RLJ Ratio Legis Journal
ISSN 2830-4624
published by
Master of Law, Faculty of Law
Universitas Islam Sultan Agung
Volume 4 No. 4, December 2025

Criminal Law Policy in Efforts to Extend Detention at the Cassation Level in Future Positive Law

Bagus Bintara Putra[1)] & Eko Soponyono[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, E-mail: baik.bintaraputra@gmail.com
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, E-mail: Ekosoponyono@unissula.ac.id

Abstract. *A first-instance court decision in Indonesia does not have permanent legal force as long as further legal remedies, such as cassation, are still available. The practice of detaining defendants during the cassation process raises legal issues related to legal certainty, the protection of human rights, and the consistency of decision enforcement. The absence of provisions in the Indonesian Criminal Procedure Code (KUHAP) regarding the limits of sentences during enforcement cassation creates uncertainty, particularly concerning the detention status of defendants who are released by operation of law while cassation proceedings are ongoing. Additionally, there is a lack of coordination among the Prosecutor's Office, correctional institutions, and the Supreme Court, resulting in misalignment in the implementation of decisions, extensions of detention, and the authority to execute judgments. This study focuses on two main issues: first, the current criminal law policy regarding the extension of detention at the cassation stage; and second, the ideal criminal law policy in the context of detention extension in the future.*
Keywords: *Cassation; Detention; Extension Integrated; Legal.*

1. Introduction

Under Indonesian criminal law, detention is a form of coercive action implemented by justice enforcement officials as part of efforts to ensure the smooth running of the criminal justice process. This action is legally permissible, although it limits a person's right to liberty, because it has a valid legal basis and is intended to prevent disruption of the investigation, prosecution, and court proceedings.[1]As stipulated in Articles 21 to 28 of the Criminal Procedure Code, detention itself can be implemented at various stages, including through special

[1]Andi Hamzah, Indonesian Criminal Procedure Law, (Jakarta: Sinar Grafika, 2008), p. 125.

legal steps outside of standard procedures, such as an appeal to the Supreme Court of the Republic of Indonesia. However, in practice, it is not uncommon for defendants convicted by a first-instance court to have served their sentence before the Supreme Court's cassation decision is issued.

This situation creates a discrepancy between the legal status of defendants who have not yet reached final legal force and the sentences already served. This problem becomes more complex when the Correctional Institution (Lapas) issues a preliminary release for defendants because their sentences have expired, even though the cassation process is still ongoing. This situation raises fundamental legal questions: is the execution of a sentence before a final verdict is legally justifiable And what is the position of defendants who have already served their sentences if the cassation decision subsequently overturns or amends the previous verdict.

Indonesian criminal procedure law, on the other hand, does not explicitly regulate the legal status of defendants who have already served their sentences before a cassation ruling, nor does it provide adequate legal protection mechanisms in such circumstances. This legal gap creates legal uncertainty and potentially violates the principle of justice, as it leaves room for defendants to serve sentences that are not yet legally final.

This situation is closely related to criminal law policy regarding detention at the cassation level. In some cases, defendants remain detained during the cassation process, and the detention period can be extended based on internal policies or interpretations of existing regulations. However, the Criminal Procedure Code also does not clearly regulate the boundaries between the detention period, the criminal execution process, and the cassation decision. This disharmony between the detention and criminal execution mechanisms demonstrates the weakness of the national criminal law policy design in guaranteeing the rights of defendants and has the potential to lead to arbitrary treatment of individuals who have not been finally decided by the highest judicial institution.

The current context of national legal development and criminal law reform demands the formulation of more comprehensive criminal law policies, including reforms to criminal procedure. Strict regulations are needed regarding the status of defendants, the implementation of criminal decisions, and the detention mechanism at the cassation level to ensure substantive and procedural justice in the Indonesian criminal justice system.

This issue is crucial within the framework of national legal development. Indonesia, as a nation based on the rule of law, upholds the principle that all government and law enforcement actions must be based on clear and just laws. This is in line with the mandate of Article 1 Paragraph (3) of the 1945 Constitution

of the Republic of Indonesia.[2], which states that the Republic of Indonesia is a State of Law. As a consequence of the principle of a State of Law, every legal process must guarantee legal certainty, justice, and protection of human rights as stated in Article 28D Paragraph (1) of the 1945 Constitution.[3].

The philosophical foundation of justice in Indonesian law is rooted in the values of Pancasila, particularly the Fifth Principle: "Social Justice for All Indonesian People." This value emphasizes the importance of fair, non-discriminatory, and non-arbitrary treatment in all state policies, including in criminal law[3]. When a defendant is serving a sentence that has not yet become legally binding or is otherwise released by law before a final verdict, this creates an imbalance between formal and substantive justice, which is contrary to the basic philosophy of the state.[4].

From a sociological perspective, this kind of legal uncertainty not only impacts the defendant but also disturbs the wider community. When the public witnesses inconsistencies in the implementation of the law, such as a defendant being acquitted while the appeal process is still ongoing, or conversely, being imprisoned despite a pending verdict, trust in the justice system can be eroded. The law, which should be a tool of social control and protection of rights, has the potential to become a source of injustice.[5].

