

## COMPARATIVE REGULATION OF “INADMISSIBLE DECISIONS” IN CRIMINAL PROCEDURE LAW BETWEEN INDONESIA AND GERMANY

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### Abstract

This article examines the comparative regulation of “inadmissible decisions” in criminal procedure law between Indonesia and Germany. Comparative law is used as an analytical approach to identify similarities and differences between the two legal systems, aiming to formulate clearer and more systematic procedural norms. Both countries belong to the civil law tradition, which emphasizes codification and legal certainty. Germany recognizes two key mechanisms related to inadmissible decisions, namely *Verfahrenshindernis* (procedural obstacles) and *Unzulässige Anklage* (inadmissible indictment). These mechanisms serve as legal filters to ensure procedural compliance and the protection of defendants’ rights before the main trial begins. This study concludes that Germany’s systematic procedural framework offers a valuable model for reformulating the normative and procedural basis of inadmissible decisions in Indonesia.

**Keywords:** Comparative Law, Inadmissible Decisions, Criminal Procedure.

### INTRODUCTION

In the Indonesian judicial system, court decisions are generally classified into three main categories (Andi Hamzah, 2017): decisions imposing criminal sanctions, acquittal or release decisions, and decisions declaring a case “inadmissible.” A conviction judgment (*putusan pidanaan*) is rendered when the court finds the defendant legally and convincingly guilty of committing a criminal offense in accordance with the charges brought by the public prosecutor. The legal basis for this decision is set out in Article 190 of Kitab Undang-Undang Hukum Acara Pidana (KUHAP). As a legal consequence, the defendant is subject to criminal sanctions under the applicable law, which may include imprisonment, fines, or additional penalties. An acquittal (*putusan bebas*) is issued when the defendant is not proven legally and convincingly guilty of the criminal charges. This is regulated under Article 191 paragraph (1) KUHAP (Anak Agung Gede, 2020). Conversely, a release judgment (*putusan lepas*) is handed down when the defendant’s act is proven but does not constitute a criminal offense, or when there are legal grounds that eliminate its criminal nature. This type of decision is governed by Article 191 paragraph (2) KUHAP.

However, Indonesian law has not specifically or comprehensively regulated the criteria for another type of decision that exists in practice the “inadmissible decision” (*putusan tidak dapat diterima*). Such decisions are generally rendered due to procedural or formal defects in the indictment or the prosecution process. The absence of a clear legal framework gives rise to ambiguity and legal uncertainty in judicial practice, particularly in determining the legal basis for declaring a case inadmissible before the court. To understand how inadmissible decisions are regulated in other jurisdictions, this paper examines a comparative analysis between Indonesia and Germany. The study adopts a substantive comparative law approach, which is considered more practical and suitable for identifying an ideal model of inadmissible decisions in criminal proceedings. To avoid artificial comparisons, the selection of Germany as a comparative country is based on three principal criteria:

### Similarity in Legal Families

The first factor is the similarity of legal systems or legal families. German criminal law has its roots in the 19th century. Initially, the *Peinliche Halsgerichtsordnung* of Emperor Charles V (1532) applied, but the most significant influence came from the *Strafgesetzbuch für das Königreich Bayern* of 1813 by Feuerbach. This formed

the basis for the Prussian Penal Code of 1851, which later evolved into the Penal Code of the North German Confederation in 1869. With minor amendments, this became the *Reichsstrafgesetzbuch* of 1871, which, with various modifications, remains in force today (Thomas Vormbaum, 2011). Indonesia and Germany both belong to the civil law tradition, characterized by systematic codification of substantive and procedural criminal law.

### Similarity in Legal Principles

Legal principles form the foundation of positive legal norms and guide their implementation. One of the most fundamental principles in both Indonesia and Germany is the principle of legality (*nullum crimen, nulla poena sine lege*) (Howard Fisher, 2009). In Indonesia, this is stipulated in Article 1 paragraph (1) Kitab Undang-Undang Hukum Pidana (KUHP), stating: “No act shall be punishable except by virtue of a penal provision that has been established prior to the commission of the act.” Procedurally, this means all investigative, prosecutorial, and judicial actions must have a written legal basis (KUHAP Articles 2 and 8). In Germany, the legality principle is enshrined in Article 103 paragraph (2) *Grundgesetz* and §1 *Strafgesetzbuch*.

