

CASSATION JUDGE CONSIDERATIONS IN OVERTURNING THE SURABAYA DISTRICT COURT'S ACQUITTAL IN A MURDER CASE

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Abstract

The responsibility of a judge is not only to the State but also to God Almighty. The panel of judges in deciding a case always carries a message with the sentence "Justice is based on the one and only God." The Surabaya District Court Judge acquitted the defendant in a murder case because he was not proven to have committed the crime charged by the public prosecutor, namely "Article 338 of the Criminal Code or both Articles 351 paragraph (3) of the Criminal Code or the first three Articles 359 of the Criminal Code and both Articles 351 paragraph (1) of the Criminal Code." The public prosecutor filed an appeal to the Supreme Court. This study aims to analyze how the public prosecutor will file an appeal in a murder case that was acquitted by the Court and how the cassation judge considered it in decision Number 1446 K / Pid / 2024? This research was conducted normatively by examining library materials and applicable regulations. The stages or process of submitting a cassation by the public prosecutor to the Supreme Court are stated in "Article 244, Article 245, Article 246, Article 247 and Article 248 of the Criminal Procedure Code concerning cassation examination". The main finding in the description of the judge's considerations, the actions carried out by the Defendant clearly fulfill the elements of a criminal act as stated in the alternative charge of the second combination of Article 351 paragraph (3) of the Criminal Code. Thus, the Defendant was found guilty legally and convincingly, and was sentenced to five years imprisonment.

Keyword: *Cassation, Criminal Law, Judge's Considerations, Murder, Public Prosecutor, Supreme Court.*

A. INTRODUCTION

In cases of murder, law enforcement officers will be more careful in naming individuals as suspects, because murder is not an ordinary crime; it is a crime against humanity that carries the maximum penalty. Referring to the fourth paragraph of the Preamble to the 1945 Constitution, the Indonesian state has a constitutional obligation to protect all Indonesian citizens, which explicitly states that the safety of every citizen is the state's responsibility. This protection includes firm action against individuals who commit criminal offenses that result in the loss of life of another person, whether intentionally or through negligence. Meanwhile, Article 27 paragraph (1) of the 1945 Constitution affirms "respect for human rights and guarantees equality of all citizens before the law and government, without exception or discrimination of any kind."

Article 338 of the Criminal Code regulates the crime of murder, stating that "anyone who intentionally takes the life of another person shall be subject to imprisonment of up to 15 years." In this article, the subject element is represented by "anyone" acting as the perpetrator, while the object element is the loss of life as a result of an intentional criminal act. From the perspective of these elements, it is clear that the act in question is the conscious and intentional loss of life, which is legally classified as a serious and reprehensible crime. Law enforcement agencies, including the police and the courts, must be able to uphold justice as fairly as possible, without violating the public's trust, especially the panel of judges, as the final decision-maker in achieving justice and legal certainty.

A judge's accountability is not only to the state but also to God Almighty. When deciding a case, the panel of judges always conveys the message "Justice is based on the one and only God." This principle is even the main foundation in the implementation of judicial power, as stipulated in "Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power." Furthermore, paragraph (2) emphasizes that "the national judicial system is obliged to uphold law and justice derived from the values of Pancasila." The dimension of moral responsibility to God Almighty is an essential aspect in the implementation of the duties of law enforcement and judicial officials, particularly in ensuring the creation of substantive justice and absolute truth in the process of handling criminal cases.¹

Every judicial process, especially criminal trials, must have its own rules, commonly referred to as criminal procedure law or formal law, and those that

¹ Irsan Arif, *Pertimbangan Yuridis Putusan Bebas & Upaya Hukum Kasasi Perkara Pidana*, (Jakarta; Mekar Cipta Lestari 2021): 2. See too, Nur Firosyiah, and Suyatna Suyatna, "Pertimbangan Hakim dalam Mengkualifikasi Tindak Pidana Penganiayaan Berat dalam Praktik Peradilan (Studi Kasus Putusan Perkara Nomor: 372/Pid. B/2020/PN. Jkt. Utr)," *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 5.

assess prohibited acts, also known as substantive law. The two are interrelated. The judicial process aims to seek the truth and reveal the truth in the cases being resolved. In the implementation of justice, the public desires a fair and just legal process. The criminal justice process always involves collaboration between several law enforcement officials, reflecting the functional interrelationships between institutions within the law enforcement structure. This implicitly indicates the existence and functioning of the criminal justice system as an integrated mechanism.

To achieve justice and legal certainty in the judicial process, a decision must be made by a panel of judges as the final decision. The panel of judges must be fair, impartial, and independent, and cannot be pressured by any party, including the government. Any judicial process, when viewed from a justice perspective, is deemed to be ineffective and even to the point of nepotism. Those who object can appeal, which is a legal remedy for those dissatisfied with the decision of the panel of judges at the district court. However, if the appellate level is still dissatisfied with the decision rendered by the panel of judges at the first instance court, they can file a cassation, which is the final legal remedy to the Supreme Court to obtain the truth and a binding, final decision with permanent legal force.

In this era of highly sophisticated technology, information can be accessed from various media, both electronic and print, regarding the public's interests and satisfaction with law enforcement. The public is now also beginning to criticize and question why judges' decisions in the same or similar cases have different sentences. Where is the justice? This question arises from the lay public, whose understanding differs from that of legal experts or law enforcement officers who have clearly studied the law. According to Harold J. Berman, "law is something complex and technical, so we often encounter people who face the law impatient or cynical."² Due to the fluctuating public satisfaction with law enforcement in Indonesia, according to a 2024 Kompas survey, the Attorney General's Office's image remained above 60%, despite a high level of public dissatisfaction. From this survey, we can conclude that not everyone is satisfied with the role of law enforcement. However, if the panel of judges acts unfairly in enforcing the law, they will bear the blame.

