

**LEGAL EFFORTS FOR REVIEW BY THE PUBLIC
PROSECUTION OF THE VERDICT
DEATH CRIME BECOMES
LIFETIME**

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ABSTRACT

A cassation decision is a decision that has permanent legal force, therefore if they are still dissatisfied with the cassation decision, the parties can submit legal action for judicial review to the Supreme Court through the district court clerk. A request for review is submitted not only for dissatisfaction with the cassation decision, but also for all court decisions that have obtained permanent legal force, in the sense that district court decisions that are not appealed can be submitted for review, and high court decisions that are not appealed can be requested for review. However, legal action for judicial review can only be submitted once. Therefore, if you still want to take legal action, this is closed. When applying for a review, the applicant for review must have new evidence that has never been presented before, and if it was presented at a previous hearing, the decision would be different, or have evidence that the judge made a mistake in applying the law. This type of research uses a normative juridical approach and uses qualitative analysis techniques which are then explained and analyzed using descriptive analytical methods. The type of approach used in writing this thesis is a library research approach, namely by studying books and documents related to the topic of the article and also using a statutory regulatory approach, namely by reviewing existing statutory regulations. A request for reconsideration does not suspend or stop the implementation of a court decision. As long as there is no decision, the request for reconsideration, which can only be submitted once, can be withdrawn. The Supreme Court of the Republic of Indonesia decided the request for judicial review at the first and final levels. This confirms that the application for review is only submitted once, and there is a term known as 'no review above review'. This ambiguity in the judicial review occurs due to the provisions in the Prosecutor's Law which state that the Prosecutor also has the right to submit a PK, in order to overcome the public's sense of justice towards the law. Meanwhile, according to the Judicial Power Law itself, prosecutors do not have the right to carry out PK. The right to submit a PK only rests with the Defendant, his Family and/or Heirs. Related to this research, the proposed PK is related to the change of the death penalty to life imprisonment by the judge as a result of the trial process at the Supreme Court.

Keywords: Judicial Review Efforts, Sentence Changes in the Supreme Court, and Judicial Review by Prosecutors.

A. Introduction

The development process can lead to progress in people's lives, apart from that it can also result in changes in the social conditions of society which have negative social impacts, such as changing the sentence of death by the District Court at the first instance and the High Court at the cassation level, to life imprisonment by Supreme Court judges in a trial at the Supreme Court in the continuation of the trial in the case of the murder of a police aide who was shot dead by his own superior, namely a high-ranking police officer who had the rank of Inspector General of Police and served as Head of the Propam Division at National Police Headquarters.

The Supreme Court Judge's decision to change the death penalty sentence became sensational and controversial, both among legal practitioners and academics in particular and among the wider community in general. How could it not be, and how is it possible that the verdict in this case/case then shifts from the death penalty to life imprisonment, even though during the trial period which was also shown directly to the public, it was proven from the results of the examination at the trial of the high-ranking police officer (the perpetrator) indeed had planned and/or carried out the premeditated murder of his aide. This was also strengthened by the facts and testimony of witnesses at the trial, that it was true that the high-ranking police officer (the perpetrator) had shot the aide dead with his own weapon, without resistance, and also without any humanity.

The judge at the district court and high court in South Jakarta felt that the death penalty was handed down against a high-ranking police officer (the perpetrator) in accordance with the facts, evidence and witness statements at the trial. The victim's family and Josua's Lawyer Team were satisfied and relieved with the results of the judge's decision. That what the Public Prosecutor demands is in accordance with the trial judge's decision.

The death sentence of a high-ranking police officer (the perpetrator) which could be changed to a life sentence, was the result of a judicial review effort with the Supreme Court which was requested by the Defendant himself. And it turned out to

have succeeded in changing the mindset of the Supreme Court judges with their legal considerations using the basics of Judicial Review presented by the Team of Legal Counsel/Lawyers for the high-ranking police officer (the perpetrator).

