EXTRAORDINARY LEGAL EFFORTS AGAINST REVIEW OF COURT DECISION IN CIVIL CASES IN THE CONSTITUTIONAL COURT DECISION OF THE REPUBLIC OF INDONESIA

Article in Journal of Critical Reviews - July 2020
DOI: 10.31838/jcr.07.16.141

CITATIONS
0

READS
106

4 authors, including:

Nur Rohim Yunus
Universitas Islam Negeri Syarif Hidayatullah Jakarta
109 PUBLICATIONS 512 CITATIONS

Rr Dewi Anggraeni
Universitas Pamulang
23 PUBLICATIONS 73 CITATIONS

Annissa Rezki
28 PUBLICATIONS 284 CITATIONS

Some of the authors of this publication are also working on these related projects:

- Islamic Ecological Laws: Environmental Ethics and Problems in The Kelud Mountain Kediri East Java View project
- Constitutional Law View project
EXTRAORDINARY LEGAL EFFORTS AGAINST REVIEW OF COURT DECISION IN CIVIL CASES IN THE CONSTITUTIONAL COURT DECISION OF THE REPUBLIC OF INDONESIA

Nur Rohim Yunus,¹ RR Dewi Anggraeni,² Annissa Rezki³

¹State University of Management, Moscow ²Universitas Pamulang Banten, ³Universitas Jayabaya Jakarta

Received: 16 March 2020 Revised and Accepted: 18 June 2020

ABSTRACT: Every citizen has the right to get, receive, and strive for legal assistance and certainty. Since conducting ordinary legal, appeal, or cassation, which must be related to the principle of legal certainty. Extraordinary legal remedies aim to find justice and material truth. A review is only allowed for judex factie decisions and the application of a combination of restrictions through procedural and discretionary models. In this study, the authors used a qualitative descriptive methodology and normative approach and included several case examples that had previously been warmed up and discussed for some time in reporting in various Indonesian media.

KEYWORDS: Judge Considerations, Review, Legal Remedies

I. INTRODUCTION

When listening to the word legal remedy, thoughts will emerge in the mind of debate, dispute, or dispute caused by a matter that is large enough and attracts attention. Especially in the Republic of Indonesia, where the people and their governments are very responsive to a policy. The responses that came were certainly very diverse. The following views and opinions from various perspectives that both need to be considered and certainly attract more attention, in general, to be discussed. The rule of law must not be upheld by ignoring the democratic principles stipulated in the constitution. Therefore, it also needs to be emphasized that sovereignty is in the hands of the people and is carried out according to the constitution (constitutional democracy) which is balanced with the affirmation that the Indonesian state is a rule of the law state that is sovereign of the people or democratic (democratische rechtstaat) [1, p. 70]. The law is no longer merely a row of dead articles contained in statutory regulation but has been "revived" by the living interpreter named judge [2, pp. 15-16]. In Indonesia, those who have the right to try and impose sanctions are judicial institutions, and judges are state apparatuses that exercise the authority to adjudicate and decide upon cases or problems that occur within the community. The task of the judge according to Roeslan Saleh is a humanitarian struggle, the magnitude of the responsibility of the judge who is carried out and must face inner struggles and turmoil in his soul when he has to make choices that are not easy in deciding the case he is trying. More than that, a judge must also open his hearing to the opinions and sense of justice expected by the community [3, p. 91]. Judges' decisions are cultural relativism, so it does not rule out the views of every judge in a case can be different. It is not surprising then that judges often have different views from one another, or there are differences in decisions, giving rise to the disparity in decisions among litigants.

