The Essence of Regulation and Dynamics of Submission of Judicial Review in Criminal Cases in Indonesia and Phenomena in Cases of Criminal Acts of Corruption

Josep Robert Khuana

University of Udayana
Corresponding author. Email: robertkhuana2020@gmail

ABSTRACT
The substance of the request for a judicial review of a court decision that has permanent legal force for justice seekers is an extraordinary legal remedy. Currently, the discussion regarding the matter is still often a matter of standard logistics. It has been regulated by the umbrella of proceedings in criminal justice, namely in Chapter XVIII, Article 263 to Article 268 of Law No. 8 the Year 1981 of Criminal Procedure Code. However, the dynamics of the development of practice have shifted and even deviated from the existing regulations. In principle, the judicial review effort of the convict or their heirs is a right, and according to the legal function, it is an effort to control the previous court decision. The applicant needs to provide reasons, such as new evidence (*novum*), in various decisions, there are contradictions, errors, or mistakes by the judge in deciding the case before. The dynamics in review efforts often deviate from formal legalities, such as the one being submitted more than one time. In this regard, the problem to be studied in this paper is the philosophical essence of the conception of judicial review efforts, the regulation of judicial review efforts in Indonesian law enforcement, and the dynamics of judicial review efforts in Indonesian law enforcement. Based on these issues, normative legal research is conducted with the aim that solutions can be discovered to solve the issues. Conclusions can be drawn by studying and analyzing the relevant theoretical foundations and conceptual frameworks. It was found that the philosophical essence of the concept of legal remedies being carried out is as a right of every justice seeker; the arrangement of legal remedies to be carried out in the Criminal Procedure Code has been regulated in a limited manner, and the dynamics of the regulation and implementation of judicial review efforts have changed and developed to give rise to disagreements according to the arguments of each party. In addition, this cross of opinion is used by convicts of corruption cases to file for reconsideration more than once.

Keywords: *Judicial Review, The Phenomenon in Corruption Cases.*

1. INTRODUCTION

The existence of law naturally and instinctively is that the law arises (made/formed), develop (applied), and dies (revoked, not followed again) by the former, namely the community itself. the great philosopher cicero in his adage, states, "*ubi societias ibi ius*," which means "there is society, there is the law [1]". Therefore, society needs and makes the law. In fact, in the end, the community is the individual or group that violates the law that has been established through the laws and regulations or potentially individually commits unlawful acts and/or acts against the law (*onrechtsmatige daad*). humans are identified as social creatures that the famous philosopher aristotle called *zoonpoliticon* [2]. When a violation of the law has occurred, the law will Start processing from the beginning, and at that time, a criminal case will emerge. Therefore, the investigation will be carried out (by the police), the prosecution will be carried out (by the prosecutor), the trial will be carried out by the court (by the judge), and the convict will be trained (by the correctional institution). if the trial process has ended marked by permanent legal force (*inkracht van geweijsde*), the law also attempts to counter the judge's decision. This legal effort starts from ordinary legal remedies, such as *verzet*, appeal, and cassation, regulated in article 233 to article 258 of the criminal procedure code.

Extraordinary legal remedies are regulated in article 259 to article 276 of the criminal procedure code. Specifically, for judicial review, it is regulated in articles 263-266 of the criminal procedure code. The focus of the discussion here is regarding extraordinary legal remedies on judicial review / *herziening*. This judicial review means an effort to control court decisions at the judex factie level for justice seekers (convicts) in certain severe cases, such as crimes classified as extraordinary crimes, crimes against humanity, and other serious crimes, such as premeditated murder. the perpetrators of this crime (the convict) will undoubtedly take advantage of this extraordinary legal remedy (review). this is because, in the legal process, the possibility is not closed for mistakes, whether done intentionally or unintentionally (there was a judge's mistake in deciding the case). the mistake, then, needs to be straightened out, corrected, and changed on the decision of the *judex jurist* court by the supreme court as a court of last resort.

