rahayu Y. Simurat, Risni Julaei Yuhan, Analisis Jalur Pada Kejadian Kriminalitas di Indonesia Tahun 2018, *Jurnal Sains Matematika dan Statistika*, Vol. 6, No. 2, 2020, page.104 – 112
 - 17 Kiki Rasdian Ningsah dan Joko Kuncoro, Persepsi Terhadap Perilaku Tindak Kriminal Ditinjau Kepribadian *The Big Five* & Status Hukum Wanita Narapidana & Wanita Non Pidana, *Proyeksi*, Vol. 12, No. 1, 2017, page.27 – 34
 - 18 Muhamad Romdoni dan Yasmirah Mandasari Saragih, Pertanggungjawaban Tindak Pidana Pencabulan Terhadap Anak Yang Dilakukan Oleh Anak, *Jurnal Hukum Pidana & Kriminologi*, Vol. 2, No. 2, 2021, page.64 – 76
 - 19 Lukman Hakim, *Asas-asas Hukum Pidana Buku Ajar Bagi Mahasiswa*, Deepublish Publisher, Yogyakarta, 2019, page.30
 - 20 Tony Yuri Rahmanto, Penegakan Hukum Terhadap Tindak Pidana Penipuan Berbasis Transaksi Elektronik, *De Jure*, Vol. 19, No. 1, 2019, page.31 – 51
 - 21 Sulistiyowati, Wahyu Nugroho, Umar Ma'ruf, The Problem of Legal Protection for Human Rights Activists, *Sociological Jurisprudence Journal*, Vol. 6, No. 1, 2023, page.56 – 62
 - 22 Safaruddin Harefa, Kebijakan Kriminal Dalam Menanggulangi Kelebihan Kapasitas Lembaga Masyarakat, *Jurnal Yuridis*, Vol. 5, No. 2, 2018, page.294 - 311

announcement of the judge's verdict. The first agenda in a trial is the reading of the indictment.²³ One of several common theories in criminal justice models is the six theories proposed by Michel King, among which is the Due Process Model. According to King, The Due Process Model is a criminal justice model that emphasizes the equality of the positions of each party involved in the judicial process, ranging from police prosecutors to suspects/defendants. The Model also emphasizes the importance of rules in the judiciary (procedural law) to reduce errors in the Proceedings of criminal cases (rules that protect the accused from error). Each party involved in the judiciary is expected not to take sides in wrongdoing, not to conduct judicial negotiations, and to prioritize justice based on law. The suspect / accused can refuse, silence, or answer the charges and is presumed innocent before a court decision.²⁴ The order of proceedings in a criminal case is reading the indictment, exception, prosecutor's response, interim decision, proof, requisitor, pleidoi, replic, duplic, and verdict. Described as follows :

1. The Indictment

The indictment is a document read aloud during the initial court session containing the criminal offense charged against the defendant, which serves as a basis for the judge's examination during the trial. The prosecutor initiates the transfer, as stipulated in Article 143, paragraph (1) of the Criminal Procedure Code, to the first-instance Court, accompanied by submitting the indictment to expedite the trial process.²⁵ The non-fulfillment of material requirements renders the indictment legally null and void²⁶, meaning that there was no criminal act as stated in the indictment from the beginning.²⁷ The law does not provide a specific definition of the indictment. Article 143 of the Criminal Procedure Code emphasizes a reliance on doctrine, jurisprudence, and customs to regulate it. The Criminal Procedure Code does not contain rules governing the form and structure of the indictment, so in practice, the format of the indictment is determined by each Public Prosecutor.²⁸ The indictment also serves as a basis for the defendant or their legal counsel to raise an exception.²⁹

2. Exception

According to Yahya Harahap, an exception is an effort given to the defendant in matters related to formal issues. Therefore, an exception must be submitted before the substance of the case is examined. Exceptions are regulated in Article 156 of the Criminal Procedure Code.