The decision of the Supreme Court justices received a disturbing response and disturbed the public's sense of justice, so the Public Prosecutor responded to this with his legal morality in responding to the unrest and sense of justice that disturbed the public by saying "will study the decision made by the Supreme Court justices which changed the sentence death becomes a life sentence in the case of a high-ranking police officer (the perpetrator) who killed his aide.

In Article 263 of the Criminal Procedure Code (KUHAP) there is also a controversial polemic and opinion among practitioners, academics and law enforcement officials. Where some of them stated that in fact those who have the right to submit a Judicial Review (PK) are only the convict, the victim's family or their heirs, and not the Public Prosecutor.¹

The meaning of "other party" which is not explicitly mentioned only has rights in the sense of being able to apply for a judicial review if there is a court decision stating that the alleged act is considered proven but is not followed by a criminal conviction. Because what is said to be the "other party" is not the convict but the Public Prosecutor (JPU). This is in line with Law Number 16 of 2004 concerning the Prosecutor's Office, which has just been amended with Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia. Where in this provision, what is widely highlighted by the public, especially practitioners and academics, is the granting of authority to prosecutors to submit a judicial review (PK). In Article 30 C Letter h, the Law regulates: "In addition to carrying out duties and authority, the "Prosecutor's Office" can: h. submit a review."

Even though there is ambiguity in the norms above, this is a reason for

¹ Yayang Susila Sakti, "Peninjauan Kembali Oleh Jaksa Penuntut Umum: Antara Kepastian dan Keadilan" diakses melalui: <file:///C:/Users/Aspire/Downloads/galiehd,+167-357-1-RV.pdf>, halaman 2

prosecutors to still be able and able to submit a judicial review, where the consideration is to make efforts to prosecute the defense against a sense of justice in society.

The Judicial Review was formed aimed at the interests of the convict, not the interests of the state or the victim. This provision rests on the philosophical basis, that the state has wrongly punished innocent citizens which can be corrected again by ordinary legal measures.²

B. Research Methods

A research cannot be said to be research if it does not have a research method.³ Research methods are one of the factors of a problem that will be discussed.⁴ The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

C. Analysis And Discussion

1. Mechanism for reviewing death penalty decisions to life imprisonment

Review of court decisions that have permanent legal force (*herzeining*) is a review of decisions at all levels of court, such as district courts, high courts and the Supreme Court that have permanent legal force, except for decisions of acquittal or release from all legal demands.⁵ Furthermore, based on Articles 66 – 77 of Law Number 14 of 1985 concerning the Supreme Court, regarding procedures for handling cases for reviewing court decisions that have obtained permanent legal force, in general matters it is stated that: 1) Applications for judicial review can only be submitted 1

² M. Jordan Pradana, Dkk. Tinjauan Yuridis Peninjauan Kembali yang Diajukan oleh Jaksa Penuntut Umum Terhadap Putusan Lepas dari Segala Tuntutan Hukum. *PAMPAS: Journal Of Criminal* Volume 1 Nomor 2, 2020. Halaman 32.

³ Ismail Koto, “Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme”, *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

⁴ Ida Hanifah, Ismail Koto, “Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19”, *Jurnal Yuridis* 8.1, (2021): 23-42.

⁵ Andi Sofyan dan Abd. Asis. 2014. *Hukum Acara Pidana Suatu Pengantar*. Jakarta: Kencana, halaman 291

(one) time, 2) The request for reconsideration does not suspend or stop the implementation of the Court's decision. 3) The application for reconsideration can be withdrawn as long as it has not been decided, and if it has been withdrawn the application for reconsideration cannot be submitted again.