In 2024, a criminal case garnered widespread public attention: a murder case, resulting in an acquittal by the panel of judges. The incident occurred at the Surabaya District Court under "Decision Number: 454/Pid.B/2024/Pn.Sby

² Budi Rizki Husin Kadrihusin, *Sistem Peradilan Pidana di Indonesia*, (Jakarta; Sinar Grafika 2022): 12. See too, Arif Ronaldi. "Reformasi Sistem Pengawasan Terhadap Jaksa Penuntut Umum Dalam Sistem Peradilan Pidana Terpadu." *Jurnal Penegakan Hukum Indonesia* 4, no. 1 (2023): 32; Yunita Hapsari, "Pengajuan Kasasi Oleh Penuntut Umum Terhadap Putusan Bebas Dalam Memutus Perkara Penggelapan Dan Pertimbangan Hakim Dalam Memutus Perkara," *Verstek* 5, no. 1 (2016), 201.

on July 22, 2024," with Chief Judge Erintuah Damanik and Associate Judges Mangapul and Heru Hanindyo. The defendant in the Dini Sera Afrianti murder case is Gregorius Ronald Tanur, 32 years old, son of Edward Tanur, who is none other than one of the DPR RI officials from the PKB faction who was eventually dismissed from his position after this case was widely discussed. The panel of judges decided that the charges filed by the public prosecutor regarding alleged violations of Article 338, Article 351 paragraph (3), Article 359, and Article 351 paragraph (1) of the Criminal Code, "as stated in Decision Number 454/Pid.B/2024/PN.Sby, were not legally and convincingly proven to have been committed by the defendant Gregorius Ronald Tanur.³ Thus, the Defendant is declared acquitted of all charges filed in the indictment. The court orders the Defendant to be immediately released from detention upon the delivery of this verdict, and to restore all his rights, including legal capacity, social standing, and personal dignity."

The verdict handed down by the Panel of Judges at the Surabaya District Court, after being published on its official website, became a hot topic in various electronic and print media. Almost all television and social media outlets questioned the judge's decision. As conveyed by the Instagram account @riekedp, this case was deemed to have several irregularities, so they asked the Judicial Commission to investigate this viral case and demand justice for the victim, Dini Sera Afrianti. Not stopping there, Member of the Indonesian House of Representatives, Rieke Diah Pitaloka, also stated that she would monitor this case until it was resolved. In fact, Commission III of the Indonesian House of Representatives specifically discussed this case and also invited the victim's family to the meeting. In addition, former Supreme Court Justice Gayus Lumbuun also provided a response on the Democracy Notes program broadcast by TV One. He stated that in this case, the cumulative evidence of the articles showed a very small possibility for the defendant to be found not guilty. In other words, the defendant had an element of guilt, and a judge could not necessarily prove otherwise. This was because the results of the police investigation and inquiry had sufficiently explained the criminal incident, although the evidentiary process would still be carried out in court. Previously, in a press conference broadcast by Kompas TV on October 7, 2023, Surabaya Police Chief, Senior Commissioner Pasma Royce, announced that Gregorius Ronald Tanur had been named a suspect for violating Article 338, Article 351, and Article 359 of the Criminal Code, which carries a maximum sentence of 12 years in prison.

³ Putusan Pengadilan Negeri Surabaya Nomor 454/Pid.B/2024/PN.Sby. See too, Altje Agustin Musa, Meiske Mandey, and Christine JJ Goni, "Kewajiban Negara Menjamin Perlindungan Hukum Terhadap Saksi Dan Korban Pada Penyidikan Ditinjau Dari Hukum Acara Pidana," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 9, no. 2 (2024): 328.

The verdict handed down by the panel of judges was met with disappointment from the public prosecutor, the victim's family who heard the verdict live, and even some members of the public who commented on the verdict, as they considered it significantly exceeded the charges expected by the public prosecutor. Referring to the verdict in case No. 454/Pid.B/2024/Pn.Sby., "the panel of judges acknowledged that the first alternative charge submitted by the public prosecutor had been legally and convincingly proven, stating that Gregorius Ronald Tanur had committed the crime of murder as stipulated in Article 338 of the Criminal Code." Based on this, the defendant was sentenced to 12 (twelve) years in prison, minus the time already served, and remains in detention. In addition, the defendant is required to pay restitution to the family of the victim, Dini Sera Afrianti, in the amount of Rp263,673,000 (two hundred sixty-three million six hundred seventy-three thousand rupiah). If the restitution obligation cannot be fulfilled, it will be replaced with a prison sentence of 6 (six) months.

From the description above, it can be seen that there is a gap between the demands of the public prosecutor and the judge's decision which is very far from the public prosecutor's expectations that the judge's decision will give an acquittal to the defendant, but we must respect the judge's decision because the profession of a judge is a law enforcer who is fair and not biased, a judge in deciding a case must have strong convictions before giving a verdict to the defendant, the judge must be free in deciding a case based on the ARBITRARY RULE, namely norms that are positive law and apply to a society or country in a certain period of time, it can be emphasized that in carrying out judicial duties, a judge has full independence and does not yield to pressure or intervention from any party. The judge is a profession that is free to administer the law in justice, for the sake of the implementation of the law. Although often less highlighted, the role of the public prosecutor has a very crucial position in the criminal justice system. Prosecutors are not just executors of prosecution, but the main actors in revealing and proving criminal acts. With the legitimacy granted by law, prosecutors have the authority to file charges and implement the judge's decision. In this context, the prosecutor's office functions as "dominus litis" or the main controller of the direction and course of the case. This is because only the prosecutor's office has the final authority to decide whether a case is worthy of being submitted to court, based on the completeness and validity of the evidence in accordance with the provisions of the Criminal Procedure Code. Because the role of the public prosecutor has a central role as a gateway for the implementation of a trial, the public prosecutor first examines the files obtained from the investigator based on Article 138 paragraph (1) of the Criminal Procedure Code if the files are believed and meet the requirements and meet the elements of a crime

then the case will go to court but if the files do not meet the requirements then they will be returned to the investigator.

