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Legal Problems of Authority of Effort Review By The Prosecutor Of The Judge's Decision (Research Study at the Lingga District Attorney's Office)

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Abstract. *Article 263 paragraph 1 of the Criminal Procedure Code is the basis for filing a judicial review, which emphasizes that extraordinary legal remedies can be filed with the Supreme Court against a court decision that has permanent legal force. Furthermore, paragraph 2 emphasizes that only the defendant or his heirs can file a judicial review. The implied meaning of this article is that the prosecutor can file a judicial review against an acquittal. There are differences in interpretation of the judicial review by the public prosecutor, which has given rise to a debate between the pursuit of justice and the achievement of legal certainty. This phenomenon is feared to have implications for disrupting the balance between the justice process and legal certainty as the goal of law. The aim of this research is to determine and analyze (1) the nature of judicial review efforts in the Indonesian criminal procedural law system, (2) the position of the Public Prosecutor in his authority to submit a judicial review of a judge's decision from a legal perspective, (3) the concept of achieving legal certainty in judicial review efforts by the Public Prosecutor in the future. The approach used in this research is sociological juridical. The research specifications are descriptive and analytical. Based on the results of the research and discussion, it can be concluded: (1) Judicial review in criminal cases is regulated in Article 263 of the Criminal Procedure Code which stipulates in Paragraph 1 that for court decisions that have obtained permanent legal force, except for decisions of acquittal or release from all legal charges, the convict or his heirs can submit a request for judicial review to the Supreme Court; (2) Constitutional Court Decision Number: 33/PUU-XIV/2016 confirms that the Public Prosecutor cannot submit an extraordinary legal remedy in the form of a Judicial Review. Judicial review of the provisions of Article 263 Paragraph 1 of Law Number 8 of 1981 concerning Criminal Procedure Law is due to the applicant's loss due to the enactment of the provisions of Article 263 Paragraph 1 of Law Number 8 of 1981 concerning*

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Criminal Procedure Law; (3) The Prosecutor's authority to submit a Judicial Review is required as a last resort in law enforcement to protect the public interest. This authority is required in cases that are classified as extraordinary crimes and are detrimental to the public interest, such as corruption.

Keywords: *Authority; Judicial Review; Prosecutor.*

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1. Introduction

Protection of victims' rights is evident in the enforcement of criminal law against perpetrators of crimes. In criminal trials, victims are represented by a public prosecutor who will demand the harshest possible punishment for the perpetrators of the crime to restore public order disrupted by their actions. Meanwhile, perpetrators of crimes are guaranteed their basic rights, starting from the investigation stage through the trial, where the case is ultimately decided by a judge. Even after the judge's decision has become legally binding, the convict still has the opportunity to exercise his or her right to file a legal action. The legal remedy referred to is a judicial review which is an extraordinary legal remedy given to the convict or his heirs in addition to the cassation for the sake of legal interests submitted by the Attorney General. It is called an extraordinary legal remedy because it is submitted and directed against a court decision that has permanent legal force. This effort can only be directed and submitted under certain conditions as a condition so that it cannot be submitted against all court decisions that have permanent legal force.

It is submitted to the Supreme Court and examined and decided by the Supreme Court as the first and final instance. Article 263 paragraph (1) of the Criminal Procedure Code is the basis for submitting a judicial review which confirms that against a court decision that has permanent legal force, the extraordinary legal remedy can be submitted to the Supreme Court. Furthermore, in paragraph (2) it is emphasized that only the accused or his heirs can submit a judicial review. However, in paragraph (3) of the same article it is emphasized that a judicial review can be submitted against a decision that has been proven and is not followed by a criminal sentence.[1] If we draw the implied meaning of the article, the Prosecutor can file a judicial review of the acquittal decision. It is illogical if paragraph (3) is interpreted and applied as the right of the convict and his heirs. Therefore, it is unreasonable for the convict to file a judicial review of the decision that acquitted him. Based on the formulation of Article 263 paragraph (3), the Public Prosecutor then filed a judicial review of the Muktar Pakpahan case.[2]

[1]Carolina Da Cruz, Sri Kusriyah, Widayati, & Umar Ma'ruf. The Implementation of Good Governance Principles in Admission of Prospective Civil Servants, *Jurnal Daulat Hukum*, Volume 5 Issue 1, March 2022, p.40

[2]Darji Darmodiharjo & Shidarta, (2006), *Pokok-pokok Filsafat Hukum :Apa dan Bagaimnana Filsafat Hukum Indonesia*, Jakarta : PT.Gramedia Pustaka Utama, p 117

