

FORMULATION OF CRIMINAL LAW POLICY REGARDING NIHIL VERDICTS IN INDONESIAN CRIMINAL COURTS

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Abstract

The verdict of acquittal in the application of law enforcement still has problems, namely the existence of a conflict of norms or a regulatory gap, whereby Article 193 of the Criminal Procedure Code "orders" judges to impose a sentence if the defendant is proven guilty. However, Article 67 of the Criminal Code, which refers to the types of basic penalties in Article 10 of the Criminal Code, "prohibits" the imposition of penalties if the defendant has already been sentenced to death or life imprisonment. This conflict of norms or regulatory gap creates a dilemma for judges in enforcing the law. This research is a normative type of research, using a statute approach, a conceptual approach, and a case approach, as well as primary, secondary, and tertiary law, and a prescriptive analysis method. This study discusses two main issues, namely the Regulation of Nil Verdicts in Indonesian Criminal Procedure Law and the Ideal Regulation Related to the Concept of Nil Verdicts in Indonesian Criminal Procedure Law in the Future.

Keywords: *Formulation; Criminal Law; Acquittal;*

INTRODUCTION

The court is a judicial institution within the Indonesian constitutional structure that has the function of examining and adjudicating cases.¹ In the practice of law enforcement within society, a verdict of acquittal has been applied in several cases, but the application of acquittal remains a subject of lengthy debate. This is because Article 193(1) of the Criminal Procedure Code states that "if the judge finds the defendant guilty, the defendant shall be sentenced." However, in this case, judges are constrained in their decision-making between upholding the concept of procedural justice or substantive justice (). This is because Article 67 of the Criminal Code states that "If a person is sentenced to death or life imprisonment, no other punishment may be imposed except the revocation of certain rights and the announcement of the judge's decision." This provision explains that if a person has already been sentenced to the highest criminal penalty, then penalties for other criminal acts cannot be added in the form of corporal punishment. The types of penalties that can be imposed must refer to Article 10 of the Criminal Code, which states that penalties consist of principal penalties and additional penalties. Principal penalties consist of the death penalty, imprisonment (), confinement, fines, and detention. Additional penalties consist of the revocation of certain rights, the confiscation of certain items, and the announcement of the judge's decision. Based on the provisions of Article 10 of the Criminal Code, a verdict of nihil is not included in the category of punishment (criminal penalty). Referring to the legal basis, it is clear that there are still problems with the application of law enforcement, namely the existence of a conflict of norms or a regulatory gap, whereby Article 193 of the Criminal Procedure Code "orders" judges to impose criminal penalties if the defendant is proven guilty. However, the provisions of Article 67 of the Criminal Code, which refer to the types of basic penalties in Article 10 of the Criminal Code, "prohibit" the imposition of penalties if the defendant has already been sentenced to death or life imprisonment. The existence of this conflict of norms or regulatory gap creates a dilemma for judges in enforcing laws oriented towards legal certainty or substantive justice, because on the one hand judges must comply with the Criminal Procedure Code to

¹ Kaldir Hulsin Daln Buldi Rizki Hulsein, The Criminal Justice System in Indonesia, Jakarta: Sinar Grafis, 2016. p. 115.

impose criminal penalties because the defendant has been proven guilty. However, on the other hand, the Criminal Code "limits" the types of penalties that can be imposed if the maximum penalty has already been imposed.

LITERATURE REVIEW

Aristotle viewed justice as the granting of rights, which is realized in the form of equality, but this is different when compared to equalization. He also distinguished between the right to equality and other types of rights, namely the right to proportionality. Equality of rights in the human paradigm becomes a single unit or container that is inherently the same. This allows us to understand that all people or citizens are treated equally before the law. This equality gives rights to everyone in accordance with their abilities and achievements.² The theory of justice is used to analyze and answer questions regarding the practice of imposing no punishment in court rulings. This theory is relevant because the judge's considerations must be analyzed in terms of the extent to which they provide equal justice as viewed by Aristotle, whether to the community harmed by the perpetrator or whether no punishment is a form of justice for the perpetrator that does not conflict with justice for the community. so that the essence of equality should be considered fair to the perpetrator and in line with the justice received by society. Therefore, the theory of justice is relevant for analyzing the formulation of problems regarding the urgency of regulating the imposition of no punishment in the future as a form of legal certainty that leads to the creation of justice.³ The theory of legal certainty is also used to analyze the formulation of issues related to criminal justice policy in the regulation of a future acquittal, because with the formulation of policy, legal certainty will be created and multiple interpretations in law enforcement practice can be avoided.