### Similarity in Legal Structures

A third consideration is the similarity in institutional structures specifically, the institutions responsible for law enforcement, their status, and authority. In the German criminal justice system, several key institutions have distinct roles and functions within the framework of the *Strafprozessordnung* (StPO) and the *Grundgesetz* (*Grundgesetz*) (Karolina Kremens, 2021). These institutions reflect the civil law system’s emphasis on codification, legal certainty, and clear separation of functions among legal actors. The main institutions include the *Polizei* (Police), *Staatsanwaltschaft* (Prosecution Service), and *Gericht* (Courts) (Howard Fisher, 2009). Based on the similarities in legal family, legal principles, and institutional structure, Germany is considered an appropriate comparative reference for analyzing and reformulating the concept of inadmissible decisions in Indonesian criminal procedure law. The shared civil law tradition provides a balanced foundation for comparison, minimizing methodological distortion. Moreover, Germany’s consistent application of the legality principle, due process of law, and defendant’s rights protection under the StPO offers a normative and procedural model that can reinforce the rule of law within Indonesia’s criminal justice system.

## LITERATURE REVIEW

In current Indonesian judicial practice, the annulment of a judgment *ex officio* commonly expressed through the phrase null and void by operation of law is generally applied when there are deficiencies in the formal aspects of an indictment. This mechanism is explicitly regulated under Article 143 paragraphs (2) and (3) of KUHAP, which underscores the importance of fulfilling both the formal and material requirements of an indictment. When an indictment fails to comply with these prescribed formal requirements, the court has the authority to declare it null and void. This provision is intended to ensure that judicial proceedings are conducted fairly and in accordance with the principles of due process of law.

By enforcing these requirements, the rights of defendants are better protected from potential abuses or procedural errors. If an indictment is declared invalid due to formal defects, the judicial process cannot proceed until the defect is corrected. This procedural safeguard aims to prevent injustice arising from early procedural irregularities. In this sense, the regulation of null and void indictments in KUHAP serves as a legal instrument to maintain a delicate balance between law enforcement interests and the protection of the defendant’s fundamental rights (M. Yahya Harahap, 2015). Beyond the explicit provisions of KUHAP, leading criminal procedure scholars have further developed the concept of null and void indictments across several procedural dimensions, including:

### M. Yahya Harahap

According to Yahya Harahap, the concept of an “inadmissible indictment” can be identified through several indicators. Some of these indicators align with the provisions of KUHAP, particularly those concerning indictments that do not fully specify the defendant’s identity or fail to formulate the elements of the alleged offense clearly. This interpretation derives from Article 143 paragraphs (2) and (3) KUHAP, which explicitly regulates the validity of indictments in Indonesia’s criminal justice system. In addition, Yahya Harahap identifies several other characteristics of inadmissible indictments. One of the most important is the violation of the *ne bis in idem* principle, meaning that a defendant who has already been lawfully tried and convicted or acquitted for the same offense cannot be prosecuted again for the same act. This principle functions as a legal safeguard against repeated prosecution for cases that have already obtained final and binding legal force. According to Harahap, if a case has already been decided with *inkracht*

status, the public prosecutor is barred from filing a new indictment on the same matter, and should this occur, the court must declare the indictment “inadmissible.” Another characteristic concerns complaint-based offenses (*delik aduan*). Certain criminal offenses in Indonesian law can only be prosecuted following a formal complaint from the aggrieved party for instance, defamation and adultery (Yanti & Sutri, 2021). If no complaint is filed by the party entitled to do so, the public prosecutor cannot proceed with the prosecution, and the indictment must be declared inadmissible by the panel of judges.

