



Navigating Legal Challenges: Implementing Nullity Verdict in Indonesia

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Abstract

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Zero verdict is a criminal sentence imposed on a person who has received a maximum sentence but must be retried due to certain cases so that the criminal sentence given is zero or the maximum limit. Nil verdicts are still rarely known by the Indonesian people. The question in the community is why judges do not add punishment to criminal offenders who have been proven legally guilty of committing a criminal offense, in essence. Nil verdict is explicitly contained in the concept of *concurso realis* based on Article 67 of the Criminal Code that imposing the death penalty in such a way does not receive additional punishment if other criminal offenses are found at any time. The research method used is normative juridical, conducted by studying, viewing, and examining legal regulations such as the Criminal Code and Circular Letter Number 1 of 2022 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022. The results showed that a nil verdict is very appropriate to be applied to defendants whose verdicts are sentenced to death, such as the cases of Muhammad Natsir and Heru Hidayat, so if there are other cases, they must be sentenced to Nil. This makes the Defendant previously sentenced to imprisonment for 20 years, not increase to life. Another problem is the lack of inter-court administration integration, resulting in overlapping criminal sanctions and exceeding 20 years. The absorption principle in *concurso realis* is sharpened. It is necessary to review the level between legally binding crimes and crimes that have just been revealed based on higher criminal threats so that the application of zero verdicts achieves the principles of legal certainty, Justice, and practicality. In this research, the author focuses on developing knowledge about zero verdicts that ordinary people can understand.

A. Introduction

Zero verdict is terminologies as a criminal sentence to a person who has received a criminal sentence with a maximum limit but must be retried due to certain cases so that the criminal



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sentence given is zero or the maximum limit. The types of punishment are regulated in Article 10 of the Criminal Code, which consists of the main punishment: death penalty, imprisonment, confinement, fines, additional punishments, revocation of certain rights, confiscation of certain goods, and announcement of the Judge's decision.¹ The limit of a person's criminal punishment is regulated in Article 12 Paragraph (4) of the Criminal Code, which states that imprisonment for a certain time may not exceed twenty (20) years. If we refer to Paragraph (1) of the same Article, which states that imprisonment is life imprisonment or imprisonment for a certain period, then it is explained in Paragraph (2) that imprisonment for a certain period is at least one day and a maximum of fifteen (15) years. In Paragraph (3), it is explained that imprisonment for a certain period may be imposed for twenty (20) consecutive years in the event of a crime for which the Judge may choose between the death penalty, life imprisonment, and imprisonment for a certain period, or life imprisonment and imprisonment for a certain period, as well as if the limit of fifteen (15) years is exceeded due to additional punishment due to concurrency, repetition, or determined by Article 52 of the Criminal Code.²

The imposition of a Nihil Verdict in a criminal offense is due to the existence of criminal acts classified as a combination of criminal acts or concourses, continuing acts, and repetition in a combination of criminal acts before a criminal decision. Nil verdict is given to criminal offenders who have received the maximum limit in the main punishment. Criminal punishment for a certain period may not exceed 20 years is mentioned in Article 12 Paragraph (4) of the Criminal Code. Life imprisonment is mentioned in Article 67 of the Criminal Code that if the perpetrator of a criminal offense has been sentenced to life imprisonment, then no additional punishment may be given. The death penalty is mentioned in Article 67 of the Criminal Code that if the perpetrator of a criminal offense has been sentenced to the death penalty, then no additional punishment may be given.

The Nihil verdict is a verdict that is still rarely known by the Indonesian people. The question in the community is why judges do not add punishment to criminal offenders who have been proven legally guilty of committing a criminal offense. The answer to this question is that the Panel of Judges in sentencing has various juridical and non-juridical considerations by considering the aspects of *concursum realis* and the maximum sentence imposed on the Defendant. In addition, the Panel of Judges must also be guided by the objectives of the law and the implementation of legal objectives, including certainty, Justice, and practicality. Zero verdict is explicitly contained in the concept of *concursum realis* based on Article 67 of the Criminal Code, that the imposition of the death penalty in such a way does not receive additional punishment if at any time other criminal offenses are found.³ Nil verdicts are very appropriate for defendants who receive death penalty sanctions so that the criminal punishment cannot be increased because it is already maximum. However, in its application, there are new problems in law enforcement in Indonesia.

