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Errors That Can Be Tolerated in Criminal Court Decisions Using A Doctrinal Approach Harmless Error in Order to Carry Out The Principles of Justice

Erwin Susilo[1)] & Dharma Setiawan Negara[2)]

[1)] Pengadilan Negeri Sigli, E-mail: erwinowam@gmail.com
[2)] Universitas Sunan Giri Surabaya, Indonesia, E-mail: dharmajournal1@gmail.com

Abstract. *A fair criminal trial is a fundamental pillar of the justice system, ensuring that substantive justice prevails over mere procedural correctness. This article explores the essential elements of criminal verdicts, particularly legal considerations and judicial rulings, as outlined in Article 197 of the Indonesian Criminal Procedure Code (KUHAP). It further analyzes judicial errors through the doctrinal approach of harmless error. In judicial practice, errors in a judge's decision can be categorized into substantial (harmful error) and non-substantial (harmless error). Substantial errors directly affect the defendant's rights or compromise the integrity of the trial, potentially leading to a miscarriage of justice. In contrast, non-substantial errors are procedural or administrative in nature, meaning they do not significantly impact substantive justice or alter the final outcome of the case. The harmless error doctrine, originating from common law jurisdictions, has been adopted in various legal systems, including Indonesia, to balance trial efficiency with the pursuit of material truth. This doctrine prevents the unnecessary annulment of verdicts due to minor, non-prejudicial errors that do not affect the essence of justice. By recognizing the distinction between procedural irregularities and substantive violations, courts can uphold fair trials while minimizing delays caused by technical challenges. This research underscores the necessity of a criminal justice system that is simple, swift, and cost-effective, in line with the principles of justice in Indonesia. An efficient legal framework that embraces the harmless error doctrine ensures that the judicial process remains fair without being unnecessarily rigid. Ultimately, the legal system must remain justice-oriented, prioritizing substantive fairness over procedural perfection to uphold the rule of law and protect individual rights.*

Keywords: *Crime; Court; Decision; Substantive.*

1. Introduction

In court decisions, the points that need to be taken into account are legal considerations (*reason for falling*) on which the decision is based. This means that these considerations are explained based on facts obtained either from written evidence (such as letters or documents) or from oral facts (such as witness statements, expert statements, and defendant statements). Therefore, the essence of the Panel of Judges' decision lies in its legal considerations (K. L. S. Nugroho, 2021). In the judge's decision there is also a ruling which is a statement in the court's decision regarding something (Leahy, 2022). In court decisions, legal considerations and rulings must be in harmony and there must

be no errors. According to Article 1 point 11 of the Criminal Procedure Code, "a court decision is a judge's official statement delivered in open court, which can take the form of conviction, acquittal, or release from all legal charges," in accordance with the procedures regulated in law. In other words, every decision reflects the end of the trial process, and must be read out at a trial that is open to the public as a guarantee of public transparency.

Article 197 paragraph (2) of the Criminal Procedure Code stipulates various errors that can result in a decision being null and void. Even though the term used is "null and void," this does not mean that the cancellation does not require legal action. In this context, to cancel the decision, legal action is required. The Criminal Procedure Code has regulated ordinary legal remedies and extraordinary legal remedies, where each of these legal remedies has its own characteristics in canceling decisions at lower levels.

Judges in deciding cases may make mistakes, such as typos in the decision, considering testimony *evidence of hearing* as evidence that proves the defendant is guilty (even though there are only two pieces of evidence), or was wrong in applying procedural law during the trial. However, errors of this kind often do not have a significant impact on the essence of the judge's decision. Unfortunately, this kind of condition has not been explicitly regulated in the Criminal Procedure Code, giving rise to gaps in legal certainty. It is feared that this legal uncertainty could trigger a lack of uniform interpretation by higher level courts regarding errors that could or may not cancel decisions at lower levels.

This research aims to answer two main problems: *First*, regarding the construction of court decisions; And *second*, assesses the extent to which errors in criminal decisions can be tolerated using a doctrinal approach *harmless error*. It is hoped that this research can provide clearer guidance in ensuring legal consistency and certainty in criminal justice practice, especially regarding the assessment of errors which do not always have an impact on canceling lower-level court decisions.