### **Andi Hamzah**

Andi Hamzah highlights that the concept of inadmissible indictments has frequently emerged in constitutional review cases before the *Mahkamah Konstitusi* (Indonesian Constitutional Court), notably in Decision Number 28/PUU-XX/2022, which addressed the interpretation of null and void indictments filed by prosecutors. In that proceeding, Hamzah elaborated in detail on the concept of null and void indictments and inadmissible indictments, including their fundamental distinctions. According to Hamzah, a null and void indictment arises when the indictment fails to clearly specify the *locus delicti* (place) and *tempus delicti* (time) of the alleged offense. These elements are essential to ensure legal certainty and enable the defendant to exercise the right to defense effectively. Failure to meet these formal requirements renders the indictment legally invalid and subject to annulment *ex officio*. By contrast, an inadmissible indictment applies to five recognized conditions in Indonesian criminal procedure practice:

- a) Absence of a formal complaint for complaint-based offenses. Certain offenses can only be prosecuted if initiated by the injured party’s complaint. Without such a complaint, the prosecution cannot proceed, and the indictment must be declared inadmissible.
- b) Expiration of the statute of limitations. Prosecution is bound by legally defined time limits. Once the limitation period has expired, the state loses its authority to prosecute, and any indictment must be declared inadmissible (Asriani Jamal, 2022).
- c) Application of the *ne bis in idem* principle. Once a case has been decided with final and binding legal force, the defendant cannot be tried again for the same act. A new indictment for the same offense must therefore be deemed inadmissible.
- d) Lack of jurisdiction under Indonesian criminal law. Certain offenses may fall outside the territorial or personal jurisdiction of Indonesian criminal law e.g., acts committed abroad that do not fall under principles such as territoriality, personality, or universality (Dian Rahadian, Jalil B., Mia Amalia, 2024). In such cases, the indictment must be declared inadmissible.
- e) Discontinuance of prosecution in the public interest (*deponering*). In specific circumstances, the public prosecutor may discontinue prosecution in the interest of justice or national stability (Windi Jannati M.A. & Frans Simangunsong, 2022). When this occurs, the indictment must also be declared inadmissible.

Hamzah’s explanation draws a clear doctrinal line between null and void indictments and inadmissible indictments. This distinction plays a crucial role in ensuring that every case brought before the court meets the legal standards required for prosecution. It reflects the Indonesian criminal justice system’s commitment to maintaining a balance between legal certainty, justice, and the protection of individual rights in criminal proceedings.

### **METHOD**

This study employs a normative juridical research design, which primarily relies on legal materials and doctrinal sources as the main foundation of analysis (Soerjono Soekanto & Sri Mamudji, 2015). The research focuses on examining legal principles and legal inventory, particularly relating to the procedural aspects of criminal law. A comparative legal approach is utilized to analyze how other jurisdictions with legal systems similar to Indonesia particularly those grounded in the civil law tradition regulate the concept of “inadmissible decisions” in criminal proceedings. Through this approach, a systematic understanding of both the substantive rules and their procedural application in other countries can be obtained, providing a critical reference point for the development of Indonesia’s legal framework. Germany, which also adhere to civil law traditions, generally issue inadmissible decisions when formal requirements of the indictment are not met or when procedural violations occur that may infringe upon the rights of the accused. In these legal systems, procedural safeguards play a central role in ensuring fairness and protecting the fundamental rights of all parties involved in criminal proceedings. Drawing from such comparative experiences offers Indonesia an opportunity to establish a clearer and more just regulatory framework aligned with universal legal principles. A structured comparative study not only expands analytical perspectives but also provides a stronger foundation for evidence-based legal policymaking. It allows legislators and judicial institutions to identify

both strengths and weaknesses in Indonesia’s legal practice and to draw lessons for procedural reform. By examining the regulation and application of inadmissible decisions in other legal systems, this research seeks to highlight existing gaps in Indonesia’s legal framework. For example, in Germany, the rules governing the inadmissibility of indictments are articulated in a more detailed and structured manner, thereby providing stronger legal certainty compared to Indonesia, where judicial interpretation still plays a dominant role. Such comparative insights can serve as a catalyst for legal reform, particularly in refining Indonesia’s procedural law concerning inadmissible decisions in criminal cases. Ultimately, this comparative analysis not only contributes new perspectives to legal scholarship but also offers practical implications for improving the effectiveness, fairness, and protection of rights within Indonesia’s criminal justice system.