Law protects human interests in social life, creating a peaceful and prosperous society. The existence of a verdict by a judge is needed to resolve a criminal case. It is hoped that the parties in a criminal case or the Defendant can obtain legal certainty about their status and, at the same time, prepare legal steps and efforts for themselves.⁴

Sentencing aims to ensure legal certainty and Justice in the community. This is following the provision that every criminal act must have consequences. In addition, an atmosphere of

¹ Rizki, Muhammad Januar Memahami Istilah Vonis Nihil dalam Perkara Pidana. <https://www.hukumonline.com/berita/a/vonis-nihil-dalam-perkara-pidana-1t61e9f1de06f60/> diakses pada 17 Juli 2023

² Riadi Asra Rahmad, *Hukum Acara Pidana* (Pekanbaru: PT. RajaGrafindo Persada, 2019), hlm 25

³ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka, 2017), hlm 412.

⁴ Lilik Mulyadi, *Hukum Acara Pidana Normatif, Teoritis, Praktik Dan Permasalahannya* (Jakarta: P.T. Alumni Bandung, 2006), hal 201.

life will be maintained that proves the guarantee of Justice and the authority of the law, and of course, there are benefits in a punishment, be it the death penalty or even a Nihil Verdict. These benefits are for better and more progressive law enforcement in Indonesia.⁵ The imposition of a Nihil verdict refers to the principle of *-nulla poena sine lege*. There is no punishment without the provisions of the law.⁶ The Judge's decision is the culmination of law enforcement through the course of Justice. The judiciary in question is the trial process, from the Judge examining the facts and sentencing with applicable regulations. This is in line with the mandate of Article 1 Paragraph (3) of the 1945 Constitution, which states explicitly that the State of Indonesia is a state of law and its society is a legal society, so that as a state of law, all aspects of society, nationality and statehood must always be based on law.⁷

The author raises this issue as research because few references such as journals, articles, and thesis research raise this Nihil Verdict. So, the author hopes this research can become a new precedent in law and new insights and references related to the Nihil Verdict, which still often occurs today. Based on the description above, the problems can be formulated as follows: a. How are the problems in applying the Nihil Verdict in Indonesia? b. How is the Legal Consideration in imposing a Nihil Verdict if it is related to the principles of certainty, Justice, and benefit?

The research used namely the normative juridical research method, was carried out by studying, viewing, and examining legal regulations such as the Criminal Code and Circular Letter Number 1 of 2022 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022. Then, the empirical juridical approach is carried out to study the law in reality or based on facts obtained at the Tanjung Karang District Court, both in the form of opinions, attitudes, and behavior of law enforcement officials. The data obtained or to be obtained is by conducting interviews with sources from the Tanjung Karang District Court. This research was conducted to obtain materials in the form of theories, concepts, legal principles, and regulations related to the subject matter. Related to the subject matter. Thus, the object analyzed with a qualitative approach is a research method that refers to legal norms. The qualitative approach is a research method that refers to legal norms in laws and regulations.

B. Discussion

1. Problems in the Application of Zero Verdict in Indonesia

Zero verdict constitutes criminal imposition without any associated penalties due to the threat being maximized.⁸ It is as stated in Article 67 of the Criminal Code that the imposition of the death penalty or life imprisonment may only be concurrent with the revocation of certain rights or forfeiture of previously confiscated goods and announcement of the Judge's decision. The Criminal Code (KUHP) and Criminal Procedure Code (KUHAP) narratively do not directly explain the meaning of Nihil Verdict. Nihil verdict is a term often heard by academics and legal practitioners in the criminal justice system that a person who commits a criminal offense cannot

⁵ A. Ridwan Halim, *Tindak Pidana Pendidikan Dalam Asas-Asas Hukum Pidana Indonesia* (Jakarta: Ghalia Indonesia, 1985), hal 244-245.

⁶ Lukman Hakim, *Asas-Asas Hukum Pidana* (Jakarta: Deepublish, 2019), hml 17.

⁷ Kusumadi Pudjosewojo, *Pedoman Pelajaran Tata Hukum Indonesia* (Jakarta: Aksara Baru, 1984), hlm 64.

⁸ Rini Fathonah dan Daffa Ladro Kusworo. (2023). The Paradigm of Applying Zero Verdict Based on Principles Legal Certainty, Justice and Benefit. *Hang Tuah Law Journal*. Vol. 7. Issue. 1. Hlm. 32.

be given additional punishment if the Defendant has been sentenced to death or life imprisonment.⁹

The application of Nihil Verdict is carried out on cumulative punishment with a certain time to limit a person from being convicted beyond the time limit of punishment, that in the Criminal Code Article 12 Paragraph 4, namely imprisonment for a certain time may not exceed twenty years. The specific period of imprisonment referred to in the Paragraph if referring to Paragraph (1) in the same Article refers to the main type of punishment in the form of imprisonment, where imprisonment for a certain period itself has a range of time between the lowest of 1 (one) day and the highest of 15 (fifteen) years consecutively. This provision limits the possibility that people who commit various criminal offenses can be tried simultaneously or separately with more than 20 years of imprisonment.