This research needs to be carried out because, based on a review of literature in Indonesia, no discussion of doctrine has been found *harmless error*, a doctrine that developed in countries with systems *common law*. This doctrine is important to be implemented and developed in Indonesia as an effort to provide legal certainty in the criminal justice system. As an initial development step, this research will describe various novelties that are relevant to the Indonesian legal system.

2. Research Methods

This research uses doctrinal legal research methods which focus on normative studies of statutory regulations, legal doctrine, and court decisions that are related to doctrine. *harmless error* (Marzuki, 2017). This method aims to analyze the consistency of the application of law in court decisions and assess the limits of tolerance for juridical errors that do not affect the substance of the decision. The data sources used include primary legal materials in the form of laws, especially the Criminal Procedure Code, as well as secondary legal materials in the form of legal literature and relevant scientific articles.

3. Results and Discussion

3.1. The Construction of Court Decisions

There are two things that are generally seen as the substance of the main decision, namely legal considerations and the verdict. In a legal consideration there are two more aspects, namely *reason for falling* And *by the way* or *incidentally said*. *Pertama, ratio decidendi* is the basis of a decision. All legal considerations that are binding in a decision are included in this category and are directly related to the decision.(Aryani, 2024)

In *reason for falling* contains the essence of legal considerations which are the basis for making decisions formulated in the ruling. This section is inseparable from the ruling and has binding legal force, so that it can be formulated as a generally applicable legal rule. *Second*, there are *by the way* or *incidentally said*, namely part of the legal considerations that are not directly related to the legal issue at hand and do not influence the decision. This section functions more as an illustration or analogy to strengthen legal arguments, but has no binding force, but merely serves as an additional view from the judge. (Hakiki & Taufiqurrahman, 2023)

Difference between "*reason for falling*" (underlying legal reasons) and "*by the way*" (non-binding consideration) may be unclear and may vary. With such differences, it is quite difficult to determine which are binding considerations and which are not binding, as stated by Julius Stone, who argues that distinguishing between the two is not clear and may not always be effective (González, 2022). In Indonesian judges' decisions, especially criminal cases, it is difficult to separate between *reason for falling* and *incidentally said*. In a judge's consideration, it does not only refer to aspects that can be measured, but the judge is also given the authority based on his subjectivity to determine the appropriate decision for the defendant. This is reflected in Article 197 paragraph (1) letter f of the Criminal Procedure Code, which gives the judge the authority to determine mitigating and aggravating factors for the defendant.

Before reaching a decision, the judge first provides legal considerations that form the basis of the decision. This consideration includes an analysis of the legal facts revealed in the trial as well as the application of relevant legal provisions. Legal considerations are very important in the judge's decision, because they explain the reasons behind the decision (Sukarmini & Idrus, 2020). In the framework of criminal decisions as contained in Article 197 of the Criminal Procedure Code, the construction of the judge's decision does not only include legal considerations and rulings, but also other aspects as part of the formal framework of the decision, this can be observed through the following table:

Table 1. Sentencing Decision Framework

Substance	Legal Basis	P	A	L
"The head of the written decision reads FOR JUSTICE BASED ON THE ALMIGHTY GOD."	Article 197 paragraph (1) letter a KUHAP.			*
"Full name, place of birth, age or date, gender, nationality, place of residence, religion and occupation of the defendant."	Article 197 paragraph (1) letter b KUHAP.			*
"Indictment, as contained in the letter of indictment."	Article 197 paragraph (1) letter c KUHAP.			*
"Considerations that are summarized regarding the facts and circumstances along with the evidence obtained from the examination at trial are the basis for determining the defendant's guilt."	Article 197 paragraph (1) letter d KUHAP.	*		
and. "Criminal charges, as stated in the demand letter."	Article 197 paragraph (1) letter e KUHAP.			*
"Articles of statutory regulations which form the basis of the sentence or action and articles of statutory regulations which form the legal basis of the decision, accompanied by aggravating and mitigating circumstances for the defendant."	Article 197 paragraph (1) letter f KUHAP.	*		
"The day and date of the panel of judges' deliberations unless the case is examined by a single judge."	Article 197 paragraph (1) letter g KUHAP.			*
"A statement of the defendant's guilt, a statement that all the elements in the formulation of a criminal act have been fulfilled, accompanied by the qualifications and the sentence or action imposed."	Article 197 paragraph (1) letter h KUHAP.	*	*	
"The provisions on whom the court costs are charged shall state the exact amount and provisions regarding evidence."	Article 197 paragraph (1) letter i KUHAP.	*	*	
"The statement that the entire letter turned out to be fake or the information about where the falsity lies, if there is an authentic letter is considered fake."	Article 197 paragraph (1) letter j KUHAP.	*		
"Order that the defendant be detained or remain in custody or be released."	Article 197 paragraph (1) letter k KUHAP.	*	*	
"The day and date of the decision, the name of the public prosecutor, the name of the judge who decided and the name of the clerk."	Article 197 paragraph (1) letter l KUHAP.			*

Source: Researcher Documentation.