The chronology of the murder case is based on the Surabaya District Court's decision number 454/pid.B/2024/Pn.sby. The incident began on Tuesday, October 3, 2023, via WhatsApp, Ivan Sianto contacted Dini Sera Afianti and invited her to sing karaoke at Blackhole KTV. After accepting the invitation, at around 21.40 WIB, Dini Sera Afianti arrived at the location with the Defendant. They then entered room number 7 of Blackhole KTV located at Lenmarc Mall, Jalan Mayjend Jonosewojo, Surabaya, and were joined by Ivan Sianto, Rahmadani Rifan Nadifi, Eka Yuna Prasetya, and Allan Cristian. In the room, they enjoyed a karaoke session while consuming alcoholic beverages such as Tequila brand Jose Cuervo. At around 00.10, Dini Sera Afianti and the defendant, who were known to have a romantic relationship, left Room Number 7, with the defendant carrying the remaining drink in the form of a bottle of Tequila Jose. While they were in the elevator on their way to the parking lot, a heated argument ensued. The dispute escalated when Dini slapped the defendant first, who retaliated by hitting her with the tequila bottle he was still carrying. After the incident, the defendant walked towards the car, while Dini was seen sitting with her legs stretched out on the front left side of the vehicle, right near the door, the defendant had time to offer the victim "do you want to go home or not" with the defendant's position in the car, because there was no response or answer from the victim Dini Sera Afianti, the defendant was emotional and annoyed and deliberately drove a gray Inova car with the license plate number B 1744 VON to the right and ran over the victim so that the victim Dini Sera Afianti was lying in the middle of the road. At 01.00 the defendant took the victim Dini Sera Afianti from the Lenmarc parking lot to the Orchard Tanglin Apartment which was none other than the residence of the victim Dini Sera Afianti, after arriving at the apartment the defendant brought a wheelchair and put the victim Dini Sera Afianti in a wheelchair located in the lower lobby and entrusted it to the security of witness Mohammad Mustofa, the defendant immediately went to the Orchard 31-12 room and was immediately chased by the security of witness Mohammad Mutofa and Witness Hermawan bin Adi went to the Victim Dini Sera Afianti's Room to conduct interrogation and accountability. Next, Witness Retno Happy Purwaningtyas came who knew the victim Dini Sera Arianti and took the initiative to take the victim to the National Hospital, after arriving at the Emergency Room of the National Hospital, she was checked by Witness Dr. Felicia Limantoro using a Defibrillator (electric shock device) which plays a role in checking the heart of the Victim Dini Sera Afianti after checking the Victim Dini Sera Afianti "Asystole" which means that the victim Dini Sera Afianti no longer has a heartbeat or has died, after that, a further examination

was carried out on the condition of the victim's pupils. It was found that there was no response to light stimulation (negative light reflex), so Dr. Felicia Limantoro recommended to the escort, Dini Sera Afrianti, that the victim be immediately referred to the Forensic Medicine Installation of Dr. Soetomo Hospital, considering the strong indication that the death experienced was unnatural. At the facility, an autopsy was carried out by Dr. Renny Sumino, Sp.F.M., M.H., and the results are recorded in Visum et Repertum No. KF 23.0465. Based on the examination results, it was discovered that the body was a female individual, with an estimated age between two decades to early thirties. The victim was approximately 159 centimeters tall, with brown pigmented skin typical of the Indonesian race.

An external examination revealed several abnormalities, including hemorrhages on the hard membranes of the eyeballs and the mucous membranes of the eyelids, accompanied by dilated blood vessels in these areas. Furthermore, the fingertips and nails of the left and right feet were pale, and the fingertips and nails of the left and right hands were bluish. These abnormalities are common in cases of asphyxiation. Furthermore, there were abrasions on the abdomen, chest, left upper arm, neck, waist, right upper limb, and left upper leg caused by blunt force trauma. An internal examination revealed blood seepage under the scalp and inside the neck. Blood seepage was also found in the chest muscles and the second to fifth right ribs. Furthermore, there was approximately 1,200 milliliters of bleeding in the abdominal cavity, as well as a laceration to the liver caused by blunt force trauma. Dilated blood vessels were also found in the brain, colon, and small intestine, indicating asphyxiation. Contusions in the lower right lung and liver also supported the suggestion of blunt force trauma as the cause of the injuries. Additional examination revealed blood in the gas exchange area in the inferior segment of the right lung and the upper left lung. Blood was also found in the stomach, and dilated blood vessels were seen in the liver, right and left kidneys, and cerebrum. Based on the overall examination results, it was concluded that the cause of death was multiple lacerations to the liver tissue caused by blunt force trauma, resulting in massive, fatal bleeding.

During the trial, the Public Prosecutor (JPU) believed that the elements of the crime stipulated in Article 338 of the Criminal Code had been fulfilled by the defendant's actions. However, the JPU expressed objection to the Panel of Judges' decision to acquit the defendant of all charges. In response to the verdict, the JPU filed a further legal appeal through an appeal. This step aims to review the previous decision, particularly regarding the application of the law, to ensure that the law has been applied appropriately. The cassation mechanism is regulated in Article 244 of the Criminal Procedure Code, which states that "against decisions of final courts other than the Supreme Court,

both the defendant and the JPU have the authority to file an appeal to the Supreme Court.” Although an acquittal cannot generally be appealed, in certain contexts, prosecutors are permitted to file a cassation appeal directly with the Supreme Court without going through the appeals process. This provision affirms that prosecutors have the constitutional authority to challenge an acquittal if they deem it inconsistent with the proper application of the law.