The addition of each punishment cumulatively is possible based on Article 272 of the Criminal Procedure Code, which states that if the convicted person is sentenced to imprisonment or confinement and then sentenced to a similar punishment before he has served the punishment imposed earlier, then the punishment shall be executed consecutively starting with the punishment imposed earlier. The provision in KUHAP Article 272 applies if a person commits criminal offenses at different times and places and the criminal offenses are unrelated. Mutually exclusive and unrelated criminal offenses are also called pure offenses.¹⁰

A pure criminal offense means that one criminal offense and another criminal offense, whether tried in the same or different District Court following the provisions of Criminal Procedure Code Article 84, do not have a special relationship or do not contain elements of continuing or concurrent acts, as stipulated in Criminal Code Article 63 Paragraph (1) or known as *concursum idealis*, Criminal Code Article 64 or continuing acts, and Criminal Code Articles 65, 66, and 70 or known as *concursum realis*. If a person commits a pure criminal offense in one region or several jurisdictions of a district court, then the entire criminal offense will be tried. The implementation of the punishment will refer to the provisions of KUHAP 272 through a cumulation system or the sum of the entire length of punishment with a maximum limit of the sum may not exceed 20 (twenty) years of imprisonment as stated in Article 12 Paragraph (4) of the Criminal Code.

In this rule of law, there is a discrepancy between the Criminal Code and the Criminal Procedure Code regarding the regulation of the Nihil Verdict, which provides legal uncertainty in the judicial process. This is not in line with the theory of legal certainty put forward by Gustav Radbruch, which states that normative legal certainty views that statutory regulation is made and promulgated with certainty because it regulates clearly and logically. It will not cause doubts due to multiple interpretations so that it does not clash or cause norm conflicts.¹¹

Norm conflicts arising from the uncertainty of laws and regulations can take the form of norm contestation, norm reduction, or norm distortion. Laws that contain these rules become guidelines for individuals in behaving in society, both in relations with fellow individuals and in relations with society. The rules become a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.

⁹ Harruma Issha, Apa Itu Vonis Nihil ?, <https://nasional.kompas.com/read/2022/03/01/00450091/apa-itu-vonis-nihil-> diakses pada 17 Juli 2023

¹⁰ Sari, N., No, J. M. H., & Timur, C. J. (2017). Penerapan Asas *Ultimum Remedium* Dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika. 17. *Jurnal Penelitian Hukum e-ISSN*, 2579, 8561.

¹¹ Muslih, M. (2017). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). *Legalitas: Jurnal Hukum*, 4(1), 130-152.

The provisions of Article 272 of the Criminal Procedure Code apply if a person commits criminal offenses at different times and places and the criminal offenses are unrelated. Criminal offenses that are mutually independent and unrelated are also called pure criminal offenses because between one criminal offense and another criminal offense, whether tried in the same or different District Court following the provisions of Article 84 of the Criminal Procedure Code, do not have a special relationship or do not contain elements of continuing or concurrent acts, as regulated in the Criminal Code Article 63 Paragraph (1) or known as *concurus idealis*, Criminal Code Article 64 or continuing acts, as well as Criminal Code Articles 65, 66, and 70 or known as *concurus realis*.

A person who commits a pure criminal offense either in one region or several jurisdictions of a district court, then all of these criminal offenses will be tried. The implementation of the punishment will refer to the provisions of the Criminal Procedure Code 272 through a cumulation system or the sum of the entire length of punishment with the maximum limit of the sum may not exceed 20 (twenty) years of imprisonment as stipulated in Article 12 Paragraph (4) of the Criminal Code. The practice of punishment against defendants who commit several criminal offenses can be cumulated so that the total number of convicts serving their prison terms can exceed the maximum provision limit, namely a maximum of 20 (twenty) years imprisonment. In its implementation, the application of Nihil Verdict raises a problem in the criminal law system, among others, as follows.

1. The disparity in Sanctioning by Judges

Criminal disparity (disparity of sentencing), in the opinion of Barda Nawawi, is the application of unequal punishment against the same offense or offenses of comparable seriousness without clear justification.¹² Problems in the application of the Nil Sentence, which, of course, raises two different opinions. If the Defendant has been sentenced to a maximum prison sentence with a certain time of 20 years, then if there are other cases, he must be sentenced to Nil. The problem is then answered in Circular Letter No. 1 of 2022 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as Guidelines for the Implementation of Tasks for the Court, which solely aims to avoid disparity in judges' decisions on Nihil Verdicts as part of maintaining the unity of application of law and consistency of decisions.