In Table I, the letter "P" refers to legal considerations, "A" to the decision, and "L" to other aspects included in the formal framework of the judge's decision. The sign (*) indicates that the substance is included in the scope of legal considerations, rulings, or other aspects. The table shows that the provisions of Article 197 paragraph (1) of the Criminal Procedure Code cover aspects that are not included in legal considerations and decisions, but are included in other categories. Apart from that, there are substances included in both aspects, namely legal considerations and injunctions.

Apart from criminal decisions, Article 1 point 11 of the Criminal Procedure Code stipulates that court decisions also include "decisions of acquittal or acquittal from all legal charges," which when shortened means there are only two types of decisions: criminal decisions and non-conviction decisions (decisions of acquittal or release). Article 199 paragraph (1) of the KUHAP states that non-conviction decisions cover all aspects of Article 197 paragraph (1) of the KUHAP, except for the points in letters "e, f, and h." Article 199 paragraph (1) letter b of the Criminal Procedure Code emphasizes that the decision must contain "a statement that the defendant has been acquitted or released from all legal charges, by including the reasons and articles of the statutory regulations that form the basis of the decision," and in letter c it is stated that " the accused must be immediately released if he is detained".

Based on Article 197 paragraph (1) which regulates the formal requirements that must be included in the judge's decision. This article states the various elements that must be included in a decision as explained above in Table 1. Continued in paragraph (2) which regulates that if the decision does not include the provisions as explained in Table 1 except letter g "day and date holding deliberations by a panel of judges unless the case is examined by a single judge" and letter i "provisions on who the case costs are charged by stating the exact amount and provisions regarding evidence", result in the decision being null and void. This means that if there are deficiencies or administrative errors in the decision, for example not including the identity of the defendant or no order for detention or release, then the decision is null and void.

Based on the decision of the Constitutional Court Number 69/PUU-X/2012 which interprets Article 197 paragraph (2) letter "k" of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have binding legal force, if it is interpreted as a sentence that does not contain the provisions of Article 197 paragraph (1) letter k of the a quo Law resulting in the decision is null and void. This confirms that the annulment of a court decision cannot be based solely on administrative deficiencies or errors, as long as it does not eliminate substantive justice. In its considerations, the Constitutional Court stated that if the substance of the decision still reflects justice and does not significantly harm the defendant, then the decision is not null and void. The important point of this decision is the strengthening of the principle of substantive justice above procedural justice, so that technical errors in the decision do not necessarily invalidate the decision that contains substantive justice.

In consideration of the decision of the Constitutional Court Number 69/PUU-X/2012, every annulment (*nullity/nullity, voidness/nullity*) which is asserted by the Law itself is void "*from now on*" (*nullity ex nunc*), so that the quality of nullity is "absolute nullity", or also called "substantial nullity" (*substantial/essential nullity*). Thus, because the sentence decision does not contain the provisions of Article 197 paragraph (1) letter k

KUHAP in the decision according to Article 197 paragraph (2) KUHAP is "absolute/absolute nullity" or "essential nullity".

Next in consideration, material-substantive qualifications *imperative* or *mandatory*All provisions in Article 197 paragraph (1) of the Criminal Procedure Code cannot be said to be the same or on the same level, especially when reading them in conjunction with other articles as a single regulatory system. This is as stated in Article 197 paragraph (2) of the Criminal Procedure Code that, "Failure to fulfill the provisions in paragraph (1) letters a, b, c, d, e, f, h, j, k and l of this article will result in the decision being null and void. ", but in the Explanation it is stated, "Except for those mentioned in letters a, e, f and h, if there is an error and/or error in writing, then the error and/or error in writing or typing does not cause the decision to be annulled in favor of law."