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In the case of labor unrest in Medan in 1994, at the first and appeal levels, Muktar Pakpahan was sentenced to four years in prison. However, at the cassation level, Muktar was acquitted. Based on the cassation decision, Public Prosecutor Havid Abdul Latip from the Medan District Attorney's Office then filed a judicial review which was accepted and granted by the Supreme Court in 1996 by the panel of Supreme Court judges Soerjono, Palti Raja Siregar, and Sarwata. The Chairman of the DPP of the Indonesian Prosperous Labor Union was found guilty of violating Article 160 in conjunction with Article 161 paragraph (1) of the Criminal Code, which essentially involves inciting others (laborers) to commit acts of opposing the general authority with violence. Of course, this has given rise to pros and cons. Some experts have stated that they do not agree with the application for a judicial review, because it clearly contradicts Article 263 paragraph (1) of the Criminal Procedure Code. Legal experts question the authority of the public prosecutor to file a judicial review because the prosecutor has been given the opportunity to file three prosecutions (at the District Court, High Court and Supreme Court) and the prosecutor has also been given another extraordinary legal remedy (cassation in the interests of law). This polemic did not deter the Supreme Court from accepting the application for judicial review by the Public Prosecutor as in the decision of the Djoko S. Tjandra case No.12PK/Pid.Sus/2009. This phenomenon is interesting to be studied in a research related to the reality in practice concerning consistency with the principles of criminal procedural law as well as the theory and norms of criminal law regarding the existence and purpose of regulating legal remedies for review of criminal decisions that have permanent legal force.[3]

Although the Criminal Procedure Code is now more than twenty-one years old, the implementation of Article 263 of the Criminal Procedure Code, which regulates extraordinary legal remedies called judicial review (PK), still gives rise to controversial differences of opinion. Mardjono Reksodiputro in Efi Laila, stated that if integration in the criminal justice system is not carried out, it is estimated that there will be three disadvantages as follows:

1) Difficulty in assessing the success or failure of each agency in relation to their shared tasks;

2) Difficulty in solving the main problems of each agency (as a subsystem of the criminal justice system) on its own; and

3) Because the responsibilities of each agency are often not clearly divided, each agency does not pay much attention to the overall effectiveness of the criminal justice system.[4]

[3]Andi Sofyan & Abd. Asis, (2014), *Hukum Acara Pidana Suatu Pengantar*, Edisi Pertama, Jakarta : Kencana Pramedia Group, p. 4.

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Based on the above description, there have been differing interpretations of the public prosecutor's judicial review, giving rise to a debate between the pursuit of justice and the achievement of legal certainty. This phenomenon is feared to disrupt the balance between the process of justice and legal certainty, the goal of law. Legal certainty always clashes with justice, therefore the author wants to examine the legal legitimacy of the Judicial Review filed by the Public Prosecutor whether it is in accordance with the goals or ideals of the Indonesian State so that justice, benefit and legal certainty can be created to create order in society so that human interests can be protected. The Judicial Review Regulation contained in Article 263 of the Criminal Procedure Code is considered less appropriate to current legal developments in Indonesia. Therefore the author will examine how the Judicial Review regulation should be included in the future Criminal Procedure Code, without releasing the principles contained in Pancasila and the 1945 Constitution of the Republic of Indonesia.

2. Research Methods

In the research carried out, the writing uses a Sociological Juridical approach, namely research that uses an approach method to problems by looking at the norms or laws that apply as positive provisions, the following are theories that are relevant to this written work by linking its implementation to the facts found in the field.

3. Results and Discussion

3.1. The Nature of Judicial Review Efforts in the Indonesian Criminal Procedure System

Legislation is created with the aim of providing certainty for all holders of rights and obligations, ensuring order within a country based on the principle of legal certainty. Legal certainty is inseparable from written legal norms and serves as a guideline for everyone. Legal certainty also provides clarity regarding what is and is not permitted by law in each statute.

Law Number 1 of 1981 concerning the Criminal Procedure Code has the objective of implementing criminal law in the Criminal Code while still paying attention to human rights, the intended objective is part of the discussion that explains the theory of the Legal State (rechstaat) that applies in the Republic of Indonesia. Law Number 8 of 1981 concerning the Criminal Procedure Code, which has been in effect until now, in its implementation there have been various developments and

[4]M. Jordan Pradana, Syofyan Nur, Erwin. Tinjauan Yuridis Peninjauan Kembali yang Diajukan oleh Jaksa Penuntut Umum Terhadap Putusan Lepas dari Segala Tuntutan Hukum. *PAMPAS: Journal Of Criminal* Volume 1 Nomor 2, 2020, p. 143

changes, including changes to the regulations in the Articles in the Criminal Procedure Code that have been subject to judicial review at the authorized judicial institution, namely the Constitutional Court of the Republic of Indonesia.[5]

The term criminal procedural law can be found in Law Number 8 of 1981 concerning Criminal Procedural Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia 3209), this law, based on Article 285, is officially named "Criminal Procedural Code", and in the Explanation of the Article it is stated "This Criminal Procedural Code is abbreviated as KUHAP".[6]

One thing worth noting here is that Law Number 8 of 1981 concerning Criminal Procedure (which will be abbreviated as KUHAP for further discussion) does not specify the definition of criminal procedure. Chapter 1, concerning General Provisions, in Article 1 only regulates the terms used in the law. For example, the definitions of investigator, inquiry, inquest, inquiry, prosecution, and so on.

