The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

LEGAL CONSEQUENCES OF THE CONSTITUTIONAL COURT'S LIMITATION ON THE RESUBMISSION OF INDICTMENTS

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Abstract

This study aims to determine the legal consequences of limiting the resubmission of indictments by the constitutional court and the legal certainty of limiting the resubmission of indictments by the constitutional court. This type of research is normative with data collection techniques carried out through library research, namely laws and regulations, a case approach, namely the Constitutional Court Decision, and a conceptual approach. In addition, the author also conducts library research through data and books related to the research topic. Furthermore, the data obtained was analyzed qualitatively which was then presented descriptively. The results of the study show that: 1) The legal consequences of limiting the re-submission of indictments that have been canceled make the decision in the form of a final decision because it has been examined and considered the subject matter of the case and will be nebis in idem if filed again afterwards. The form of legal action that can be taken by the public prosecutor is an appeal or cassation and not resistance (verzet). In order to harmonize this form of legal action with the Constitutional Court's decision, additional arrangements are needed which contain new norms in criminal procedural law; and 2) The Constitutional Court's decision which limits the re-submission of indictments is a form of legal certainty. Thus, in order to prevent repeated cancellation of the indictment, the prosecutor's accuracy is required in preparing the indictment because at the second examination, there is a potential for the indictment to still not meet the material requirements so that the case is considered finished without any examination of the main case, and there is a potential for an indictment still does not meet the material requirements, while the subject matter of the case is proven. This resulted in no settlement and clarity of the status of the case for the accused and victims to obtain a guarantee of fair legal certainty as mandated in Article 28D paragraph (1) of the 1945 Constitution.

Keywords: Indictment, null and void, Constitutional Court's decision.

1. INTRODUCTION

In implementing criminal law, it is necessary to have a legal procedure for implementation so that there is no overlap between one system and another criminal justice system. This is expected to create law enforcement that is harmonious, certain, and just. The procedure is regulated through criminal procedural law or commonly referred to as formal law which contains all the rules on how the mechanisms and stages of law enforcement implement and defend criminal law (Luhut M. P. Pangaribuan, 2013: 76). According to Soesilo Yuwono, Criminal Procedure Law is a legal provision that contains the rights and obligations of the suspect/defendant and the procedures for a criminal process. (Suyanto, 2018: 3)

Criminal procedural law regulates the ways to implement and maintain material law to solve problems that match the norms prohibited in material law through a process by referring to the rules included in the procedural law itself. (R. Abdoel Djamali, 2008: 193)

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In Indonesia, the discourse on the formation of procedural law emerged amidst the rise of legal discovery and the formation of legislation in the New Order government. Since then, the drafting of Law No. 8 of 1981 on Criminal Procedure (KUHAP) began. The spirit of the formation of KUHAP according to Romli Atmasasmita has at least five objectives, as follows: 1). Protection of human dignity (suspect or defendant). 2). Protection of legal and governmental interests. 3). Codification and unification of Criminal Procedure Law. 4.) Achieving unity of attitude and action of law enforcement officials. 5). Realizing the Criminal Procedure Law in accordance with Pancasila and the 1945 Constitution. (Romli Atmasasmita, 2010: 35)

Meanwhile, Van Bemmelen suggests three objectives of criminal procedure law, namely: 1) Seeking and expressing the truth; 2) Providing decisions by judges; and 3) Implementation of decisions (Riadi Asra Rahmad, 2019: 5). Meanwhile, according to Andi Hamzah, the purpose of criminal procedure law, namely to seek material truth, is only an intermediate goal, the ultimate goal of criminal procedure law is actually to achieve order, peace, justice, and public welfare. (Andi Hamzah, 2000: 9)

The prosecution of criminal cases is a task carried out by the Public Prosecutor's Office. After a criminal case is submitted by the Public Prosecutor (JPU) to the authorized court, the next task for the court judge is to examine and try and then make a decision. Adjudication is a series of actions by a judge to receive, examine and decide criminal cases based on free, honest and impartial principles in a court session in the matters and in the manner regulated in the criminal procedure law.

An indictment, according to M. Yahya Harahap, can be null and void if the indictment does not formulate all the elements of the charge, or does not clearly detail the role and actions of the defendant in the indictment. Yahya Harahap, 2008: 39), as stipulated in Article 143 paragraph (3) of KUHAP which states that an indictment that does not fulfill the provisions referred to in paragraph 2 letter b is null and void, namely an indictment that does not contain a careful, clear and complete description of the criminal offense charged by mentioning the time and place when the criminal offense was committed. The assessment of the non- fulfillment of the provisions of Article 143 paragraph (2) letter b of KUHAP is decided by the judge after an objection (exception) from the defendant or his legal counsel.