After materially contained in the decision regarding the identity of the defendant, the indictment, consideration of the facts and circumstances as well as evidence obtained from the examination in the trial which is the basis for determining the defendant's guilt, criminal charges, articles of statutory regulations which are the legal basis for the decision along with the circumstances aggravating and mitigating the defendant, a statement of the defendant's guilt, a statement that all the elements in the formulation of the criminal offense have been fulfilled along with the qualifications and the sentence or action imposed, a statement that the entire document is in fact fake or a statement of where the falsity lies, if there is an authentic letter it is considered fake, the day and date decision, the name of the public prosecutor, the name of the judge who decided, and the name of the clerk but the judge did not include an order for the defendant to be detained, or remain in detention, or released, then this causes the decision to be null and void, according to the Court, this is a form of denial of human weakness as imperfect servants of God. It is very ironic that a defendant who has been declared guilty and sentenced to a crime and whose decision cannot be executed simply because it does not include an order for the defendant to be detained or remain in detention or released, which is actually a follow-up substance to the decision declaring the defendant guilty and imposing a crime on him.

That when in a criminal case what must be proven is the material truth, and when the material truth has been proven and therefore the defendant is sentenced to a crime, but due to the absence of an order for the defendant to be detained or remain in detention or released which causes the decision to be null and void, this is truly a provision that are far from the substance of justice, and are closer to procedural justice or mere formal justice.

Thus, if a sentencing decision does not include the provisions of Article 197 paragraph (1) letter g and letter i because it is not mentioned in Article 197 paragraph (2), and there is an error and/or mistake in writing or typing the material as specified in Article 197 paragraph (1) which excludes letters a, e, f, and h, does not cause the decision to be null and void.

Furthermore, based on the Constitutional Court Decision Number 68/PUU-XI/2013 which interprets Article 197 paragraph (1) letter l of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have binding legal force, if it is interpreted as a criminal decision letter that does not contain the provisions of Article 197 paragraph (1) letter l of Law Number 8 of 1981 concerning Criminal Procedure Law resulted in the decision being null and void;

This decision confirms the interpretation of Article 197 of the Criminal Procedure Code, especially regarding orders to cancel decisions which do not include the day and date of the decision, the name of the public prosecutor, the name of the judge who decided and the name of the clerk. In this decision, the Constitutional Court emphasized that decisions that do not include the day and date of the decision, the name of the public prosecutor, the name of the judge who decided and the name of the clerk are still considered valid as long as they do not harm the rights of the defendant.

The Constitutional Court in decision number 68/PUU-XI/2013 also stated that justice must take priority over mere administrative technical errors and the Judge must ensure that the Defendant's rights are not violated due to technical or procedural errors in the decision.

The two decisions of the Constitutional Court emphasize the importance of balance between procedural justice (fulfillment of Article 197 of the Criminal Procedure Code) and substantive justice (the essence of justice in the case). This prevents excessive cancellation of decisions just for technical reasons. If there are deficiencies in the administrative aspects of the decision, but do not harm the defendant's rights, then the decision is still considered valid.

In general, the judge's decision includes elements of legal considerations and injunctions. In theory, legal considerations are divided into: *reason for falling* And *incidentally said*, which in the context of court decisions in Indonesia cannot be separated so that the two become one unit in legal considerations. The ruling is a concretization of these legal considerations. The Criminal Procedure Code has regulated the systematics of judges' decisions in Article 197 paragraph (1), with additional provisions in Article 199 for non-conviction decisions. If the conditions for a decision in the KUHAP are not fulfilled, the decision is threatened with being null and void, although this threat has been narrowed down through the Constitutional Court Decision as explained above.

3.2. Tolerable Errors in Criminal Decisions with a Doctrinal Approach *Harmless Error*

Law continues to develop dynamically, so that provisions in positive law cannot always meet practical needs. In this context, the framework for the judge's decision has been regulated in the Criminal Procedure Code. To create a uniform model for writing decisions, the Supreme Court (MA) issued Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number 359/KMA/SK/XII/2022 concerning Templates and Guidelines for Writing Decisions/Determinations of Courts of First Level and Appeal Level in the Four Judicial Environments under the Supreme Court . Provisions in the Criminal Procedure Code and regulations issued by the Supreme Court indicate that judges' decisions must meet formal and substantial standards.