The Review of Court Decision (PK) in a civil judgment is also referred to as the "Civiel Account" or "Civiel Request." The purpose of the Review of Court Decision (PK) is to fulfill a sense of justice for justice seekers because there is a possibility of reopening cases that have been decided by the court and decisions that have permanent legal force [4, p. 163]. While extraordinary legal efforts aim at finding justice and material truth. Justice cannot be limited by time or formality provisions for filing extraordinary remedies, such as the Review of Court Decision (PK) because it is possible that a substantial new novum was found when the previous Review of Court Decision (PK) has not yet been found [5, p. 9]. The Review of Court Decision (PK) also separates civil and criminal decisions. The Constitutional Court's ruling which opened the Review of Court Decision (PK) room more than once has also caused polemics among law academics and practitioners/law enforcers. Some agree and disagree concerning the legal aspects of the Review of Court Decision (PK) more than once. Even in the perspective of principles, theories, norms, and practices give rise to controversy. From a
philosophical perspective, the principle of justice is confronted with legal certainty. Based on legal certainty, a prolonged or endless case because of the Review of Court Decision (PK) many times without limit can cause justice to be held hostage so that it can harm justice seekers themselves. But on the other hand, the existence of novum that can appear or be submitted at certain times needs to be accommodated for the sake of material truth based on having/have previously submitted a Review of Court Decision (PK) before [6, p. 335]. The right to submit legal remedies is used by the defendant/convict and Prosecutor/Public Prosecutor, so the court must accept it [7, p. 21]. The term “Review of Court Decision (PK)” of court decisions that have obtained permanent legal force in positive law in Indonesia began to be known since the Indonesian state was independent, namely in the Law, Supreme Court Regulations (PERMA) as well as an Official Circular from the Supreme Court (SEMA) [8]. The legal efforts of the Review of Court Decision (PK) aim to provide legal justice and can be submitted by litigants, both for criminal and civil cases. Review of Court Decision (PK) is the right of a convicted person to undergo a criminal period in a prison [9]. Arrangement of Review of Court Decision (PK) only once, as explained in Article 268 paragraph (3) of the Criminal Procedure Code is a formulation of law that emphasizes the principle of legal certainty, because the case concerned has been tested by a judge through examination in the General Court (PN & PT) to cassation in the Supreme Court (MA). If the legal justice situation has not been reached, then the legal efforts in the form of a Review of Court Decision (PK) as an extraordinary effort more than once on the grounds of finding new evidence (novum), the request for Review of Court Decision (PK) need not be limited. Laws that contain general rules are guidelines for individuals behaving in society, both concerning fellow individuals and with society. The rules become a limit for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty [10, p. 158]. From the description above, the author wants to outline some things that will be the subject of discussion related to the dynamics of extraordinary legal efforts against the Review of Court Decision (PK) with a single break in consideration of article 268 of the Criminal Procedure Code. Among them are judges’ considerations in accepting and deciding with a single break on the Review of Court Decision (PK), aspects of the Review of Court Decision (PK) in one break, and Review of Court Decision (PK) in several case examples.

II. RESEARCH METHODOLOGY

The research method used is a normative juridical research method. Data analysis used in this study is a qualitative analysis, and conclusions are drawn using the inductive method, which describes specific matters and then draws conclusions that are generally following the issues discussed in the study. The approach used by the normative approach which discusses the Review of Court Decision (PK) is once broken into consideration of Article 268 of the Criminal Procedure Code. The specification/nature of this research is analytical descriptive, which describes various problems in their entirety regarding the completion of the petition for Review of Court Decision (PK).

III. ANALYSIS AND DISCUSSION

1. Judge's Consideration in Receiving and Deciding a Case in a One Time Break at the Review of Court Decision (PK)

In the perspective of legal history, the limitation of the norm “petition for Review of Court Decision (PK) can only be submitted 1 (one) time” in a civil case, not a policy born of a legislative initiative (formulating policy), but rather a norm that is formulated and derived from provisions of Article 7 of the Supreme Court Regulation (PERMA) Number 1 of 1969 which states that: “requests for Review of Court Decision (PK) can only be submitted once.” The Supreme Court held that if the Review of Court Decision (PK) could be submitted many times it was feared that the legal instrument would be used to avoid executions (such as drug cases) because it submitted the second Review of Court Decision (PK) after the president's pardon was rejected [11, pp. 407-408].

The initiative and inspiration of the Supreme Court limited the Review of Court Decision (PK) only once turned out to be based on the provisions of Article 400 “Reglement op de burgerlijke rechtsvordering voor de raden van justitie op Java en het hooggerechtshof van Indonesiër, alsmede voor de residentie-gerechten op Java en Madura, S. 1847-52 jo. 1849-63/Rv. "which is derived from French legal norms, specifically the provisions of Article 503 of the Code de Civil Procedure which states that:

“Na een eerst request civiel, het zij hetzelfde aangenomen of verworpen zij, zal men geen tweede hunnen indienen, het zij tegen het vonnis op request civiel gewezen, het zij tegen het vonnis hetwelk, na aaneming van dat request, ten principale zal hebben bestl.”
It means: "after the first petition of Review of Court Decision (PK) is made, whether the request is granted or rejected, then one can no longer submit a second request, either against the decision of the Review of Court Decision (PK) issued or after the request is granted for a decision that decides the subject matter" [12, pp. 189-204].

