

The Submission of Judicial Review by the Public Prosecutor Following the Decision of the Constitutional Court No 20/PUU-XXI/2023 (Indonesia): an Examination of Legal Protection for the Rights of the Convicted

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Abstract. This paper examines the inclusion of verbally displaying sexual acts (commonly known as catcalling) within the framework of criminal law in Indonesia. It also analyses the legal protections afforded to victims of such actions under Law No 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law). Verbal sexual concealment, or catcalling, involves the non-physical expression of sexual acts directed at an individual's body, sexual desires, and/or reproductive organs. This undermines the person's dignity based on their sexuality and/or modesty. Under the TPKS Law, victims of verbal sexual harassment, or catcalling, are granted specific legal protections. These include the right to be shielded from acts of violence and the right to be free from any treatment that undermines their dignity. These protective measures encompass the fulfilment of ownership and the provision of assistance to ensure the victims' sense of security. The LPSK or other relevant institutions are responsible for carrying out these protective measures by the requirements outlined in the law.

Keywords: Catcalling; Legal Protection; Sexual harassment; Victim.

INTRODUCTION

The rule of law is characterised by acknowledging and safeguarding individuals' rights, which are held in esteem and protected. These individual rights represent fundamental rights inherent in human beings, reflecting the essence of human existence. Constitutional provisions govern the safeguarding of these human rights. Within a legal state, the hierarchy in legislation places the Constitution at the highest level as a source of law, especially within the jurisdiction of Indonesia, with the Constitution reigning supreme in the legal framework [1]. The Constitution encompasses the acknowledgement, assurance, protection, and legal assurance of individual rights.

The recognition of individual rights within the realm of law is exemplified by the process of judicial review, which constitutes one of the rights conferred by the law (after this referred to as the "Law"). A judge's verdict serves as the resolution in a criminal case. Simultaneously, this judicial decision is the origin of all legal endeavours to

uphold legal certainty. Consequently, the judge's decision embodies a sense of confidence and must exemplify fairness, offering advantages to all parties involved [2]. *Herziening*, a Dutch term meaning review, is seen as an effort to seek justice when you feel aggrieved by the district court's decision or appeal [3].

Reconsideration (now referred to as "PK") is a part of law enforcement aimed at creating a law that is both certain and just, thereby benefiting Indonesian society. The principles of fairness and trial independence are implemented within the legal system in Indonesia for legal efforts, making legal remedies a means to rectify errors in the execution of the law, as manifested in decisions at the district and high court levels [4].

Correction of a judge's decision due to indications of errors can be achieved through Legal Remedies, enabling the rectification of previous judicial decisions [5]. The principle of consensus deliberation is utilised in legal efforts for revisiting criminal legal proceedings. Judges deliberate

based on facts and circumstances about the overall matter observed and found during the trial process. When a judge's decision entails criminal sanctions, the judge provides information on the defendant's rights [6]. For the execution of their rights, convicts are allowed to make specified legal efforts as stipulated by the law, including regular legal recourse at the appellate and cassation levels and an extraordinary legal remedy known as reconsideration, representing the final legal recourse.

Every effort made by a convict involved in a court case, resulting from suffering harm to their rights and seeking to achieve justice by the established procedures under the legislation, can be classified as a legal recourse. When dissatisfied with a decision at the district court level, a convict can file an ordinary legal remedy, including appeal and cassation. If a cassation decision is perceived to be detrimental to the convict after it has become legally binding, an extraordinary legal remedy known as reconsideration can be pursued. Special legal remedies represent a last-resort measure in seeking justice for the convict, with all procedural steps stipulated by the law.

Legal remedies that can be pursued by the accused or convicts have been regulated by law to ensure that the applicable law protects these legal actions for the entire Indonesian society. Legal remedies consist of appeals in the high court, cassation in the supreme court, and an extraordinary legal remedy known as reconsideration. A final court decision, which has become legally binding, can be submitted by a convict for reconsideration and presented to the highest legal institution, namely the Supreme Court (from now on referred to as "MA"). As stipulated in the law, a reconsideration request acknowledges individual rights, granting freedom to pursue justice following regulations. However, it is essential to note that reconsideration is not only given to convicts but can also be pursued by heirs or family members of convicts [7]. Martiman Prodjohamidjojo opines that legal remedies serve as a means to correct errors in previous judicial decisions [8]. Legal remedies aim to ensure certainty in implementing justice and act as a means of protection for convicts in cases with indications of judicial bias. Additionally, legal remedies serve as a means to correct errors in the execution of justice by legal authorities. Furthermore, legal remedies serve as an avenue for convicts to present new evidence and infor-

mation that remains within the scope of fundamental criminal issues [9].