In relation to the writing of this research which focuses on the legal action for Judicial Review (PK) carried out by the Public Prosecutor and not carried out by family relatives and/or heirs, regarding the decision of the High Court judge who decided in his decision that the death row convict should be sentenced to life imprisonment. life, is a legal remedy that can be taken by the Public Prosecutor against the results of the judge's decision at the cassation hearing at the High Court which gives a life sentence to the convict (person who is sentenced), where the Prosecutor still has confidence that based on the suitability of the facts that occurred and with sufficient evidence at the cassation hearing, the prosecutor remained firm in his stance of prosecuting the convict with the death penalty.

The Prosecutor considers that the decision by the High Court judge changing the Prosecutor's demands is not appropriate for the convict, and for this reason the Prosecutor has carried out a Judicial Review (PK) effort with the Supreme Court, so that the cassation decision by the High Court judge is reviewed again with an assessment and examination of the the results of the High Court judge's decision at the cassation level.

The procedure for submitting a request for review can be carried out orally or in writing by the Public Prosecutor to the Supreme Court of the Republic of Indonesia, through the district court clerk who decides the case at the first instance. Moreover, if the applicant, in this case, the Public Prosecutor who is requesting a review, has new evidence that was never presented before, and if this was presented at the previous trial, the decision would be different, or there would be evidence that the judge had made a mistake in applying the law.

A request for reconsideration does not suspend or stop the implementation of a court decision. As long as there is no decision, the request for reconsideration, which can only be submitted once, can be withdrawn. The Supreme Court of the Republic of Indonesia decided the request for judicial review at the first and final levels. This confirms that the application for review is only submitted once, and there is a term known as 'no review above review'.

2. Legal efforts to review the prosecutor's decision regarding the death penalty to life imprisonment

To prevent or correct a judge's error in a decision, various legal measures can be taken. Efforts that can be taken include filing an appeal, using cassation and judicial review (PK). Based on Article 1 point 12 of the Criminal Procedure Code, "Legal remedy is the right of the defendant or public prosecutor not to accept a court decision in the form of a challenge or appeal or cassation or the right of the convict to submit a request for review in the matter and according to the method regulated in this law.

Related to this research is the legal action for Judicial Review (PK) by the Public Prosecutor regarding the decision of the High Court judge who decided in his decision that the death row convict should serve a life sentence, is a legal effort that can be taken by the Public Prosecutor regarding the results of the judge's decision at the cassation hearing in the High Court which gave a life sentence to the convict (the person who was sentenced), where the Prosecutor remained confident that based on the suitability of the facts that occurred and with very sufficient evidence at the cassation hearing, the Prosecutor remained in his position to prosecute the convict with the death penalty.

The Prosecutor considers that the decision by the High Court judge changing the Prosecutor's demands is not appropriate for the convict, and for this reason the Prosecutor has carried out a Judicial Review (PK) effort with the Supreme Court, so that the cassation decision by the High Court judge is reviewed again with an assessment and examination of the the results of the High Court judge's decision at the cassation level.

The Prosecutor's Authority to Request a Judicial Review Based on Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court. In Chapter IV concerning Procedural Law of the Supreme Court, Part Four. In Article 68, Article 68 states the parties who have the right to request a review. Article 68 reads: "(1) The application for review must be submitted personally by the parties to the case, or their heirs or a representative who is specifically authorized to do so. (2) If during the review process the applicant dies, the application can be continued by his heirs." From this article, it is also not stated that the prosecutor has the right to submit a review of a decision that has obtained permanent legal force, but it also does not state that there is a prohibition on the prosecutor from requesting a review. This law only states that the request for review is submitted by the party in the case but does not state further about who is included in the parties in the case. The explanation section of this law also does not explain these parties.

The Prosecutor's Authority to Request a Judicial Review Based on Law Number 48 of 2009 concerning Judicial Power states that a judicial review of a decision that has obtained legal force can still be submitted by the parties concerned or interested parties. Article 24 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that: "Regarding decisions that have obtained permanent legal force, the parties concerned can submit a review to the Supreme Court, if there are certain matters or circumstances specified in the Law -Invite." This article was interpreted by the review panel of judges in several cases to mean that the parties concerned were apart from the convict and his heirs, of course the other party was the Public Prosecutor. This is reaffirmed in Article 30 C Letter H of Republic of Indonesia Law no. 11 of 2021 concerning Amendments to Law no. 16 of 2004 concerning the Indonesian Prosecutor's Office gives the same authority to the prosecutor's office to submit a judicial review.