Some decisions submitted for legal action sometimes contain errors in the judge's considerations, rulings, or application of procedural law, but these errors are not significant so the decision is not cancelled. Like the following example:

1. In the decision of the Supreme Court of the Republic of Indonesia Number 14 K/Pid/2020, even though there were objections related to one piece of evidence that was not submitted procedurally, the Court decided that the error did not reduce the fairness of the decision, because other evidence was sufficient to support the judge's conclusion;
2. In the Supreme Court of the Republic of Indonesia decision Number 1234 K/Pdt/2018, the district court judge wrote the plaintiff's name incorrectly in the decision. However, the high court considered that this error did not harm the substance of the decision so it still upheld the previous decision;
3. In the Raha District Court Decision Number 8/Pdt.P/2019/PN Rah, there was a typo in the decision. The court acknowledged the existence of a "clerical error" and ordered corrections without canceling the substance of the decision;
4. The Supreme Court once corrected an error in writing the date in the decision on the judicial review of Presidential Instruction No. 8 of 2002. Even though there were writing errors, corrections were made without changing the substance of the decision;
5. In several cases, the Supreme Court rejected the cassation request even though there were errors in legal considerations that were insignificant and did not affect the fairness of the decision as a whole. For example, in the Supreme Court Decision Number 1128 K/Pdt.Sus-PHI/2021, the cassation request was rejected even though there were improvements in the decision;
6. In several decisions, the court acknowledged that there were errors in the application of procedural law, but if the error did not affect the substance and fairness of the decision, then the decision was maintained. For example, in the Supreme Court Decision Number 588 K/Pdt.Sus-PHI/2024, the cassation request was rejected with improvements to the decision;

Minor errors such as writing errors are also not a basis for canceling a decision, in accordance with the Elucidation to Article 197 paragraph (2) of the Criminal Procedure Code. These tolerable errors require legal explanation regarding the limits and the types of errors that can invalidate the decision. If the threat of nullity is provided for in law, this is clear; however, if it is not regulated, then a doctrinal approach *harmless error* necessary to investigate this problem.

Doctrine *harmless error* determines that even if there are errors in the trial, these errors are deemed not to affect the final result, so that the decision remains valid or is not cancelled. This doctrine states that not all errors are of equal importance, and errors alone are not sufficient to overturn a court decision. A decision will only be annulled if the error is deemed to have influenced the outcome of the decision (Sukarmini & Idrus, 2020). Before the introduction of this doctrine, conditions that were too formal and rigid caused delays and backlogs of cases in England, because without this doctrine, higher courts could overturn decisions for trivial reasons. In fact, American courts still maintain this view, even in the early 20th century, they were still overturning verdicts for very trivial errors, such as lack of words. *the* in the indictment. This causes many things to be repeated, some cases even up to five times. This condition led to dissatisfaction among lawyers, judges, and legal scholars, which ultimately prompted a reform movement to change the rules. According to *Justice* Frankfurter, the purpose of this doctrine is to prevent problems that are only related to technical procedures or minor errors in the trial. (Goldberg, 1980)

In the 19th century, American courts were so careful that even a small error in criminal justice could overturn a verdict. For example, in 1863, the California Supreme Court overturned a conviction in a robbery case simply because the indictment did not state that the items stolen did not belong to the defendant. Likewise, in another case, they overturned the decision because there was a typo in the term "*larceny*" (theft) is written "*larcey*." This condition shows that the courts often focus too much on technical aspects rather than aiming for substantial justice, even these technical matters can exonerate defendants who should be responsible (Henderson, 2020). In the early 1900s, many people were dissatisfied with the law's overly rigid way of dealing with errors in court. In 1906, the famous jurist Roscoe Pound said that "the worst thing about American legal procedure is the large number of requests for retrials" (Henderson, 2020). Doctrine *harmless error* those that exist today are largely a development of the second half of the 20th century. Previously, until 1919, courts generally followed the English rule which stated that "any substantial error" should lead to the annulment of a judgment. In 1919 when Congress passed *the revised Judicial Code*. This new provision provides that federal courts may only overturn lower court rulings if substantial rights are violated that could affect the outcome of the trial. In 1963, in case *Fahy v. Connecticut*, the United States Supreme Court provided guidance that doctrine *harmless error* can be applied to constitutional errors, but only to cases *Chapman v. California* In 1967, the United States Supreme Court officially declared that some constitutional errors could be considered not to affect the outcome and set standards for how the doctrine should be applied to such errors. (Kamin, 2002)