The philosophical foundation of reconsideration is rooted in restoring convict rights, signifying the protection of human rights inherent to convicts. Thus, convicts are not solely viewed as legal subjects who have committed legal transgressions but are seen in balance, with their rights protected through extraordinary legal efforts to pursue justice. This rationale underscores the limitation of reconsideration to convicts and their heirs or families. However, it is worth noting that public prosecutors have also submitted reconsideration requests, thereby prompting the establishment of Constitutional Court Decision No 20/PUU-XXI/2023.

The case under consideration in the Constitutional Court decision originated from the case of a notary in Denpasar named Hartono, who was suspected of falsifying documents. In the conclusion of the Gianyar District Court, Hartono was found to have participated in the forgery of documents. Subsequently, Hartono pursued a legal remedy by appealing to the Bali High Court, which acquitted him of the charge of document forgery. However, the Public Prosecutor's Office sought cassation. In the cassation decision, Hartono was found to have been involved in document forgery, prompting Hartono to resort to an extraordinary legal remedy – reconsideration.

On September 15, 2021, the reconsideration decision ruled that Hartono was not proven to have engaged in document forgery and was acquitted of all charges. The reconsideration request submitted by Hartono was based on the provision of Article 30C § h of the Republic of Indonesia Law No 11 of 2021 concerning Amendments to Law No 16 of 2004 concerning the Republic of Indonesia Attorney General's Office. This request, initiated by the Public Prosecutor's Office, was deemed to violate the Criminal Procedure Code (KUHAP) provisions and infringe upon the defendant's constitutional rights. As a result, Hartono filed a Judicial Review against Article 30C § h of the Republic of Indonesia Law No 11 of 2021 concerning Amendments to Law No 16 of 2004 concerning the Republic of Indonesia Attorney General's Office.

The Judicial Review submitted by Hartono was approved by the Constitutional Court, as stated in Decision No 20/PUU-XXI/2023. The operative part of the decision says that Hartono's petition is granted in total, and Article 30C § h of the Re-

public of Indonesia Law No 11 of 2021 concerning Amendments to Law No 16 of 2004 concerning the Republic of Indonesia Attorney General's Office is declared to be without legal force. The Constitutional Court's decision provides a philosophical understanding that reconsideration emphasises the convict's fundamental rights to receive fair and equal treatment under the law, allowing individuals to advocate for their rights and justice. Reconsideration is a means the state grants convicts to assert and protect their rights. The rights inherent to convicts are fundamental human rights; therefore, reconsideration is inherently linked to these fundamental human rights. Extraordinary legal remedies are grounded in historical and philosophical meanings and are created to safeguard the rights of the parties involved in legal proceedings. Protecting convict rights is a concept enshrined in the Criminal Procedure Code (KUHAP). In the context of human rights, reconsideration becomes an essential instrument to shield individuals from potential abuses of power or systemic errors that may occur within the judicial process.

Public prosecutors cannot file a request for reconsideration (PK) against a court decision because the fundamental principle of reconsideration is to protect the convict's human rights. This ensures that convicts obtain fair legal certainty in their judicial process. Although errors in a convict's acquittal decision or the discovery of new evidence indicating the convict's wrongdoing may arise, such considerations can only be entertained if the evidence is obtained before the final decision. The lengthy judicial process, including investigation, prosecution, examination, and findings at the first-instance, appellate, and cassation levels, provides ample opportunity for public prosecutors to exercise their authority in proving the convict's guilt. Therefore, from a fair perspective, the scope of reconsideration examinations should be limited to convicts, heirs, or convict families. The authority held by public prosecutors in the previous judicial process is deemed to have granted sufficient opportunity for them to demonstrate the convict's guilt.