This issue highlights the need for reforms to criminal procedural law that address not only formal procedures but also the substance of justice and the comprehensive protection of the defendant's rights. Within the framework of national legal development based on Pancasila and the 1945 Constitution, it is time to establish clear regulations regarding the legal status of defendants during the cassation process, the limitations on the implementation of criminal penalties before they become final, and an execution mechanism that ensures a balance between law enforcement and human rights protection.

An example of a case that can be studied regarding the Implementation of the Determination of Extension of Detention at the Cassation Level in Cases of Being Free by Law (BDH) Because They Have Served a Criminal Sentence According to the First Level Decision, namely in a case of alleged corruption, the Defendant with the initials SND was accused by the Public Prosecutor of committing a criminal act of corruption as regulated in PRIMAIR: Article 2 Paragraph (1) in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number: 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number: 31 of 1999 concerning the Eradication of

[2]Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia
[3]Ibid., Article 28D Paragraph (1).
[4]Notonagoro, Pancasila in a Popular Scientific Way, (Jakarta: Pantja Simpati, 1975), p. 109
[5]Soerjono Soekanto, Sociology of Law: In Society, (Jakarta: Rajawali Pers, 2010), p. 43

Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code. SUBSIDIARY: Article 3 in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number: 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number: 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code. The prosecutor demanded that the Defendant SND be sentenced to 4 (four) years and 6 (six) months in prison and a fine of Rp. 100,000,000.00 (one hundred million rupiah) subsidiary to 6 (six) months in prison. However, in the first instance decision, the Corruption Crime Court at the Semarang District Court in Decision Number 15/Pid.Sus-TPK/2024/PN Smg dated July 11, 2024 only imposed a prison sentence of 1 (one) year and a fine of Rp. 50,000,000.00 (fifty million rupiah) subsidiary to 2 (two) months imprisonment.

The prosecutor then filed an appeal, but the Semarang High Court, through Decision Number 25/Pid.Sus-TPK/2024/PT SMG dated August 27, 2024, upheld the first instance decision. The prosecutor then proceeded to file an appeal on September 25, 2024, the Supreme Court of the Republic of Indonesia then issued a detention order for Defendant SND, namely for 50 days from September 13 to November 2, 2024, then an extension of detention for 60 days from November 2 to January 1, 2025.

However, on November 14, 2024, the Class IIA Ambarawa Penitentiary granted legal release (BDH) to the defendant SND on the grounds that he had served one year of his sentence in accordance with the first instance decision which had been upheld by the appellate court, while the cassation decision had not yet been issued. The prosecutor objected and argued that the release was invalid because there was no final and binding decision and the Supreme Court still had a detention order.

The Supreme Court issued a cassation decision with Decision Number 8113 K/Pid.Sus/2024 dated December 30, 2024 and rejected the cassation request from the Public Prosecutor, so that the 1-year prison sentence imposed by the first-instance court remains in effect.

That the Defendant SND has been released from the Class II A Ambarawa Penitentiary with the status of Free by Law (BDH) before the execution was carried out by the Public Prosecutor considering that the Defendant SND has served the sentence in accordance with the first level criminal decision which was confirmed by the appeal decision. The execution of the Criminal fine of IDR 50,000,000,- (fifty million rupiah) of the Defendant SND has also not been carried out, if the criminal fine is not paid, it can be replaced with a prison sentence according to the provisions in the decision.

In relation to the corruption case involving Defendant SND, although the person concerned has served a one-year prison sentence as per the first instance decision and strengthened by the appeal decision, the case is still in the cassation process, and the Supreme Court of the Republic of Indonesia has issued a valid detention extension decision. The release by the Prison on November 14, 2024 on the grounds that the sentence has been served according to the first instance decision is a form of legal error, because it ignores the existence of further legal efforts and the determination of detention extension from the Supreme Court of the Republic of Indonesia, in addition to also potentially disrupting the implementation of additional criminal penalties, such as fines and substitute imprisonment, which have not been implemented. This action is not only contrary to the provisions of the Criminal Procedure Code but also contradicts the Principle of Legal Certainty, the Principle of Legality, the Principle of Procedural (due process of law), and the Principle of Proportionality.

This situation has led to inconsistent practices across courts, potentially harming the defendant's legal rights and hindering the judicial process. This inconsistency demonstrates the lack of legal certainty in the regulation of detention at the cassation level. Yet, one of the essential principles of a state governed by the rule of law is clear norms and equal legal protection for all citizens.[6].

Therefore, it is crucial to formulate a criminal law policy that specifically regulates the extension of detention at the cassation level in a comprehensive manner. This policy must be able to uphold human rights while maintaining certainty in the application of the law for law enforcement authorities in carrying out their duties. In the context of national legal development, this is an element of efforts to reform criminal procedural law to be more modern, adaptive, and in line with the principles of substantive justice.[7].

Thus, research into the direction of criminal law policy governing the extension of detention at the cassation stage is urgent. This study is expected to contribute to reform of the national criminal procedure system and provide input for the development of regulations that better ensure justice and legal clarity that reaches all parties in the criminal justice system.

Based on the description above, the author is interested in studying it in the form of a study entitled CRIMINAL LAW POLICY IN EFFORTS TO EXTEND DETENTION AT THE CASSATION LEVEL IN FUTURE POSITIVE LAW.