Extraordinary legal remedies such as the judicial review in practice have often been used to submit requests for judicial review by corrupt convicts. because in fact, convicts of corruption are often severely punished, even sentenced to life imprisonment. As an effort to lighten the sentence, the convict asked the supreme court so that the courts at the district court and high court level reviewed their previous sentences by the courts at the final level (supreme court).

It has become material for reflection and study of several juridical-philosophical-sociological problems from the existence of this judicial review / herziening legal effort. For example, there are three issues examined in this study, namely: (1) what is the philosophical-ontological essence of the launching of judicial review? (2) how is a judicial review at the level of positive indonesian law (ius contituendum perspective) regulated? (3) what is the progress and direction of updating the judicial review arrangement from the perspective of the ius contituendum? the juridical-philosophical-sociological issue of this judicial review needs to get analysis and studied as a solution to answer the phenomena and facts of the existence of the judicial review in the realm of indonesian law both now and in the future in order to create justice/benefit and legal certainty in indonesian law enforcement.

2. RESULT AND DISCUSSION

2.1 Correlation among the Rule of Law and Rights, Human and Rights

Indonesia is law, not a power. This is confirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (amended) [3]. Before the amendment, it was only contained in the explanation of the State Government System Number 1, which reads, "Indonesia is a country based on the law (rechstaat). That means the Indonesian state is based on the law (rechtstaat), not based on sheer power (machstaat) [3].

With the statement, in the Unitary State of the Republic of Indonesia, the law serves as the basis, the benchmark for all aspects of the life of the state, government, nation, and society. It can also be said that the law determines the life of the community on all fronts. It is also intended that law is a system that plays a role in organizing and demanding social life to the national ideals and goals outlined in the preamble of the 1945 Constitution of the Republic of Indonesia, especially those stated and implied in Paragraph IV, which implies the form and type of democracy government welfare state [4], for every citizen. If Indonesia has an identity as a state of law, the law is supreme; the law is positioned above all else. The rule of law also means upholding the highest rule of law [5]. Indeed, the function and duty of the law are to maintain order and security for every citizen. The nature of the law regulates, binds, and even forces its citizens if they violate legal norms to be sanctioned by the state in the form of punishment or crime. Talking about the law means bringing up two essential elements: the existence of a positive law (ius operatum) that is fair and provides certainty and the existence of the objective, firm, and non-discriminatory law enforcement.

In principle, the state has an absolute obligation to protect the individual rights of its citizens, especially if someone conflicts with the law. Enforcement must be carried out by law enforcement institutions such as the Police, Prosecutors, Courts, Correctional Institutions, and Advocates' Organizations. With the existing set of laws and regulations, the law must be enforced at all times without discrimination (equality before the law). This is in line with Soerjono Soekanto's view that the law in its enforcement cannot be separated from its enforcement and cannot be ignored because if it is ignored, it will not achieve the law enforcement expected by the applicant judicial review [6].

The protection of the community's rights individually and in groups in the legal sector by the state through law enforcement officials and the rule of law is a human obligation. That is because the rights of each individual in the law, especially in the topic of the paper the author are writing, is anyone, including the state, can violate the right of individual freedom (independence) which cannot /.

The right to be free from any restraint is protected by a natural acquisition right that is innate from birth (even since a person is still in the womb). The right to freedom should not be reduced because it is an absolute right (derogable rights). The right to freedom, for example, was born in the first generation of human rights groupings initiated by Kalvasak [7] (French jurist and pioneer of human rights). Nevertheless, in law, even that freedom is not absolute. The law provides a priority scale for whenever a person's freedom can be reduced or violated for the sake of the law itself when needed in the legal process/mechanism itself.