The above descriptions and background explanations have led researchers to focus their study on the issue of the principle of legal protection for convict rights in the implementation of extraordinary legal remedies, namely reconsideration. Consequently, when public prosecutors initiate reconsideration of legal remedies, they violate the principle of legal protection in reconsidera-

tion, which is intended exclusively for convicts. In the Criminal Procedure Code (KUHAP), reconsideration adheres to the principle of advocating individual rights when facing the state. In this context, reconsideration becomes the right of convicts and their heirs or families, as stipulated in Article 1 No 12 and Article 263 § 1 of the KUHAP. The main essence of reconsideration is for the benefit of convicts and their heirs or families, allowing them to review legally binding court decisions. If public prosecutors also have the right to reconsideration, the essence of reconsideration would be compromised. This is because the accusatorial principle places the convict as a principle of non-guilt, leading to disorientation. The right of reconsideration, originally intended to protect convict rights, would become fragmented and susceptible to misuse by public prosecutors for the interests of their institution without considering principles of justice and legal certainty.

Thus, this research will trace and deeply analyse the concept of the principle of legal protection in the context of extraordinary legal remedies, particularly the review process. This study aims not only to comprehend the essence of the rights of convicted individuals within the judicial system but also to highlight how the dynamics of legal modernisation and societal interests confront this principle. With a more profound understanding of the crucial role of the principle of legal protection, this research endeavours to ensure that extraordinary legal remedies, such as the review process, remain within the framework of justice, human rights, and legal certainty. These efforts are geared towards gaining a more comprehensive understanding of the critical role of the principle of legal protection in maintaining the integrity and balance of a modern justice system.

METHODS

This research employs a conceptual approach, Legal Approach, and Historical Approach. In this study, the researcher utilises three crucial legal materials in analysing and comprehending the examined issues. Firstly, primary legal sources are used, encompassing various relevant legislative regulations such as Law No. 8 of 1981 concerning criminal procedural law, Law No 48 of 2009 concerning judicial authority, Constitutional Court Decision No 20/PUU-XXI/2023, and Republic of Indonesia Law No 11 of 2021 amending Law No 16 of 2004 concerning the Prosecutor's

Office. Secondly, secondary legal sources, including official documents, textbooks, and legal publications, also serve as vital sources of information to support this research. These publications encompass various books, legal journals, and commentaries on court decisions, providing deeper insights into legal issues. Finally, tertiary legal materials, such as legal dictionaries and encyclopedias, are also used to enhance the understanding of relevant technical terms and legal concepts.

The technique of legal material analysis in this study employs qualitative content analysis, examining the concepts of an integrated criminal justice system, material truth in criminal procedural law, and other relevant concepts. These concepts are subsequently analysed to determine whether regulations limit criminal case review. After identifying the findings of this analysis, the research concludes with new insights into the statute of limitations on the study of criminal cases by the principles governing the criminal justice system in Indonesia. The legal materials analysed using qualitative content analysis will be presented systematically, explaining the interrelationships among the legal sources used. Subsequently, all these legal materials are selected, processed, and presented descriptively to conclude by identifying the specific characteristics of electronic proceedings, thus leading to solutions and resolutions for the intended issues.

RESULTS AND DISCUSSION

The essence of filing a reconsideration by convicts and their heirs after constitutional court decision No 20/puu-xxi/2023 from the perspective of legal certainty

1. Procedure for Filing a Reconsideration Request by Convicts. Article 263 § 2 of the Criminal Procedure Code (KUHAP) outlines the reasons that can serve as the basis for a reconsideration request, which the applicant expresses in a "reconsideration request letter." In this letter of recommendation or reconsideration application, the applicant clearly states the underlying reasons for the request.

Considering the provisions of Article 264 §§ 1, 4, the formal requirement to determine the validity of a reconsideration request is a "request letter" for reconsideration. Without a request letter that contains reasons as a basis, such a request is con-

sidered "non-existent." This viewpoint is supported by Article 264, §§ 1, 4, which affirms:

a) The last sentence of § 1 affirms that the applicant must clearly state the reasons for the reconsideration request;

b) §4) affirms that if the petitioner for reconsideration is a convict who lacks a proper understanding of the law, the court clerk, when receiving the reconsideration request, is obligated to inquire about the reasons from the petitioner. For this purpose, the court clerk prepares a reconsideration request letter.

Based on the above assertion, the formal requirement for a reconsideration request is the existence of a "request letter" containing the reasons that form the basis of the reconsideration request. Whether this request letter containing explanations is created by the convict or the court clerk of the District Court, as stipulated in Article 264 § 4, is not the issue. What matters is that as a requirement for the request's validity, it must be submitted in a reconsideration request letter that explains the underlying reasons. The reasons forming the basis for the reconsideration request are detailed in Article 263 §§ 2, 3 of the law [10].