METHOD

This study uses normative legal research or legal literature research.⁴ The approaches applied in this study are the statute approach, the conceptual approach, and the case approach.⁵ This study uses three types of legal materials, namely primary, secondary, and tertiary law. The collection of legal materials used in this research was done through a literature review, namely by grouping the materials and processing the legal materials by grouping various legal materials that are relevant to the items discussed in this research, and the analysis of legal materials used by the researcher in this research was done through prescriptive analysis. Legal research is research that uses prescriptive analysis methods.⁶

RESULTS AND DISCUSSION

The Application of Nihil Sentences in Indonesian Criminal Procedure Law.

A null verdict has been applied in several cases, but its application is still debatable due to the lack of a strong and uniform legal basis. This can be seen from the provisions of Article 193 paragraph (1) of the Criminal Procedure Code, which explicitly requires judges to impose a sentence if the defendant is proven guilty. Meanwhile, Article 67 of the Criminal Code states that a person who has been sentenced to death or life imprisonment may not be sentenced to any other punishment, except for additional penalties. This provision is often interpreted as a "prohibition" on imposing other principal penalties, thus providing an opening for acquittals.

Based on this, it is clear that there is a regulatory gap between Article 193 of the Criminal Procedure Code, which "orders" judges to impose punishment, and Article 67 of the Criminal Code, which is interpreted as "prohibiting" additional punishment, thus creating a legal vacuum that has been the source of lengthy debates regarding nil verdicts. This highlights the need for legal reform to create certainty and justice in Indonesia's criminal justice system, as certainty is an inseparable feature of law, especially for written legal norms. Law without certainty loses its meaning because it can no longer be used as a guide for behavior for everyone. Legal certainty ensures that a person will act in accordance with the applicable legal provisions; conversely, without legal certainty, a person will not have a standard for conducting an action. Legal certainty is essential in law enforcement because provides clarity on positive law. Legal certainty, as recognized by countries that adhere to the civil law system, requires "regularity" and "certainty" in order to support the proper functioning of the legal system. The consequences of legal vacuums, in relation to matters or circumstances that are not or have not yet been regulated, can lead to legal uncertainty (rechtsonzekerheid) or uncertainty regarding legislation in society, which can further result in legal confusion

² Hyronimus Rhiti, 2011, Philosophy of Law, Yogyakarta: Atma Jaya University Yogyakarta, p. 241.

³ Fence M. Wantu, 2013, Legal Certainty, Justice and Benefit, Yogyakarta: Pustaka Pelajar, p. 13.

⁴ oerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review, UI Press, Jakarta, 2003, p. 23.

⁵ Peter Mahmud Marzuki. Legal Research, Kencana Prenada Media Group. Jakarta 2006 p. 13

⁶ Bambang Sunggono, Legal Research Methods, Pt Raja Grafindo Persada, Jakarta 2012, p. 114

(rechtverwarring). In general, when there is a legal vacuum, there will be confusion and uncertainty in society regarding the legal basis to be used when legal problems arise. Addressing this issue can be done by revising the laws governing criminal procedure to include clear provisions on acquittals, as well as training law enforcement officials so that they have a common perspective and understanding of acquittals. In addition, it is also necessary to raise public awareness about the legal process and the implications of a null verdict so that the public can be more critical and understand their rights. Thus, the regulation of null verdicts in Indonesian criminal procedure law is very important for creating a fair, transparent, and accountable judicial system.

Ideal Regulations Related to the Concept of Acquittal in Indonesian Criminal Procedure Law in the Future.