2. Research Methods

This study uses a normative legal research approach, focusing on the analysis of primary, secondary, and tertiary legal materials to clarify norms, principles, and

[6]Jimly Asshiddiqie, Introduction to Constitutional Law, (Jakarta: Konstitusi Press, 2007), p. 103.
[7]Barda Nawawi Arief, Legislative Policy in Combating Criminal Acts, (Jakarta: Kencana, 2013), p. 42

legal systems related to criminal law policy, particularly regarding the extension of detention at the cassation level. This approach is used to examine current criminal law policy and how future positive legal formulations should be formulated to address the need for fair and effective law enforcement.[8]. This research also uses a conceptual method (conceptual approach) and an approach based on legal regulations (statute approach), because it discusses the concept of criminal law policy as well as applicable and expected laws and regulations in the future.[9]

This research analysis is expected to reveal the current state of affairs in theory and practice, so that it is hoped that by the end of the activity, it can solve existing problems.

This research uses various approaches:

1) Statute approach:

This method is used to analyze regulations related to detention and the cassation process, such as the Criminal Procedure Code, the Judicial Power Law, and Supreme Court Regulations;

2) Conceptual approach:

Used to understand the basic concepts of criminal law policy and how these concepts should be applied in detention practices at the cassation level;

3) Case approach:

It is used to analyze court decisions, particularly Supreme Court decisions, related to criminal prosecution while the appeal is still pending. This is done to see how courts decide similar cases and to what extent these legal gaps impact judicial practice.

4) Comparative approach:

5) Used to compare legal regulations related to the policy of extending detention at the cassation level in positive law in Indonesia currently as evaluation material and input in the formulation of positive law policies in Indonesia in the future.

This research has descriptive-analytical specifications, where the descriptive nature is intended to provide a systematic, detailed, and comprehensive picture of criminal law policies in extending detention, while the analytical nature aims to

[8]Irwansyah, Legal Research Methods: Normative and Empirical Approaches, (Jakarta: Prenadamedia Group, 2020), pp. 45-50
[9] Peter Mahmud Marzuki, Legal Research, (Jakarta: Kencana, 2010), pp. 51-53

assess legal norms, judicial practices, and relevant legal theories, by comparing das sollen (what should be) and das sein (what happens), so that recommendations for criminal law policies can be formulated that are fairer and more effective.

Thus, through this descriptive-analytical specification, this study not only explains the legal reality, but also criticizes it and offers ideas for reforming criminal law that are appropriate while upholding justice and respect for human rights.[10].

The type of data used in this study is secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include the Criminal Procedure Code (KUHAP), the Law on Judicial Power, the Supreme Court Law, Supreme Court Regulations (PERMA), Supreme Court Circulars (SEMA), and Supreme Court decisions regarding the extension of detention. Secondary legal materials include criminal law and criminal procedure law literature, books, journals, scientific articles, as well as official explanations of laws and academic papers. Meanwhile, tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other sources that provide definitions or understandings of law.

Data collection was conducted through document studies and library research. Document studies included the collection of laws and regulations, court decisions, and academic papers, while library research involved collecting relevant scientific books, journals, articles, and expert opinions. This method was chosen because the approach used is a normative and conceptual juridical approach, which does not require direct empirical data collection in the field, but rather requires data mining from written sources.[11]Data processing and analysis were conducted qualitatively, descriptively, and comprehensively, using Criminal Justice System Theory and Legal Policy Theory to evaluate the effectiveness and fairness of applicable legal provisions. The results of the analysis are expected to provide a comprehensive understanding of positive law, judicial practice, and formulate recommendations for reforming criminal law policies that are fair, certain, and protect the rights of defendants and the public interest.

3. Results and Discussion

3.1. Criminal Law Policy in Efforts to Extend Detention at the Cassation Level in Current Positive Law.

Criminal Law Policy In the effort to extend detention at the cassation level, it can be studied through the Case of Being Free by Law (BDH) Because He Has Served a

[10]Peter Mahmud Marzuki, Legal Research, p. 65
[11]Soerjono Soekanto & Sri Mamudji, Normative Legal Research, pp. 22-23

Criminal Sentence According to the First Level Decision, namely in the Corruption Crime case in the name of the Defendant SND.

That the Defendant in the name of SND was brought to trial by the Public Prosecutor and was charged with committing a Criminal Act as regulated and threatened with criminal penalties in PRIMAIR: Article 2 Paragraph (1) in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number: 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number: 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code. SUBSIDIARY: Article 3 in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number: 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number: 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code, and against him the Public Prosecutor at the Semarang Regency District Attorney's Office demands that the Defendant SND has been legally and convincingly proven guilty of committing the Criminal Act of Corruption as regulated and threatened with criminal penalties in Article PRIMARY: Article 2 Paragraph (1) in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number: 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number: 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code.

The Public Prosecutor at the Semarang District Prosecutor's Office demanded that the Defendant SND be sentenced to a prison term of 4 (four) years and 6 (six) months minus the time the defendant has served in detention in the detention center and impose a fine of Rp. 100,000,000.00 (one hundred million rupiah) in lieu of a prison sentence of 6 (six) months in prison.