The formulation of the Criminal Chamber stipulates that if there is maximum imprisonment in general criminal cases and special criminal cases, the Defendant serving 20 years of imprisonment in a legally binding case can be sentenced to further imprisonment in another case committed during the imprisonment. The Supreme Court believes that even though the Defendant, in this case, is serving a 20-year term of imprisonment if it turns out that he has committed another criminal offense, the re-imposition of punishment can still be carried out. However, the question is that the consideration of judges in the imposition of a Nihil Sentence before the existence of this SEMA raises a polemic, wherein the new paradigm regarding those who are Nihil Sentence is that the maximum punishment can no longer be imposed due to the absence of other criminal offenses whose threats above that or more than that have been included in the accumulation of previous criminal threats unless there is additional punishment and is legally binding.¹³

Judges can independently impose any punishment as long as it is still within the corridors of legislation. Prosecutors who make higher legal efforts are not an obstacle because what prosecutors do is representative of the state's interests, which, in its perspective, has not

¹² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenada Media, 2016), hlm 65.

¹³ Yaris Adhial Fajrin and Ach Faisol Triwijaya, — *Arah Pembaharuan Hukum Pidana Indonesia Di Tengah Pluralisme Hukum Indonesia*, *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (2019).

achieved Justice in the criminal law system. In the doctrine of stare decisions, in deciding a case, a judge must base his decision on legal principles that already exist in the decisions of other judges from similar cases (precedent).¹⁴

Indeed, such a principle can create a new law that can guide other judges to resolve similar cases. It means that judges function not only as those who determine and interpret legal regulations. Judges play a major role in shaping society's entire way of life. Judges have very broad authority to interpret the applicable legal regulations. Judges can hand down decisions according to custom or fully implement this principle. With the broad powers of judges, judges can form new laws through their interpretation.¹⁵ Judges can create norms or rules based on the pulse of Justice in society through their jurisprudence.

2. Lack of Integration of Inter-Court Administration

According to R. Subekti and R. Tjitrosoedibio, the definition of Justice is everything related to the duty of the state to uphold law and Justice. Judiciary (*rechtspraak*, judiciary) refers to providing Justice to uphold the law (*het rechtspreken*).¹⁶ A person who commits a pure criminal offense either in one region or several jurisdictions of a district court, then the entire criminal offense will be tried. The implementation of the punishment will refer to the provisions of KUHAP 272 through a cumulation system or the sum of the entire length of punishment with a maximum limit of the sum may not exceed 20 (twenty) years of imprisonment as stipulated in Article 12 Paragraph (4) of the Criminal Code.

The court practice is that the Defendant has often been sentenced to the maximum by the Court, while there has also been another case in another court, where this Court is not even aware that another case has been decided.¹⁷ It makes the threat of criminal sanctions overlap, potentially exceeding 20 years of imprisonment or above. Whereas based on Article 12 Paragraph 4 of the Criminal Code, imprisonment for a certain period may not exceed twenty years.

The specific period of imprisonment referred to in the Paragraph mentioned above if referring to Paragraph (1) in the same Article, refers to the main type of punishment in the form of imprisonment, where imprisonment for a certain period itself has a range of time between as low as 1 (one) day and as high as 15 (fifteen) years consecutively. The inaccuracy of the administration of Justice does not support the Judge in imposing punishment. This provision limits the possibility of people who commit various criminal offenses being tried simultaneously or separately with more than 20 years of imprisonment.

The addition of each punishment cumulatively is possible based on Article 272 of the Criminal Procedure Code, which states that if the convicted person is sentenced to imprisonment or confinement and then sentenced to a similar punishment before they serve the previously imposed punishment, then the punishment shall be executed consecutively starting with the punishment imposed first.

The provisions in Article 272 of the Criminal Procedure Code apply if the criminal acts committed by a person are committed at different times and places, and the criminal acts are not related to one another. Criminal offenses that are mutually independent and have no

¹⁴ Fioren Alesandro Keintjem, —Konsep Perbarengan Tindak Pidana (Concurcus) Menurut Kitab Undang-Undang Hukum Pidana, *l* Lex Crimen 10, no. 5 (2021)

¹⁵ Andi Suherman, —Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman, *l* SIGn Jurnal Hukum 1, no. 1 (2019).