This provision can be interpreted that at the preliminary examination, the judge can make a decision to dismiss the indictment or not accept the indictment based on consideration of the defendant or legal counsel who raises objections regarding "the authority of the court to try the case" or "the indictment is inadmissible" or "the indictment must be dismissed" after being given the opportunity to the public prosecutor to express his opinion. The decision on these objections can be made by the judge in an interlocutory decision or decided after the examination is completed.

For indictments that are deemed not to meet the qualifications of Article 143 paragraph (2) letter b of the Criminal Procedure Code, the consequences are null and void. The nullification can be decided by the judge in an interlocutory decision or after the completion of the examination of the main case. Thus, it is possible for a decision to cancel the indictment even

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ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

though the main examination has been conducted. This arrangement does not clearly regulate the time and at what stage the indictment is canceled after the main examination of the case. If you pay attention to the provisions of Article 182 paragraph (1) letter a of KUHAP, it regulates that after the examination is declared complete, the public prosecutor submits criminal charges. Furthermore, the provisions of Article 182 paragraph (2) of KUHAP can be interpreted that the examination is declared closed if against the charges, the defendant / legal counsel submits a defense that can be answered by the public prosecutor and after that the examination is closed.

In accordance with this systematic procedural law, the judge can implicitly decide that the indictment is null and void after the examination of the main case is completed and before the public prosecutor files charges. However, because the norms mentioned are not explicitly stated, there is an interpretation that such a decision can be made after the completion of the main examination of the case after hearing the reading of the indictment and answering questions between the public prosecutor and the defendant/lawyer.

In practice, judges sometimes dismiss the indictment not in an interlocutory decision, but at the time after the examination is declared closed and after the reading of the indictment which is stated in the final decision, giving the impression that the decision is the final decision. Furthermore, the final decision is regulated in Article 193 of the Criminal Procedure Code, namely: 1). If the court is of the opinion that the defendant is guilty of committing the criminal offense charged against him, then the court imposes a sentence;

By dismissing the indictment after the examination is complete, there is an impression that such a decision is a final decision because it has gone through a series of examinations of the subject matter of the case, but the contents of the decision are not a decision of acquittal, release, or conviction. Although the judge in issuing a decision does not actually consider an assessment of the substance of the case, the reference in assessing whether the indictment is accurate, clear, complete or not refers to the subject matter of the case.

On October 31, 2022, the Constitutional Court (MK) through its decision No. 28/PUU-XX/2022 has overhauled the regulation of resubmission of null and void indictments. If previously the public prosecutor was not limited to resubmitting the indictment, currently the resubmission of the indictment is limited to 1 (one) time and if the judge still considers that an indictment does not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code, then the case is immediately examined, considered, and decided together with the subject matter of the case in the final decision. The Constitutional Court's decision was a decision on the examination of Article 143 paragraph (3) of the Criminal Procedure Code against the 1945 Constitution, which was finally decided to be conditionally unconstitutional. This means that the article petitioned for review is unconstitutional if the conditions set by the Constitutional Court are not met. Thus, the article petitioned for review at the time the decision is read out is unconstitutional and will become constitutional if the conditions as stipulated by the Constitutional Court are fulfilled by the addresaat of the Constitutional Court's decision. (Syukri Asy'ari et al, 2013: 675)

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The existence of the Constitutional Court's decision does not necessarily solve the problem. When linking the Constitutional Court's decision with the configuration of the Criminal Procedure Code, the Constitutional Court's decision actually creates its own problems because there are legal consequences, namely the decision on objections from the defendant / legal counsel because the indictment does not meet the provisions of Article 143 paragraph (3) of the Criminal Procedure Code is no longer in the form of an interlocutory decision and also has an impact on the form of legal remedies and will cause legal uncertainty and disharmony of arrangements in the Criminal Procedure Code.

The problem is that the Constitutional Court's decision has indirectly limited the re-submission of indictments, which has the following legal consequences: First, prior to the Constitutional Court's decision, judges were given the freedom to assess objections from defendants/lawyers to be decided in an interlocutory decision or after the completion of the examination. If the judge was of the opinion that the matter could only be decided after the completion of the examination, then the judge in handing down the decision would not consider the merits of the case and only assess the formal and material requirements of the indictment which made the form of the decision an interlocutory decision even though it was decided in the final decision so that the form of legal remedy was a challenge to the high court. After the Constitutional Court's decision, for indictments that are filed again because they have previously been dismissed, judges are required to immediately examine, consider and decide on them together with the subject matter of the case in the final decision which makes the decision in the form of a final decision so that the form of legal remedy is an appeal or cassation.

Secondly, the restriction on the resubmission of a revoked indictment will lead to legal uncertainty because at the second examination, there is the potential that the indictment still does not meet the material requirements, while the subject matter of the case is proven. This restriction also creates disharmony between Article 143 paragraph (3) of KUHAP and Article 156 paragraph (2) of KUHAP. This results in no resolution and clarity of case status for defendants and victims to obtain fair legal certainty as mandated in Article 28D paragraph (1) of the 1945 Constitution.