That then the Corruption Crime Court at the Semarang District Court issued a Criminal Decision against the Defendant SND based on the decision of the Corruption Crime Court at the Semarang District Court Number 15/Pid.Sus-TPK/2024/PN Smg dated July 11, 2024, the ruling of which reads to sentence the Defendant to imprisonment for 1 (one) year and a fine of Rp. 50,000,000.00. (fifty million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 2 (two) months.

That Against the Decision of the Corruption Crime Court at the Semarang District Court Number 15/Pid.Sus-TPK/2024/PN Smg Dated July 11, 2024, the Public Prosecutor at the Semarang Regency District Prosecutor's Office filed an appeal with the Public Prosecutor's Appeal Request Deed Number: 23/Akta.Banding/Pid.Sus-TPK/2024/PN Smg Jo. 15/Pid.Sus-TPK/2024/PN Smg on July 16, 2024 and submitted the appeal memo on July 30, 2024 based on the Receipt of Submission of the Public Prosecutor's Appeal Memorandum No. 23/Akta.Banding/Pid.Sus-TPK/2024/PN Smg jo No. 15/Pid.Sus-TPK/2024/PN Smg.

That the Corruption Crime Court at the Semarang High Court based on Decision Number: 25/PID.SUS-TPK/2024/PT SMG dated August 27, 2024 issued a decision with the order to confirm the Decision of the Corruption Crime Court at the Semarang District Court Number 15/Pid.Sus-TPK/2024/PN Smg, dated July 11, 2024 for which the appeal was requested.

That subsequently the Public Prosecutor at the Semarang Regency District Attorney's Office filed a request for a Cassation Legal Effort against the decision of the Corruption Crime Court at the Semarang High Court Number 25 / PID.SUS-TPK / 2024 / PT SMG dated August 27, 2024 based on the Public Prosecutor's Cassation Application Deed Number: 13 / Deed. Cassation / Pid. Sus-TPK / 2024 / PN Smg Jo 25 / Pid. Sus- Tpk / 2024 / PT Smg Jo. 15 / Pid. Sus. TPK / 2024 / PN Smg and submitted the Cassation Memorandum on September 25, 2024 based on the Receipt for Submission of the Public Prosecutor's Cassation Memorandum No. 13 / Deed. Cassation / Pid. Sus- TPK/ 2024/ PN Smg Jo. 25/ Pid. Sus- TPK/ 2024/ PT Smg Jo. 15/ Pid. Sus-TPK/ 2024/ PN Smg.

That the Supreme Court of the Republic of Indonesia issued Decree No. 21701/ 2024/ S.5396. Tah. Sus/ PP/ 2024/ MA dated October 9, 2024 regarding the Detention of Defendant SND in the State Detention Center for 50 (fifty) days starting from September 13, 2024 until November 2, 2024,

That based on Detention Determination No. 21701/ 2024/ S. 5396. Tah. Sus/ PP/ 2024/ MA dated October 9, 2024 by the Supreme Court of the Republic of Indonesia, the Public Prosecutor at the Semarang Regency District Attorney's Office has implemented the Judge's Determination by making a Minutes of Implementation of the Judge's Determination (BA-15) to carry out detention for 50 (fifty) days starting from September 13, 2024 until November 2, 2024.

That due to reasons of interest in the examination that have not been completed, the detention of the Defendant is still necessary so that the Supreme Court of the Republic of Indonesia has again issued Decision No. 21702/ 2024/ S. 5396. Tah.Sus/PP/2024/MA dated October 9, 2024 regarding the extension of the detention of the Defendant SND in the State Detention Center for a period of 60 (sixty) days, starting on November 2, 2024 to January 1, 2025.

On November 14, 2024, Class II A Ambarawa Penitentiary based on the Minutes of Release of Prisoners Issued by Law Number W13. PAS. PAS. 4- 2004. PK. 05. 12 YEAR 2024 dated November 14, 2024 released the Defendant SND from Class II A Ambarawa Penitentiary on the grounds that there was no longer any reason/legal basis to protect his further detention because the Defendant's detention period was the same as the decision of the Corruption Crime Court at the Semarang District Court for 1 (one) year which was strengthened by the decision of the Corruption Crime Court at the Semarang High Court and until now there has been no Cassation Decision from the Supreme Court. Attached to the letter was the Release Letter from Class II A Ambarawa Penitentiary in Kab. Semarang Register A. No.AV.051/2024-2024 dated November 14, 2024. That the Public Prosecutor at the Semarang District Prosecutor's Office has made a Minutes of Opinion regarding the Release of Detainees by Law dated November 14, 2024, which in essence the Public Prosecutor is of the opinion that the release/release of the defendant SND by the Class II A Ambarawa Prison is baseless, because there is no decision that has permanent legal force and there is a basis for continuing to detain the Defendant SND as stipulated in Decree No. 21702/2024/S.5396.Tah.Sus/PP/2024/MA dated October 9, 2024 in conjunction with Decree No. 21701/2024/S.5396.Tah.Sus/PP/2024/MA dated October 9, 2024.

The legal basis for detention at the cassation level is regulated in Article 28 Paragraph (1) of the Criminal Procedure Code. Article 28 of the Criminal Procedure Code contains two important norms:

1) Main Norms:

If the detention period has expired and there is no new extension, the suspect or defendant may no longer be detained and must be released automatically ("by law").