Doctrine *harmless error* emphasized that trials should proceed professionally and judges should decide cases based on the search for material truth. However, not all insignificant technical errors have to result in the cancellation of the decision. The aim of this doctrine is not to trivialize mistakes, but rather to prevent prolonged trials and provide legal certainty for those seeking justice. Thus, doctrine *harmless error* help achieve fast, simple and low-cost justice and substantive justice. Draft "*justice delayed is justice denied*" expressed by William Gladstone means that if justice is delayed in being given, then that is the same as not giving justice. This term has apparently been around for a long time and can be found in Biblical writings as well *Magna Carta*. This condition shows that people have long been aware that this delay can be detrimental. Roscoe Pound also addressed this issue in 1906, revealing why society was dissatisfied with the justice system. Robert A. Stein writes that these complaints about delays are still relevant in the 21st century. This shows that it is very important for a legal system to ensure that the process of obtaining justice is fast and efficient. Because if the process is too slow, not only will justice seekers be harmed, but it can also reduce public trust in a country's justice system (Stein, 2019). These views show that the existence of legal certainty in the criminal justice system aims to realize justice for justice seekers, and of course makes the public believe in judicial institutions as the appropriate forum for resolving problems that exist in society. The essence of this view is adhered to in the principles of administering judicial power, as in Article 2 paragraph (4) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (UU No. 48 of 2009), which states that "judiciary is carried out simply, quickly, and low costs."

In America, this principle is a constitutional right of citizens, where the Sixth Amendment to the United States Constitution states emphatically that "in all criminal prosecutions, the defendant has the right to a speedy and public trial." This right, like the other rights contained in the Sixth Amendment, is a very important right. The Fourteenth Amendment also guaranteed that the right to a speedy trial could be enforced against the states.

Apart from America, the right to a speedy trial has a long history in English law dating back to 1215, when *Magna Carta* signed. In it is a statement that states, "We will not sell justice to anyone, we will not deny or delay justice for anyone." Also, the famous jurist, Sir Edward Coke, wrote that in the late 13th century, judges who were given special duties would ensure that prisoners were not detained for long periods. They will provide speedy justice without placing prisoners in prison for too long. Lawyers in the American Colonies also studied English law, so it is not surprising that the first charter of rights drafted by George Mason included the right to a speedy trial: "In all cases criminal or under penalty of death, a person has the right to a speedy trial" (Tracz, 2019). The desire for a resolution of this case that does not drag on has long been one of the things that we can identify, as stated in *Magna Carta* in 1215. When applying doctrine *harmless error*, of course there will be difficulties in determining which errors can be tolerated and which cannot. Although this doctrinal approach is based on the principle of speedy justice, this cannot be used as a basis for ignoring the main objective of criminal trials, namely finding the material truth (*material truth*). Van Apeldoorn states that "criminal judges are different from civil judges, where civil judges uphold formal truth, while criminal judges must look for material truth". (D. R. Nugroho & Suteki, 2020)

Van Neste stated that material truth can be understood as correct knowledge or information, which reflects as much as possible the actual facts of a case. This truth provides the most accurate description possible of the facts relating to events that have occurred. By understanding the material truth, we not only see the surface of a problem, but also dig deeper to gain a full understanding of the actual situation, and this becomes the basis for a judge's decision in a criminal case (Naufal et al., 2021). In the relevant context, doctrine *harmless error* aims to ensure that justice is carried out quickly, simply and at low cost, and recognizes that errors that can be tolerated do not obscure a material truth which is the aim of the criminal trial. In this condition, an error that can be tolerated is when the error does not change the outcome of a decision, for example from guilty to not guilty, or vice versa, from innocent to guilty.

Doctrine *harmless error* This is expected to increase the efficiency of criminal trials and restore public confidence in criminal justice. According to this doctrine, technical errors, defects, or exceptions can be considered "harmless" if they do not affect the substantive rights of the parties, so that a higher court does not need to overturn a decision simply because of a "harmless error". (Lin, 2023)

In matter *Chapman v. California*, the U.S. Supreme Court affirmed that goal of the doctrine *harmless error* is to avoid annulment of judgments due to minor errors or defects that do not have a significant impact on the outcome of the trial. The US Supreme Court recognizes that there are certain constitutional rights that are so important to ensuring a fair trial that violations of those rights can be considered harmful. Examples of these rights include a forced confession, the right to be accompanied by legal counsel, or the right to an impartial judge. (Lin, 2023)