¹⁶ Fauziah Yumna and Rahayu Subekti, —Otoritas Dan Implikasi Mahkamah Konstitusi Dalam Sistem Hukum Indonesia, *l* Sovereignty 1, no. 3 (2022)

¹⁷ Angga Putra, —Pembaharuan Sistem Peradilan Pidana Melalui Penataan Administrasi Peradilan, *l* Lex Crimen 4, no. 3 (2015).

connection are also called pure criminal offenses.⁵⁴ Between one criminal offense and another criminal offense, whether tried in the same or different District Court following the provisions of Criminal Procedure Code Article 84, does not have a special connection or does not contain elements of continuing or concurrent acts, as regulated in the Criminal Code Article 63 Paragraph (1) or known as *concursum idealis*, Criminal Code Article 64 or continuing acts, as well as Criminal Code Articles 65, 66, and 70 or known as *concursum realis*.¹⁸

A person who commits a pure criminal offense either in one region or several jurisdictions of a district court, then the entire criminal offense will be tried. The implementation of the punishment will refer to the provisions of KUHAP 272 through a cumulation system or the sum of the entire length of punishment with a maximum limit of the sum may not exceed 20 (twenty) years of imprisonment as stipulated in Article 12 Paragraph (4) of the Criminal Code.

In 5 years, a person commits theft, maltreatment, and murder. Theft is punishable with a maximum imprisonment of 5 years as stipulated in Article 362 of the Criminal Code, maltreatment is punishable with a maximum imprisonment of 2 years eight months as stipulated in Article 351 of the Criminal Code, and murder in Article 338 of the Criminal Code is punishable with a maximum imprisonment of 15 years. The three acts accumulated to 22 years and two months, but this cannot necessarily be applied to the perpetrators of these criminal acts. The heaviest punishment here is 15 years of imprisonment applied to the crime of murder, and one-third of 15 years is five years. Hence, the maximum punishment that can be imposed on the perpetrator of the crime is 20 years, even though accumulatively, the person should be imprisoned for 22 years and two months.

C. Consideration of Judges in Imposing Nihil Sentences Concerning the Principles of Legal Certainty, Justice, and Benefit

Judicial practice in deciding a case in Court must follow the law, which often confronts the courts and judiciary with various legal meanings. The law regulates that an act committed by someone will have consequences. The purpose of law that Gustav Radbruch has stated is to divide the purpose of law into three, namely Justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and expediency (*Zweckmässigkeit*), the ontological aspects and epistemological aspects of legal reasoning activities that must be considered carefully. In addition, there is a link between the purpose of law and the axiological aspects of legal reasoning models.¹⁹

The Judge's consideration regarding the Nihil Verdict is based on the imposition of criminal sanctions that have been maximized so that they can no longer be imposed because they cannot exceed the maximum threat of punishment as the Criminal Code Article 12 Paragraph 4, namely imprisonment for a certain time, which may not exceed twenty years. The Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains Justice (*ex aequo et bono*) and legal certainty. In addition, it also contains benefits for the parties concerned so that the Judge's consideration must be addressed carefully, well, and carefully. If the Judge's consideration is not thorough, good, and careful, the Judge's decision derived from the Judge's consideration will be canceled by the High Court or Supreme Court.²⁰

¹⁸ Tina Asmarawati, *Pidana Dan Pemidanaan Dalam Sistem Hukum Di Indonesia (Hukum Penitensier)* (Sleman: Deepublish, 2015), hlm 21

¹⁹ Santoso, H. A. (2021). *Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan Pkpu* æPTBâ€. *Jatiswara*, 36(3), 325-334.

²⁰ Sutrisno Sutrisno, Fenty Puluhulawa, and Lusiana Margareth Tijow, —Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *l Gorontalo Law Review* 3, no. 2 (2020)

Evidence aims to obtain certainty that an event or fact submitted occurred to obtain a correct and fair judge's decision. The Judge cannot decide before it is clear to him that the event or fact happened, namely proven to be true, so that it appears that there is a legal relationship between the parties.²¹ Article 4 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power explains that the Court tries according to the law without discriminating against people. The importance of judges paying attention to juridical sociological aspects so that Justice can be achieved, realized, and accounted for in the Judge's decision is Justice oriented towards legal Justice, Social Justice, and moral Justice. Judges to adjudicate cases have the dimensions of upholding Justice and enforcing the law. Judges carrying out their duties must be free and not be influenced or take sides with anyone. The guarantee of this freedom is also regulated in various regulations, namely in Article 24 of the 1945 Constitution of the Republic of Indonesia, which is independent to administer Justice to uphold law and Justice. Judges, in handing down decisions, consider the following matters :²²

1. Juridical factors, namely laws and theories related to the case or case.
2. Non-juridical factors, namely looking at the environment and based on the conscience of the Judge himself.