The Dutch use the term Wetboek van Strafvordering, which literally translates as "Criminal Code." This differs from the term Wetboek van Strafprocesrecht, which in Indonesian is the "Criminal Procedure Code." However, according to the Dutch Minister of Justice, the term "Stafvordering" encompasses all criminal procedural procedures.[7]

The definition of criminal procedural law itself, according to several experts, is as follows:

1) According to Moeljatno, Criminal Procedure Law is a part of the overall law in force in a country which provides the basis and rules which determine the manner and procedures in which the criminal threat in a criminal act can be implemented if there is a suspicion that a person has committed the crime.[8]

2) According to de Bos Kemper

Criminal Procedure Law is a number of principles and legal regulations that regulate when criminal law is violated, the state uses its right to punish.[9]

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[5]Andi Hamzah, (1998), *Hukum Acara Pidana Indonesia*, Edisi Kedua, Cet.ketujuh, Jakarta: Sinar Grafika, p.67

[6]Didik Endro Purwoleksono, (2015), *Hukum Acara Pidana,* Airlangga University Press, p.2

[7]Andi Hamzah, (1985), *Pengantar Hukum Acara Pidana Indonesia,* Ghalia Indonesia, Edisi Revisi, Jakarta, p. 13-14.

[8]Moeljatno, (1995), *Azas-azas Hukum Pidana*, Bina Aksara, Jakarta, p.1-6.

[9]R. Atang Ranoemihardja, (1976), *Hukum Acara Pidana*, Transito, Bandung, p. 1

3) According to Simons

Criminal Procedure Law regulates when the state, using its complete tools, uses its right to punish.

4) According to SM Amin

Criminal Procedure Law as a collection of provisions with the aim of providing guidelines in the effort to seek truth and justice in the event of a violation of a legal provision in material law means giving this procedural law a relationship that is subservient to material law.[10]

The Supreme Court issued Circular Letter No. 6 of 1967, which served to provide guidance to judges regarding the judicial review institution. The Circular Letter stated that although Article 15 of Law No. 19 of 1964 and Article 31 of Law No. 13 of 1965 already stated that a decision that had obtained legal force could still be requested for judicial review to the Supreme Court. However, because the law that determined new things or new circumstances and the formal requirements that made it possible as referred to in the law did not yet exist at that time, the application should not be accepted, whether the application was submitted to the Supreme Court or to the District Court.

Several years later, Circular Letter No. 6 of 1967 was revoked with the issuance of Supreme Court Regulation No. 1 of 1969 concerning Judicial Review. This regulation was effective from the day and date of its stipulation, namely on July 19, 1969. However, through Circular Letter No. 18 of 1969, the Supreme Court stated that the regulation could not be implemented because it still required further implementing regulations. The judicial review institution which was originally regulated in Article 15 of Law No. 19 of 1964, was re-regulated in Article 21 of Law No. 14 of 1970, which reads:

"If there are matters stipulated by law, the court decision which has obtained permanent legal force may be requested for review by the Supreme Court in civil and criminal cases by the interested parties."[11]

However, the provisions and procedures for such judicial review have not been legally regulated, while a wide variety of cases have developed within the community, with varying judicial decisions. Some justice seekers are interested in using this special legal remedy. Several criminal and civil cases have been legally binding, but are considered materially flawed and irreparable precisely because

[10]S.M.Amin, (1981), *Hukum Acara Pengadilan Negeri*, Pradnya Paramita, Jakarta, p.3.
[11]Article 21 of Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power

the method or means to correct them has not been regulated or does not yet exist.[12]

In this critical situation, in accordance with the authority granted by law to the Supreme Court, and in response to public demand, the Supreme Court issued Regulation No. 1 of 1980 concerning the judicial review of decisions that have obtained permanent legal force. Since then, legal remedies for this judicial review have been available.[13]In civil and criminal cases that occur in general courts or other courts.

Historically, the birth of extraordinary legal remedies, namely PK, cannot be separated from the Sengkon and Karta case in 1977. In this case, the state had misapplied the law (miscarriage of justice) by convicting an innocent person, so that what occurred was a miscarriage of justice (rechterlijke dwaling). Therefore, as an effort to overcome the state's mistakes in the Sengkon and Karta case, the Supreme Court finally issued PERMA No. 1 of 1980 concerning the Review of Decisions that Have Obtained Permanent Legal Force. The Sengkon and Karta case also became the background for the birth of Chapter XVIII Article 263 of the Criminal Procedure Code to Article 269 of the Criminal Procedure Code which regulates PK legal remedies.

These provisions according to Adami Chazawi, if the judicial review institution is like a building, then the building is built on a foundation, namely the provisions in Article 263 paragraph (1) of the Criminal Procedure Code. If the foundation of the judicial review building is dug up and dismantled, the judicial review building will certainly collapse and be useless.

Meanwhile, according to Seonarto Soerodibroto, Herziening is a Judicial Review (PK) of criminal decisions that have obtained definite legal force containing punishment, which cannot be applied to decisions where the accused has been acquitted (vrijgerproken). Another definition put forward by Andi Hamzah and Irdan Dahlan is that PK is the right of the convict to request to correct a court decision that has become final, as a result of an error or negligence by the judge in issuing his decision.