2.2 A Brief History and Formal Legalistic Arrangements for Requests for Judicial Review of Decisions that Have Permanent Legal Force (Inkracht Van Geweijsde) in the Indonesian Positive Legal Treasure

Regulations for Judicial Review Applications in Several Laws Judicial Review Regulations in the Judicial Power Act. Law on Judicial Power since 1970 under Number 14 of 1970, which is named the Basic Provisions of Judicial Power in Article 21, outlines, "If there are things or circumstances that are determined by law, the court decision that has obtained legal force which can still be requested for a judicial review to the Supreme Court." In civil and criminal cases, by interested parties Law, No. 14 of 1970 has been successively revised with Law No. 35 of 1999 in conjunction with Law No. 4 of 2004 in conjunction with Law No. 48 of 2009 concerning the Law on Judicial Power (which is currently in effect) [8]. Through the provisions of Article 24 paragraph (1), there is still a formal legality guarantee regarding the request for a judicial review, as it is written, "About a Court Decision that has obtained permanent legal force, the parties concerned can submit a judicial review to the Supreme Court if there are certain things or circumstances that specified in the law."

When examined carefully, it seems that the formulation of Article 24 Paragraph (1) of Law Number 48 the Year 2009, in Paragraph (1) stipulates, "Against a court decision that has obtained permanent legal force, the parties concerned may submit a judicial review to the Court. Great if there are certain things or conditions specified in the law."; and paragraph (2) stipulates, "A judicial review cannot be carried out on a judicial review decision." As a basic rule, the law instructs the operational law to regulate technically and practically further. This refers to Number 1 of 1981 of the Criminal Procedure Code, enacted by the government starting on December 31, 1981 [9]. In that paragraph, the law is a legislation product of the independence era, which is proud of as the "Great Work of the New Order Government" to replace the Procedural Law. The criminal product of the Dutch colonial era was known as “Het Herziene Inlands Reglement” (Staatsblad 1941 Number 44).

Regulations for Continuous Judicial Review Requests in the Criminal Procedure Code Law No. 1 of 1981. Before the Criminal Procedure Code was born as a great product in law, a famous and legendary criminal case occurred, namely the Sengkon and Karta cases [10]. It happened in West Java. At that time, the judge made a mistake in deciding who the perpetrator was. From the facts of the case, the government accommodated in the Criminal Procedure Code to launch a Judicial Review Institution against court decisions that have permanent legal force. Previously, the Supreme Court also had issued Regulation (Regulation of the Supreme Court of the Republic of Indonesia) No. 1 of 1980 concerning Judicial review of court decisions that have permanent legal force. Hence, the concrete realization of the judicial review institution is an extraordinary legal remedy written in a formal legalistic-limitative manner in CHAPTER XVIII, Part Two, starting from the provisions of Article 263 to Article 269 of the Criminal Procedure Code.

Arrangements for Judicial Review requests in the Criminal Procedure Code for Indonesia or the drafters of legal norms have tried their best to satisfy the expectations of all parties, especially justice seekers who have an interest in that. However, along with the development of demands for law and justice, the previously available rules have given rise to different opinions. Each of them criticizes, examines, evaluates based on the arguments of interested parties. In general, judicial review arrangements have accommodated the basic arrangements, definitions, submission requirements, parties who can request a judicial review, procedures, time of submission, the examining authorities, the form of the decision, legal risks, and so on that arise according to the case requested by the judicial. The review. Each of these leaves socio-juridical-economic and political problems and the currents of modern globalization in all lines of human life.

As for the formulation of the provisions of the judicial review setting in the Criminal Procedure Code that need to be studied and analyzed are as those concerning the following matters: The formulation of the judicial review as legal standing is Article 263 Paragraph (1) of the Criminal Procedure Code, which reads "Against a court decision that has permanent legal force," unless the decision is free from all lawsuits, the convict or the heirs may submit a request for judicial review to the Supreme Court. (Here, it can be claimed that a judicial review can be requested only against a court decision that has permanent legal force, and the party who can file a judicial review is the convict or their heir. So, other parties/outside of that are prohibited from requesting a judicial review. This becomes logical because it is the convict or their heirs who have an interest in changing / mitigating / freeing from court decisions at the judex fatie level)

Requirements/basics for filing a judicial review according to Article 263 Paragraph (2) of the Criminal Procedure Code are: (1) If there are new solid circumstances/evidence or "Novum"; (2) If there are contradictions or differences in the various judges' decisions; and (3) If the decision has an error that the judge has made.