The Review of Court Decision (PK) is an extraordinary remedy that can be submitted only 1 (one) time as regulated in Article 23 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power and Article 66 paragraph (1) concerning the Supreme Court also emphasized that submission of Review of Court Decision (PK) can only be submitted once. [13] Law Number 5 of 2004 or amendments namely Law Number 3 of 2009 concerning the Supreme Court, as well as Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedures (KUHAP Law) provides limitations but is felt very minimalist, so as not to be able to withstand the desire of justice seekers to ask for justice to the highest court [14, p. 2]. But furthermore, the restrictions became more relaxed with the existence of the Official Circular of the Supreme Court (SEMA) Number 10 of 2009 dated June 12, 2009, which allowed submission of Review of Court Decisions (PK) more than once, both for civil and criminal cases.

In Article 263 paragraph (1) of Law Number 8 of 1981 Concerning the Criminal Procedure Code (KUHAP), it is explained that "Against court decisions that have obtained permanent legal force, except those which are free or released from all lawsuits, convicted or his heir can submit a request for Review of Court Decision (PK) to the Supreme Court." [15] In Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code, where Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code explains that "Requests Review of Court Decision (PK) of a decision can only be done once." [15] Besides, the Review of Court Decision (PK) is also regulated in article 31 of Law Number 13 of 1965 concerning Courts in the General Courts and Supreme Courts which states that: "In the case of a court ruling obtaining legal force, a review of Court Decision (PK) can be requested from the Supreme Court following the provisions stipulated in the Law." [16]

Judges in interpreting the law should pay attention to the principle of 'cessat in claris' and be more careful. The principles underlying the Review, namely the principles of justice, expediency, and certainty, as well as the decision of the Constitutional Court with the principle of ne bis in idem, speedy administration of justice and lini finiri opertet must be in line and not mutually limiting.

The process of making laws and regulations must be based on the existence of a balance, harmony, and harmony between legal awareness instilled from, above, and by the authorities (legal awareness) with legal feelings that are spontaneous from the people (legal feeling). [17, pp. 69-70]

2. Aspects of Review of Court Decision (PK) in One Time Binding

Submission of Review of Court Decision (PK) within 180 days after a court decision or decision has permanent legal force or since evidence of deception or new evidence has been found, and if the reasons for the applicant for Review of Court Decision (PK) are based on new evidence (Novum) then the new evidence was declared under oath and approved by the authorized official (Article 69 of Law Number 14 of 1985, which has been amended by Law Number 5 of 2004).

The law that limits the application for the Review of Court Decision (PK) can only be done once it can damage the sense of justice from justice seekers (justiciabelen). The justice seekers (justiciabelen) expect that cases submitted to the court can be decided by professional judges and have high moral integrity, so that they can give birth to decisions that not only contain aspects of legal certainty (procedural justice), but also have the dimensions of legal justice, moral justice, and social justice, remembering that justice is the main goal to be achieved from the process of dispute resolution in court. [18, p. 6]

The limitation of the Review of Court Decision (PK) in a civil case can be reviewed from the aspect of "equality in allowing submitting a Review of Court Decision (PK) to the parties" not giving a dimension of justice because only the Review of Court Decision (PK) applicant has received justice, while it does not include justice for the Respondent’s Review of Court Decision (PK).

There are two definitions of legal certainty, namely; First, the existence of general rules that make individuals know what actions may or may not be done. Second, in the form of legal security for individuals from the arbitrariness of the government, because with the existence of general rules that individuals can know what may be charged or done by the state against individuals [19, p. 23].
The concept of regulating legal remedies for the Review of Court Decision (PK) based on justice and legal certainty towards the renewal of civil procedural law should be oriented to the following aspects:

1. Restrictions on the Review of Court Decision (PK) in civil cases can only be done once for the sake of legal certainty. In essence, it does not provide equality of opportunity for the parties to submit remedies for the Review of Court Decision (PK). For the Respondent the Review of Court Decision (PK) may submit it or request for the Review of Court Decision (PK) if there is a decision that is contrary to the decision that has permanent legal force (inkracht van gewijzi de zaak / res judicata), not the decision of the Review of Court Conflicting Decision (PK) to be the reason for the request for submission of Review of Court Decision (PK) on the request for Review of Court Decision (PK) for another Review of Court Decision (PK) decision.