However, the US Supreme Court has also held that there are certain constitutional errors and in the context of certain cases can be considered harmless if the error has no effect on the outcome of the decision. US Supreme Court in case *Arizona v. Fulminante* to determine which types of constitutional errors can be studied in doctrine *harmless error*. In *Fulminant,* The US Supreme Court distinguishes between structural error and trial error. Structural errors are violations of the fundamental values of the trial mechanism; these errors make the mechanism unreliable and make criminal trials unfair. Therefore, structural errors can never be considered harmless and will automatically invalidate the

verdict. In contrast, trial errors are errors that occur during the trial process and errors of this type can still be analyzed using doctrine *harmless error*. Interestingly, confessions obtained by force are considered a deep structural error *Chapman*, but later classified as a conference offense in *Fulminant*. (Lin, 2023)

The United States Supreme Court now differentiates between doctrines *harmless error* into two scopes, namely structural errors and trial errors. Doctrine *harmless error* relevant to be developed in the analysis of errors that occur during trials and errors in decisions. First, in trial errors, errors can be tolerated as long as the errors do not violate the minimum rights and principles contained in a fair trial. This fair trial is a procedural aspect that must be guaranteed in criminal trials (Ažubalytė & Titko, 2022). John Rawls stated that criminal trials are part of procedural justice (*procedural justice*) which is not perfect (*imperfect*). In this model of justice, Rawls argues that criminal trials have the goal of "punishing the guilty and acquitting the innocent," but there is no guarantee that this goal can always be achieved. Even though the trial was fair, Rawls argued that there was no guarantee of the truth of the results. However, trials must still be designed to increase the likelihood of achieving the correct result. (Mladenović, 2022)

Based on Rawls' view, even if a criminal trial is designed to be as fair as possible, there is no guarantee that the outcome will be completely correct, especially if the trial is conducted unfairly. Therefore, violations of the content or substance of a fair trial need to be considered as detrimental violations (*harm*). On the other hand, if the violation does not violate the content or substance of a fair trial, then the violation can be considered not detrimental (*harmless*) and can still be tolerated. Next, a fair criminal trial will be explained.

In Article 6 *European Court of Human Rights* (ECHR), a fair trial is a right (*right to a fair trial)* which includes the right to a fair trial (*fair hearing*), The right to be tried by an independent and impartial tribunal (*independent and impartial tribunal*), The right to a trial that is open to the public, except in certain cases requiring confidentiality. This article aims to ensure that every individual is given fair treatment before the law, without discrimination, and that the legal process is not used as a tool to violate a person's basic rights. Even though Indonesia is not part of the ECHR, the principles in Article 6 are in line with universally recognized human rights and are in line with the norms regulated in the 1945 Constitution of the Republic of Indonesia.

Based on Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it guarantees everyone's right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. A fair trial must uphold principles *due process of law* (Asshiddiqie, 2005), namely protecting the rights of the accused during the legal process. Non-compliance with this principle can lead to substantive violations of fair trials, as this will have a direct impact on the defendant's ability to receive fair treatment.

A fair trial must be presided over by an independent and impartial judge (Mahfud, 2010). Injustice in a judge's decision, whether caused by personal bias or external pressure, constitutes a substantial violation of justice. This impartiality also includes the judge's freedom from political, economic or social pressures that could influence the decision.

Every legal procedure in a criminal trial must be strictly followed, including the rules stated in the Criminal Procedure Code. However, as confirmed by the Constitutional

Court Decision, procedural errors that do not violate the defendant's substantive rights can be considered *harmless* and does not invalidate the fairness of the trial results.

Examples of procedural violations that may be considered *harmless* is an administrative error in including the defendant's identity, as long as this does not affect the essence of the case or the defendant's rights.

A fair trial must also guarantee equality of all parties before the law. There shall be no discrimination based on social status, economic status, race, religion, or any other factor. Every defendant must be treated equally and given an equal opportunity to defend themselves (Rahardjo, 2006). The power imbalance between prosecutors, defendants and defense attorneys must be minimized through fair mechanisms, such as providing free legal advice to defendants who cannot afford it.

Fair criminal trials must be carried out openly based on Article 64 of the Criminal Procedure Code, except in certain conditions regulated by law, such as protecting victims of sexual crimes or children. Transparency allows the public to monitor the legal process and ensure that justice is served. Accountability of judges and other law enforcement officials is also important to ensure the integrity of the justice system.