Article 264 Paragraph (3) of the Criminal Procedure Code stipulates, "Requests for judicial review are not limited to a period of time." This implies that a judicial review provides an opportunity for interested parties to request a judicial review at the Supreme Court.

The provisions of Article 266 paragraph (3) stipulate, "The punishment imposed in the judicial review decision may not exceed the sentence imposed in the original decision."

This implies that the judex jurist decision greatly protects the interests of the judicial review applications as a seeker of justice, and in the sense that such a judicial review decision from the Supreme Court acts as a protector against the applicant; the Supreme Court is the representative of the state and law enforcer, and the Supreme Court is the highest Court that participates as the executor for a democratic government with welfare states for its citizens.

The regulatory provisions of Article 268 Paragraph (3) of the Criminal Procedure Code relating to the frequency an applicant may request for a judicial review, as it is written that "A request for a judicial review of a decision can only be made once."

Although normatively, it has been strictly regulated, in practice, this provision is often violated by applicants for judicial review. For example, one application for judicial review was submitted more than once in the case of Antasari Azhar (with the excuse of a novum) and the case of the Bali Bombing I-Amrozi and his colleagues; the judicial review has been submitted several times. This has caused controversy among several basic arrangements for filing a judicial review.

Several parties then took legal action through a Request for Judicial Review as stipulated in Article 268 Paragraph (3) of the Criminal Procedure Code. Concerning the 1945 Constitution, the Constitutional Court once examined a judicial review regarding the limits on how many judicial review submissions may be made, with its decision Number: 34/PUU-XI/2013 dated March 16, 2014 [11]. The dictum of its decision is that the petition for judicial review is not limited; it may be submitted many times because it is considered in the consideration (ratio decidendi) that it does not conflict with consistency. Thus, the decision of the Constitutional Court contradicts the provisions of Article 268 Paragraph (3) of the Criminal Procedure Code, which states that the submission of a judicial review as stipulated may only be made once.

Eventually, the Supreme Court responded to the jurisprudence of the Constitutional Court mentioned above by issuing a Circular Letter of the Supreme Court of the Republic of Indonesia No. 7 of 2014 concerning the Submission of a Criminal Procedure Code in criminal cases, which states that the petitioner may only submit a judicial review one time. The opinions from the Supreme Court is "the Constitutional Court in its decision, which annuls the essence of Article 268 Paragraph (3) of the Criminal Procedure Code, does not abolish the legal norms contained in the provisions of Article 24 Paragraph 92) concerning Judicial Power in conjunction with Law Number 48 of 2009 and Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009 [12], all of which state that the application for judicial review is limited to one time only."

Some Socio-Juridical Facts and the Phenomenon of Submission of Judicial Review in Various Criminal Cases (Criminal Justice Practices), primarily Criminal Corruption in Indonesia

Several parties then took legal action through a Request for Judicial Review in Article 268 Paragraph (3) Criminal Procedure Code in practicing criminal law. Regarding the 1945 Constitution, the Constitutional Court had examined a material review regarding the limit of how many times it was permissible to submit a judicial review, with its decision Number: 34/PUU-XI/2013 dated March 16, 2014, that in the dictum of its decision that the application for judicial review is not limited, it may be submitted several times because it is considered that the ratio decidendi does not conflict with consistency. Thus, the decision of the Constitutional Court contradicts the provisions of Article 268 paragraph (3) of the Criminal Procedure Code that the submission of a judicial review is regulated for one time only. The Supreme Court responded to the jurisprudence of the Constitutional Court by issuing the Circular Letter of the Supreme Court of the Republic of Indonesia No. 7 of 2014, regarding the submission of a judicial review. This means that the applicant can submit a judicial review application only one time for criminal cases. The opinion of the Supreme Court that, "The decision of the Criminal Procedure Code of the Constitutional Court which cancels the essence of Article 268 Paragraph (3) of the Criminal Procedure Code does not abolish the legal norms contained in the provisions of Article 24 Paragraph 92) concerning Judicial Power in conjunction with Law No. 48 of 2009 and Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009, all of the rules in the article state that the application for judicial review is limited to one time only." As a result of the Constitutional Court's decision, convicts in corruption cases have the opportunity to apply for judicial review more than once. In addition, this has been proven to have been submitted by several convicts of corruption cases, including the convict OC. Kaligis. Convicts use opportunities for convicts to apply for judicial review more than once in corruption cases that are not in line with the state's efforts to eradicate corruption. It also alludes to the sense of justice of the people who are anti-corruption in Indonesia. With the occurrence of such phenomena and facts, for the sake of legal certainty for justice seekers, a revision of the Criminal Procedure Code is needed in order that in the future, there will be more definite, firm, and consistent arrangements for the above problem.