The main function of a judge is to give a decision on the case submitted to him, where in criminal cases, it is inseparable from the negative evidentiary system (negative *wetterlijke*), which in principle determines that a right or event or error is considered proven, in addition to the existence of evidence according to the law is also determined by the Judge's belief based on good moral integrity. The application of the Nihil Verdict is certainly faced with the parameters of legal certainty by everyone. It can be realized by establishing law in a concrete event. The applicable law is not allowed to deviate. This is also known as *fiat justitia et pereat mundus*, which means that even if the world collapses, the law must be enforced. That is what is desired by legal certainty.²³

1. Principle of Legal Certainty

Legal certainty is a judicial protection against arbitrary action, meaning a person can obtain something expected in certain circumstances. The benefit of the Nihil Verdict cannot be separated from measuring the success of law enforcement in Indonesia. According to the school of Utilitarianism, law enforcement has a purpose based on certain benefits, not just to retaliate against criminal offenders, not just to carry out retaliation or compensation to people who commit criminal acts, but has certain useful goals. The benefit here is defined as happiness. A good law is a law that provides happiness for many people. Lastly, Justice is an expectation that must be fulfilled in law enforcement.²⁴

Law enforcement emphasizes the value of Justice while the value of the benefit and legal certainty is put aside, then the law cannot run well. Vice versa, if the emphasis is on the value of benefit while legal certainty and Justice are put aside, then the law does not work ideally in enforcing the law. In the case of the Nihil verdict in the Heru Hidayat case in the trial of the case held at the Jakarta Corruption Court, the Judge imposed a Nihil verdict on the Defendant. The Nihil verdict given to the Defendant is a bit disturbing. It injures the sense of Justice of the

²¹ Loway, S. (2022). KEDUDUKAN HAKIM DALAM PROSES PEMBUKTIAN PERADILAN PIDANA INDONESIA. *LEX CRIMEN*, 11(5).

²² Efendi, J. (2018). *Rekonstruksi dasar pertimbangan hukum hakim: Berbasis nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat* (p. 336). Prenada Media.

²³ Budiman, M. (2020). Penerapan Pasal 5 Ayat (1) Huruf b Undang-Undang Pemberantasan Tindak Pidana Korupsi. *Jurnal Yudisial*, 13(1), 73-87.

²⁴ Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1).

community because this corruption crime is an extraordinary crime capable of paralyzing the country's economy. Despite imposing a zero sentence, the panel of judges found Heru Hidayat guilty.²⁵

Samsung Hidayat said that Heru was proven to have committed the acts in two charges, namely Article 2 Paragraph (1) Jo Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Jo. Article 55 Paragraph (1) to 1 of the Criminal Code and Article 3 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering. The Nihil verdict received a response from the Attorney General's Office of the Republic of Indonesia, who felt there were shortcomings in the verdict. The Public Prosecutor's Office still appreciates and respects what has been decided by the Panel of Judges. Still, the Public Prosecutor feels that things are lacking in that there is a little disturbed public justice that the Defendant was convicted and proven guilty, but the sentence was zero or Nil.

Heru Hidayat was reported in the PT Jiwasraya Insurance corruption case, which cost the state IDR 16 trillion. The Defendant was sentenced to life, but for the Corruption Crime Case at PT ASABRI, which cost the state IDR 22.78 trillion, the Defendant was found guilty, and the Judge gave a zero sentence verdict. The provisions of the Nil Sentence in the legislation are in Article 67 of the Criminal Code, which states that if the Defendant has been sentenced to life in addition, no other criminal penalties may be imposed except for the revocation of certain rights and the announcement of the panel of judges. Article 67 of the Criminal Code is the basis for the Judge in deciding the Nihil Heru verdict in the ASABRI case. The case with Dimas Kanjeng was that the Defendant was legally proven guilty of committing the crime of fraud as stipulated in Article 378 of the Criminal Code,

The Public Prosecutor still appreciates and respects what has been decided by the Panel of Judges. Still, the Public Prosecutor feels that things are lacking where there is a little disturbed public justice that the Defendant was convicted and proven guilty, but the sentence is zero or Nil. Heru Hidayat was reported in the PT Jiwasraya Insurance corruption case, which cost the state Rp16 trillion. The Defendant was sentenced to life imprisonment, but for the Corruption Crime Case at PT ASABRI, which cost the state Rp22.78 trillion, the Defendant was found guilty, and the Judge handed down a zero sentence.