In civil law, according to the provisions of Article 67 of Law No. 14 of 1985 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009 concerning the Supreme Court, an application for review of a civil case decision

[12]K. Wantjik Saleh, (1980), *Peninjauan Kembali Putusan yang Telap.Memperolep.Kekuatan Hukum Tetap*, Jakarta: Ghalia Indonesia, p.9.

[13]Roihan A. Rasyid, (1989), *Upaya Hukum Terhadap Putusan Pengadilan Agama*, cet, Ke2, Jakarta: CV. Pedoman Ilmu Jaya, p.103-104

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that has obtained permanent legal force can be submitted only based on the following reasons:

a. If the decision is based on a lie or trickery by the opposing party which is discovered after the case has been decided or is based on evidence which is later declared false by the criminal judge.

b. If after the case is decided, documents of decisive evidence are found which could not be found at the time the case was examined.

c. If something has been granted that was not demanded or more than what was demanded.

d. If a part of the claim has not been decided without consideration of the reasons.

e. If between the same parties regarding the same issue, on the same basis, by the same Court or at the same level, decisions have been given that contradict each other.[14]

f. If in a decision there is a judge's error or a real mistake.

The strict requirements for a judicial review request are intended to apply the principle of justice to the application of the principle of legal certainty. Therefore, judicial review is oriented towards the demands of justice. Judges' decisions are human works that are not immune to human error. The Supreme Court's function in judicial review is to make final corrections to court decisions that contain injustice due to errors and mistakes made by judges. Therefore, although the judicial review is solely based on legal requirements and considerations, its purpose is for the sake of justice for the convict. This is where the similarity between judicial review and clemency lies, namely both for the sake of justice. The difference lies in that if the judicial review is solely based on legal requirements and considerations, namely as a form of "retrial", the judicial review examination is authorized to examine the facts, this is not the case with clemency because clemency does not always require legal requirements and considerations. The President, as the holder of constitutional rights (prerogative rights), for certain reasons can use any considerations such as considerations of justice or humanity as the basis for accepting or rejecting a clemency request.

Towards the end of 1980, a criminal drama unfolded, starring Sengkon and Karta, who were sentenced and serving their sentences due to a flawed court ruling.

[14]Article 67 of Law No. 14 of 1985 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009 concerning the Supreme Court

Sengkon and Karta, who were serving their sentences in Cipinang Prison after being accused of robbing and murdering husband and wife Sulaiman and Siti Haya in Cakung, Pondok Gede, Bekasi, were on the verge of death.[15]A prisoner named Gunel felt sorry for him and then honestly and felt guilty and apologized to Sengkon who was at that time languishing in prison for an act he did not commit. Gunel then admitted that he and his friends had killed Sulaiman and his wife Siti Haya, not Sengkon and Karta. Gunel's confession, who was in Cipinang Prison for another case, was finally known by the mass media. Can a request for judicial review still be submitted against a criminal decision whose convict has accepted the District Court's decision (no appeal or cassation) but he asked for clemency which has also been rejected?

Considering the meaning of the judicial review institution, a judicial review application should be filed after a criminal verdict has become final and binding, but not yet a pardon. This is why, in the case of Sengkon and Karta, they filed a judicial review application to revise the final and binding verdict, as they did not feel guilty.

Judicial error or manifest error as regulated in Article 67 letter f of Law No. 14 of 1985 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009 concerning the Supreme Court can occur both regarding matters of fact and matters of law. In the cassation level, in principle, a distinction is made between matters of fact and matters of law, but according to jurisprudence, matters of fact can be entered if the matter of fact is essentially an error in applying the law of evidence. Article 67 Sub b of Law No. 14 of 1985 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009 concerning the Supreme Court determines that if after a case is decided, documents of decisive evidence are found which at the time the case was examined could not be found, which are commonly called "novum".

This means that the case was previously referred to in the District Court or High Court, but the interested party was unable to submit the evidence (for example, because it was lost). If the evidence is later found and subsequently submitted in the cassation examination, it does not constitute a "novum," because it was already mentioned in the judex factie examination, so the cassation panel has the authority to consider it. However, if the evidence in question is only discovered after the decision has become legally binding, Article 67 Sub b can be applied.

It should also be noted that in a petition for judicial review, no other petition may be submitted other than the petition stated in the lawsuit, because the basis for the judicial review panel remains the original lawsuit. The judicial review panel is

[15]https://historia.id/politik/articles/lika-liku-peninjauan-balik-sengkon-karta-hingga-kasus-vina-P7Nm4/page/1, Accessed May 9, 2025

bound by the reasons for judicial review submitted by the Applicant and is not authorized to use other reasons/its own reasons as expressly stipulated in Article 52 of Law No. 14 of 1985 for cassation proceedings. Thus, it can be concluded that the lawmakers do not want the use of other reasons/its own reasons for the judicial review panel.