3. CONCLUSION

Based on the socio-juridical phenomena and facts on the regulation and application of the Judicial Review Institution on decisions that have permanent legal force, after being studied and analyzed based on legal theory, it can be concluded that the philosophical-juridical-ontological essence of the launching of the judicial review/herziening institution is a form of protection for the convict's rights. This is specifically in fighting for the rights of the convicted principal in restraining the

freedom of movement as the principal derogable right. This is done so that individual convicts' human rights are protected every time there is a conflict with the law. Moreover, if the Court Judge severely sentences the convict), they need to fight for their rights to decisions that are considered unprofessional, lacking,/unfair according to the convict's version: they can fight for their fate through judex jurist trials the Supreme Court. Regarding judicial review in positive Indonesian law, it has been regulated in a limitative, definite and precise manner as stated in the Law on Judicial Power, the Law on the Supreme Court, as well as the Criminal Procedure Code as well as the Circular Letter of the Supreme Court of the Republic of Indonesia. However, in judicial practice (criminal), many of these regulations are often violated by judicial review applicants either intentionally or unintentionally with arguments for the sake of justice and truth according to the version of each judicial review applicant (convict/heir / public prosecutor). However, the Constitutional Court of the Republic of Indonesia, through its Decision Number 34/PUU-XI/2013 dated March 16, 2014, opened an opportunity for convicts to apply for judicial review more than once, with the conditions as stipulated in Article 263 Paragraph (2) of the Criminal Procedure Code. Consequently, this has been utilized by several convicts of corruption cases as a means to apply for a judicial review that offends a sense of justice for the community; Procedural future judicial review arrangements, applicant parties, limitations on submission opportunities, and other matters need to be formulated in a firm, definite and consistent manner in the Criminal Procedure Code for the sake of upholding justice, realizing benefits and legal certainty, as a guarantee, especially for justice seekers under the auspices of Pancasila state ideology and the 1945 Constitution of the Republic of Indonesia.

REFERENCES

[1] L. Marpaung, *Teori, Praktek Pidana*. Jakarta: Sinar Grafika, 2005.

[2] S. Mertokusumo, *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Libertiy, 1985.

[3] F. Media, *UUD NRI Tahun 1945 dan Amandemennya*. 2004, p. 39.

[4] Notonagoro, *Pancasila Secara Ilmiah Populer*. Jakarta: Pancuran Tujuh, 1975.

[5] M. Pakpahan, *Potret Negara Indonesia*. Jakarta: Bumi Intitama, 2002.

[6] S. Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakkan Hukum*. Jakarta: , PT. Raja Grafindo Persada, 1991.

[7] S. Rhona K.M., *Hukum dan Hak Asasi Manusia*. Yogyakarta: PUSHAM UI, 2008.

[8] *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*. .

[9] *Undang-Undang Republik Indonesia Nomor 1 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP)*. .

[10] A. Sabuan and et. al., *Hukum Acara Pidana*. Bandung: Angkasa, 1990.

[11] *SEMA Republik Indonesia Nomor 7 Tahun 2014 tentang Pengajuan Judicial review (JUDICIAL REVIEW)*. .

[12] *Undang-Undang Republik Indonesia Nomor 3 Tahun 2009 tentang Mahkamah Agung*.