In relation to this research, regarding the Public Prosecutor's review of the judge's decision to sentence the death penalty to life imprisonment, for example the case of the shooting of a high-ranking police officer against his aide. Apart from

changing the death sentence against the perpetrator/defendant, the Supreme Council also changed the sentences against three other defendants. From the results of the two decisions at the two court institutions, namely: the District Court and the High Court, the Public Prosecutor felt that the legal prosecution by the Prosecutor had been supported by the two court institutions previously. According to the prosecutor, if the cassation decision is legally binding, the decision can be executed immediately.

Because the death penalty sentences for these cases clearly and clearly violate Article 340 of the Indonesian Criminal Code. Article 55 paragraph (1) of the Criminal Code. in cases of premeditated murder.

Based on the judicial analysis by the prosecutor's office, the review efforts they have carried out in this case are solely for law enforcement and legal protection if a similar case occurs in the future. The Prosecutor's Office also admitted that the decision to change the sentence to death which was then made by the supreme judges at the Supreme Court determined differently from their legal considerations, so the Prosecutor's Office also admitted that this was indeed the case in the investigation of the shooting carried out by a high-ranking officer against his aide during the examination at the trial on the trial was quite complicated.

Considerations for the supreme judges regarding the change of the death sentence to a life sentence, the Cassation Panel had several considerations in handing down this decision. One of the reasons is that the perpetrator (a high-ranking police officer) has served as a member of the National Police for 30 years, and has made a contribution to the state by contributing to maintaining order and security and upholding the law in the country, according to an excerpt from the legal considerations in the copy of the cassation decision.

3. Legal Considerations for Death Sentence Sentencing to Life

One of the duties and authorities of the Supreme Court is to examine Judicial Review (PK). Judicial review is a legal effort used to obtain a withdrawal or change to a judge's decision which generally cannot be contested anymore. So that Judicial

Review is the last extraordinary legal effort that can be submitted by the convict and/or his heirs to obtain justice and clear the convict's name if there is new evidence (novum) that is discovered during the trial or after the decision is handed down and has permanent legal force (in kracht van gewijsde), which is explained in article 263 paragraph (1) of the Criminal Procedure Code.⁶

In his legal considerations, the cassation judge views that the National Criminal Code regarding the death penalty is not a basic crime, so that the politics of criminal law in Indonesia has shifted from retributive to rehabilitative. The high-ranking police officer in the case of the shooting of his aide, the judge considered that the high-ranking police officer was deemed to have served as a member of the National Police for around 30 years. So, based on these considerations, the high-ranking police officer escaped the death penalty.

The decision made in the deliberation meeting of the panel of judges has reaped pros and cons in the community. Some views believe that the death penalty is appropriate for this high-ranking police officer who was proven to have carried out the premeditated murder of his aide.

Judex Jurist's decision in this case essentially rejected the Public Prosecutor's (South Jakarta District Attorney's) request for judicial review. However, the cassation panel was asked by the Supreme Court to amend the decision of the DKI Jakarta High Court No.53/PID/2023/PT DKI, dated April 12 2023 which strengthens the Decision of the South Jakarta District Court Number 796/Pid.B/2022/PN Jkt.Sel dated 13 February 2023. This improvement targets the qualifications of criminal acts and the penalties imposed on these high-ranking police officers. Namely by amending the verdict by stating "Sentence the convict to life imprisonment," in a copy of the cassation decision.

⁶ Chazawi Adami. 2005. *Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana*. Jakarta: PT. Raja Grafindo Persada, halaman 23.