2. From the dimension of "legal certainty," it must be seen from the constancy of regulations or norms. In this aspect, the legal certainty is oriented towards the Supreme Court's authority, specifically its duties and authorities, and the existence of case restrictions that can be accepted by the Supreme Court. Based on the provisions of Article 30 letter b of Law Number 14 the Year 1985 jis Law Number 5 of 2004, Law Number 3 of 2009 concerning the Supreme Court, the Supreme Court is a judex juris who examines the application of the law carried out by judex facti (First Level Court and Appellate Level) is appropriate and following applicable legal provisions.

The Supreme Court as the highest court has more authority than the competence of judges at the appellate level with the competence to judge whether the judges of the first court and the appellate level are right or wrong in applying the law in assessing the facts of the trial [20, p. 51].

The Supreme Court as a court of cassation can be interpreted as a resolver or cancellation of a decision or a court decision that is considered to have applied the law (judex Juris). Therefore, according to Subekti, the cassation judge in deciding the case "sits on the Judex Factie seat" because he decides what is usually the "Judex Factie" authority (Court of First Instance or Appellate Level) [21, p. 161].

The material requirements for submitting a Review of Court Decision (PK) are regulated in Article 263 paragraph (2) of the Criminal Procedure Code, namely: Request for Review of Court Decision (PK) which is conducted based on: first, If there are new circumstances that raise a strong suspicion, that if the situation is already known at the time the trial is still ongoing, the result will be in the form of an acquittal or acquittal of all lawsuits or the demands of the public prosecutor cannot be accepted or against the case a lighter criminal provision is applied. Secondly, if in various decisions there is a statement that something has been proven, but the thing or condition as the basis and the reason for the decision that has been proven to have conflicted with one another. Third, if the verdict clearly shows a mistake of the judge or a real mistake.

The Supreme Court's interpretation of Article 268 paragraph (3) of the Criminal Procedure Code then arises as a result of the Supreme Court Judge who was wrong in applying the law. This is found in decision No. 133 PK / Pid / 2011 dated 2 October 2013 which then brought up 3 (three) legal norms, including:

1. Review of Court Decision (PK) can only be done "once" which means that each applicant for Review of Court Decision (PK) such as the convict or heir, or the Public Prosecutor may submit one Review of Court Decision (PK) time;

2. Requests for Review of Court Decision (PK) at this time can be accepted because there was a mistake/error of the Judge in the decision of the Judges of the Review of Court Decision (PK) in the previous period which decided higher than the decision made by the previous Judex Juris Juris Facti under Article 266 paragraph (3) of the Criminal Procedure Code;

3. Other reasons from the Petitioner for Review of Court Decision (PK) in the form of novum cannot be justified because it is not in the form of decisive evidence.

The ambiguity in the judges' decision is not uncommon in Indonesia, because the primary material used as the main reference for the judges is a law made politically in the parliamentary institution. So of course it has certain behavior that can end because it does not correlate with the values that live in the middle of society. So it is natural if a judge interprets to be able to end the conflicting legal thoughts. For each judge's decision generally available legal remedies, namely efforts or tools to prevent or correct mistakes in a decision [22, p. 168].

3. Review of Court Decision (PK) in some cases
In the Constitutional Court Decision, Number 34 / PUU-XI / 2013 dated March 6, 2014, which states that the limitation of the Criminal Review of Court Decision (PK) may only be done once has closed the space for the fulfillment of a sense of justice. The limitation of the Review of Court Decision (PK) in a civil case can only be done once for the sake of legal certainty in essence does not provide equal opportunity for the parties to submit legal efforts for the Review of Court Decision (PK). Legal certainty is normative conformity, both to the provisions and decisions of judges. Legal certainty is the implementation of a clear, consistent, orderly legal life system and cannot be influenced by subjective conditions. [23, p. 43]

However, against this Decision, there is a gap which is a problem in law enforcement in Indonesia, where many people who think the emergence of the Constitutional Court Decree Number 34/PUU-XI / 2013 is a death knell for legal certainty and justice in the Republic of Indonesia [24].