This is understandable, as the judicial review institution is an extraordinary legal remedy, and therefore the articles concerning the judicial review institution are limited. It should be noted that decisions that can be reviewed are cases involving parties or contentious cases. A judicial review applicant may withdraw their application to the Supreme Court, provided the application has not yet been decided by the Supreme Court. If the application has already been decided, it cannot be withdrawn.

In relation to "there are new circumstances" according to the explanation of Article 24 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it states that what is meant by "certain matters or circumstances" includes the discovery of new evidence (novum) and/or the existence of an error or mistake by the judge in applying the law.

Specifically in criminal cases, the submission of a judicial review application can be tested using two principles in legal theory, namely, "lex posteriory derogate lex priory" and "lex superiory derogate lex inferiory." According to the principle of lex posteriory derogate lex priory, Within the same regulatory hierarchy, if a dispute arises, the most recent regulation shall prevail. This means that the Constitutional Court's decision, which is equal to the law in question, should prevail over the previous laws (the Judicial Power Law and the Supreme Court Law). Similarly, if the principle of lex superiory derogate lex inferiory is used, which states that lower regulations are trumped by higher regulations, then the Constitutional Court Decision should be higher than the SEMA which is only internally binding. By using these two principles, the polemic is legally considered resolved and thus what is followed by the public and law enforcement officers is the Constitutional Court Decision which states that PK applications can be submitted more than 1 (one) time.[16]

3.2. The Position of the Public Prosecutor in the Authority to File a Judicial Review of a Judge's Decision

The prosecutor as public prosecutor has the authority to receive and examine the case files of the investigation from the assistant investigator; conduct pre-prosecution if there are deficiencies in the investigation, grant an extension of

[16]Arfan Faiz Muhlizi, *Memperebutkan Tafsir Peninjauan Kembali*, Rechtsvinding Online Badan Pembinaan Hukum Nasional (BPHN), Volume 23 January 2015, p. 2-3.

detention; carry out detention or change the status of the detainee after the case has been transferred by the investigator; make an indictment; transfer the case to the court; provide notification to the defendant regarding the provisions of the day and time of the case being tried accompanied by a summons, both to the defendant and to witnesses, to come on the appointed trial day; close the case; take other actions; and implement the judge's decision.[17]

The action of the prosecutor as public prosecutor to transfer a criminal case to the district court with a request that it be examined and decided by a judge in a court hearing is called prosecution.[18]To carry out the prosecution, the prosecutor, after receiving the results of the investigation from the police as investigator, must immediately study and examine them and, within seven days, must notify the investigator whether the results are complete. If incomplete, the case file will be returned to the public prosecutor.

Case files that meet the requirements will be prepared as soon as possible to be submitted to the court. The indictment must be dated and signed, and must include the suspect's full name, place of birth, date of birth or age, gender, nationality, residence, religion, and occupation. The indictment must clearly describe the crime charged, stating the time and place of its commission. Otherwise, the indictment is null and void.

Once the prosecutor has completed the indictment, the case can be transferred, with the indictment also being delivered to the suspect, their attorney, legal counsel, and the investigator. The indictment can be amended no later than seven days before the trial begins. A copy of the amendments must also be delivered to the suspect, their legal counsel, and the investigator.

The Republic of Indonesia has a Prosecutor's Office, which serves as the highest institution for legal prosecutions and plays a key role in realizing justice and upholding the rule of law for all citizens. As a government institution exercising state authority in the areas of pre-prosecution and prosecution, as well as an institution authorized to enforce law and justice, the Prosecutor's Office's role as the vanguard of law enforcement is crucial and strategic.

The Public Prosecutor has the right to submit a legal action, namely an appeal for legal reasons. According to Article 259 paragraph (1) of the Criminal Procedure Code, it is stated that in the interests of law, the Attorney General may submit one appeal for legal reasons against all decisions that have obtained permanent legal force from a court other than the Supreme Court.

[17]Article 14 letter ai of the Criminal Procedure Code
[18]Article 1 paragraph (7) of the Criminal Procedure Code

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In addition to the extraordinary legal remedy of cassation for the sake of legal interests, another extraordinary legal remedy is judicial review. The provisions regarding legal remedies are fully regulated in the Criminal Procedure Code, namely in Chapters XVII and XVIII.[19]There are two types of legal remedies, the first is ordinary legal remedies which include Appeal and Cassation Level Examination, then the second is extraordinary legal remedies, namely Cassation for Legal Interests and Judicial Review.

One of the complications regarding the problematic authority of the Republic of Indonesia's Attorney General's Office is related to the authority to file a judicial review, which until now is still considered to be causing polemics by various academic circles and law enforcement officials who do not yet reflect legal certainty.