The Supreme Court plays a crucial role as an institution that implements judicial power, firmly enforcing the law. This institution is the final instance in the pursuit of truth and justice after the proceedings in the district courts and high courts. Furthermore, the Supreme Court also serves as a protector of public freedom from all forms of human rights violations.⁴ The Supreme Court has a crucial role in carrying out supervision in accordance with the provisions of “Article 39 of Law Number 48 of 2009 concerning Judicial Power, as well as Article 32, Article 32 paragraph (1), and Article 36 of Law Number 14 of 1985 which has been amended through Law Number 5 of 2004 and the second revision with Law Number 3 of 2009 concerning the Supreme Court.”⁵ In this regulation, the Supreme Court is given the authority to carry out the highest supervision of all judicial bodies under its jurisdiction in carrying out the functions of judicial power.

In the case of decision number 454/Pid.B/2024/Pn Sby, the cassation stage carried out by the public prosecutor is in accordance with the provisions of Article 46 and 47 Article 70, 71, and 72 of Law Number 14 of 1985 concerning the Supreme Court, the procedure for submitting a cassation/review application. The Supreme Court received the files received by the public prosecutor, after examining the files received and declared complete by the cassation judge, the Supreme Court decided through decision number: 1446 K/pid/2024 on July 24, 2024, the contents of which were: “The defendant Gregorius Ronald Tanur has been legally and convincingly proven guilty of committing a crime of assault resulting in death, sentencing the defendant therefore to imprisonment for 5 (five) years, determining that the detention period that has been served by the defendant is reduced entirely from the sentence imposed.” The purpose of this research is to discuss how

⁴ Rinsofat Naibaho and Indra Jaya M Hasibuan. “Peranan Mahkamah Agung Dalam Penegakan Hukum Dan Keadilan Melalui Kekuasaan Kehakiman.” *Nommensen Journal of Legal Opinion*, 2, no. 2 (2021): 209. See too, Rambu Susanti Mila Maramba, “Pertimbangan Hakim Tentang Tujuan Pelaku Tindak Pidana Dalam Penjatuhan Putusan Pengadilan,” *Akrab Juara: Jurnal Ilmu-ilmu Sosial* 4, no. 2 (2019): 7.

⁵ Undang-Undang Nomor 5 Tahun 2004 tentang Perubahan atas Undang-Undang Nomor 14 Tahun 1985 Tentang Mahkamah Agung. See too, Udin Latif, “Diskresi Penyidik Kepolisian Dalam Penyelesaian Perkara Pidana Melalui Jalur Non Litigasi,” *Muadalah: Jurnal Hukum* 3, no. 1 (2023): 23.

the public prosecutor conducted the cassation and how the cassation judge considered the decision Number 1446 K/Pid/2024.

B. RESEARCH METHODS

In writing this article, the researcher employed a normative juridical research method by analyzing sources related to the problem being studied. The author employed a statutory and analytical approach to conduct an in-depth review of legal materials on Indonesian criminal law regulations. In addition to the statutory and analytical approaches, this research also employed a conceptual and case-based approach to understand the application of legal norms in court decisions and interpret the underlying legal principles. Regarding data sources, this study uses secondary data classified into three groups, namely legal materials in the form of books, journals, and laws and regulations as primary legal documents such as the Criminal Code, the Criminal Procedure Code (Law Number 8 of 1981), the 1945 Constitution of the Republic of Indonesia, Law Number 14 of 1985 concerning the Supreme Court, Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court and the Decision of the Panel of Judges of the Surabaya District Court Number 454 / Pid.B / 2024 / PN.Sby and Cassation Decision Number 1466 K / Pid / 2024 and Decision of the Constitutional Court Number 114 / PUU-X / 2012. The analysis was conducted by examining the consistency of the provisions of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP) with the legal considerations in the Surabaya District Court Decision Number 454/Pid.B/2024/PN.Sby and the Supreme Court Cassation Decision Number 1466 K/Pid/2024. Each decision was evaluated based on the principles of legality, justice, and the theory of criminal responsibility to assess the consistency of the application of criminal law. Furthermore, the analysis results were compared with legal doctrine and expert opinions from the literature to obtain comprehensive arguments.

Peter Mahmud Marzuki stated that normative legal research is a scientific approach that aims to explore and formulate consistent legal rules or principles to address specific legal issues. This approach not only describes existing norms but also serves as a means to construct legal arguments, develop theories, or formulate new concepts that can provide conceptual solutions to the legal problems being studied.⁶ Therefore, this literature study was conducted as part of data collection, aiming to gather information relevant

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta:Kencana 2011): 141. See too, Ferdian Rinaldi, Ari Wibowo, and Ryan Fani. "Independensi Kejaksaan Dalam Penegakan Hukum Terhadap Terdakwa Oknum Anggota Kejaksaan Berdasarkan Sistem Peradilan Pidana Di Indonesia." *Cendekia: Jurnal Hukum, Sosial dan Humaniora* 2, no. 3 (2024): 735.

to the problem being discussed. The analysis was conducted deductively, drawing conclusions from a general problem related to the problem at hand.