Violations of the above principles can be categorized into two, which are:

1. Substantial Violation (*Harmful Error*): Violations that directly affect the defendant's rights or undermine the integrity of the trial, such as judge bias or violation of defense rights;
2. Non-Substantial Violations (*Harmless Error*): A procedural or administrative violation that does not impact substantive justice, such as a typographical error in a decision.

4. Conclusion

Errors in criminal decisions are divided into two, namely substantial errors (*harmful error*) or non-substantial (*harmless error*). Relying on the Constitutional Court's decision, as in cases Number 69/PUU-X/2012 and Number 68/PUU-XI/2013 which confirmed administrative/non-substantial errors (*harmless error*) that do not affect the Defendant's substantive rights should not cancel a criminal decision, while substantial violations that have a direct impact on the Defendant's rights must be avoided and corrected. Doctrine *harmless error* shows the importance of focusing on the substance of justice, not just technical procedures, to ensure real and efficient justice. In this context, the application of this doctrine helps create a justice system that is fast, simple and low cost

5. References

Aryani, F. D. (2024). The Judicial Policy of Ratio Decidendi regarding Corporate Criminal Liability towards Just Judgments. *Indon. L. Rev.*, *14*, 137.

Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia, Jakarta*. Konstitusi Press.

Ažubalytė, R., & Titko, I. (2022). Remote criminal trial–fair trial? *International Comparative Jurisprudence*, *8*(2).

Goldberg, S. H. (1980). Harmless Error: Constitutional Sneak Thief. *The Journal of Criminal Law and Criminology (1973-)*, *71*(4), 421–442.

González, R. C. (2022). The Ratio Decidendi through Mexican Lens. *Problema: Anuario de Filosofía y Teoría Del Derecho*, *16*, 1.

Hakiki, Y. R., & Taufiqurrahman, T. (2023). The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision: Gagasan Penataan Legislasi Nasional Berbasis Ratio Decidendi Dan Obiter Dictum Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, *20*(1), 78–99.

Henderson, Z. L. (2020). A Comprehensive Consideration of the Structural-Error Doctrine. *Mo. L. Rev.*, *85*, 965.

Kamin, S. (2002). Harmless error and the rights/remedies split. *Va. L. Rev.*, *88*, 1.

Leahy, J. K. (2022). Undead Dicta or Haunted Holdings? A Closer Look at the Zombie Subjective Intent Partnership Formation Cases. *UNHL Rev.*, *21*, 1.

Lin, M. (2023). Trial and Error: A Comparative Perspective on the Lay Participation in Criminal Trials and Appellate Review of Errors in Taiwan. *Ind. Int'l & Comp. L. Rev.*, *33*, 93.

Mahfud, M. D. (2010). Membangun politik hukum, menegakkan konstitusi. *Rajawali Pers*.

Marzuki, P. M. (2017). Penelitian Hukum, Jakarta, Kencana 2009. *Dalam Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi, Salim HS, Erlies Septiana Nurbani, Rajawali Pers*.

Mladenović, I. (2022). Considerations on democracy in Rawls's A Theory of Justice. *Prolegomena: Časopis Za Filozofiju*, *21*(1), 9–24.

Naufal, R. S., Rusmiati, E., & Ramdan, A. (2021). Urgensi Pembaharuan Hukum Autopsi Dalam Proses Penyidikan Tindak Pidana Pembunuhan Untuk Mencapai Kebenaran Materiil. *Jurnal Legislasi Indonesia*, *18*(3), 351–363.

Nugroho, D. R., & Suteki, S. (2020). Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi). *Jurnal Pembangunan Hukum Indonesia*, *2*(3), 291–304.

Nugroho, K. L. S. (2021). Criminal Law Policy of Justice Collaborator in Corruption Crime Case. *Law Reform*, *17*(1), 24–35.

Rahardjo, S. (2006). *Hukum dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)*. UKI press.

Stein, R. A. (2019). What exactly is the rule of law. *Hous. L. Rev.*, *57*, 185.

Sukarmini, W., & Idrus, N. S. (2020). Penerapan Pidana Kekayaan Intelektual Dalam Putusan Pengadilan. *Masalah-Masalah Hukum*, *49*(1), 90–102.

Tracz, E. T. (2019). Revisiting the right to a speedy trial: reconciling the sixth amendment with the speedy trial act. *Cap. UL Rev.*, *47*, 1.