Suppose the convict, as the petitioner for reconsideration, has a limited understanding of the law. The court clerk must inquire about and record the reasons in that case, creating a reconsideration request letter. This reconsideration request must then be communicated to the Public Prosecutor within 14 days after receipt by the District Court. Subsequently, the Chief Justice of the District Court designates a judge to examine the case. During the proceedings for reconsideration, both the petitioner and the prosecutor participate in the hearing to provide their opinions. A record of the reconsideration hearing is then prepared by the court clerk and signed by the Judge, Prosecutor, petitioner, and court clerk. Additionally, a review of the reconsideration hearing is conducted, and the court clerk is obligated to draft a record of the Chief Justice/Judge of the District Court's opinion on the reconsideration. Following this, within 30 days, the court clerk sends the reconsideration case bundle (Bundle B), including:

a) The request letter for reconsideration, signed by the court clerk and petitioner;

b) The reconsideration request letter, along with its reasons;

- c) The record of the reconsideration opinion of the Judge/Chief Justice;
- d) Copies of the original court's decision;
- e) Copies of the appellate court's decision;
- f) Copies of the Supreme Court's decision;
- g) Any other relevant documents.

By Article 264 of the Criminal Procedure Code, the procedure for submitting a reconsideration request can be explained as follows:

1. The Request is Submitted to the Court Clerk: The petitioner submits the request to the court clerk of the District Court, who issues the initial verdict. The District Court then forwards the request to the Supreme Court.

- a) The reconsideration request, in principle:
- b) Must be submitted in writing,
- c) Must clearly state the reasons underlying the reconsideration request. It may also be submitted orally. Submitting orally is derived from Article 264, § 4. Specifically for petitioners who have a limited understanding of the law, the request may be submitted orally. Then, the court clerk transcribes the oral request into a "reconsideration request letter," which also includes the reasons provided by the petitioner.

2. Court Clerk Prepares a Reconsideration Request Deed: For juridical accountability, the court clerk of the District Court receiving the reconsideration request records it in a document commonly referred to as the "reconsideration request deed."

- a) The court clerk and the petitioner sign the deed or document,
- b) The document is then attached to the case file.
- c) This is the procedure for creating a reconsideration request deed, as regulated by Article 264 § 2 in conjunction with Article 245 § 2 of the Criminal Procedure Code.

3. Timeframe for Submitting Reconsideration Requests: The timeframe is regulated by Article 264 § 3. This provision explicitly establishes that a reconsideration request can be submitted "without a time limit."

New documents and witnesses not presented in the initial court proceeding can be submitted during the trial. Within 30 days after the test is completed, the court clerk must promptly send the case bundle to the Supreme Court. A copy of

the cover letter is provided to the petitioner and the Public Prosecutor. In cases where the request for reconsideration pertains to a decision of the Court of Appeals, the covering letter must be accompanied by a copy of the examination report and the opinion record sent to the relevant Court of Appeals. A copy of the ratified Supreme Court decision notification, certified by the court clerk, is sent to the Supreme Court. Reconsideration requests are only accepted before the District Court forwards the reconsideration request to the Supreme Court. Article 265 assigns the relevant District Court to hold a hearing before forwarding the reconsideration request to the Supreme Court.

Article 265 § 4 specifies what must be forwarded to the Supreme Court. According to this provision, the things that the Chief Justice of the District Court must send to the Supreme Court include:

1. The reconsideration request letter.
2. The original case file in its entirety, including the investigation's examination report, the trial's examination report, all documents related to the case, and all decisions related to the topic.
3. The reconsideration request examination report.
4. The opinion record.

In addition to sending the reconsideration request to the Supreme Court, the Chief Justice of the District Court is further obligated to [10]:

1. Provide the petitioner and the prosecutor a copy of the forwarding letter.
2. Provide a copy of the forwarding letter to the Court of Appeals. If the case being reconsidered is a decision of the Court of Appeals at the appellate level, an examination report and an opinion record must accompany the forwarded letter.