The resubmission by the Public Prosecutor (JPU) has given rise to pros and cons and controversial opinions among academics, law enforcement officials and legal experts (especially criminal law experts), some of whom say that the one who may submit a judicial review is the convict or his heirs as stated in Article 263 paragraph (1) of the Criminal Procedure Code, and there are also those who say that the one who may submit a judicial review is the Public Prosecutor (JPU), with the dualism of understanding and opinion, it will give rise to injustice and legal certainty for the parties, especially the convict and the Public Prosecutor (JPU), however in practice the Public Prosecutor (JPU) can submit a legal action for a judicial review, for example, in the first case submitted by the Public Prosecutor (JPU), namely the case of Muchtar Pakpahan on October 25, 1996 with No. In case No. 55/PK/Pid/1996, the Public Prosecutor (JPU) filed an extraordinary legal remedy, namely a judicial review, against defendant Muchtar Pakpahan, who was a labor activist at the time. In this case, the public prosecutor's charge against defendant Muchtar Pakpahan was "committing the crime of incitement and continuously disseminating writings containing seditious content."

Initially, in the cassation level, Muchtar Pakpahan was acquitted of all legal charges. which is clearly stated in the contents of Article 263 paragraph (1) of the Criminal Procedure Code, which states that unless the verdict is acquitted, or free from all legal charges, it can be said that the "convict" or "his heirs" can file a judicial review, from the text and explanation of the article it can be interpreted that the verdict is "acquitted" and "free" from all legal charges, extraordinary legal remedies for judicial review cannot be carried out, however in practice the Public Prosecutor (JPU) can carry out a judicial review which expressly and clearly states that those who can file a judicial review are "the convict" or "his heirs", however

[19]S. Salle, (2020), *Sistem Hukum dan Penegakan Hukum*. CV. Social Politic Genius (SIGn).

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the Public Prosecutor (JPU) has reasons for filing a judicial review and the legal basis is Article 263 paragraph (2) and (3) of the Criminal Procedure Code.

In this case, the researcher tries to explore scientific sources from the perspective of legal practitioners in the form of prosecutors who take sociological research samples in the prosecutor's office environment directly by obtaining information through the prosecutor's office. Based on the results of interviews with Amriyata as a prosecutor at the Lingga District Prosecutor's Office (Kejari Lingga), according to Amriyata, the review by the public prosecutor is not only based on Article 263 paragraph (1), (2) and (3) of the Criminal Procedure Code and several laws and regulations related to the PK issue but is based on the "principle of legality" and "principle of balance" as well as the values of justice that live and develop in society. Where legal certainty always clashes with justice because the goal of the Public Prosecutor (JPU) is to realize justice in accordance with the goals and ideals of the State of Indonesia because Indonesia is a state of law so that justice, benefit and legal certainty can be in line with each other, not the opposite which is contradictory, even though justice and legal certainty are not in line but what is prioritized is justice, because justice is everything.

In the substance of this decision, the applicant essentially asks the Constitutional Court to review the authority of the Prosecutor to file a judicial review. Current developments in legal politics (rechtpolitiek) indicate an urgency for lawmakers to grant the Prosecutor's Office attributable authority to conduct a judicial review.

In the substance of the Court Decision number 63/PUU-XXII/2024 based on applicant I, namely a Prosecutor from the South Tapanuli District Prosecutor's Office, in which in the a quo judicial review application which essentially argues that he has constitutional rights to the protection, advancement, enforcement, and fulfillment of human rights, equal legal standing before the law and government and guarantee of legal certainty, and has the right to defend the country. According to Applicant I, these constitutional rights have the potential to be harmed because the prosecutor's authority to conduct a judicial review is lost due to the Constitutional Court Decision Number 20/PUU-XXI/2023 which was decided without hearing the statements of the legislators, in casu, the House of Representatives and the President as stipulated in Article 54 of the Constitutional Court Law. Furthermore, the cancellation of Article 30C letter h of Law 11/2021 through the a quo decision according to Petitioner I will create legal uncertainty if the prosecutor is prohibited from filing a judicial review, however, the prosecutor as regulated in Article 248 paragraph (3) of Law 31/1997 can file a judicial review without coordinating with the Prosecutor's Office and the enactment of Article 263 paragraph (3) of the Criminal Procedure Code shows ambiguity in meaning regarding whether the prosecutor has the authority to file a judicial review or not. Therefore, in order to avoid constitutional losses, according to Petitioner I there is

a need and urgency to give the authority back to the prosecutor's office or prosecutors to be able to file a judicial review.

Meanwhile, applicant II, who claimed to be a victim of the criminal act of forgery of letters in documents related to the sale and purchase of assets of PT Bali Rich Mandiri, which was allegedly carried out by Notary Hartono, SH, who at the time the criminal legal process was underway, Notary Hartono, SH, actually filed a Request for Judicial Review of Article 30C letter h of the Prosecutor's Office Law at the Constitutional Court to eliminate the authority of the Prosecutor to file a Judicial Review registered in Case Number 20 / PUU-XXI / 2023. That the Constitutional Court actually granted the Request for Judicial Review of Article 30C letter h of the Prosecutor's Office Law filed by Notary Hartono, SH without opening the opportunity for the legislators, the Prosecutor's Office of the Republic of Indonesia, and Applicant II to provide information regarding the urgency of granting authority to the Prosecutor to file a Judicial Review in the empirical practice of law enforcement in Indonesia, one of which is the existence of errors in the application of law in court decisions that have permanent legal force (in kracht). For example, in the case of alleged forgery of documents committed by Notary Hartono, SH (Applicant for Judicial Review of Article 30C letter h of the Prosecutor's Office Law in Case Number 20/PUU-XXI/2024) where the Supreme Court granted the Judicial Review application submitted by Notary Hartono, SH due to an error in the application of the law in the form of selective and incomplete citation of the formulation of Article 81 paragraph (1) letter b of the Regulation of the Chief of the Republic of Indonesia Police Number 10 of 2009 which was instead used as a basis by the Supreme Court to release Mr. Hartono, SH who had previously been sentenced to prison in the Supreme Court Cassation Decision Number 534 K/Pid/2020.