The provisions of the Nil Sentence in the legislation are in Article 67 of the Criminal Code, which states that if the Defendant has been sentenced to life in addition, no other criminal penalties may be imposed except for the revocation of certain rights and the announcement of the panel of judges. Article 67 of the Criminal Code is the basis for the Judge in deciding the Nihil Heru verdict in the ASABRI case. In the case of Dimas Kanjeng, the Defendant was legally proven guilty of committing the crime of fraud as stipulated in Article 378 of the Criminal Code. The Criminal Code and the Nihil Verdict can hinder the implementation of the death penalty for Muhammad Nasir.²⁶

The author analyzes that Heru Hidayat was sentenced to life imprisonment, Dimas Kanjeng was sentenced to 20 years imprisonment, and Muhammad Nasir was sentenced to death. From these three cases, the application of the Nihil Verdict for Heru Hidayat could have been increased to the death penalty, and Dimas Kanjeng could no longer be increased with a maximum sentence of 20 years due to the absence of sufficient evidence and based on other

²⁵ Alfons, Heru Hidayat di Vonis Nihil di Skandal ASABRI, apa artinya ? <https://news.detik.com/berita/d-5904339/heru-hidayat-divonis-nihil-di-skandal-asabri-apa-artinya#:~:text=Presiden%20Komisaris%20PT%20Trada%20Alam,sebesar%20Rp%2022%2C8%20triliun>. Diakses pada 18 Juli 2023

²⁶ <https://www.cnbcindonesia.com/news/20220119172013-4-308801/jaksa-agung-naikkan-kasus-korupsi-garuda-ke-tahap-penyidikan> diakses pada 18 Juli 2023

considerations to be aggravated. Muhammad Natsir's case is different in that the imposition of the death penalty is the heaviest criminal sanction, and there is no longer a criminal threat that rivals it, so even though the newly revealed actions have been found guilty, Muhammad Natsir can no longer be sentenced because it has accumulated with the previous criminal offense. Analysis of the three cases above, linked to the Principles of Legal Certainty, Justice, and Benefit, shows that a good Nihil Verdict paradigm achieves these three parameters.

Realizing a judge's decision based on legal certainty, Justice, and practicality is not easy, let alone the demands of Justice, because the concept of Justice in a judge's decision is not easy to find benchmarks. Fairness for one party is not necessarily perceived the same by another party. Article 65 of the Criminal Code discusses the combination of crimes that do not carry the same punishment. Therefore, all types of punishment for each crime are imposed, but the total amount may not exceed the maximum punishment plus one-third. Legal certainty was achieved when the presence of Circular Letter No. 1 of 2022 concerning the Application of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as Guidelines for the Implementation of Tasks for the Court with one of which aims to maintain the unity of the application of law and consistency of judges' decisions in several Supreme Court chambers, one of which is criminal law in the Nihil Verdict. The bright spot can be seen in its content, which reads that a defendant serving 20 years of imprisonment in a case with permanent legal force can be sentenced to further imprisonment in another case committed during the imprisonment. Then, the maximum imprisonment for special crimes such as Corruption Crime, Money Laundering Crime, Narcotics Crime, and other crimes for which the maximum punishment is 20 years.

Aggravation such as *concursum*, whether submitted in combination (cumulative) or not combined or because it is determined by Article 52 of the Criminal Code, as long as it is not regulated in a special law, the maximum punishment applies the maximum provisions of the main punishment plus 1/3 following Article 65 of the Criminal Code and Article 103 of the Criminal Code. Furthermore, in the case of corruption, the Defendant sentenced to the death penalty or life imprisonment can be sentenced to additional restitution, without substitute imprisonment, and does not conflict with Article 67 of the Criminal Code. The author analyzes that this emphasizes the criminal act of recidivism with the enactment of Circular Letter No. 1 of 2022 that the Judge can impose another prison sentence even though the Defendant has been sentenced to 20 years imprisonment. This is following the formulation of the criminal chamber of the SEMA that the Defendant, who is serving 20 years of imprisonment in a legally binding case, can be imposed subsequent imprisonment in another case committed during the imprisonment.