2. RESEARCH METHODS

The type of research used by the author is normative research. Normative legal research whose other name is doctrinal legal research is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials (Soerjono Soekanto and Sri Mamudji, 2014: 14). Normative research is doctrinal legal research or theoretical legal research because normative research focuses on written studies using secondary data such as laws and regulations, court decisions, legal theories, legal principles, legal principles, and can be doctrine. (Irwansyah, 2021: 98)

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3. DISCUSSION

A. Legal Consequences of Restrictions on Resubmission of Dismissed Indictments

A decision can be implemented if the decision has permanent legal force (inkracht van gewijsde). It is said to have permanent legal force if a decision is not appealed or cassated by the parties to the case within the time period specified by statutory regulations. The consequences of a decision that has permanent legal force are as follows: (M. Yahya Harahap, 2010: 871)

1) No one has the right and power to change it.
2) What can change it is limited to the granting of clemency in criminal cases, and through judicial review in civil cases.
3) Therefore, every verdict that has permanent legal force, must and must be implemented either voluntarily or by force through execution, and the implementation of the fulfillment of the verdict regardless of whether the verdict is cruel or unpleasant.

The existence of a court decision that has permanent legal force (inkracht van gewijsde) on a case, the purpose of the justice seeker has been fulfilled. This is because through the court's decision the rights and obligations of each litigant can be known, but that does not mean that the final goal of the litigants has been completed, especially for the winning party, this is because the winning party does not expect his victory to be only on paper but there must be implementation of the decision. (M. Husni, Ilyas Ismail, and Muzakkir Abubakar, 2013: 30)

After the Constitutional Court's decision, for indictments that are filed again because they were previously dismissed, judges are required to immediately examine, consider and decide on them together with the subject matter of the case in the final decision.

According to Yahya Harahap, a verdict that is null and void means that the verdict is rendered: (M. Yahya Harahap, 2010: 385)

1) Considered to have "never existed" in the first place;
2) A null and void judgment has no legal force and effect;
3) Thus, a verdict that is null and void, from the moment it is rendered, has no execution power or cannot be executed.

This will have an impact on the form of the verdict that will be handed down. Because in the second opportunity, if the material requirements of the indictment still do not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code, the judge is not allowed to decide on an interlocutory decision, but directly examines, considers, and decides it together with the subject matter of the case in the final decision. Unlike before the Constitutional Court's decision, if there is an objection from the defendant/lawyer, the judge is given the option to decide on an interlocutory decision or decide it after the completion of the examination. In the event that the judge is of the opinion that the objection can only be decided after the completion of the examination, the examination will continue but the judge will not

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ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

ultimately consider it together with the subject matter of the case so that the decision does not take the form of a final decision.

By the Constitutional Court's decision, objections from the defendant/lawyer for the second time due to failure to fulfill the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code, must be examined, considered, and decided together with the subject matter of the case in the final decision. Thus, there are several possible forms of decisions that can occur with the following simulations:

1) If the indictment still does not meet the material requirements as stipulated in Article 143 paragraph (2) letter b of KUHAP, then the judge will declare the indictment null and void as well as decide the main case either acquittal, release, or conviction.
2) If the indictment has met the material requirements as stipulated in Article 143 paragraph (2) letter b of the Criminal Procedure Code, then the judge will override the objection of the defendant/lawyer and then decide the main case either acquittal, release, or conviction.

Even so, it is difficult to accept a decision in which the indictment is annulled on the one hand and the defendant's actions are proven (conviction decision) on the other hand as a decision that has binding legal force. This is because from the outset the indictment has actually been null and void (van rechtswege nietig/null end void) so that in accordance with the provisions of Article 197 paragraph (1) letter c of the Criminal Procedure Code which stipulates that the decision must contain the indictment, while the indictment contained is actually null and void, then the decision should be null and void.

Because the verdict is null and void, the author argues that for such a verdict, the form of the verdict becomes a final verdict because the judge has examined the defendant who was present at the trial until the subject matter has been examined, as also quoted from the consideration of the judges in Constitutional Court Decision No.28 / PUU-XX / 2022 at 3.18 p. 263 as follows:

"...Moreover, in judicial practice, judges ex officio in examining and trying criminal cases without any objection (exception) from the defendant / legal counsel regarding the authority to try the case concerned, the indictment is inadmissible or the indictment is null and void by law ex officio can impose an interlocutory decision or continue to examine the subject matter of the case and then impose a final decision together. Therefore, even if there are deficiencies in the formal and material requirements of the indictment, it will be a separate legal consideration for the judge hearing the case to consider comprehensively. It is in this regard whether the judge will focus his decision on aspects of formal justice, material justice, or combine the two in assessing and deciding the case concerned. Thus, with a final decision that includes the subject matter of the case, the available legal remedies on the case can be pursued by the objecting parties. Moreover, if such a case is resubmitted with an amended indictment by the public prosecutor, it will be constrained by the provisions on ne bis in idem, which means that a case with the same defendant and criminal act material that has been decided by the court and has permanent legal force, whether proven or unproven, then the case cannot be re-examined for the second time [vide Article 76 of the Criminal Code].