The meaning of "by law" in this context is:

Release does not require any additional request, petition, or order from any party (whether the defendant, legal counsel, prosecutor, or court). This means that once the detention period ends, and there is no extension, the detainee must be automatically released by the detaining authority (usually a detention center or prison).

This norm reflects the principle

a. Due process of law, namely that detention is only valid if it is carried out based on law.

b. Procedural legality, namely that deprivation of liberty is not permitted without a valid legal basis.

2) Exceptional Norms:

If there is a valid extension order, then the detention can continue.

Detention May Be Continued If There Is a Valid Extension "Unless it has been extended by a new determination", meaning:

a. If there is a decision by a judge or court (including the Supreme Court at the cassation level), then detention can be continued for as long and as long as it is in accordance with the decision;

b. The determination must be official, written, and within the time limit specified by law.

That in the case of Defendant SND, the Supreme Court has issued two decisions:

1. First appointment: 50 days (September 13 – November 2, 2024);

2. Determination of extension: 60 days (November 2 – January 1, 2025)

So formally, the defendant's detention was still valid until January 1, 2025 and the legal basis for the detention was still valid when the Prison released the defendant on November 14, 2024. However, a problem arose when on November 14, 2024, the Ambarawa Prison released the defendant because he had served 1 (one) year of imprisonment according to the first level decision, which was then confirmed by the appeal decision.

Even though the main sentence of 1 (one) year had been served, the defendant's status at that time had not yet changed to that of a convict who had been given a permanent sentence because there had not yet been a cassation decision and he still had the status of defendant in the cassation legal process.

The action of Ambarawa Prison in releasing the defendant based on the calculation of the main sentence without waiting for the results of the cassation is a form of ignoring the ongoing legal procedures, because:

1. The defendant's legal status is still in the cassation process at the Supreme Court, so there is no legal certainty (inkracht van gewijsde) regarding the previous decision;

2. The detention of the accused was still legally extended by the Supreme Court, which means there is still a valid legal basis for continuing the detention;

3. There is no decision that has final legal force (inkracht) that can be used as a legal basis for carrying out criminal executions or for ending the detention period;

4. Criminal execution can only be carried out by the prosecutor after the cassation decision has been officially received and declared to have permanent

legal force (inkracht) referring to the provisions of Article 270 of the Criminal Procedure Code.

Thus, release on the grounds of "having served the sentence according to the first verdict" has no legal basis, because the verdict is not final.

In the criminal justice system, detention is a very serious form of restriction on human rights because it concerns the right to personal liberty. Therefore, the law strictly and systematically regulates detention through the principles of legality and due process of law. One important norm under Indonesian criminal procedure law is that detention is only valid if carried out in accordance with legal provisions and for a justified period. When the stipulated detention period expires and there is no valid extension, the accused or suspect must be released immediately and automatically, without the need for additional requests or orders from any party. This norm is known as release by law, which emphasizes that a person's liberty may not be further deprived if there is no valid legal basis for continuing their detention.

However, this norm also recognizes exceptions, namely when there is a valid extension of detention from the authorized party, in this case a judge or court. As long as the decision is legally valid (official, written, and within the timeframe specified by law), then the detention can be continued until the specified time limit. This means that as long as the detention period has not expired and there has not been a final (inkracht) judge's decision, the defendant's legal status remains as a party legally entitled to be detained. In this context, law enforcement officials, including detention centers (Rutan) or correctional institutions (Lapas), are legally bound to continue the detention. Thus, the act of releasing or releasing a defendant from detention before the detention period ends and without a valid legal basis is a form of violation of the expressly regulated exception norm. This kind of release not only contradicts the logic of criminal procedure law, but also violates the authority of the judicial institution that has determined the detention. Detention determined by a judge cannot be ignored or unilaterally canceled by prosecutors, police, prison officials, or even by the court itself without going through a valid legal mechanism. Any form of exemption outside the legal provisions can be considered an unlawful act and a deviation in the exercise of authority.

Thus, current positive legal policy stipulates that judicial release can only be granted if the detention period has expired and there is no valid extension. As long as there is still a legal basis for detention through a court order and no final decision has been made, prisons do not have the authority to unilaterally release detainees. Release under such circumstances violates the principles of due process of law and legality, and undermines the authority of court decisions and the effectiveness of criminal law enforcement.

3.2. Criminal Law Policy in Efforts to Extend Detention at the Cassation Level in Future Positive Law

The direction of reforming Indonesian criminal law policy includes a number of important aspects that will have a direct impact on the mechanism for releasing prisoners and executing criminal sentences, as occurred in the case of Defendant SND.

Formulating criminal law policy within the context of a theoretical approach is crucial for assessing whether the policy aligns with the principles of legal rationality, social effectiveness, and institutional legitimacy. One relevant theory is Morgan Friedman's Legal Policy Theory, which emphasizes that law is not merely a normative system (rules), but also part of a social process that reflects and responds to societal needs.[12].