In essence, criminal law reform includes the field of criminal law policy, which is part of and closely related to law enforcement policy, criminal policy, and social policy. Therefore, criminal law reform is essentially part of a policy (rational effort) to renew the substance of the law in order to make law enforcement more effective, combat crime in order to protect society, and address social and humanitarian issues in order to achieve national goals, namely social protection and welfare and accountability.⁷ Criminal law policy is an effort to determine the direction of the implementation of Indonesian criminal law in the future by looking at its current enforcement.⁸ The purpose of criminal law policy is to ensure that criminal legislation is appropriate for the present and the future.⁹

In carrying out substantive legal reforms in Indonesia, the following methods can be used:

1. Creating special laws outside the Criminal Code. Substantive legal reform through special laws outside the Criminal Code is inevitable in line with developments in society and crime. On the other hand, the current Criminal Code is an unofficial translation of the *Wetboek van Strafrecht*, a relic of Dutch colonialism that has been officially in force in Indonesia since January 1, 1918.
2. Additions, deletions, and partial amendments to the Criminal Code. The second substantive legal reform carried out in Indonesia was to amend parts of the Criminal Code. This legal policy was implemented through various laws that repealed, added, or amended articles in the Criminal Code.

The nullity ruling is clearly stated in the draft *concurrus realis* based on Article 67 of the Criminal Code, which stipulates that the imposition of the death penalty shall not be subject to additional punishment if at any time other criminal acts are found to have been committed concurrently. Article 67 of the Criminal Code prohibits the imposition of punishment if the perpetrator has previously been sentenced to death or life imprisonment in another case. However, on the other hand, the provisions of Article 193 paragraph (1) of the Criminal Procedure Code require judges to impose a sentence if the defendant is found guilty. Therefore, to address this problem, for the sake of legal certainty, justice, and the benefit of the law, there are two alternatives for imposing a nihil sentence, namely through the consistency of judges imposing a nihil sentence because it is impossible for defendants who have been sentenced to death and/or life imprisonment to be punished again in a similar manner in other cases. The next alternative is a conditional life sentence, which indicates the possibility that the perpetrator will be able to reduce their sentence through the judicial process. This is a criminal policy that is in line with the situation of future cases and will prevent and minimize disparities in interpretation and decisions, in the interests of proportional justice and no disparities.

Regarding the official appeal above, the authority that issued the official appeal is the Supreme Court along with its legal products, namely Supreme Court Regulations (PERMA), Supreme Court Circular Letters (SEMA), Supreme Court Fatwas, and Supreme Court Chief Justice Decrees (SK KMA). How the Supreme Court is regulated and empowered by laws and regulations determines the extent to which the Supreme Court can issue legal statements. The Supreme Court has the power to hear appeals, assess violations of the law, and perform other functions assigned to it by law. This is in line with the idea that only organizations that have the authority to make laws (*wetgevingsbevoegheid*), also known as the ability to make laws (*rechtsforming*), can do so.¹⁰ Article 32 Paragraph (4) of the Supreme Court Law grants the Supreme Court the authority to issue orders to courts in all jurisdictions deemed necessary. Therefore, the Supreme Court has the authority to issue court orders to direct or urge judges to make decisions by studying and understanding the norms that form the basis of criminal punishment before imposing a zero sentence, which is the third issue raised in this study.

⁷ Robert A. Stein, "What Exactly Is The Rule Of Law?," *Houston Law Review* 57, No. 1 (2019); Isabel Lifantevidal, "Is Legal Certainty A Formal Value," *Jurisprudence* 11, No. 3 (2020): 456–67.

