



## Juridical review of an acquittal verdict which unable to undergo any legal efforts (Critical analysis of supreme court's decision No. 128 K/Pid/2020 with the defendant of Junaidi Syahputra Bin Abu Bakar).

Muhammad Agra Syafiquddin Yusuf<sup>1</sup>, Dahlan<sup>2</sup>, Sulaiman<sup>2</sup>

<sup>1</sup> Student, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

<sup>2</sup> Lecturer, Faculty of law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

### Abstract

An acquittal verdict is one of several decisions that can be made by the Judges in any criminal cases through a fair criminal trial. Essentially, Public Prosecutors are invested with an authority to challenge any court decisions through legal efforts (e.g. appeal and/or cassation). However, taking into account the Supreme Court's Decision Number 128 K/Pid/2020 with Junaidi Syahputra Bin Abu Bakar as the Defendant (hereinafter will be referred to as the 'SC Decision'), Public Prosecutors are bound to a limitative regulation *in casu* of taking legal efforts upon the aforementioned acquittal verdict. This research aims to analyze: (i) the accuracy of judges' considerations in determining SC Decision, viewed from legal certainty, legal correctness and the value of justice; and (ii) the correct reformulation of legal efforts in terms of acquittal decision in Criminal Procedure Law. This writing is a normative legal research; library research is used along with the approaches of concept and values. The findings are (i) the judges' has given accurate considerations viewed from legal certainty and correctness, however, the SC Decision does not provides the value of justice; and (ii) there should be a reformulation upon legal efforts stipulation in regards of acquittal decision.

**Keywords:** supreme court, public prosecutor, acquittal decision, reformulation

### Introduction

The 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a rule of law state. In line with this provision, one of the important principles of a rule of law is the existence of guaranteed implementation of an independent judicial power, free from the influence of other powers to administer justice in order to uphold law and justice. Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "UUD 1945") emphasizes that the judicial power is an independent power to administer justice in order to uphold law and justice.<sup>[1]</sup> Enforcement of the criminal law indicates that the independency of judges provides the widest possible freedom to be able to see the value of truth in legal events, not the other way around, which may use to commit an act that only has transactional value.

The importance of administering justice is related to legal certainty, as Prof. Van Kan stated that the law aims to safeguard the interests of every human being so that these interests are not disturbed.<sup>[2]</sup> In an effort to seek, prevent and safeguard these matters and avoid taking the law into their own hands (*eigenrichting is verboden*), so that a judiciary is held to examine and decide on every case submitted to the court, by mediation of a judge based on applicable legal provisions.

As one of the implementation of criminal procedural law, a judge is given an authority based on statutory regulations to receive, examine and decide on a criminal case, which makes it very important for a judge who is given special authority to act fairly in handling a case. In criminal procedural law, there are 3 (three) types of judge's decisions, namely: (i) Sentences; (ii) Release of All Claims; and (iii) Acquittal. Of these 3 (three) types of decisions, a

defendant can be acquitted of all charges on the grounds that the judge has not proven the crime sufficiently based on the evidence and according to the provisions of the criminal procedure law.

Regarding the acquittal decision, legal efforts can be made in accordance with Article 1 Paragraph 12 of the Criminal Procedure Code (hereinafter referred to as the "KUHAP") which explains that legal efforts are the right of the Defendant or Public Prosecutor not to accept the court's decision. Criminal law efforts are divided into 2 (two), namely ordinary legal efforts and extraordinary legal efforts. Whereas ordinary legal efforts are divided into 2 (two), namely: (i) Appeals; and (ii) Cassation.

In its development, the phrase "*except for acquittal*" in Article 244 KUHAP has been annulled by the Constitutional Court (MK) through Decision No. 114/PUU-X/2012 dated 28 March 2013 ("MK Decision"). So that currently the Defendant and Public prosecutor can still submit a cassation against the acquittal. However, in Article 45A of Law No. 5 of 2004 concerning Amendments to Law No. 14 of 1985 concerning the Supreme Court (hereinafter referred to as "UU No. 5/2004") limits cases that meet the requirements for cassation to consist of<sup>[3]</sup>: (i) pre-trial decision; (ii) criminal case punishable by imprisonment for a maximum of 1 (one) year and/or punishable by a fine; and (iii) state administrative cases whose object of lawsuit is in the form of decisions of regional officials whose scope of decisions applies to the area of the region concerned.

The cases for the criminal act of unpleasant conduct at the Pidie District Attorney's Office in Kotabakti which violate the provisions as stipulated in Article 335 paragraph (1) of the Indonesian Criminal Code ("KUHP") which punishment is: (i) imprisonment for a maximum of one year or (ii) a fine

of up to four thousand five hundred rupiahs, who tried the defendant Junaidi Syahputra Bin Abubakar, was acquitted of all charges by the Sigli District Court. The Public Prosecutor then made a request on cassation against the acquittal of all the charges. However, the SC Decision stated that the Supreme Court could not accept the cassation request from the Public Prosecutor based on the legal reasoning that the case did not meet the requirements for cassation based on Article 45A paragraph (2) UU No. 5/2004.