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According to Eddy O.S. Hiariej, it is not allowed for a case to be tried repeatedly because there is an underlying adagium, namely nemo debet bis vexari, which means that no one can be tried by prosecuting twice for the same case and nihil in lege intolerabilius est (quam) eandem rem diverso jure censeri, which means that the law does not allow the same case to be tried in several courts (Eddy O.S. Hiariej, 2016: 423). In general, the adage is known as nebis in idem. There are three reasons underlying the two adages, namely first to maintain the honor and dignity of the judge who decides the case, res judicata in criminalibus: the finality of the verdict in a criminal case that has permanent legal force so as to completely close the right to re-prosecute. Secondly, to guarantee human rights, in this case the interests of individuals to be inviolable for cases that have been tried and have permanent legal force. Third, the state must provide legal certainty for individuals in obtaining security and peace of mind.

Table 1: Comparison of arrangements and legal consequences before and after Constitutional Court Decision No. 28/PUU-XX/2022

No.	Before and After Comparison Constitutional Court Decision No. 28/PUU-XX/2022	Legal Effects
1.	**Before** - Indictments that are dismissed because they do not meet the material requirements in Article 143 paragraph 2 letter b of KUHAP can be challenged by the public prosecutor to the CA or resubmit the indictment. - The prosecutor can amend and resubmit the indictment without any restrictions.	- The form of the decision is an interlocutory decision although it is decided after the completion of the examination (final decision) because it examines, but does not consider the subject matter of the case. - The prosecutor's legal action was a challenge to PT. - If the CA upholds the interlocutory decision of the District Court, then the prosecutor can file a new indictment without any restrictions and not nebis in idem because it has not examined the subject matter of the case.
2.	**After** - Indictments that are dismissed because they do not meet the material requirements in Article 143 paragraph 2 letter b of KUHAP can be challenged by the public prosecutor to the CA or resubmit the indictment.	- The form of the decision is a final decision because it has examined and considered the subject matter of the case which is decided together in a final decision.
	- The public prosecutor may amend and resubmit the indictment in the trial 1 (one) time, and if there is still an objection by the defendant/lawyer, the judge shall directly examine, consider and decide it together with the subject matter of the case in the final decision.	- The legal remedy that can be taken by the prosecutor is no longer a resistance to the PT, but an appeal or cassation. - Additional regulation on legal remedies for the dismissal of a second indictment is needed as a legal basis in line with the Constitutional Court's decision. - If no legal action is taken or legal action is taken and the case is legally binding, then the case cannot be filed again because it will be nebis in idem.

A court decision that has permanent legal force means that there has been an examination of the subject matter. If the decision "relates to absolute competence or relative competence, as well as decisions relating to the validity or invalidity of the indictment are not decisions that

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ISSN 1533-9211
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have definite legal force. As a further consequence, if the case is tried again, it cannot be said to be ne bis in idem. The requirement for ne bis in idem is res judicata, which means that there is a criminal offense that has been examined in relation to the defendant's criminal liability that has been decided and has permanent legal force. It is the value in society that can be used to explain why people use or do not use or abuse the legal process or legal system. The preference or dislike for a case is part of the legal culture. (Lawrence M. Friedman, 1975: 15)

The author has previously stated that the indictment that has been canceled because it does not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code can be submitted once again and if there is still an objection from the defendant / legal counsel, the judge will immediately examine, consider, and decide it together with the subject matter of the case in the final decision which the output of the decision is in the form of a final decision.

However, with the possibility of a decision with a simulation that if there is an objection from the defendant / legal counsel to the canceled indictment because it still does not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code, the judge will declare the indictment null and void while deciding on the subject matter of the case either acquittal, release, or conviction.

When the judge dismisses the indictment because it still does not meet the material requirements as stipulated in Article 143 paragraph (2) letter b of the Criminal Procedure Code, but the results of the examination of the main case are proven and a verdict of punishment is imposed, then the author argues that the legal remedy that can be taken is an appeal or cassation, so that the object of examining the material requirements of the indictment that is submitted once again is no longer the authority of a legal effort to challenge (verzet) as stipulated in Article 156 of the Criminal Procedure Code, but rather becomes the object of examination of an appeal or cassation. However, with a note that this mechanism only applies when submitting the indictment for the second time and there is an objection from the defendant / legal counsel in accordance with the Constitutional Court's decision.