Some of the reconsideration decisions that can be described are as follows: a reconsideration can only be requested once (Article 268, § 3 of the Criminal Procedure Code). After the submission, the potential outcomes are:

1. The request is declared unacceptable.
2. A decision rejecting the request for reconsideration.
3. A decision affirming the reasons provided by the applicant.

Another type of decision that the Supreme Court can issue in a reconsideration request case is a decision that "affirms" the reasons for the request. The reasons for the request must genuinely involve relevant facts by Article 263 § 2. For instance, if new circumstances presented by the petitioner hold significant and appropriate value, that can undermine the situation outlined in the original decision. Or if there is an apparent and concrete contradiction between various choices. Alternatively, suppose a significant error is evident in a decision that cannot be tolerated under the law. In that case, the reasons for the request can be substantiated if such factors are present.

According to Article 266 § 2 letter b, if the Supreme Court grants the reasons for a request for review, the Supreme Court's decision accompanies such approval [10].

1. Acquittal verdict. For instance, the petitioner submits a new circumstance supported by "new evidence" that could undermine the proof of the convict's guilt. In cases like this, the new evidence or possibility is evaluated and considered to negate the re-evaluation of evidence, thus proving the convict's guilt. Therefore, the convict's responsibility should be declared unproven, leading to an acquittal verdict or in cases where a legally irrefutable error is present in a final and binding judgment that cannot be lawfully justified.

The mistake or error cannot be excused, or it is not an error that can be tolerated. The only way to rectify such an error is by overturning the decision with alternative outcomes such as "release," "exemption from all legal claims," or "application of a milder provision." In practice, the Supreme Court grants very few review requests. Of the many proposals submitted, only one in a hundred is accepted. One of the requests for review granted by the Supreme Court is the decision dated March 15, 1984, No 20 PK/Pid/1983. According to the final and binding court decision, the defendant was sentenced to 3 years for murder as formulated in Article 338 of the Criminal Code. The defendant requested to review the decision, arguing that the decision clearly showed a judge's error, who had declared the defendant guilty based solely on circumstantial evidence. However, according to Article 188 § 2 of the Criminal Procedure Code, circumstantial evidence can only be drawn and obtained from witnesses, documents, and the defendant's statements. Such evidence was not presented during

the trial, as neither the statements of witnesses nor the defendant's statements and documents provided any indications proving the defendant's guilt for the alleged crime. The Supreme Court upheld the objection on the grounds of the following considerations:

a) The judge's decision clearly shows a significant error as stipulated in Article 263 § 2 letter c, as the defendant consistently denied the alleged guilt from the beginning, both for the primary and subsidiary charges.

b) Not a single witness saw the defendant pushing the victim out of the train, causing the victim to fall and die instantly.

c) The defendant's parents, police, and prosecutor only suspected the defendant of committing the murder, but these were mere individual conclusions unsupported by valid evidence.

Based on the above considerations, the request for review can be granted, and the Supreme Court can "annul" the original decisions.

2. Discharge from all legal claims. Another alternative that the Supreme Court can decide if the reasons for a request for review are justified is to issue a verdict of "discharge from all legal claims." This may occur if the new circumstances presented by the petitioner demonstrate a situation that removes the criminal nature of the alleged act, placing it outside the scope of criminal offence or violation, as the act in question is not a criminal offence or offence. Alternatively, if there is a contradiction or error in the decisions, this contradiction or error negates the criminal nature resulting from the denial or mistake.

3. Not accepting the public prosecutor's demand. Another decision that the Supreme Court can render in justifying a request for review is a verdict stating that it does not accept the public prosecutor's demand. Such a decision can be made if it is revealed that there are new facts or circumstances indicating that the case had previously been examined and decided. Alternatively, if the defendant dies during the trial proceedings, the court still renders a verdict and imposes a penalty on the deceased defendant. However, based on Article 77 of the Criminal Code, the defendant's death should rightfully invalidate the prosecutor's authority to pursue the case.

4. The decision was made by applying a milder criminal provision. A decision involving the application of a softer illegal provision may be rele-

vant in cases where the indictment provides alternative or subsidiary charges. For example, the defendant is charged alternatively with the criminal act of premeditated murder, subsidiarily with murder, or further subsidiarily with assault resulting in death. The court sentences the defendant based on the primary charge of premeditated murder, per Article 340 of the Criminal Code. Subsequently, this decision becomes final and binding. Against this decision, the convict files a request for review. According to the reasons presented, it becomes apparent that the decision contains a significant error or new circumstances that could nullify the proof of premeditation in the criminal act, leading to the correct application of the charge of murder under the subsidiary charge, as per Article 338 of the Criminal Code. Alternatively, the judge's error or the new circumstances might hold a value that negates the elements previously considered proven regarding the act of murder. For instance, by eliminating the intent to take another person's life, the appropriate charge to apply is causing death, as per Article 351 § 3 of the Criminal Code.