⁸ Mahmud Mulyadi, *Criminal Policy: An Integral Approach to Penal Policy and Non-Penal Policy in Combating Violent Crime*, Pustaka Bangsa Press, Medan, 2008, p. 6

⁹ Moh. Mahfud M.D. 2009. *Legal Politics in Indonesia*. Jakarta: Rajawali Pers. p. 12

¹⁰ Maria Farida Indrati Soeprapto. 2008. *Legislation: Types, Functions, and Content*. Yogyakarta: Kanisius. P. 54

Which Supreme Court legal product is appropriate, whether it be PERMA, SEMA, MA Fatwa, or SK KMA, requires first explaining the concept or meaning of each. PERMA is basically a form of regulation containing provisions of a procedural nature, while MA Fatwa contains the legal opinion of the Supreme Court given at the request of a state institution. SK KMA or SK KMA is a decision letter (beschikking) issued by the Chief Justice of the Supreme Court regarding a specific matter, and SEMA is a circular letter from the leadership of the Supreme Court to all levels of the judiciary containing guidance on the administration of justice, which is more administrative in nature.¹¹ Based on Law Number 10 of 2004 concerning the Formation of Legislation, which was amended by Law Number 12 of 2011 concerning Amendments to Law Number 10 of 2004 concerning the Formation of Legislation, Article 8 paragraph (1) of the Law on Legislation stipulates that "Types of legislation other than those referred to in Article paragraph (1) include regulations established by ... the Supreme Court ...". This formulation is in line with Article 7 paragraph (4) and the explanation of Law Number 10 of 2004 concerning the Formation of Legislation. As long as they are regulated by higher laws or regulations or announced by the authorities, these laws and regulations are recognized and have binding legal force, as confirmed by Article 8 paragraph (2) of Law Number 10 of 2004 concerning the Formation of Legislation.

Based on the description of the Supreme Court's authority above, as well as the Supreme Court's legal products, it can be concluded that the criminal law policy regarding nihilistic punishment in the future is the issuance of a Supreme Court Circular Letter (SEMA) of the Republic of Indonesia addressed to Judges of the First Instance, Appeal, Cassation, and Review Courts throughout Indonesia, without reducing the freedom of judges in examining and deciding cases, regarding the appeal to judges examining cases, particularly those involving corruption, to impose the death penalty and/or conditional life imprisonment, in order to anticipate the convicted person in subsequent legal proceedings in cases where the previous decision has been changed, in the interests of justice for the people and the state, whose finances and economy have been damaged. However, formally in criminal procedure law, a nihil decision is not explicitly regulated in the Criminal Procedure Code (KUHAP). Article 1 point 11 of the KUHAP only states that court decisions can be criminal, acquittal, or dismissal. Thus, in principle, a nihil decision, which does not impose a criminal penalty or punishment on the defendant, is not covered by this provision. Therefore, the application of a nihil decision can threaten accountability in the criminal justice system, which has an important contribution to the rule of law, because it undermines the legal certainty that must be guaranteed by the state. To explicitly accommodate a null verdict, Article 1 point 11 of the Criminal Procedure Code can be proposed for revision to read: "A court verdict is a statement made by a judge in an open hearing which may take the form of a conviction, a null verdict, an acquittal, or dismissal of all legal charges in the circumstances and in the manner prescribed by this law

CONCLUSION

First, the regulation of acquittals in Indonesian criminal procedure law needs to be explicitly regulated in Indonesian criminal procedure law because it has the potential to cause legal uncertainty, human rights violations, and abuse of authority by law enforcement officials. The ambiguity of this regulation has resulted in disparities between the Criminal Code and the Criminal Procedure Code. The ideal arrangement related to the concept of nihil verdicts in Indonesian criminal procedure law in the future is the issuance of a Circular Letter of the Supreme Court (SEMA) of the Republic of Indonesia addressed to Judges of the First Instance, Appeal, Cassation, and Review Courts throughout Indonesia. In addition, revisions to legislation can also be made, including Article 1 point 11 of the Criminal Procedure Code, which needs to be amended to include provisions regarding "Nihil Verdicts/Nihil Punishments." Article 193 paragraph (1) of the Criminal Procedure Code by adding phrases such as "unless otherwise specified by law" or "or declaring that a basic sentence cannot be imposed based on the provisions of the law."

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¹¹ Henry P. Panggabean. 2001. The Function of the Supreme Court in Daily Practice. Jakarta: Pustaka Sinar Harapan. P. 144.

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