2. Principle of Benefit

The principle of expediency means that expediency in law enforcement cannot be separated from measuring the success of law enforcement in Indonesia. According to the school of Utilitarianism, law enforcement has a purpose based on certain benefits, not just to retaliate for the criminal's actions, not just to carry out retaliation or compensation to people who commit criminal acts, but has certain useful goals. Prof. Satjipto Raharjo stated that Justice is indeed one of the main values, but still in addition to others, such as practicality. So, in law enforcement, the ratio between benefits and sacrifices must be proportional.²⁷

Beneficence is defined as happiness. A good law is a law that provides happiness for many people. The application of the Nihil Verdict provides benefits for the Defendant to obtain guidance and resocialization later in imprisonment. According to the explanation of Article 2

²⁷ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010), hlm 204

of Law Number 22 of 2022, the correctional system is carried out to form correctional prisoners to become fully human, realize mistakes, improve themselves, and not repeat criminal acts so that they can be re-accepted by the community environment, can actively play a good and responsible role.

Correctional institutions are useful for building the character of prisoners in various forms of crimes that these prisoners have committed. From the aspect of benefits/usefulness, the death penalty, which has also been sentenced to a Nil Verdict, will have a deterrent effect on other people who have and will commit crimes and can also maintain the authority of the government and law enforcement.

3. Principle of Justice

Judges' decisions based on legal certainty, Justice, and practicality are not easy, let alone the demands of Justice because the concept of Justice in judges' decisions is not easy to find benchmarks. Fair for one party, not necessarily felt the same by another party. Satjipto Rahardjo formulated how to create Justice based on balanced equal rights and obligations values. However, the suitability of the mechanism used by the law must also be considered by making and issuing legal regulations and then applying sanctions against community members based on the regulations that have been made and what actions can and cannot be done, namely substantive.²⁸

Law enforcement includes the values of Justice contained in the sound of formal rules and those of Justice living in society. However, in a narrow sense, law enforcement is only concerned with enforcing formal and written regulations. The position of Justice is a very important element in law enforcement in Indonesia. Indonesia has a diverse community culture and noble values, of course, expecting Justice and practicality to be prioritized over legal certainty. Justice is the essence of law, so law enforcement must also realize this.²⁹

The Nihil verdict has certainly achieved the value of Justice where the imposition of criminal sanctions has solely referred to the criminal act and the criminal penalties following the applicable regulations. The Judge merely sees that the imposition of a Nil Sentence is that the criminal offense has been given the maximum following the legal facts revealed at trial. Nihil verdicts have achieved these three parameters but are more inclined to the principle of legal certainty. This is because, in the aspect of legal certainty, judges are based on the provisions of Article 67 and Article 12 Paragraph (4) of the Criminal Code, which are explicitly listed, as well as the existence of Circular Letter Number 1 of 2022 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chambers in 2022 as Guidelines for the Implementation of Tasks for the Courts, one of which aims to maintain the unity of the application of law and consistency of judges' decisions in several Supreme Court chambers, one of which is criminal law in the Nihil Sentence.

D. Conclusion

Problems in the application of Nihil Verdicts in Indonesia consist of 3 factors, namely the disparity in the imposition of criminal sanctions by judges, the lack of administrative integration between courts, which results in overlapping criminal sanctions exceeding 20 years, and a sharpened absorption stelsel, that it is necessary to review the level between legally binding crimes and crimes that have just been revealed by referring to higher criminal threats.

The Judge's consideration in imposing a Nihil Verdict, when associated with the principles of certainty, usefulness, and Justice, has reached these three parameters. Regarding legal

²⁸ Sutrisno Sutrisno, Fenty Puluhalawa, and Lusiana Margareth Tijow, —Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *Gorontalo Law Review* 3, no. 2 (2020)

certainty, the Judge is based on Article 67 and Article 12 Paragraph (4) of the Criminal Code and Circular Letter Number 1 of 2022. Then, regarding the principle of expediency, the purpose of imposing imprisonment sanctions is to foster, namely, to make lawbreakers repent and not function as retaliation. From the aspect of benefit/usefulness, the death penalty, which has also been sentenced to a Nil Verdict, will have a deterrent effect on other people who have and will commit crimes and can also maintain the authority of the government and law enforcement. For Justice, the imposition of criminal sanctions has solely referred to the criminal act and the criminal punishment following the applicable regulations without being fabricated.

E. Suggestion

The application of Nihil Sentences needs to be socialized so that the public knows more about the new jurisprudence related to Nihil Sentences so that there is no misunderstanding about its application because Nihil Sentences arise due to the imposition of criminal sanctions that have been maximized so that other criminal threats can no longer be imposed. Judges need to more deeply interpret the basic reasons for imposing Nihil Sentences concerning SEMA No. 1 of 2022 to ensure Justice and benefit the community, which is certainly adjusted to the legal facts obtained during the trial period.

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