2. The Essence of the Principle of Legal Certainty in Post-Constitutional Court Decision No 20/PUU-XXI/2023 Review. In post-review cases following Constitutional Court Decision No. 20/PUU-XXI/2023, the principle of legal certainty becomes crucial to ensure that the review process is conducted transparently and per the prevailing laws. The following are some ways the code of legal certainty can be applied in post-review cases following Constitutional Court Decision No. 20/PUU-XXI/2023.

The principle of legal certainty must be applied to the review process to ensure that it is conducted transparently and by the prevailing laws. This can help maintain justice and effectiveness in the legislative process in Indonesia [11].

Clear regulations regarding the review process should be established to ensure that the process is conducted correctly and by the prevailing laws. This can help maintain legal certainty and prevent conflicts or inconsistencies between the laws in force [12].

The review process should be conducted while considering human rights and not restricting those rights. This can help maintain justice and effectiveness in the legislative process in Indonesia [12].

Meaningful participation from the public in the review process can help maintain justice and effectiveness in the legislative process in Indonesia. This participation should be positioned as a fundamental principle and legal policy in the legislative process in Indonesia [13].

In conclusion, the principle of legal certainty is crucial in post-review cases following Constitutional Court Decision No. 20/PUU-XXI/2023 to ensure that the process is transparently conducted and by the prevailing laws. Clear regulations, the protection of human rights, and meaningful participation from the public can help maintain justice, effectiveness, and legal certainty in the legislative process in Indonesia. The principle of legal certainty in post-MK No. 20/PUU-XXI/2023 cases is consistently applied in line with Constitutional Court Decision No. 34/PUU-XI/2013. This decision states that the principle of legal certainty in the review process remains applicable, and legal certainty exists from the appellate and cassation levels. True legal certainty is achieved when the convict is subject to a review decision. Decision No. 34/PUU-XI/2013 allows for more than one review process without undermining the principle of legal certainty. The decision aims to seek material justice and truth, and justice cannot be restricted by time. The Constitutional Court protects human rights by not limiting the review process. However, the Supreme Court issued Supreme Court Circular Letter (SEMA) No. 7 of 2014, restricting the submission of a request for review in criminal cases to only one time. This circular letter has caused confusion among law enforcement agencies and those seeking justice.

Review by the Public Prosecutor's Office from the perspective of legal protection for the rights of convicts

1. Violation of Subject and Object Elements in Requests for Review by the Public Prosecutor's Office. The Constitutional Court, as one of the branches of the judiciary with powers specified in Article 24C § 1 of the 1945 Constitution of the Republic of Indonesia, is empowered to adjudicate at both the first and final levels, with decisions that are considered final, to examine a law against the 1945 Constitution.

The controversy surrounding the prohibition for the public prosecutor to file a request for a review arose from Constitutional Court Decision No. 33/PUU-XIV/2016, issued on May 12, 2016.

This decision was prompted by a request from Anna Boentaranyang, who felt aggrieved by the provision of Article 263 § 1 of Law No. 8 of 1981 concerning Criminal Procedure (KUHAP).

Based on the considerations and decision of Constitutional Court Decision No. 33/PUU-XIV/2016, essentially, the decision stated that the Public Prosecutor's Office cannot submit a Request for Review in criminal cases. The Constitutional Court argued that the Public Prosecutor's Office is granted rights and authority throughout the investigation process, up to the appellate and cassation levels, in the interest of the law. Furthermore, the Constitutional Court affirmed that the review mechanism is intended for the benefit of the convict, not the state or the victim. Therefore, only convicts or their heirs can submit a Request for Review as an extraordinary legal remedy.