23 Article 10 Kitab Undang-Undang Hukum Pidana

24 Nursyamsudin, Samud, Sistem Peradilan Pidana Teradu (Integreted Criminal Justice System) Menurut KUHAP, *Mahkamah : Jurnal Kajian Hukum Islam*, Vol. 7, No. 1, 2022, page.149 – 160

25 Article 143 paragraph (1) Criminal Procedure Code

26 Article 143 paragraph (3) letter b Criminal Procedure Code

27 Riadi Asra Rahmad, *Hukum Acara Pidana*, PT Rajagrafindo Persada, Depok, 2019, page.136

28 Nova Aulia Pagar Alam, La Ode Husen & Kamri Ahmad, Efektivitas Penyusunan Surat Dakwaan Oleh Penuntut Umum, *Journal of Lex Generalis (JLS)*, Vol. 1, No. 6, 2020, page.912 – 927

29 Ganda Yusaf A, Kewajiban Menyampaikan Surat Dakwaan Oleh Penuntut Umum Kepada Terdakwa Atau Penasihat Hukumnya, *Jurist-diction*, Vol. 2, No. 3, 2019, page.891 – 905

An exception can also be described as an incidental legal effort characterized by an objection. Exceptions are raised before the examination of the substance of the case. The purpose is to avoid the examination process and the final decision on a substantive matter and determine whether the examination of the substantive matter can proceed to a final decision.³⁰

To make an effective exception, a crucial first step is to carefully consider the various reasons that can be the basis for filing an exception, such as *obscuur liebel*, *errors in persona*, changes in the indictment that do not fit the law, and other relevant reasons. This requires an in-depth analysis of the charges brought, including researching the evidence presented by the public prosecutor and a solid understanding of the legal provisions related to the case, both in the context of the law of criminal materials and the law of Criminal Procedure. By identifying weaknesses in the indictment and preparing solid arguments in favor of exceptions, the defendant or his lawyer can build a solid case to protect the rights of the accused and ensure that the judicial process proceeds fairly and under fundamental principles of justice. Thus, through a comprehensive and meticulous approach to the various relevant aspects, the exceptions made can be a powerful tool in defending the rights of the accused and ensuring the continuity of a fair and just judicial process. To make a reasonable exception, consider the reasons for making exceptions, such as *obscuur liebel*, *error in persona*, etc.³¹ An exception also does not have a specifically regulated format by the Court; however, public defenders or attorneys generally use a format containing the following points.:

- a. Header: Contains the Title/Heading "EXCEPTION."
 - b. Opening: Addressed to the examining panel and others as an introduction.
 - c. Exception Content: Object of Objection and Reasons for the Objection.
 - d. Petitum
 - e. Conclusion: Date of reading the exception, signature, etc.
3. Public Prosecutor's Response to the Exception

It responded to the exception or objection from legal counsel or the defendant. Refuting the exception and typically maintaining the position that the indictment has been made based on formal and material requirements as stipulated in the law.³²

4. Interim Decision

30 Bandaharo Saifuddin, Eksistensi Eksepsi Terhadap Surat Dakwaan Batal Demi Hukum Dalam Perkara Pengerusakan (Studi Kasus Di Pengadilan Negeri Padangsidempuan), *Muqoddimah*, Vo. 1, No. 2, 2017, page.3

31 Emy Rosnawati, *Buku Ajar : Praktek Peradilan Pidana*, UMSIDA Press, Sidoarjo, 2019, page.41

32 Rivaldy Edwell Moningka, Olga A. Pangkerego dan Susan Lawotjo, Pertanggungjawaban Pidana Pelaku Penyebaran Video Bermuatan Asusila Ditinjau Dari Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik, *Op.cit*

- a. The decision is made after the defendant or their legal counsel has submitted an exception or objection and the Public Prosecutor has responded.
- b. It contains a decision that does not touch on the substantive issues of the case stated in an indictment. In this regard, it relates to an event where the Court is not authorized to adjudicate the case, the indictment is unacceptable, or it must be annulled. In criminal procedural law, regarding interim decisions, it can be inferred from Article 156 of the Criminal Procedure Code.