In order to harmonize the Constitutional Court Decision No. 28/PUU- XX/2022 which gives meaning to the provisions of Article 143 paragraph (3) of the Criminal Procedure Code, namely that the indictment of the public prosecutor which has been declared null or void by law by the judge can be corrected and resubmitted in the trial 1 (one) time, and if an objection is still submitted by the defendant / legal counsel, the judge immediately examines, considers, and decides it together with the subject matter of the case in the final decision, it is necessary to add a legal remedy regulation to the decision by inserting an article between articles 156 and 157 of the Criminal Procedure Code, namely Article 156A of the Criminal Procedure Code so that the arrangement is as follows:

1) After the judge and/or higher court declares that the defendant's/lawyer's objection is accepted, the public prosecutor may amend and resubmit the indictment once again.
2) If the defendant or legal counsel still raises an objection, then the magistrate judge immediately examines, considers, and decides it together with the subject matter of the case in the final decision.

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In addition, it is also important for the Court to remind judges in handling cases to always maintain integrity, while still prioritizing legal certainty and justice. Thus, the possibility of interlocutory decisions declaring the indictment of the public prosecutor null and void repeatedly no longer occurs. This is because judges can assess a case from the aspects of formal and material justice, or combine the two, while still being oriented towards simple, fast and low-cost justice.

Such a limitation on the review of the indictment requires the prosecutor to be more thorough and professional in drafting the indictment so that there is no second or third review of the indictment because if it still does not meet the requirements, the case is automatically finished without examining the subject matter of the case.

B. Legal Certainty of Restrictions on Resubmission of Dismissed Indictments

According to Peter Mahmud Marzuki, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the state can impose or do to individuals. Legal certainty is not only in the form of rules in the law, but also the existence of consistency in one judge's decision with other judge's decisions for similar cases that have been decided. (Peter Mahmud Marzuki, 2008: 137)

Legal certainty in legal society must be positive and legal positivity is a requirement for truth. Legal positivity can be found in the concept of true law as the truth of its content is the task of positive law. (Redbruch and Dabin, 107)

Legal certainty philosophically is legal certainty that must contain justice not only the certainty of the law. The existence of legal certainty in running it must be preceded by justice. Legal certainty must be preceded by truth (verum) and the law is held as a rule to determine what is true and what is not true. Implementing the law without preceding it with the intention of upholding justice or upholding the truth only limits itself to implementing the certainty of justice, not legal certainty itself.

Exceptions to the court's lack of jurisdiction either regarding absolute competence such as lack of authority because the competent authority is the Military Court as stipulated in Article 10 of Law No. 4 of 2002 in conjunction with Law No.

31 of 1997 concerning the Military Criminal Code (KUHPM), lack of authority because the competent authority is the court of connexity as stipulated in Article 89 of the Criminal Procedure Code or the court does not have jurisdiction due to relative competence such as the district court does not have authority because the competent authority is another district court. (Matheos F. Santos, 2021: 188)

In Seja No: SE-004/J.A/11/1993, it is explained that a careful description requires the prosecutor to be meticulous in preparing the indictment that will be applied to the defendant. By placing the word "meticulously" at the forefront of the formulation of Article 143 (2) letter b of the Criminal Procedure Code, the legislator intends that the public prosecutor in preparing

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ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

the indictment always be correct and thorough.

A clear description means a clear description of the events or facts in the indictment, so that the defendant can easily understand what is charged against him and can prepare a defense as well as possible. A complete description means that the indictment contains all the elements of the crime charged. These elements must be reflected in the description of the facts set out in the indictment.

A null and void indictment can be decided in an interlocutory or final decision after the examination of the main case has been completed. If it is decided in an interlocutory decision, it is because there is an objection to the indictment filed by the defendant/lawyer. Without any objection from the defendant or counsel, the judge cannot declare the indictment null and void by interlocutory decision even though it is actually known to the judge that the indictment submitted by the public prosecutor has weaknesses. That is because the judge in accordance with KUHAP is passive, if there is no objection from the defendant / legal counsel then no interlocutory decision is issued. (Gatot Supramono, 1991: 75)

For indictments that are null and void or voided due to objections by the defendant/lawyer, there are two possibilities, namely that the objection is rejected, meaning that the trial continues with the examination of the subject matter of the case. Conversely, if the objection is accepted then a case is not examined further which is stated in an interlocutory decision or the objection is accepted, but the judge is of the opinion that the matter can only be decided after the completion of the examination. Such provisions are regulated in Article 156 of the Criminal Procedure Code as follows:

1) In the event that the defendant or legal counsel files an objection that the court has no jurisdiction to hear the case or that the indictment is inadmissible or that the indictment should be dismissed, then after giving the public prosecutor an opportunity to state his opinion, the judge considers the objection and then makes a decision;
2) If the judge declares that the objection is accepted, the case is not examined further, otherwise if it is not accepted or the judge is of the opinion that the matter can only be decided after the completion of the examination, a hearing is conducted;
3) If the public prosecutor objects to the decision, he or she may file an appeal to the Court of Appeal.