There are at least 2 main points of consideration used by the cassation panel of judges in deciding the case of the shooting of a high-ranking police officer against his aide. First, pay attention to the objectives and guidelines for punishment according to criminal law science, as well as the politics of national criminal law after the promulgation of Law No. 1 of 2023 concerning the National Criminal Code (KUHP). In the new Criminal Code, the death penalty is seen as a special crime, no longer as a basic crime. In this way, the political spirit of criminal law in Indonesia shifts from retributive/retributive/ex stationis to rehabilitative.

Current punishment prioritizes the aim of punishment as a means of prevention, correction/rehabilitation, conflict resolution/restoration of balance, creation of a sense of security and peace as well as fostering remorse for the convict. In the series of premeditated murder incidents committed by the convict against the victim, his aide needs to be looked at again clearly, wisely and wisely by prioritizing the principles of objectivity and proportionality of the defendant's guilt towards the actions that have been committed. Sentencing of high-ranking police officers in this case must take into account various philosophical, sociological and normative aspects so that it is felt to be fair and beneficial not only for the victim/family as well as the defendant and society in general. Of course, by upholding just legal values.

Second, *judex jurist* considers Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which states, "In considering the severity of the crime, the judge is obliged to also pay attention to the good and evil characteristics of the defendant." The defendant's life history and social situation must also be considered. Because, when he served as a member of the National Police with his last position being Head of the Professional and Security Division (Kadiv) (Propam), this high-ranking police officer had made a contribution to the country by contributing to maintaining order and security and upholding the law in the country. The defendant/convict has served as a member of the National Police for around 30 years, and has firmly admitted his mistakes and is ready to take responsibility for the actions

he committed. "So that it is in line with the aim of punishment which is to foster a feeling of regret for the perpetrator of the crime," reads part of the considerations for the decision.

Based on these various legal considerations and related to the overall legal facts, the cassation panel considers that for the sake of the principles of just legal certainty and proportionality in punishment, the death penalty that has been imposed *judex facti* needs to be revised to life imprisonment.

D. Conclusion

The Judicial Review (PK) mechanism for the Judge's Decision in Court is a legal effort carried out by the Convict and/or his Heirs and/or legal representative, to submit a request for Judicial Review (PK) by registering the Judicial Review with the court, because evidence has been found. very significant and has the potential to lighten the sentence and or even free the convict from the legal trap of which he is accused. The methods or procedures (mechanisms) in legal review efforts can be seen clearly in Article 263 of the Criminal Procedure Code and Articles 66 - 77 of Law Number 14 of 1985 concerning the Supreme Court, regarding procedures for handling cases for reviewing court decisions that have obtained permanent legal force.

The legal effort to review the prosecutor's decision to reduce the death penalty to life imprisonment is a legal effort initiated by the prosecutor to respond to public concerns regarding the change in the judge's decision in the court trial which was felt to be inappropriate. As Article 1 point 12 of the Criminal Procedure Code states, "Legal remedy is the right of the defendant or public prosecutor not to accept a court decision in the form of a challenge or appeal or cassation or the right of the convict to submit a request for review in terms and according to the method regulated in law. And the prosecutor's authority to submit a judicial review is based on Article 68 of Law Number 14 of 1985 concerning the Supreme Court, there is no mention of any prohibition for prosecutors to submit a judicial review.

3. Legal considerations regarding the decision of the death penalty to life imprisonment by the decision of the Supreme Court judge in this research who took the Ferdi Sambo case as an example. That the convict is known to be cooperative during the trial period, obedient and obedient to following all legal processes imposed on him. During his duties as a police officer and high-ranking officer in the police, Ferdi Sambo was considered to be a person who had also made many contributions to the nation and state, and the case itself was not a premeditated murder as accused by the public prosecutor. So, with these basic considerations in the end, the Supreme Court judge decided and changed Ferdi Sambo's death sentence to life imprisonment.

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