The consideration of the judge in SC Decision certainly violates the law in limiting a person or public prosecutor in seeking material truth or obtaining justice if in the submission of cassation legal efforts restrictions are made. It is because as stated in Article 263 of the Criminal Procedure Code, the Public Prosecutor in this decision can't apply for extraordinary legal efforts or Judicial Review. This is contrary to the provisions of Article 28D Paragraph (1) of the 1945 Constitution which stipulates that everyone has the right to a fair legal certainty.

### Research Method

This research is based on a normative juridical method. The data collected is based on secondary data in the form of laws, books, the latest scientific journals, and searches for other law-related materials. The method of data collection used in this research is the study of literature. The data are analysed qualitatively, namely analysis with analytical and prescriptive descriptive analysis.

### Results and Discussions

#### 1. Acquittal and Release from All Claims Decisions

**Acquittal Decision.** Theoretically, acquittal decisions in the Continental European law family are commonly referred to as "*vrijspraak*" decisions, while in the Anglo-Saxon family they are called "*acquittal*" decisions<sup>[4]</sup>. In principle, the essence of the acquittal occurred because the defendant was declared legally and convincingly not guilty of committing a crime as charged by the public prosecutor/prosecutor in the indictment. Concretely, the defendant was acquitted of all charges and was not sentenced to crime.

Article 191 paragraph (1) KUHAP stipulates that:

*"If the court is of the opinion that from the results of the examination at trial, the guilt of the defendant for the actions he was charged with has not been legally and convincingly proven, then the defendant is acquitted."*

In the elucidation of Article 191 paragraph (1) KUHAP, what is meant by "*the actions charged against him are not legally and convincingly proven*" is insufficient evidence according to the judge's assessment on the basis of evidence using evidence according to the provisions of this criminal procedure law. Juridically, a defendant is acquitted if the panel of judges concerned considers: (i) does not fulfill the evidence according to the law negatively; (ii) does not meet the principle of proof.

**Release of All Claims.** Fundamentally, the decision to release from all claims or "*onslag van alle rechtsvervolging*" is regulated in the provisions of Article 191 paragraph (2) KUHAP, which formulated that:

*"If the court is of the opinion that the act charged against the defendant is proven, but the act is not a crime, then the defendant is dismissed from all charges."*

Like an acquittal, a decision to release from all charges has several conditions that must be met, namely: (i) the

defendant's actions are proven; and (ii) is not a criminal act.<sup>[5]</sup>

*"The defendant's actions are proven guilty"* legally, convincingly according to the facts revealed and according to valid evidence in Article 184 KUHAP and convincing the judge to declare the defendant as the perpetrator of the act. Even though it is proven, "*the act is not a crime*". Even though previously it had been stated at the level of inquiry and investigation that the case under investigation was a criminal case, however, in the trial examination, the case was decided by the panel of judges not being a criminal case.

### Ordinary and Extraordinary Legal Efforts

**Appeals:** According to Yan Pramadya Puspa, an appeal (*revise/re-examination*) is a re-examination of a criminal case by a court of a higher level, as long as the time period given is still valid. Appeal is the right of a defendant and prosecutor as explained in Article 67 KUHAP. Specifically for the acquittal as according to the Letter of the Supreme Court of the Republic of Indonesia No. MA/PEB/2651/83, an appeal can be filed against a purely veiled acquittal. For this case, there must be reasons to prove that a pure acquittal decision is actually incorrect, therefore it is subject to appeal and the legal remedy that is open to pure acquittal and release from all charges, is cassation to the Supreme Court.

**Cassation:** Cassation is one of the efforts provided by law, which is used as a means or tool to ask the Supreme Court to re-examine court decisions in criminal cases that are hierarchically below it or decisions of final courts.

**Cassation in the Interest of Law:** Cassation for the Interest of Law is commonly referred to as "*cassatie in het belang van het recht*". Cassation for the Interest of Law is one of the efforts provided by law, which is used as a means or tool by the Attorney General to ask the Supreme Court to re-examine the court's decision which is hierarchically below him.<sup>[6]</sup>

**Judicial Review:** According to J.C.T Simorangkir, that *herziening* is a review of court decisions that already have permanent legal force. As for the legal basis for Judicial Review, as stipulated in Article 23 of Law No. 48/2009 concerning judicial power, that: (i) regarding court decisions that have obtained permanent legal force, the parties concerned can submit a judicial review to the Supreme Court, if there are certain matters or circumstances specified in the law; (ii) the Judicial Review decision cannot be revisited.