This policy can be realized through a revision of the Criminal Procedure Code and the development of technical guidelines between law enforcement agencies (the Prosecutor's Office, Prisons, and the Supreme Court) that regulate the administrative flow for extending detention and the control mechanisms for the legal status of defendants. Protection of the rights of suspects and defendants must be implemented in line with legal certainty and order in the criminal justice process, including in cases of lawful detention.[13]. Furthermore, the action of releasing a detainee can only be carried out if it is clear that there is no longer a legal basis for detaining him, and such action must be based on the results of coordination with the prosecutor's office and the courts.[14].

So that detention does not become an instrument of arbitrariness, the administrative procedures for extending and implementing criminal sentences must be subject to an integrated legal system, where each party knows and understands the legal status of the accused in real time.[15]Therefore, future legal policy needs to establish an integrated criminal justice information system and impose strict administrative sanctions on officials who fail to enforce court decisions or rulings. This way, the law will not only exist as written norms but will also be enforced in a concrete, consistent, and accountable manner to ensure legal certainty and justice for all parties.

The following is the positive legal policy that will come regarding the case of the legal position of the corruption crime case involving the Defendant SND, who was released by law by the Prison because he had served his sentence in accordance

[12]Morgan D. Friedman in Lawrence M. Friedman, The Legal System: A Social Science Perspective, (New York: Russell Sage Foundation, 1975), p. 12-13.
[13]Andi Hamzah, Indonesian Criminal Procedure Law (Jakarta: Sinar Grafika, 2012), p. 148.
[14]Badriyah Khaleed, Criminal Procedure Law Guide (Jakarta: Prenadamedia Group, 2020), p. 211.
[15]Bambang Poernomo, Orientation of Indonesian Criminal Procedure Law (Yogyakarta: Liberty, 2005), p. 164.

with the first level decision before the cassation decision was issued, even though the detention was still extended by the Supreme Court:

1) Limitations and Conditions for the Implementation of Criminal Sentences During the Cassation Process

a. Policy:

It will be regulated that the implementation of the principal punishment (imprisonment, fines, etc.) can be carried out temporarily even though it has not yet become final, on the condition that there is a temporary execution order from the court (MA/PN/PT), as well as with a guarantee of restitution or compensation if the cassation decision later acquits the defendant.

b. Objective:

Maintaining a balance between the state's interests in law enforcement and the protection of the individual rights of the accused during the legal process.

Examples of norms to be proposed:

"The execution of a criminal sentence against a defendant who has not yet been sentenced may be carried out temporarily based on a provisional execution order issued by a competent court. If the defendant is acquitted in subsequent legal proceedings, the state is obligated to provide compensation for the sentence already served."

1) Affirmation of the Defendant's Legal Status during the Cassation Process

a. Policy:

In the upcoming revision of the Criminal Procedure Code, there must be strict regulations after the Appeal Decision, if the Public Prosecutor files an appeal and the defendant has served the sentence according to the District Court/High Court decision, then temporary detention can still be carried out until the cassation decision is issued, as long as there is a ruling from the Supreme Court. The legal status of a defendant who has been sentenced by the first instance court but is still in the cassation process will be regulated as "Temporary In kracht Detention".

b. Objective:

To differentiate between defendants who have truly been freed due to a final decision and to prevent the prison from releasing them before the legal process is over.

Examples of norms to be proposed:

"Defendants who have been sentenced by a first-instance court, and who are still appealing the verdict, remain in detention in a case that has not yet become final and binding and must remain in detention if the Supreme Court issues an extension."

2) Integration of Digital Systems for Execution of Judgments and Detention Status

a. Policy:

An integrated digital information system was formed between the Supreme Court, the Prosecutor's Office, Prisons, and Courts.

b. Objective:

Avoiding administrative errors such as releasing detainees even though there is still a legal basis for detention (for example, a Supreme Court decision), as well as speeding up the flow of information regarding the execution of fines or substitute sentences.

Examples of norms to be proposed:

"An integrated digital information system, namely the National Integrated Criminal Execution System (STEPINA)".

"The Corruption Crime Case committed by the Defendant SND, if a system like this already exists, then the Prison will not be able to release the detainee because the system will immediately show that the cassation decision has not been issued, and the detention is still valid based on the Supreme Court's Decision."

4) Prison Confirmation Obligation to Prosecutor before Release

a. Policy:

Every act of releasing a prisoner or detainee before it becomes final must be accompanied by written confirmation from the Public Prosecutor as the sole executor (Article 270 of the Criminal Procedure Code).

b. Objective:

Provide formal and legal control over the administrative actions of the prison and prevent unilateral release.

In the revised Criminal Procedure Code:

"Correctional institutions are prohibited from releasing defendants from detention before obtaining written confirmation from the Public Prosecutor regarding the inkracht status and execution of additional sentences."

5) Automation of Orders for Execution of Fines and Additional Criminal Penalties

a. Policy:

The new system will automatically execute the fine (and subsidiary imprisonment) if the defendant does not pay within a certain time, without the need for a new request from the prosecutor.

b. Objective:

Preventing the avoidance of additional criminal execution as occurred in the SND case, where the fine has not been paid and the substitute sentence has not been carried out even though the main sentence has been completed.

Examples of Proposed Norms:

"If the convict does not pay the fine as imposed in the court decision within 30 (thirty) days from the date the execution notification is received, the substitute sentence will automatically be carried out by the Prosecutor's Office without the need for a new request from the Public Prosecutor."