## RESULTS AND DISCUSSION

To properly understand the comparative aspects of inadmissible decisions, it is necessary to first examine how the Indonesian and German legal systems formulate provisions concerning such decisions in criminal proceedings. As explained in the background section, Indonesia currently lacks a clear and specific legal framework regulating inadmissible decisions in criminal cases. In contrast, the German criminal justice system, as regulated in *Strafprozessordnung* (StPO), provides a structured categorization of judicial decisions in criminal matters. Decisions are divided into two main types: (1) decisions related to the merits of the case (*Urteile in der Hauptsache*) and (2) procedural decisions (*Prozessurteil*). Substantive judgments are further classified into three categories:

- a) Conviction (*Strafurteil*),
- b) Acquittal (*Freispruch*) of the defendant, and
- c) Imposition of security and treatment measures (*Maßregel der Besserung und Sicherung*).

Apart from these, procedural decisions known as *Einstellungsurteil* (dismissal judgments) are rendered when procedural or legal obstacles arise (*Verfahrenshindernis*), preventing the continuation of the proceedings. In German criminal procedure law, *Verfahrenshindernis* constitutes a fundamental legal concept signifying procedural barriers that directly obstruct the continuation of criminal proceedings. This term refers to circumstances in which the court is legally prevented from proceeding with the case due to procedural deficiencies or unmet formal requirements. The legal basis of this concept is clearly stipulated in § 206a StPO for the pre-trial stage (*Vorverfahren*) and § 260(3) StPO for the main trial stage (*Hauptverhandlung*) (Wolfgang Heinz, 2004). These provisions empower the court to terminate the proceedings before engaging with the substantive aspects of the case. In this way, *Verfahrenshindernis* operates as a procedural “filter” to ensure that only cases fulfilling legal formalities proceed to substantive adjudication. In practice, *Verfahrenshindernis* may arise for several reasons, which can be summarized as follows:

Grounds for <i>Verfahrenshindernis</i>	Legal Basis	Explanation
Statute of Limitations ( <i>Verjährung</i> )	§ 78 StGB + § 206a StPO	If the statutory limitation period has expired, the judge terminates the case through an <i>Einstellungsbeschluss</i> or <i>Einstellungsurteil</i> .
<i>Ne bis in idem</i> (double jeopardy)	General principles of German criminal law + § 206a StPO	If the defendant has previously been tried or convicted for the same offense, the new proceedings must be discontinued.
Lack of authorization to prosecute ( <i>Strafantrag</i> )	§ 77 ff. StGB + § 206a StPO	For certain offenses, prosecution requires the victim’s or an authorized institution’s consent; without it, prosecution is invalid.
Immunity	§ 206a StPO (implemented through parliamentary/government laws)	Defendants enjoying legal immunity (e.g., members of parliament) cannot be prosecuted unless immunity is lifted.
Lack of jurisdiction ( <i>Unzuständigkeit</i> )	§ 6 ff. Gerichtsverfassungsgesetz (GVG) + § 260(3) StPO	If the court lacks absolute jurisdiction, the case must be discontinued or transferred to the competent court.
Death of the defendant	§ 206a StPO	Criminal proceedings cannot continue against a deceased person; the case is terminated by operation of law.

### Unzulässige Anklage as an Additional Inadmissibility Mechanism

In addition to *Verfahrenshindernis*, the German legal system also recognizes the mechanism of *Unzulässige Anklage*. Linguistically, “*Unzulässige*” means inadmissible, and “*Anklage*” refers to the indictment. Contextually, this mechanism applies when the indictment fails to meet the formal and substantive requirements laid out in § 200(1) StPO, rendering it unfit to serve as a legal basis for proceeding to the main trial. When these formal and substantive requirements are not satisfied, the indictment is declared *unzulässig* (inadmissible), and the case does not proceed to substantive examination. Importantly, such decisions are temporary and procedural in nature because they do not address the merits of the case. *Unzulässige Anklage* is, therefore, a judicial ruling declaring that the indictment cannot be pursued due to legal or procedural defects.