### Analysis of Supreme Court Decision No. 128K/PID/2020 with the Defendant of Junaidi Syahputra Bin Abu Bakar

The Council of Judges of the Supreme Court in the Supreme Court Decision No. 128K/PID/2020 adjudicates that the cassation request from the Public Prosecutor at the Pidie District Attorney in Kotabakti can't be accepted, concerning that the punishment for such cases in Article 335 paragraph (1) point (1) of KUHP is in a maximum of 1 (one) year in prison. Hence, according to Article 45A of UU No. 5/2004 as amended by UU No. 3/2009 can't be examined at the cassation level.

In the perspective of legal certainty theory, the SC Decision is in line with the principle of administering justice based on

legal certainty. This is because the Supreme Court has implemented a decision that contains clarity and consistency over the enactment of a law, wherein in an environment that has legal certainty, law enforcement is not affected by subjective aspects whether that subjectivity is caused by power relations or external pressure.

SC Decision has also fulfilled the aspect of normative truth, namely a truth of certain legal norms which the value of its truth is obtained because of its suitability/compatibility with legal norms that have a higher hierarchical position. Supreme Court has appreciated the norms in Article 45A of UU No. 5/2004 as amended by UU No. 3/2009 which does not give legal authority to the Supreme Court in adjudicating cassation against criminal cases which are punishable by imprisonment for a maximum of 1 (one) year and/or are subject to fines.

However, it feels that the construction of Article 45A of UU No. 5/2004 as amended by UU No. 3/2009 which does not give legal authority to the Supreme Court in adjudicating cassation against criminal cases which are punishable by imprisonment for a maximum of 1 (one) year and/or subject to fines have not succeeded in providing a sense of justice. By accepting this limitation, this type of case will not receive factual and in-depth legal considerations in order to find justice for the parties in the dispute.

Often, these cases are "*simplified*" by judges, especially at the District Court level, because a crime that is punishable by a maximum imprisonment of 1 (one) year and/or are subject to a fine is a type of *misdemeanor*. In the event that the District Court acquits a criminal case which is punishable by imprisonment for a maximum of 1 (one) year and/or are subject to a fine, then in the current legal construction, the Public Prosecutor no longer has any legal effort, be it law of appeal as well as legal remedies for cassation, to fight for material truth and substantive justice in this case.

### **Construction Reformulation of Legal Efforts for Acquittal Decision in the Criminal Procedure Law**

Based on the previous description, it is necessary to reformulate the regulations regarding appeals and cassation against acquittals, both pure acquittal and impure acquittal, including criminal cases that are punishable by imprisonment for a maximum of 1 (one) year and/or are subject to a fine. Legal reform can be regulated in the bill on KUHAP, with the following points:

1. Against the acquittal, the Defendant or the Public Prosecutor has the right to appeal against the decision of the court of first instance to the court of second instance, except for the court's decision in an expedited manner.
2. The Defendant or Public Prosecutor has the right to appeal to the Supreme Court against the decision of the second instance court.
3. In the case of a court of first instance and a court of second instance giving a decision that acquits the accused, the Defendant or Public Prosecutor has no right to appeal to the Supreme Court.
4. Removing the limitations on cases that can be appealed at the Supreme Court, namely criminal cases that are punishable by a maximum imprisonment of 1 (one) year and/or are subject to a fine.

### **Conclusion**

To sum up, hence

#### **1. Supreme Court Decision No. 128K/PID/2020 with the Defendant of Junaidi Syahputra Bin Abu Bakar**

The Council of Judges has gave the right decision in the perspective of the theory of legal certainty and normative truth. However, such decision does not provides a sense of justice because in these cases mean that they will not receive consideration of a factual and in-depth legal considerations in order to find justice for the parties to the dispute.

#### **2. Reformulation of Legal Efforts for Acquittal Decision in the Criminal Procedure Code**

It is necessary to reformulate the formula regarding appeals and cassation against acquittals, both pure acquittal and impure acquittal, including criminal cases that are punishable by imprisonment for a maximum of 1 (one) year and/or are subject to a fine.

### **References**

1. Indonesia, the 1945 Constitution of the Republic of Indonesia.
2. Kansil, C.S.T., and Christine Kansil. Introduction to Indonesian Law. Jakarta: Rineka Cipta, 2011.
3. Indonesia, Law on Amendments to Law Number 14 of 1985 concerning the Supreme Court, Law no. 5 of 2004, LN No. 9, TLN No. 4359.
4. Mulyadi, Lili. The Face of the Judge's Decision in Indonesian Criminal Procedure Code. Bandung: PT Citra Aditya Bakti, 2010.
5. Harahap, M. Yahya. Discussion of Problems and Application of the Criminal Code: Court Examination, Appeal, Cassation, and Judicial Review, Second Edition. Jakarta: Sinar Graphics, 2003.
6. Subekti, R. The power of the Supreme Court of the Republic of Indonesia. Bandung: Alumni, 1992.