C. DISCUSSION

1. The Concept, Implementation, and Challenges of Cassation Filed by the Public Prosecutor in Murder Cases That Were Acquitted by the Court

The definition of murder is an activity carried out by a person or several people which results in the death of a person or several people.⁷ Another definition of murder is the intentional taking of another person's life. To take another person's life, the perpetrator must do something or a series of actions that result in the death of another person, provided that the perpetrator's intention must be aimed at the result of the death of that other person.⁸ In the case of the crime of murder that has been explained above, every law enforcement officer will certainly be more careful in determining the suspect or defendant for the perpetrator of the crime. The imposition of the murder article by the police must have carried out a series of long processes and requires a process that needs to be professional both at the level of investigation or inquiry carried out by police officers to obtain clarity on an incident and obtain at least 2 pieces of evidence as stated in article 183 of the Criminal Procedure Code which states that "a judge may not sentence a defendant except with a minimum of two valid pieces of evidence and accompanied by the judge's belief that the defendant is guilty." Valid evidence according to article 184 paragraph (1) of the Criminal Procedure Code is "1. Witness testimony, 2. Expert testimony, 3. Letters, 4. Instructions, 5. Defendant's statement." From the beginning of the investigation and inquiry conducted by police officers must be based on these regulations as a formal requirement in determining someone as a suspect, after the filing is completed, the file is then submitted to the prosecutor for checking before the trial stage, in accordance with Article 109 paragraph (1) of the Criminal Procedure Code and Article 110 paragraph (1) of the Criminal Procedure Code.

After the complete file by the public prosecutor based on Article 139 of the Criminal Procedure Code, the public prosecutor should immediately be

⁷ Zainudin Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2007): 24. See too, Veni Septiani and Dika Ratu Marfuatun. "Urgensi Penguatan Peran Jaksa Penuntut Umum dalam Sistem Peradilan Pidana Indonesia." *KRAKATAU (Indonesian of Multidisciplinary Journals)* 1, no. 1 (2023): 11; Rifrinda Nur Affiani. "Pertimbangan Hakim dalam Menentukan Kematian Korban dalam Tindak Pidana Pembunuhan (Studi Kasus Putusan Nomor: 26/Pid. B/2014/Pn. Atb)." *Indonesian Journal of Law and Justice* 1, no. 3 (2024): 8.

⁸ Moeljatno, *Kitab Undang-undang Hukum Pidana*, (Jakarta, Bumi Aksara, 1996): 54. See too, Sanjaya Sanjaya, Rizki Fitri Amalia, Affreddyan Affreddyan, Roby Roby, and Darwin Butar Butar. "Analisis Pertimbangan Putusan Hakim terhadap Tindak Pidana Pembunuhan (Studi Kasus Putusan Pengadilan Negeri Prabumulih Nomor: 25/Pid. B/2021/PN/Pbm)." *Lex Stricta: Jurnal Ilmu Hukum* 1, no. 1 (2022): 9.

transferred to the court. From a series of existing processes, all are interrelated and inseparable in trying a criminal case, especially in the context of the crime of murder, which carries a maximum penalty if found guilty. One of the articles on murder is regulated in Article 338 of the Criminal Code "anyone who intentionally takes the life of another person is threatened with murder with a maximum prison sentence of 15 years." And Article 351 paragraph (3) of the Criminal Code "anyone who intentionally commits assault resulting in death will be punished with a maximum prison sentence of 7 years." From the explanation given, both of them had the same intention to commit a crime, Article 338 of the Criminal Code has the intention to deliberately commit murder and Article 351 paragraph (3) has the intention to deliberately commit assault which causes someone's death.

From the explanation above, the element of intent is strongly emphasized that the perpetrator in this case is the subject or person who commits a criminal act and the object is an act that intentionally commits a criminal act. According to expert opinion, intent can be divided into several categories which are generally known as 3 (three) categories of intent, but according to Moeljanto there is a 4th (fourth) intent which is usually called *dolus eventualis* (conditional intent).⁹ And if someone carries out an action consciously, then intent can be classified into three main groups:

- a. Intentional with the meaning or intent (*Opzet als oogmerk*) which means an intentional act with the intention of producing a prohibited result,¹⁰ for example someone who stabs someone with a sharp weapon to the point of taking someone's life.
- b. Intention accompanied by conscious certainty (*opzet met zekerheidsbewustzijn*) refers to an action that is consciously directed to achieve a certain result, even though the perpetrator knows and accepts the existence of other undesirable consequences, but is considered a necessity for the sake of achieving the main goal.¹¹ For example, a woman

⁹ Topo Santoso, *Asas-Asas Hukum Pidana*, (Depok: Raja Grafindo Persada 2023): 276. See too, Fitria Indah Damayanti and Hari Soeskindi. "Kewenangan Jaksa Penuntut Umum Dalam Upaya Hukum Peninjauan Kembali." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 288; Ahmad Habibi Maftukhan, Anjar Setiawan, and Muhamad Abdul Aziz, "Keadilan, Kemanfaatan Dan Kepastian Hukum Dalam Putusan Batal Demi Hukum Sistem Peradilan Pidana Indonesia," *Jurnal Verstek Vol 2*, no. 2 (2014): 356.

¹⁰ Juniati Laora Garoma, Julianus Edwin Latupeirissa, and Iqbal Taufik. "Pembunuhan Tidak Disengaja Ditinjau Dari Hukum Pidana Menurut Pasal 351 KUHP" (Studi Kasus: Putusan No 1/Pid.B/2022/Pn Amb). *PATTIMURA Law Study Review*, 1, no. 1 (2023): 157. See too, Brenda Saskia Delarenta Putri. "Analisis Vonis Bebas terhadap Terdakwa Pembunuhan dalam Perspektif Keadilan Substantif (Studi Kasus Putusan Nomor 454/Pid. B/2024/PN Sby)." *Journal Evidence Of Law* 4, no. 1 (2025): 321.