In summary, Constitutional Court Decision No. 20/PUU-XXI/2023 essentially states that the provision of Article 30C letter h of Law No. 11 of 2021 regarding Amendments to Law No. 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, which grants additional authority to the prosecutor to submit a Request for Review, is not in line with the norm of Article 263 § 1 of KUHAP as affirmed in Constitutional Court Decision No 33/PUU-XIV/2016. The latter decision stipulates that the prosecutor does not have the authority to submit a Request for Review, and only the convict or their heirs are eligible to do so. According to the Constitutional Court, any different interpretation of Article 263 § 1 of KUHAP would lead to legal uncertainty and injustice. Consequently, Article 30C letter h and the explanation of Article 30C letter h of Law No. 11/2021 would not only result in legal disharmony and ambiguity regarding the submission of Review requests. Still, they would also violate the rights to recognition, guarantees, and fair legal certainty guaranteed by Article 28D § 1 of the 1945 Constitution.

2. The Principle of Legal Protection for the Rights of Convicts Through Review. The principle of legal protection for the rights of convicts through review is an extraordinary legal remedy regulated from Article 263 to Article 269 of KUHAP. Review is a legal process initiated by convicts or their heirs to seek better justice. The second principle in the review process is the protection of the finality of acquittal and release verdicts, which cannot be appealed, cassated, or sub-

ject to a Request for Review. A Review request should also benefit the convict, and its outcome should not impose a heavier consequence than the original verdict. However, the prosecutor cannot submit a Request for Review unless the convict or their heirs initiate it. The Constitutional Court has established this through Decision No. 33/PUU-XIV/2016, which declared that Article 263 § 1 of KUHAP does not have binding legal force as long as it is interpreted differently from the explicit norm.

Since this Constitutional Court decision, prosecutors can no longer submit Review requests. In divorce cases in religious courts, convicts also have rights that need protection, such as the right to attend hearings and participate in all response processes. However, limitations on the defendant's attendance in court hearings can fail to uphold the principle of justice for detainees or inmates in defending their rights in court. Therefore, the government should be present to ensure the fulfilment of the civil rights of detainees or prisoners in correctional institutions.

In pursuing legal remedies for convicts or defendants, extraordinary legal remedies such as cassation examination in the interest of the law and review also manifest the legal function aimed at protecting individuals within society, the nation, and the state. Furthermore, physical and mental well-being and individual rights must also be covered, including fundamental, property, and personal freedoms.

CONCLUSIONS

In judicial review after Constitutional Court Decision No 20/PUU-XXI/2023, the essence of the principle of legal certainty is central to ensuring the integrity and fairness of the legal process. This principle underscores the need for clear and transparent arrangements in judicial review procedures, ensuring that every step is by applicable law. In this context, judicial review must consider human rights, primarily to protect convicted persons from possible violations of their rights. Moreover, public participation in the judicial review is essential to maintain justice and legal expediency. Applying the principle of legal certainty in judicial review after Constitutional Court Decision No 20/PUU-XXI/2023 ensures that the process takes place somewhat measurable and avoids legal ambiguity that could harm the parties involved.

Judicial review by public prosecutors in the context of legal protection of the rights of convicted persons is an important topic to discuss. The Constitutional Court Decision No 33/PUU-XIV/2016 clarified that the Public Prosecutor does not have the authority to file a judicial review in a criminal case. The Constitutional Court emphasised that judicial review is designed to benefit convicts or their heirs, not the state or victims. The norm of Article 30C letter h of Law No 11 of 2021 concerning Amendments to Law No 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which gives additional authority to the prosecutor to file a Judicial Review, is not in line with the decision of the Constitutional Court and can result in legal uncertainty and injustice. The principle of legal protection of the rights of convicted persons through judicial review is an extraordinary effort to obtain better justice. Still, only convicted persons or their heirs are entitled to apply. In protecting the

rights of convicted persons, it is essential to uphold the principles of justice, protection of individual rights, and the function of law to protect the community, nation and state.

Addressing the intricate issues around the Public Prosecutor's role and convicts' legal protection requires focused legal reforms. Clearly defining the circumstances for Public Prosecutor-initiated Reviews and unwavering adherence to Constitutional Court decisions will ensure balanced authority. Strengthening convicts' access to justice through better representation and communication and public awareness campaigns can empower individuals seeking justice. Lastly, periodic assessments of legal reforms, including the Review process, will maintain alignment with evolving legal and societal needs. In conclusion, strategic reforms can harmonise the Public Prosecutor's role and convicts' legal protection, advancing justice within Indonesia's legal system.

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