5. Evidence

The Criminal Procedure Code provides an understanding of evidence:³³ The Criminal Procedure has regulated valid evidence that can be presented in Court. Evidence presented outside the scope of the Criminal Procedure Code does not have legally binding force or may lack validity.³⁴

6. Requisitor

Following the evidence presentation, the process involves reading the Public Prosecutor's Indictment Letter (Requisitor). The requisitor contains a description of the Indictment Letter based on the evidence revealed in the trial and the prosecutor's conclusion regarding the defendant's guilt, accompanied by criminal demands.³⁵

7. Pleidooi (*Defense Memorandum*)

a. Definition of Pleidooi

"Pleidooi" in Indonesian means a defense speech for the defendant delivered by legal counsel or the defendant.

- 1) The purpose of creating Pleidooi is to weaken the content of the written demands (requisitor) from the Public Prosecutor (JPU).
- 2) The objective of Pleidooi is to obtain a judge's decision that acquits the defendant of all charges, releases the defendant from all legal claims, or imposes a light criminal penalty on the defendant.

b. Those entitled to submit Pleidooi can be submitted by either the Defendant or Legal Counsel alone or by both.³⁶

8. Replic

Replic is the response provided by the Public Prosecutor after the defendant or their legal counsel has presented Pleidooi. It typically maintains the indictment and demands.³⁷

9. Duplic

Duplic is the answer or response submitted by the defendant or his legal counsel after the public prosecutor submits a Replic—a rebuttal to the Public Prosecutor's replicas.³⁸ After the New duplicate was

33 Bastianto Nugroho, Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP, *Yuridika*, Vol. 32, No. 1, 2017, page.17 – 36

34 Article 184 paragraph (1) Criminal Procedure Code

35 Article 182 paragraph (1) letter a Criminal Procedure Code

36 Article 182 paragraph (1) letter b Criminal Procedure Code

37 *Ibid*

38 *Ibid*

delivered, the judge handed down the verdict.

10. Verdict

The verdict is the product of a trial in the first-instance Court, commonly referred to as "judex factie," marking the conclusion of the trial from the beginning to the end of the examination of all evidence. The Final Decision (Verdict) is the "judge's statement pronounced in an open court session, which may involve conviction, acquittal, or release from all legal claims, under the provisions of this law."³⁹

In the sequence of court agendas, it is evident that exceptions become a crucial part. Therefore, this should be maximized. Maximum exceptions will result in optimal outcomes. To better understand the factors that lead judges to grant exceptions, we will further examine Interim Decision Number 1473/Pid.Sus/2017/Pn Jkt. Sel.⁴⁰ :

Nelly Rosa Yulhiana was charged with illegal access to personal accounts, which, according to her confession, she never knew and understood the determination of the chairman of the Central Jakarta District Court Number: 2089/pen.pid/2017 / pn.jkt.pst on September 18, 2017, regarding the seizure of accounts submitted by investigators for the sake of Investigation, upon the re-examination of Nelly Rosa Yulhiana in the continuation of the lippo defamation case over the news "the Lippo Way." Nelly Rosa Yulhiana never felt told about it. When Nelly Rosa was using the account in question, he was arrested and detained until trial.