Gustav Radbruch said that law is the bearer of the value of justice which has both a normative and constitutive nature for the law. It is normative because it is towards justice that positive law originates, and it is constitutive because justice must be an absolute element of the law. Without justice, a rule is inappropriate to become law. Legal certainty is closely related to the guarantee of protection to the community from arbitrary actions aimed at public order, and expediency aimed at creating maximum benefits or happiness to the community, whereas justice is truth, impartial, can be accounted for and treat every human being at the same position before the law (equality before the law). [25]

Based on the Constitutional Court Decision Number 34 / PUU-XI / 2013 dated March 6, 2014, constitutional and normative questions arise, namely whether the principle of justice can be applied in the Review of Court Decision (PK) of the Civil Code considering that the provisions of civil law norms prioritize the search for formal truth (formale waarheid) in authentic evidence and statements of the litigants. According to Star Busman, in civil cases, people often consider that sufficient formal truth is obtained. That is different in the realm of criminal law. No wonder then that the Review of Court Decision (PK) became the object of material testing at the Constitutional Court.

As seen in the Review of Court Decision (PK) decision No. 39 PK / Pid.Sus / 2011 on behalf of Defendant Hengky Gunawan. The problem that arises is related to the consideration of a panel of judges stating that the death penalty is contrary to Article 28 paragraph (1) and violates Article 4 of Law Number 39 of 1999 concerning Human Rights. Where then the consideration of the death penalty is made one part of the judge's mistake or a real error in the cassation decision, to impose the decision of the Review of Court Decision (PK) by applying lighter criminal provisions.

In addition to the consideration of the provisions on the death penalty, there are also considerations of the Review of Court Decision (PK) panel of judges which are based on the reasons for the applicant of the Review of Court Decision (PK) which are used as part of the reason for the existence of a judge's mistake or a real mistake. However, these considerations also need to be reviewed by referring to the provisions of the existing legislation, doctrine, and jurisprudence. This is because as is well known, lighter criminal provisions by the panel of judges at the Review of Court Decision (PK) level can be carried out if the indictment is prepared by the public prosecutor in the form of alternative or subsidiary charges [26, pp. 635-638].

Then before, through its decision number 34/PUU-XI/2013, the Constitutional Court overturned Article 268 paragraph (3) of the Criminal Procedure Code which was requested by the former Chairperson of the Corruption Eradication Commission Antasari Azhar which was read on March 6, 2014. This decision implies that the Review of Court Decision (PK) may be submitted many times as long as it meets the requirements specified in Article 268 paragraph (2) of the Criminal Procedure Code.

The Constitutional Court's ruling had caused groups to agree and disagree, especially from within the Supreme Court itself. Because, the cancellation of the provisions of the Review of Court Decision (PK) can only have implications for the request for Review of Court Decision (PK) can be submitted many times by the convict or public prosecutor, causing legal uncertainty. The search for justice for every citizen is the most essential constitutional right. State CQ The Supreme Court may not close the efforts of every citizen to fight for justice for the rights of freedom and life. The restriction on the Review of Court Decision (PK) is a limitation on the rights of every person so that it is contrary to the spirit of the Indonesian state, where there is a guarantee for the rights of Indonesian citizens.

IV. CONCLUSION

The Supreme Court respects and is concerned about the impact of annulling Article 268 paragraph (3) of the Criminal Procedure Code. Respect, because it is a final and binding decision, and at the same time worried
because filing a request for Review of Court Decision (PK) becomes unlimited because it means that the Review of Court Decision (PK) may be submitted multiple times. In the practice of criminal cases, the Review of Court Decision (PK) can indeed be submitted more than once. This can be seen from the decision of the Supreme Court that allowed the convicted person to submit a Review of Court Decision (PK) over the Review of Court Decision (PK) decision submitted by the prosecutor beforehand. Because the panel of judges declared that the Review of Court Decision (PK) was the last right of the convicted person. The removal of Article 286 paragraph (3) of the Criminal Procedure Code will only create legal uncertainty. The allowed Review of Court Decision (PK) repeatedly affected the Supreme Court directly. Like, the difficulty of finding a supreme judge who is not in line with the speed of the case files pile up for inspection by representatives of God. Review of Court Decision (PK) regulated in Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code is declared to have no binding legal force after the appearance of the Constitutional Court Decision Number 34 / PUU-XI / 2013 concerning Judicial Review of Article 268 paragraph (3) of Law 8 of 1981 concerning the Criminal Procedure Code.

V. REFERENCES