¹¹ Juniati Laora Garoma, Julianus Edwin Latupeirissa, and Iqbal Taufik. "Pembunuhan Tidak Disengaja Ditinjau Dari Hukum Pidana Menurut Pasal 351 KUHP" (Studi Kasus: Putusan No 1/Pid.B/2022/Pn Amb). *PATTIMURA Law Study Review*, 1, no. 1 (2023): 158. See too, Ruddy

named ZEE plans to commit murder because of revenge against a man named RX who has left her with another woman, ZEE commits a crime by installing an explosive device in RX's car, if RX's car explodes with the victim RX and another victim, it means that ZEE committed a second intention for victims other than RX and this is a form of intention with definite awareness, because she has thought about all her actions and ensured that the tool used for her crime will be successful.

- c. Intentional awareness of the possibility (*dolus eventualis*) describes the mental state of the perpetrator who is aware of the potential consequences of his actions, but still chooses to continue the behavior, even though the consequences actually occur. In this context, the perpetrator does not only imagine the possibility of consequences, but also accepts and allows the opportunity to become a reality without any effort to prevent it. In other words, the perpetrator consciously takes a risk that has been understood beforehand,¹² for example a car driver driving his car at high speed while using a cellphone, the car driver has been warned to slow down and not use a cellphone while driving but the driver does not heed it which results in crashing into a road divider wall which causes damage to the car and there are passengers who die and are seriously injured.

Regarding the fourth form of intent that the author has conveyed above, after the 3 categories of intent according to Moeljanto, there is a fourth intent called conditional intent or the theory of what can be done, this theory explains that conditional intent is that the perpetrator does not want the consequences to occur at all, but if they do occur, the perpetrator is ready to bear them (theory of what can be done). To prove that someone intentionally committed a crime, for example, taking someone's life, the prosecutor or judge must have external data that can be used as a basis for concluding that there was intent, which is strengthened according to Remmelink, a judge has the authority to interpret the existence of elements of intent as well as external contexts and indicators that have been collected and filtered through an approach based on

Handoko, "Tinjauan yuridis kasasi terhadap putusan bebas dalam sistem pemidanaan di Indonesia," *Spektrum Hukum* 15, no. 2 (2018): 223.

¹² Juniati Laora Garoma, Julianus Edwin Latupeirissa, and Iqbal Taufik. "Pembunuhan Tidak Disengaja Ditinjau Dari Hukum Pidana Menurut Pasal 351 KUHP" (Studi Kasus: Putusan No 1/Pid.B/2022/Pn Amb). *PATTIMURA Law Study Review*, 1, no. 1 (2023): 159. See too, Venansia Dinati Tifoni and Tomy Michael. "Putusan No. 454/Pid. B/2024/PN. Sby Tentang Kasus Pembunuhan Berdasarkan Perspektif Prinsip Hak Asasi Manusia." *Policies On Regulatory Reform Law Journal* 1, no. 2 (2025): 61; Adriansya Mukhtar, Ma'ruf Hafidz, and Muhammad Fachri Said, "Kedudukan Jaksa Selaku Pelaksana Mewakili Negara Dalam Sistem Peradilan Pidana," *Journal of Lex Generalis (JLG)* 3, no. 4 (2022): 834.

common sense, public policy, and ethical considerations that reflect a sense of responsibility.¹³

Throughout the complex and detailed criminal proceedings, from the investigation stage to the trial, the final decision to achieve truth and justice rests with the panel of judges. While the panel's decision will undoubtedly have its pros and cons, this is commonplace for all parties involved. A first-instance court decision is not final. Other legal remedies available if the panel's decision is deemed incomplete include filing an appeal or cassation with the Supreme Court.

The public prosecutor files a cassation if they believe the court's decision does not reflect substantive justice. One of the prosecutor's primary functions is to pursue the indictment with maximum effort to prove the defendant's guilt, as expressly stipulated in Article 66 of the Criminal Procedure Code (KUHP), which states, "The burden of proof does not rest with the suspect or defendant." The public prosecutor's right to file an appeal is regulated in Article 244 of the KUHP, which states that both the defendant and the public prosecutor may file a cassation petition against a final-instance criminal decision issued by a court other than the Supreme Court, except in cases of acquittal." However, based on Constitutional Court Decision Number 114/PUU-X/2012, the phrase "except against an acquittal has been removed so that the provision no longer has binding legal force."¹⁴ Thus, the public prosecutor can immediately file an appeal against the acquittal decision handed down by the court to the defendant to the Supreme Court."¹⁵

The procedure for filing a cassation by the Public Prosecutor to the Supreme Court is regulated in detail in Articles 244 to 248 of the Criminal Procedure Code, which discuss the procedures for examining cassation. Article 245 of the Criminal Procedure Code explains that "the cassation application must be submitted by the applicant to the clerk of the court that issued the decision at the first instance, no later than fourteen days after the decision was read, and then notification must be given to the Defendant." Article 246

¹³ Topo Santoso, *Asas-Asas Hukum Pidana*, (Depok:Raja Grafindo Persada 2023): 278. See too, Primus Nahak and Frans Simangunsong. "Analisis Yuridis Pertimbangan Hakim Dalam Memberikan Putusan Bebas Atas Perkara Tindak Pidana Pembunuhan." *Journal of Law and Legal System* 1, no. 1 (2025): 58.

¹⁴ Putusan Mahkamah Konstitusi Nomor 114/PUU-X/2012. See too, Rian Pertiwi, and S. H. Bambang Santoso, "Analisis Pengabaian Visum Et Repertum Oleh Hakim Pengadilan Negeri Kabanjahe Menjatuhkan Putusan Bebas Sebagai Alasan Kasasi Penuntut Umum," *Verstek* 4, no. 3 (2016): 355.