The indictment filed against Nelly Rosa Yulhiana is through indictment number PDM-883/JktSel/Euh.2/12/2017, dated April 25, 2017, with mixed charges, namely alternative and subsidiary charges. The law used as the basis for the indictment is the ITE Law. The exceptions proposed in this case are as follows:

1. "First Objection," Drs. Danang Kemayanjati, as director of Communications Lippo, does not "have legal standing or *legal persona standi in judicio*, the indictment of the Public Prosecutor of the South Jakarta District Attorney case Register Number: PDM-883/JktSel/12/2017 dated December 07, 2017.
2. "Second objection," the seizure is not under the application of Article 38 of the Criminal Procedure Code, Article 128 of the Criminal Procedure Code, Article 129 of the Criminal Procedure Code, and Article 130 of the Criminal Procedure Code
3. "Third objection," the prosecutor/Public Prosecutor amended the indictment at the hearing on Thursday, January 8, 2018 (Article 144 of the Code of Criminal Procedure), not according to the law.
4. "Fourth objection," there are stars (), which we do not know is the meaning of the asterisk (). That is what the public prosecutor makes, which cannot be said to be a clerical error.

³⁹ Article 1 butir 11 Criminal Procedure Code

⁴⁰ Discussion of the a quo interim decision, including a Note of Objection (exceptions) in the case of Indictment Letter No: PDM-883/JktSel/12/2017 so that the Judge grants freedom to the Defendant

The Petitem in the exception includes the following applications: first, receiving a memorandum of objection (exception) from legal counsel Nelly Rosa Yulhiana as a whole; second, declaring it null and void or at least inadmissible indictment from the Public Prosecutor number PDM-883/JktSel/Euh.2/12/2017, dated April 25, 2017; third, order the public prosecutor to release Nelly Rosa Yulhiana from state detention to be released; fourth, restore Nelly Rosa Yulhiana's rights in terms of ability, position, dignity, and dignity; and fifth, charging case fees to the state. If the judge has a different opinion based on his judgment, then a fair verdict is requested (*ex aequo et bono*).

In the criminal procedure law, judges must make decisions for the sake of justice based on God Almighty. In criminal procedural law, the judge must rule in the name of justice based on the Almighty God.⁴¹ The verdict reads as follows: ADJUDICATING:

1. Accepting the exception/objection from the defendant's legal counsel.
2. Declaring the indictment from the Public Prosecutor No. Case Register PDM-883/Jaksel/12/2017 inadmissible.
3. Acquitting the Defendant Nelly Rosa Yulhiana from detention.
4. Stating that the costs arising from this case are to be borne by the state in the amount of Rp. 0 (zero).⁴²

The factors considered by the judge are based on Article 144, paragraph (2) and Article 156, paragraphs (1) and (2) of Law No. 8 of 1981 concerning the Criminal Procedure Code, as well as other relevant legal provisions as per the provisions of Article 144 of the Criminal Procedure Code.

The factors considered by the judge are based on Article 144, paragraph (2) and Article 156, paragraphs (1) and (2) of Law No. 8 of 1981 concerning the Criminal Procedure Code, as well as other relevant legal provisions as per the provisions of Article 144 of the Criminal Procedure Code.⁴³ The prosecutor argues that since only the arrangement of the indictment is modified, according to the prosecutor's opinion, it does not automatically render the indictment null and void in law or inadmissible.⁴⁴

Article 144 (2) of the Criminal Procedure Code stipulates that such changes to the indictment can only be made once, at the latest, seven days before the trial begins. Considering the provisions of Article 144 (2) Criminal Procedure Code, it has been established that the modification or correction of the indictment submitted by the Public Prosecutor to the Court did not occur within the prescribed period of 7 (seven) days before the trial commenced (with the procedure of reading the indictment), as mandated by the law. Instead, the changes or corrections to the indictment proposed by the Public Prosecutor were made only 3 (three) days before the prosecutor

41 Fauziah Lubis, *Bunga Rampai Hukum Acara Pidana*, CV Manhaji, Medan, 2020, Page.6

42 Putusan Sela Nomor 1473/Pid.Sus/2017/PN Jkt. Sel

43 *Ibid*

44 *Ibid*

read the indictment, namely on January 11, 2018. Therefore, the Court finds that the period for amending or correcting the indictment did not fall within the 7 (seven) days before the reading of the indictment, as regulated in Article 144 Criminal Procedure Code (2). Hence, the Court deems the exception filed by the defense counsel justified and should be granted.⁴⁵

The judges in the *a quo* case considered that since the defense counsel's exception was deemed justified and granted, the Court no longer needed to consider the fourth exception/objection from the defendant's legal counsel. As the defense counsel's exception is deemed justified, the indictment from the Public Prosecutor with Case Register Number PDM-883/Jaksel/12/2017 must be declared inadmissible.⁴⁶

Accepting one point of the exception brings legal consequences regarding restoring human rights for Nelly Rosa Yulhina. In this case, the defendant has been detained in state detention and must be released.