As previously discussed, the nullification of indictments is regulated in the Criminal Procedure Code. If the indictment is invalidated, the public prosecutor is given the opportunity to amend and resubmit the indictment, or if the judge disagrees with the interlocutory decision to invalidate the indictment, the public prosecutor can file a complaint (verzet) with the Court of Appeal. If the Court of Appeal rejects the prosecutor's appeal, the only remaining option is to amend and resubmit the indictment. In contrast, if the public prosecutor's opposition is accepted, then by order of the high court, the district court continues the evidentiary stage until the verdict.

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This is as stipulated in Article 156 paragraph (3) and paragraph (4) of KUHAP as follows:

1) If the public prosecutor objects to the decision, he or she may file an appeal to the Court of Appeal through the relevant district court;
2) In the event that a challenge filed by the defendant or his legal counsel is accepted by the superior court, then within fourteen days, the superior court shall by its decision letter annul the decision of the district court and order the competent district court to examine the case;

After the Constitutional Court Decision No. 28/PUU-XX/2022, it has changed the regulation on the annulment of indictments and its consequences. The decision itself has limited the public prosecutor from resubmitting a case where the Indictment has already been annulled. The prosecutor is only given the opportunity to re-submit 1 (one) time and if the material requirements of the indictment still do not meet the provisions in Article 143 paragraph (2) letter b of the Criminal Procedure Code, the judge is required to immediately examine, consider and decide together with the subject matter of the case in the final decision. The Constitutional Court's decision is a decision on the examination of Article 143 paragraph (3) of the Criminal Procedure Code against the 1945 Constitution, which was subsequently ruled conditionally unconstitutional. Thus, the article petitioned for review at the time the decision was read out was unconstitutional and would become constitutional if the conditions as stipulated by the Constitutional Court were met.

Based on the norm provisions of Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code mentioned above, if examined carefully, there is actually no requirement for judges to impose interlocutory decisions on every objection (exemption) from the defendant / legal counsel relating to the court not having the authority to try the case concerned, the indictment cannot be accepted or the indictment must be canceled, as specified in Article 156 paragraph (1) of the Criminal Procedure Code. Thus, according to the Court, because the norm provisions of Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code a quo are not imperative or optional, for the sake of creating legal certainty and justice for defendants and victims of criminal offenses and also the public interest, the existence of the Article a quo is a fundamental reason for limiting the indictment that can be corrected and the defendant can be re-filed in court repeatedly. In addition, it is also for judges in issuing interlocutory decisions on objections from defendants / legal counsels relating to the court not having the authority to hear the case concerned, the indictment cannot be accepted or the indictment must be canceled.

The Constitutional Court's legal consideration is based on the status of the defendant and the protection of victims of crime who do not get legal certainty and justice for the defendant, victims of crime and the public interest because the prosecutor can submit multiple indictments that have been canceled and for judges can also decide multiple times.

The author respects and understands the Constitutional Court's intention to impose such restrictions, but there is a problem in the enforcement of material law that has the potential to create legal uncertainty itself. By limiting the resubmission of indictments, it means that the

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ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

status of the case itself has been completed and there has never been a verdict on the guilt or innocence of the perpetrator/defendant. Restrictions on the revision and resubmission of indictments that have been declared null and void result in floating cases and unclear resolution.

Meski sesungguhnya MK telah mempertimbangkan keberlakukan Pasal 156 ayat (1) dan ayat (2) KUHAP, namun ternyata norma tersebut tetap eksis dan berlaku sehingga dapat dikatakan bahwa setelah putusan MK No. 28/PUU-XX/2022 has permanent legal force and is binding after being recorded in the official gazette, the public prosecutor is limited to submitting an indictment that has been annulled (either in an interlocutory decision or in a final decision), but there is still an option for the judge to choose whether the defendant's / legal counsel's objection to the material requirements of the indictment that do not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code to be decided in an interlocutory decision. This is in accordance with the provisions of Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code which still allows an objection not to be directly examined, considered, and decided together with the subject matter of the case in the final decision as stated in Constitutional Court Decision No. 28/PUU-XX/2022.

Furthermore, in its legal considerations, the Constitutional Court is of the opinion that the limitation on the review of an indictment that is void or null and void, in addition to providing legal certainty and justice for defendants and victims of criminal acts as well as the public interest, is also to avoid cases that have the potential to exceed the expiration date of prosecution as stipulated in the provisions of Article 78 and Article 79 of the Criminal Code.