### Comparative Function and Legal Effect: *Verfahrenshindernis* vs. *Unzulässige Anklage*

As previously explained, the German criminal procedure system recognizes two distinct forms of inadmissibility: *Verfahrenshindernis* (procedural obstacles) and *Unzulässige Anklage* (inadmissible indictment). (Howard Fisher, 2009). Although both mechanisms function as procedural safeguards to prevent unlawful or defective prosecutions, they differ in focus, timing, and legal consequences:

- a) Focus of the Issue, *Verfahrenshindernis* refers to broad legal or procedural barriers such as the expiration of the statute of limitations, legal immunity, or lack of jurisdiction. These obstacles prevent the continuation of criminal proceedings even if the indictment is otherwise valid. By contrast, *Unzulässige Anklage* focuses narrowly on deficiencies within the indictment itself, such as the failure to properly identify the defendant, to articulate the alleged act, or to specify the applicable legal provisions.
- b) Timing of the Decision, *Unzulässige Anklage* typically arises at the preliminary stage, when the court examines whether the indictment submitted by the prosecution complies with formal legal requirements before opening the main trial. *Verfahrenshindernis*, however, may occur at any stage during the investigation, pre-trial, or even in the midst of the main trial. For example, a procedural obstacle may be discovered after the hearing has begun, such as the expiration of the limitation period.
- c) Legal Consequences, A ruling of *Unzulässige Anklage* results in the rejection of the indictment, but the prosecutor retains the right to correct the deficiencies and refile the case. By contrast, a ruling based on *Verfahrenshindernis* is final in nature, as it confirms that the criminal proceedings cannot legally continue unless the obstacle is removed (for instance, if new legal circumstances arise in the future).

These procedural safeguards are essential for protecting the rights of defendants, ensuring due process, and promoting judicial efficiency.

The results of the comparative study with the German criminal procedure system reveal a more structured normative model. Under §206a of StPO, the court is explicitly authorized to terminate proceedings when there are *Verfahrenshindernis* (procedural obstacles) or *Unzulässige Anklage* (inadmissible indictments). This provision underscores that the termination of a case is not an ad hoc judicial policy but a legitimate legal mechanism to safeguard the integrity of judicial proceedings. The German model can serve as a valuable reference for developing similar regulations in KUHAP or a special statute in Indonesia, thereby providing judges with a clear and explicit legal basis when rendering “inadmissible decisions.” From a judicial technical perspective, the regulation of “inadmissible decisions” would require the establishment of clear minimum standards regarding the formal requirements of indictments, the absolute and relative competence of the court, statutes of limitation, and the *ne bis in idem* principle. With explicit legal norms in place, judges would have uniform guidelines on when such decisions should be rendered. This standardization would also enable prosecutors and investigators to correct deficiencies before a case is brought to court. In the absence of such standards, “inadmissible decisions” would emerge merely as products of judicial discretion rather than as applications of a well-defined legal framework.

## CONCLUSION

The comparative analysis between the Indonesian and German criminal procedure systems clearly demonstrates that Germany has established a comprehensive and structured legal framework for inadmissible decisions in criminal cases. Through §206a StPO, the German legal system explicitly provides the court with the authority to issue a decision of inadmissibility based on *Verfahrenshindernis* (procedural obstacles) or *Unzulässige Anklage* (inadmissible indictment). This clear normative foundation ensures legal certainty, uniform judicial practice, and procedural integrity. In contrast, Indonesia has not yet developed an equivalent procedural mechanism within its Kitab Undang-Undang Hukum Acara Pidana (KUHAP). The absence of explicit legal provisions leaves

“inadmissible decisions” in Indonesia largely dependent on judicial discretion, which may lead to inconsistency, procedural uncertainty, and inefficiency in criminal proceedings. Therefore, it is essential for Indonesia to formulate clear and codified legal provisions governing inadmissible decisions. Such regulation would provide judges, prosecutors, and investigators with a uniform legal framework, strengthen procedural safeguards, and align Indonesia’s criminal procedure with established principles of due process and legal certainty, as exemplified by the German model.

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