¹⁵ Nugraha Wisnu Wijaya. "Pengajuan Kasasi Penuntut Umum Terhadap Putusan bebas Oleh Judex Facti dan pertimbangan Judex Juris Memutus Perkara Narkotika.," *Jurnal Verstek bagia hukum acara universitas sebelas maret*, 8, no. 2 (2020): 39. See too, Angelina Christie Wattie, "Upaya Hukum Kasasi Terhadap Putusan Bebas Perkara Pidana," *Lex Privatum* 5, no. 10 (2017): 356.

of the Criminal Procedure Code regulates the time limit for filing a cassation, stating that if the time specified in Article 245 paragraph (1) "has passed without any cassation application from the relevant party, then the decision is deemed to have been accepted." Furthermore, Article 247 of the Criminal Procedure Code explains that "as long as the Supreme Court has not yet decided the case, the cassation applicant has the right to withdraw his cassation application at any time, and if it has been withdrawn, the applicant is not permitted to file a new cassation for the same case." Article 248 of the Criminal Procedure Code stipulates that "the applicant for cassation is obligated to submit a cassation brief containing the reasons for the petition, which must be submitted to the clerk within fourteen days of the filing of the cassation petition."

In addition to the formal requirements explained above, there are also material requirements that must be met, as stipulated in Article 253 paragraph (1) of the Criminal Procedure Code (KUHP). This article explains that the examination at the cassation level is conducted by the Supreme Court at the request of the parties, as stipulated in Articles 244 and 248 of the KUHP. This examination aims to determine several important matters, including: whether a legal regulation was not applied or was applied improperly; whether the trial was conducted in accordance with statutory provisions; and whether the court did not exceed its authority.

After all case files have been submitted by the Public Prosecutor to the Supreme Court, the cassation judge will conduct the cassation examination process. The decision made at this level is final and binding (*inkracht van gewijsde*), thus having permanent legal force and no further legal action can be taken. Therefore, all parties to the case are required to accept the cassation judge's decision with an open heart as a form of respect for the principles of justice and legal certainty.

2. Case Study Related to the Cassation Judge's Considerations in Decision Number 1446 K/Pid/2024

In the cassation petition filed by the Public Prosecutor against Decision Number 454/Pid.B/2024/Pn.sby, which was fully accepted by the Supreme Court, the prosecutor presented a solid legal basis. He argued that the application of the law in the decision was erroneous (*Judex Facti*), indicating a deviation in considering the legal facts that had been legally proven in court through evidence established by law. Furthermore, the decision was deemed to have acquitted the defendant of all charges brought by the prosecutor, despite clearly contradicting the legal evidence revealed during the trial.

July 24, 2024, marked the starting point of this case, with the public prosecutor filing a cassation petition on August 5, 2024. Subsequently, the cassation memorandum was submitted and officially recorded by the Surabaya

District Court Clerk's Office on August 16, 2024. Therefore, the legal steps, including filing the cassation petition and its arguments, were carried out procedurally and within the time limit stipulated by law. Therefore, formally, the public prosecutor's cassation petition meets the requirements for acceptance.

At the trial stage at the Surabaya District Court, the Public Prosecutor charged Gregorius Ronald Tanur with alleged violations of criminal acts regulated in Article 338 of the Criminal Code, Article 351 paragraph (3) of the Criminal Code, Article 359 of the Criminal Code, and Article 351 paragraph (1) of the Criminal Code, "with a demand for a maximum prison sentence of 12 years minus the period of temporary detention, and a request that the defendant remain in detention." However, in the Decision of the Panel of Judges of the Surabaya District Court Number 454/Pid.B/2024/PN.Sby, "the panel of judges decided to acquit the defendant of all charges, because there was not enough valid and convincing evidence that the defendant had committed a criminal act as charged by the prosecutor. Not stopping there, the Public Prosecutor filed a cassation application to the Supreme Court." The application was then granted, as stated in the Supreme Court Decision No. 1466 K/Pid/2024. In the decision, "The Supreme Court annulled the acquittal of the Surabaya District Court, and adjudicated itself by declaring that the defendant was legally and convincingly guilty of committing the crime of assault resulting in death." For his actions, the Supreme Court ordered a 5-year prison sentence for Gregorius Ronald Tanur, and determined that the entire period of detention that the defendant had served was counted as part of the sentence imposed.

In Cassation Decision Number 1466 K/Pid/2024, the Panel of Judges considered that there are three categories of intent in criminal acts, namely: (1) intent with intention (*dolus directus*), (2) intent with conscious certainty (*dolus indirectus*), and (3) intent based on awareness of possibility (*dolus eventualis*).¹⁶ In this case, the Defendant was deemed aware that his actions had the potential to result in legal consequences, yet he continued to act. This means that the Defendant did not avoid the risk, but rather implicitly accepted the possibility of consequences prohibited by law. Because these consequences ultimately occurred, the Defendant's legal position is classified as intentional, based on an awareness of the possibility, which is legally understood as an acceptance of the potential consequences of his actions. Considering that as the legal facts above, by paying attention to the chronology

¹⁶ Ruby Falahadi, Victor Eric Fransiscus Gultom, Lucia Roida, and Hendra Setiawan, "Hakim Bukan Corong Undang-Undang, Hakim Bukan Corong Masyarakat, Dan Hakim Adalah Corong Keadilan," *Jurnal Penegakan Hukum Indonesia* 1, no. 1 (2020): 96. See too, Putusan Kasasi Nomor 1466 K/Pid/2024

that began with the defendant's actions in the elevator arguing and hitting each other, in the basement of the Lanmarc parking lot or the TKP, the defendant admitted to hitting, kicking and running over the victim Dini Sera Afrianti with an Inova car until she was dragged and left the victim lying in pain for about 30 minutes, then the victim did not immediately help her take her to the nearest hospital but took the victim to the Orchid apartment where the victim lived, then these things become a form of intention as aware of the possibility, for the actions of the Defendant to commit abuse that resulted in the victim's death after the Visum et Repertum Number KF 23.0465 was carried out from Dr. Soetomo Regional Hospital on the results of the autopsy on the victim Dini Sera Afrianti by Dr. Renny Sumino.Sp.F.M.,M.H which stated that the victim died due to multiple lacerations to the liver due to blunt force trauma resulting in severe bleeding.