In its legal reasoning, the Constitutional Court stated that in addition to providing certainty and justice, the limitation on the PK of an indictment that has been canceled or null and void is also to avoid the expiration of the prosecution. By not granting a review of an indictment that has been canceled or null and void, it can actually create legal certainty itself because the assessment of the guilt or innocence of the defendant at trial must be based on the evidentiary process which can only be found from the examination of the main case. As for the applicant's concerns in the judicial review of Article 143 paragraph 2 of KUHAP a quo, which is faced with repeated trials, there is a form of check and balance in the criminal justice system to correct the formal and material requirements of the indictment made by the public prosecutor. The legal certainty mentioned in the Constitutional Court's decision has actually been well regulated by KUHAP, with at least two instruments, namely: 1) there is an expiration of prosecution mechanism in the event that the public prosecutor is unable to prove the case submitted to the trial; and 2) in the event that the case submitted to the trial by the public prosecutor has been examined on the merits and not proven (acquitted / free), then nebis in idem applies if it is submitted again. Thus, there is no urgency to limit the review of the indictment because aspects of legal certainty for victims, the public, especially the perpetrators/defendants have been provided by the configuration of the Criminal Procedure Code.

As stated by the previous author, the limitation on the review of the indictment allows for a decision that states that the indictment still does not meet the material requirements and subsequently dismisses the indictment, but the results of the examination of the main case are proven and a verdict of punishment is handed down. Of course, it becomes a dilemma because

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ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

the formal aspect is declared not fulfilled but the material aspect has been fulfilled. This can lead to various interpretations by law enforcers. The existence of such confusing arrangements has even become a growing issue and it is difficult for the Constitutional Court itself to determine whether such issues are a matter of norm application or constitutional issues.

Therefore, the provision of additional requirements to 143 paragraph (3) of the Criminal Procedure Code as decided by the Constitutional Court, which limits the revision and resubmission of a case, creates legal uncertainty and creates the potential for delaying the rights of suspects / defendants to be immediately tried, and has the potential to delay the rights of suspects and hamper the completion of the main case. Restrictions on the revision and resubmission of indictments that have been declared null and void result in floating cases and unclear resolution. In fact, the previous arrangement of Article 143 paragraph (2) of KUHAP was appropriate. How long the prosecutor will resubmit an indictment that has been declared null and void is the full authority of the prosecutor as the owner of the case based on the principle of "dominus litis", as long as the case does not exceed the prosecution expiration limit as stipulated in Article 78 and Article 79 of the Criminal Code.

Prior to the Constitutional Court's decision, the provisions of Article 143 paragraph (2) of KUHAP did not limit the public prosecutor in submitting indictments that had been canceled or null and void. This resulted in the submission of indictments without any restrictions, which potentially hampered defendants and victims as well as the public in obtaining legal certainty because indictments that did not meet the material and formal requirements were easily corrected and resubmitted, giving the impression that law enforcement carried out by the prosecutor was uncertain. Meanwhile, the provisions of Article 143 paragraph (2) of the Criminal Procedure Code after the Constitutional Court's decision give the impression of legal certainty because the prosecutor can only submit an indictment that has been canceled or null and void and after that if the indictment still does not meet the requirements of Article 143 paragraph (2) of the Criminal Procedure Code, then the case is automatically considered finished. As a result, there will never be a verdict in the form of punishment for a criminal offense that has actually occurred only because of the limitations in the Review of the Indictment.

With the decision of the Constitutional Court No. 28/PUU-XX/2022, it has created incoherence and inconsistency in the regulation regarding the non- fulfillment of the material requirements of the indictment as stipulated in Article 143 paragraph (2) letter a of the Criminal Procedure Code because it will lead to different treatment for the public prosecutor who is limited in submitting an indictment that has been annulled (either in an interlocutory decision or in a final decision), but there is still an option for the judge to choose whether the defendant's / legal counsel's objection to the material requirements of the indictment that does not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code to be decided in an interlocutory decision. This is in accordance with the provisions of Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code which still allows an objection not to be directly examined, considered and decided together with the subject matter of the case in the final decision because it is not considered and not canceled or given new meaning by the

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

Constitutional Court. Thus, in order to create coherence and consistency in the regulation of the existence of the defendant's/lawyer's objection to the material requirements of the indictment that do not meet the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code, the author argues that ideally any objection of the defendant/lawyer to the material requirements of the indictment should only be decided in an interlocutory decision and does not provide a limitation for the Public Prosecutor to amend and resubmit the nullified indictment so that the regulation in Article 156 of the Criminal Procedure Code is amended as follows:

1) In the event that the defendant or his/her legal counsel files an objection that the court has no jurisdiction to hear the case or that the indictment is inadmissible or that the indictment should be dismissed, then after giving the public prosecutor an opportunity to state his/her opinion, the judge considers the objection and then makes a decision;
2) If the judge declares the objection admissible, then the case is not examined further, preferably in the event that it is not admissible, then a hearing is conducted.