"The criminal execution information system is required to provide automatic notification to the Prosecutor's Office and Correctional Institutions regarding the implementation of substitute punishment if payment is not made within the specified time limit."

"Delaying or neglecting the implementation of additional criminal penalties without valid legal reasons may result in administrative sanctions against the law enforcement officials concerned."

6) Affirmation of Administrative Sanctions for Officers Who Release Persons Without Justification

a. Policy:

Supervisory mechanisms and administrative or even criminal sanctions will be implemented for parties who release prisoners without a valid legal basis, including prison officials.

b. Objective:

Cultivate legal responsibility in criminal executions and ensure that legal processes are not neglected for administrative reasons.

In the case of SND: Prison officers who release prisoners even though there is still a decision to extend detention can be held administratively responsible for exceeding their executional authority.

Examples of Proposed Norms:

"Any official or Correctional Institution officer who releases a defendant or convict without a valid legal basis, even though the case is still in the legal process or there is a court order to extend detention, may be subject to administrative and/or criminal sanctions in accordance with the provisions of laws and regulations."

"The release of the accused before the case has permanent legal force can only be carried out after written confirmation has been obtained from the Public Prosecutor and is stipulated in the Integrated Criminal Execution Information System."

"In the event of an unlawful release, the Ministry of Law and Human Rights and the Attorney General's Office are required to conduct a joint investigation and impose sanctions on any party found negligent or abusing their authority.

Future criminal law policies must guarantee:

1) Legal certainty in detention status at all levels of justice;

2) Coordination between executing agencies;

3) Efficient implementation of additional penalties;

4) Protection against administrative errors in criminal execution.

The SND case serves as a clear example that without firm legal policies and an integrated system, the potential for procedural violations remains high, despite the existence of normative regulations in the Criminal Procedure Code. Future policies must prevent similar errors and ensure the integrity of the legal process from start to finish.

5. References

Kitab Al-Qur'an

Al-Qur'an. (2019). *Al-Qur'an dan Terjemahannya*. Jakarta: Kementerian Agama RI.

Journals:

Dizar Al Farizi, "Konsep Penahanan dalam Sistem Hukum Indonesia," *e-Journal Lentera Hukum*, Vol. 3, No. 1 (2023), hlm. 10.

Janpatar Simamora, "Kepastian Hukum Pengajuan Kasasi oleh Jaksa Penuntut Umum terhadap Vonis Bebas," *Jurnal Yudisial*, Vol. 11, No. 1 (2018), hlm. 89.

Komnas HAM, *Laporan Tahunan tentang Pelaksanaan HAM dalam Proses Pidana*, 2022

Putu Rimbawan Mahaputra. "Tahanan Dibebaskan Demi Hukum dalam Sudut Pandang Hukum dan HAM di Indonesia," *Kertha Desa: Journal Ilmu Hukum* 9, no. 12 (2021): 1–10.

Risdalina Siregar, "Manfaat dan Jangka Waktu Penahanan Sementara Menurut KUHAP," *Jurnal Ilmiah Advokasi*, Vol. 7, No. 2 (2022), hlm. 45.

Tedjo Asmo Sugeng, "Tinjauan KUHAP tentang Penangguhan Penahanan," *Jurnal Cermin*, Vol. 4, No. 2 (2021), hlm. 57.

Books:

Ancel, M. (1973). "Penal Policy and Social Policy." Dalam Criminal Policy and Penal Reform, 12. London: Routledge.

Andi Hamzah. (2008). "Hukum Acara Pidana Indonesia" Jakarta. Sinar Grafika.

-------. (2012). "Hukum Acara Pidana Indonesia" Jakarta. Sinar Grafika.

Bambang Poernomo. (2005). "Orientasi Hukum Acara Pidana Indonesia". Yogyakarta. Liberty.

Barda Nawawi Arief. (2002). "Bunga Rampai Kebijakan Hukum Pidana". Jakarta. Kencana.

-------. (2008). "Bunga Rampai Kebijakan Hukum Pidana". Jakarta. Prenadamedia Group.

-------. (2010). "Masalah Penegakan Hukum dan Kebijakan Hukum Pidana". Jakarta. Kencana.

-------. (2013). "Kebijakan Legislasi dalam Penanggulangan Tindak Pidana ". Jakarta. Kencana.

Jimly Asshiddiqie.(2005). "Konstitusi dan Hak Asasi Manusia". Jakarta. Konstitusi Press.

-------. (2006). "Konstitusi dan Konstitusionalisme Indonesia". Jakarta. Konstitusi Pres.

-------.(2007). "Pengantar Ilmu Hukum Tata Negara". Jakarta. Konstitusi Press.

-------. (2013). "Konstitusi dan Hukum Acara Pidana". RajaGrafindo Persada.

-------. (2015). "Konstitusi dan Konstitusionalisme Indonesia". Jakarta. Rajawali Pers.

Lilik Mulyadi. (2018). "Hukum Acara Pidana: Teori, Praktik, dan Permasalahannya di Indonesia". Bandung. Alumni.

Morgan D. Friedman dalam Lawrence M. Friedman (1975). "The Legal System: A Social Science Perspective" New York. Russell Sage Foundation.