In the context of criminal law enforcement, analysis of cassation decisions focuses not only on the application of legal norms but also on assessing the legal construction and legal facts revealed at trial. This process is crucial to ensure that each judge's decision is based not only on formal legality but also on substantive justice that reflects moral and humanitarian values. Therefore, the discussion of this case focuses on how the Supreme Court, at the cassation level, interpreted the element of intent, assessed the evidence, and upheld the principle of prudence in determining the form of criminal responsibility for the defendant.

Based on the above description, the Defendant's actions are deemed to have fulfilled the legal elements as referred to in the second alternative charge, which refers to Article 351 paragraph (3) of the Criminal Code. Therefore, the panel of judges determined that the Defendant was legally and convincingly guilty and sentenced him to five years' imprisonment. In the author's opinion, the cassation judge should have sentenced the defendant without a crime under Article 338 of the Criminal Code or the same as what the public prosecutor had charged because of the chronology of the incident, that the victim and the defendant before the incident drank alcoholic drinks which had an impact on a person's mental state, meaning that the defendant committed the act due to the influence of alcohol which affected the defendant's mental state, making him easily emotional, resulting in the defendant committing the act of taking another person's life and this is included in the element of deliberate acts with the intention or act of the defendant taking another person's life because of uncontrolled emotions due to alcohol which caused the defendant to commit the act of taking another person's life by running over the victim using the defendant's Inova car which caused torn wounds to the victim's internal organs due to blunt force trauma which caused death.

The aggravating articles for the crime of murder in Indonesian law refer to several provisions in the old Criminal Code and Law 1/2023 (new Criminal Code). Criminal aggravation is also regulated in Article 340 of the Criminal Code (also called premeditated murder) and Article 339 of the Criminal Code (murder followed, accompanied, or preceded by another criminal act) in the old Criminal Code, as well as Article 459 of Law 1/2023 (premeditated murder) in the new Criminal Code. Article 50 paragraph (1) of Law No. 14 of 1985 concerning the Supreme Court states that "Judex Juris is a process of examining and evaluating a case legally based on documents submitted to the Supreme Court." As stipulated in this paragraph, "cassation examination is conducted by the Supreme Court based on the case files." The Supreme Court will only conduct direct examinations of parties or witnesses if deemed necessary, or may also order the first-instance court or the appellate court that has decided the case to hear testimony from the parties or witnesses.

The decision of the cassation judge is a final and binding decision with permanent legal force and becomes jurisprudence or a guideline for justice seekers in similar cases. Cassation is only filed once for the sake of upholding the law and legal certainty. As stipulated in Article 30 of Law No. 14 of 1985, "The Supreme Court is the highest state court of all courts whose duties must not be influenced by anyone, including the government itself." So, all parties must accept what the cassation judge has decided without exception because the cassation judge has upheld the law and justice which has permanent legal force.

D. CONCLUSION

One of the central roles of a public prosecutor is to file an indictment and actively prove the defendant's guilt, in line with the principle of Article 66 of the Criminal Procedure Code, which emphasizes that the burden of proof does not rest with the suspect or the defendant. In carrying out their function, public prosecutors are authorized to file a cassation appeal based on Article 244 of the Criminal Procedure Code, which states that "either the defendant or the public prosecutor may file an appeal against a final court decision, unless the decision is an acquittal." However, this exception lost its legal force following the issuance of Constitutional Court Decision No. 114/PUU-X/2012, which explicitly removed the phrase "except against an acquittal" from the article. Thus, prosecutors now have the legal legitimacy to file an appeal against an acquittal, expanding the scope for extraordinary legal remedies in the Indonesian criminal justice system. In cassation decision No. 1466 K/Pid/2024, the Panel of Judges considered three general variants of intentional intent, namely: "first, intentional intent with intent (*dolus directus*); second, intentional intent with certainty of awareness of the consequences

(dolus indirectus); and third, intentional intent based on awareness of the possibility of consequences (dolus eventualis).

The defendant was known to have been aware of the potential for other consequences from his actions, but continued his actions without changing his intention. The fact that the consequences of his actions ultimately occurred indicates that the Defendant not only understood the risks but also implicitly accepted the possibility as a consequence of his actions. Thus, the relevant form of intention in this case is classified as dolus eventualis, where the Defendant is deemed to have agreed to or allowed the possibility of consequences that are legally prohibited to occur. The judge's decision, which has permanent legal force (inkrah), states that the Defendant has been legally and convincingly proven guilty of committing the crime of assault resulting in death. An evaluation of this case demonstrates that the cassation process serves not only as a means of correcting erroneous legal application, but also as a crucial instrument in maintaining the consistency of court decisions. The Supreme Court's decision in this case reaffirms the principle that any act that results in fatal consequences, even if not directly intended, can still be subject to criminal liability if the element of conditional intent is proven. More broadly, this decision also has implications for public perceptions of justice: it demonstrates that the judicial system still has room to improve decisions deemed not to reflect the public's sense of justice, thereby reinforcing public trust in the Indonesian judiciary.

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