That the absence of the Prosecutor's authority to file a Judicial Review following the Constitutional Court Decision Number 20/PUU-XXI/2023 is an obstacle for Petitioner II not only to obtain justice in the sense of enforcing criminal law but also an obstacle for Petitioner II to control or regain the assets of PT Bali Rich Mandiri which have been transferred from legal control to other parties who should not have the right to control them. Petitioner II is hampered or prevented from filing a civil lawsuit for Unlawful Acts (onrechtmatigedaad) to regain the right to control the assets of PT Bali Rich Mandiri. In fact, it is clear that there is an error in the application of the Court's law in the consideration of the Supreme Court's Review Decision Number 41 PK/Pid/2021 (page 32) which quotes the formulation of Article 81 paragraph (1) letter b of the Regulation of the Chief of the Republic of Indonesia Police Number 10 of 2009 selectively and incompletely resulting in a change in the direction of the final decision which was originally Notary Hartono, SH based on the Supreme Court Cassation Decision Number 534 K/Pid/2020 legally and convincingly proven to have committed the crime of forgery of documents

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sentenced to imprisonment changed to being declared not proven to have committed the crime charged by the Prosecutor as the Public Prosecutor in his indictment. As a result, Petitioner II suffered material losses amounting to IDR 37,000,000,000.00 (Thirty Seven Billion Rupiah). In fact, from the nominal agreed price of the Sale and Purchase of PT Bali Rich Mandiri Shares which was agreed to be IDR 38,000,000.00 (Thirty Eight Billion Rupiah), there was only a Down Payment of IDR. 1,000,000,000.00 (One Billion Rupiah).

Petitioner II has experienced constitutional losses that have clearly occurred due to the enactment of several provisions in the Law being tested in the a quo Application, especially Article 30C of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia following the Constitutional Court Decision Number 20/PUU-XXI/2023, Article 263 paragraph (3), Article 266 paragraph (2) letter b number 4, Article 266 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Law, and Article 54 of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The constitutional loss experienced by Applicant II is related to the right to obtain protection for property under his control as regulated and protected in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which expressly states as follows:

"Everyone has the right to protection of themselves, their families, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

3.3. The Concept of Achieving Legal Certainty for Future Judicial Review Efforts by Public Prosecutors

The turmoil of the polemic regarding the authority of judicial review by the Prosecutor is still being generated in the Constitutional Court Decision Number 63/PUU-XXII/2024, in which the decision rejected the request to restore the authority of judicial review by the Prosecutor on the basis that it did not meet formal requirements and was legally groundless. According to the author, the consideration of the Constitutional Court in the Constitutional Court Decision Number 20/PUU-XXI/2023 with the judge's considerations is substantially logical and rational in constitutional terms, but the revocation of the authority of judicial review by the Prosecutor through a Constitutional Court decision can be a double-edged sword for the success of just law enforcement for the victim. This argument appears in the legal reasoning paradigm in the author's sociological juridical observations that there are certain elements of offenses that can benefit from the revocation of the authority of judicial review by the Prosecutor in the realm of

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criminal cases. What is feared is the exploitation of this legal loophole in the corruption criminal trial process to escape the defendant of corruption from the criminal trap until the cassation stage.

For example, the verdict against PT Duta Palma Group, which caused tens of trillions of rupiah in state economic losses, only ordered it to pay compensation of Rp 2 trillion. This makes the state, representing the affected communities, unable to file a judicial review (PK) against the verdict. In this case, Surya Darmadi, the CEO of PT Duta Palma Group, was suspected of corruption and money laundering in land clearing and managing oil palm plantations without permission from the Ministry of Environment and Forestry and without obtaining a land use right from the National Land Agency (BPN). At the first instance court, Surya Darmadi was sentenced to 15 years in prison, a fine of Rp 1 billion, to pay compensation of Rp 2.23 trillion, and to pay compensation of Rp 39.7 trillion in state economic losses. Meanwhile, at the cassation level, the Supreme Court sentenced him to 16 years in prison but removed the penalty of paying compensation of Rp 39.7 trillion in state economic losses. Surya Darmadi was only required to pay Rp 2.23 trillion in state losses.

Constitutionally, according to Amriyata, the Constitutional Court's decision is final and binding, so that prosecutors as implementers of the law will carry out the decision while still following law enforcement steps that are in accordance with the constitution and upholding the principles of justice, certainty and legal benefits.