------- dalam Lawrence M. Friedman. (2002). "American Law in the 20th Century". New Haven. Yale University Press.

-------. (2018). "Law in Society: An Introduction to the Sociology of Law ". London. Routledge.

Mahfud MD. (2009). "Politik Hukum di Indonesia". Jakarta. LP3ES.

Marwan dan Jimmy P.(2009). "Pengantar Ilmu Hukum. Jakarta. Kencana.

M. Yahya Harahap. (2005). "Pembahasan Permasalahan dan Penerapan KUHAP, Edisi Revisi. Jakarta. Sinar Grafika.

-------. (2008). Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan, Edisi Kedua, Cetakan Kesepuluh. Jakarta. Sinar Grafika.

-------. (2016). "Pembahasan Permasalahan dan Penerapan KUHAP". Jakarta. Sinar Grafika.

-------. (2019). "Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan" . Jakarta. Sinar Grafika.

Muladi. (2002). "Hak Asasi Manusia, Politik dan sistem Peradilan Pidana". Semarang. Badan Penerbit Undip.

-------. (2002). "Demokrasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia". Semarang. Badan Penerbit UNDIP.

Peter Mahmud Marzuki. (2010)."Penelitian Hukum".Jakarta.Kencana.

Ronny Hanitijo Soemitro. (1990). "Metodologi Penelitian Hukum dan Jurimetri, .Jakarta. Ghalia Indonesia.

R. Soesilo. (1991). "Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-komentarnya". Bogor. Politea.

-------. (2018). "Hukum Pidana Indonesia" Jakarta. Sinar Grafika.

Satjipto Rahardjo. (2000). "Ilmu Hukum".Bandung. Citra Aditya Bakti.

-------. (2006). "Hukum Progresif: Hukum yang Membebaskan". Jakarta.Kompas.

Soerjono Soekanto. (1983)."Faktor-Faktor yang Mempengaruhi Penegakan Hukum,". Jakarta. Raja Grafindo Persada.

-------. (2005). “Sosiologi Suatu Pengantar”. Jakarta. Rajawali Press.

-------. (2006). “Pokok-Pokok Sosiologi Hukum”. Jakarta. Rajawali Press.

-------. (2007). “Pengantar Penelitian Hukum”. Jakarta: UI Press.

-------, (2010). “Sosiologi Hukum”. Jakarta: Raja Grafindo Persada.

Sudikno Mertokusumo. (2009). “Hukum Acara Perdata Indonesia. Yogyakarta. Liberty.

Regulation:

The 1945 Constitution of the Republic of Indonesia.

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).

Criminal Code (KUHP).

Law Number 14 of 1985 concerning the Supreme Court.

Law Number 48 of 2009 concerning Judicial Power.

Law Number 39 of 1999 concerning Human Rights

Law Number 12 of 1995 concerning Corrections.

Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR).

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001.

Regulation No. 2 of 2012on the Administration and Trial of Criminal Cases in Court.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-24.PK.0101 of 2011 concerning the Release of Prisoners by Law.

SEMA No. 4 of 2016.

MA Registrar Circular No. 2304/PAN/HK.01/12/202.

Decision of the Corruption Crime Court at the Semarang District Court Number 15/Pid.Sus-TPK/2024/PN Smg dated July 11, 2024.

Decision of the Corruption Crime Court at the Semarang High Court Number: 25/PID.SUS-TPK/2024/PT SMG Dated August 27, 2024.

Decision of the Supreme Court of the Republic of Indonesia Number 8113 K/Pid.Sus/2024 Jo 25/Pid.Sus-TPK/2024/PT. Smg Jo 15/Pid. Sus-TPK/2024/PN Smg Dated December 30, 2024.

Supreme Court Decision No. 42 K/Pid/2005 (defendant at the cassation level after serving his sentence).

Decision of the Constitutional Court of the Republic of Indonesia, Decision Number 003/PUU-IV/2006, concerning the principle of legality and the principle of justice in criminal sentencing.

Decision of the Constitutional Court of the Republic of Indonesia, Decision Number 140/PUU-XIII/2015.

Sources of Islamic Books and Literature (Fiqh, Maqashid, etc.):

Al-Ghazālī, *Al-Mustashfa*, Beirut: Dar al-Kutub al-'Ilmiyyah.

Al-Suyuthi. Al-Ashbah wa al-Nazair fi Qawa'id wa Furu' Fiqh al-Shafi'i. Beirut: Dar al-Kutub al-'Ilmiyyah, 1990.

Al-Tahir ibn 'Ashur, Muhammad. *Ma'ahid al-Shari'ah fi al-Dawlah al-Islamiyyah* (Prinsip-Prinsip Syariat dalam Negara Islam). Tunis: al-Dar al-Tunisiyah, 1984.

Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu, Jilid 6. Damaskus: Dar al-Fikr, 2002.

Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu (Hukum Islam dan Dalil-Dalilnya), Jilid 10. Damaskus: Dar al-Fikr, 1997.

Auda, Jasser. Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach. London: *International Institute of Islamic Thought*, 2008.

Azra, Azyumardi. Hukum Islam dan Negara: Perspektif Kontemporer. Jakarta: Prenada Media, 2003.