Ideally, any objections by the defendant/lawyer to the competence of the court, the formal or material requirements of the indictment should be examined, considered and decided only in the preliminary hearing (interlocutory decision). If the results of the examination are proven, then the judge does not examine further the subject matter of the case. Meanwhile, if the result of the examination is not proven, the judge proceeds to examine the subject matter of the case so that after the completion of the examination stage on the subject matter of the case, the judge no longer assesses the formality of the indictment, but is oriented towards examining the subject matter of the case. Such arrangements can at least maintain coherence and consistency between the rules of law, which are very strict in their application in criminal procedure law. Legislation is only an endorsement of the rules of law that have been formed informally in and by social interaction. (Clarence Morris, 1978: 300) In addition to having legal consequences on the form of legal remedies, the limitation of repairing and resubmitting indictments that have previously been canceled can lead to injustice in society, where in a criminal trial a person or defendant can be legally acquitted without considering the facts of the defendant's material actions in the trial but only based on formal administrative procedures. In other words, the defendant will escape criminal liability only on the basis of a court that examines the formal aspects without any proof of the subject matter of the case so that the handling and status of the case becomes uncertain.

4. CLOSING

The legal consequences of limiting the resubmission of an indictment that has been canceled make the decision in the form of a final decision because it has been examined and considered the subject matter of the case and will be nebis in idem if submitted again afterwards. The form of legal remedy that can be taken by the public prosecutor is an appeal or cassation and not a resistance (verzet). To harmonize this form of legal remedy with the Constitutional Court's decision, additional regulations are needed that contain new norms in criminal procedure law. The Constitutional Court's decision limiting the resubmission of indictments is a form of legal

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.8366362

certainty. Thus, in order to avoid the repeated dismissal of indictments, it is necessary for the prosecutor to be careful in preparing the indictment because at the second examination, there is the potential that the indictment still does not meet the material requirements so that the case is considered finished without any examination of the subject matter, and there is the potential that the indictment still does not meet the material requirements, while the subject matter of the case is proven. This resulted in no resolution and clarity of case status for defendants and victims to obtain fair legal certainty as mandated in Article 28D paragraph (1) of the 1945 Constitution.

Literature

1) Abdoel Djamali, R. 2008, Introduction to Indonesian Law, PT Raja Grafindopersada, Jakarta.
2) Asra Rahmad, Riadi 2019, Criminal Procedure Law, Cet. 1st, PT Raja Grafindo Persada, Depok.
3) Atmasasmita, Romli. 2010, Contemporary Criminal Justice System, Prenada Media Group, Jakarta.
4) Clarence Morris, 1978, The Great Legal Philosophers.
5) F. Santos, Matheos. 2021, Legal Study of Exception to the Indictment of the Public Prosecutor According to the Provisions of Article 156 paragraph (1) of Law No. 8 of 1981, Journal of Lex Crimen Vol. X No. 6, Faculty of Law, Samratulangi University.
6) Gustav Rebruch in The Legal Pholosopheis of lack, Redbruch and Dabin, (Cambridge Massachusetts, Harvard University Press)
7) Hamzah, Andi. 2000, Indonesian Criminal Procedure Law, PT Sinar Grafika, Jakarta. Irwansyah, 2021, Legal Research, Choice of Methods & Practice of Article Writing,
8) Mirra Buana Media, Yogyakarta.
9) Lawrence M. Friedman, 1975, The Legal System: A Social Science Perspective, (New York: Russel Sage Foundation).
10) M. Husni, Ilyas Ismail, and Muzakkir Abubakar, 2013, Immediate Decision and Its Implementation (A Study in the Legal Area of the District Court of Banda Aceh), Journal of Postgraduate Legal Studies, Syiah Kuala University Vol. 2 No. 2.
11) M. P. Pangaribuan, Luhut. 2013, Criminal Procedure Law, Cet. 1st, Djambatan, Jakarta.
12) Mahmud Marzuki, Peter. 2008. Introduction to Legal Science. Kencana. Jakarta.
13) O.S. Hiariej, Eddy. 2016, Principles of Criminal Law (Revised Edition), Cahaya Atma Pustaka, Yogyakarta.
14) Soekanto, Soerjono and Sri Mamudji, 2014, Normative Legal Research, Raja Grafindo Persada, Jakarta.
15) Supramono, Gatot. 1991. Indictments and Judicial Decisions that are Null and void.
16) Djambatan. Jakarta.
17) Suyanto, Criminal Procedure Law, Zifatama Jawara, Sidoarjo, 2018.
18) Syukri Asy'ari et al, Model and Implementation of Constitutional Court Decisions in Law Testing (Study of Decisions in 2003-2012), Constitutional Journal Vol. 10 No. 4, December 2013.
19) Yahya Harahap, M. 2008, Discussion of Problems and Application of KUHAP, Investigation and Prosecution, Sinar Grafika, Jakarta.
20) Yahya Harahap, M. 2010, Civil Procedure Law, Sinar Grafika, Jakarta.