However, according to Amriyata, looking at the polemic from a legal analysis perspective, there are two variations in the judge's decision in responding to the request for judicial review from the public prosecutor. These two variations can be viewed from two different perspectives, namely the perspective of legal certainty and legal justice. However, it turns out that there is still one form of legal interpretation in the decision of the panel of judges for judicial review regarding the acceptance or rejection of the request for judicial review from the public prosecutor, which is based on the perspective of legal benefit. As in the example of the Roedyanto Case Decision No. 57 PK/Pid/2009, the panel of judges for judicial review decided not to accept the request for judicial review from the public prosecutor because the prosecutor/public prosecutor could not show any Public Interest or State Interest that must be protected. The panel of judges for judicial review in this case is of the opinion that basically a request for judicial review can only be submitted by the convict or by his heirs. However, the Supreme Court is of the opinion that this provision can be relaxed if there is something that can state that the prosecutor/public prosecutor's request for judicial review is to protect a greater Public Interest or State Interest.

Legal reasoning This is essential to the prosecutor's authority to file a judicial review as a last resort in law enforcement to protect the public interest. This authority is necessary in cases classified as extraordinary crimes and detrimental to the public interest, such as corruption. Therefore, the paradigm supporting the submission of a judicial review by the public prosecutor is limited to certain cases, namely those related to the public interest or the state interest. Therefore, in cases unrelated to the public interest or the state interest, the request for judicial review from the public prosecutor is set aside or no basis is given for acceptance. This distinction is emphasized on the utility or benefit of a case. As in the perspective of legal benefits, which has the view that the law is used for the greatest possible benefit for the greatest number of people.

There are several definitions of public interest, including in the explanation of Article 49 of Law Number 5 of 1986 concerning State Administrative Courts, which states that public interest is the interest of the nation and state and/or the interest of the community as a whole and/or the interest of development, in accordance with applicable laws and regulations. Furthermore, it is also regulated in the explanation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 35 letter c, which states that "Public Interest" is the interest of the nation and state and/or the interest of the wider community.

The interests of the general public are the interests of the state in the field of law enforcement, the Prosecutor's Office as a government institution that exercises state power in the field of prosecution has a role in protecting the public interest. The Public Prosecutor's right to submit a request for a Judicial Review is in his capacity as a representative of the state or the public interest in the process of resolving criminal cases. Thus, this request for a Judicial Review is not due to the personal interests of the Prosecutor or the Prosecutor's Office, but for the public and state interests. It is natural that a request for a Judicial Review against a decision of acquittal or release from all legal charges by a convict or his heirs is excluded because the decision is already beneficial to the convict. For the sake of upholding the law and justice towards court decisions in the form of a decision of acquittal or release from all legal charges, it is the right of the Public Prosecutor to submit a Judicial Review as an interested party as long as there is a sufficient basis or reason as regulated in Article 263 paragraph (2) of the Criminal Procedure Code.

4. Conclusion

Judicial review in criminal cases is regulated in Article 263 of the Criminal Procedure Code which stipulates in Paragraph 1 that for a Court decision that has obtained permanent legal force, except for a decision of acquittal or release from all legal charges, the Convict or his heirs may submit a request for judicial review to the Supreme Court; Paragraph 2 explains that a request for judicial review is

made on the basis of first, if there are new circumstances that give rise to a strong suspicion that if the circumstances had been known while the trial was still in progress, the result would have been a decision of acquittal or a decision of release from all legal charges or the Public Prosecutor's demands could not be accepted or a lighter criminal provision would have been applied to the case. Second, if in various decisions there is a statement that something has been proven, however the matter or circumstances as the basis and reason for the decision that was stated to have been proven, have turned out to be contradictory to one another. Third, if the decision clearly shows a mistake by the Judge or a clear error; Meanwhile, Article 3 stipulates that on the basis of the same reasons as stated in Article 2, a request for judicial review may be submitted against a court decision which has obtained permanent legal force if in that decision an act which was accused has been declared proven but is not followed by a criminal sentence. Constitutional Court Decision Number: 33/PUU-XIV/2016 confirms that the Public Prosecutor cannot file an extraordinary legal remedy in the form of a Judicial Review. Judicial review of the provisions of Article 263 Paragraph 1 of Law Number 8 of 1981 concerning Criminal Procedure Law is due to the loss of the applicant due to the enactment of the provisions of Article 263 Paragraph 1 of Law Number 8 of 1981 concerning Criminal Procedure Law. In connection with the birth of the provisions of Article 30C letter h of Law Number 11 of 2021 concerning the Prosecutor's Office, the Constitutional Court also reaffirmed the limitations of the authority of the Public Prosecutor in the Judicial Review in Decision Number 20/PUU-XXI/2023. Constitutionally, the Constitutional Court's decision is final and binding, so the prosecutor, as the implementer of the law, will implement the decision while adhering to constitutional law enforcement measures and upholding the principles of justice, legal certainty, and expediency. However, looking at the polemic from a legal analysis, there are two variations in the judge's decision in responding to the request for judicial review from the public prosecutor.

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