The decision made by the panel of judges in the Interim Decision Number 1473/Pid.Sus/2017/PN. Jkt. Sel. aligns with the reasons provided by the defense counsel. The defense counsel, citing M. Yahya Harahap, S.H., mentioned in his book titled "Discussion of Issues and Application of the Criminal Procedure Code (Investigation and Prosecution) Volume 1, pages 443-445 on the Transfer of Case Files to Court," stated the following:

1. Modifying the Indictment Article 144 of the Criminal Procedure Code in this regard provides the prosecutor with the possibility to do several things, namely:
 - a. Modify the indictment.
 - b. Perfect the indictment with matters that aggravate the punishment, both in general and specifically.
2. Time and Limit for Modifying the Indictment "Before" the District Court Sets the "Trial Date." According to Article 144, paragraph (1), it can be stated that before the District Court sets the trial date, the public prosecutor still has the authority to (1) Modify the indictment or (2) Continue the prosecution (to stop the prosecution).

Article 144, paragraph (2) explains: The modification of the indictment can only be done "once" at the latest "seven days" before the trial begins. From the provisions of Article 144, paragraph (2), it can be concluded: (1) The modification of the indictment can only be done once. This does not pose any issues; it simply emphasizes that changes cannot be made repeatedly but only once. (2) The modification can only be done at the latest seven days before the trial begins.

During the trial on Monday, January 8, 2018, the Public Prosecutor quickly submitted a modification to the Indictment Letter with Case Register Number: PDM-883/JKTSEL/12/2017. This is a mistake in applying criminal procedural law, as stipulated in Article 144, paragraph (2) of the Criminal Procedure Code, which states that modifications can only be made at the latest seven days before the trial begins. However, exceptions can cover

45 *Ibid*

46 *Ibid*

other matters. According to the Supreme Court Decision of the Republic of Indonesia Number: 492/K/Kr/1983 dated January 8, 1983, "An indictment that is vague or unclear must be annulled in the interest of the law."⁴⁷

1. Supreme Court Decision of the Republic of Indonesia Number: 600 K/Pid/1982, dated November 9, 1983, states: "An indictment that is vague or unclear must be annulled in the interest of the law."
2. Supreme Court Decision of the Republic of Indonesia No. 1413/Pid.B/2010/PN.JKT.UT dated August 4, 2011: "The public prosecutor's indictment is an error in persona," "the public prosecutor's indictment is inadmissible because it is based on a legally defective examination report," "the complainant has no legal standing as the complainant."

In this case, the findings prove how crucial it is to optimize exceptions so that the results align with expectations. For those previously detained, this may result in legal freedom.

D. CONCLUSION

In the process, the defendant will be accompanied by legal counsel to protect his rights, including making files, among other exceptions. If an exception is made, that can convince the panel of judges to grant if the defendant in custody can be accessible by law because the charges are canceled or at least unacceptable. The criminal justice process is carried out under the applicable procedural law so that it does not cause problems. For legal advisors to help optimally so that the client's rights are beneficial, there is no exception to the right of exception. The panel of judges decided in the case of Interim Decision number 1473 / Pid.Sus/2017/PN. Jkt. Sel. in line with the reasons given by the legal advisor, is careful in looking at the judicial process to determine whether it is under the code of Criminal Procedure because the maximum legal counsel is needed to utilize the rights so that the optimal result is the freedom of Nelly Rosa Yulhiana.

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