

## **EXTRA ORDINARY LEGAL REMEDY IN INDONESIA CRIMINAL LEGAL SYSTEM (ANALYSIS OF DEATH SENTENCE)**

### **I. Legal Remedy in Indonesia's Criminal Legal System**

Legal remedy is the right given by the law to each party in a case, to extend their objection regarding a verdict. Disagreement must be extended in written at the registrar and made as a deed in a certain period. If it is not being done through as stipulated, it is considered that the party has accepted the verdict.<sup>1</sup> In Indonesia's criminal legal system as stipulated on Act No. 8 1981 regarding KUHAP (Indonesia Criminal Procedural Law), there are two kinds of legal remedy, as follow:

#### **Legal Remedy (regulated at Chapter XVII KUHAP)**

##### **a. Appeal**

All first stage verdicts can be appealed to the appeal court by the defendant or his power of attorney or public prosecutor with several exceptions. These exception as regulated in Article 67 KUHAP are:

1. Verdict acquitted defendant from accusation
2. Verdict released defendant from indict.
3. Traffic violation.

Appeal has two purposes, as follow:

1. Examine first stage verdict regarding its accuracy.
2. As a new examination of the whole case.<sup>2</sup>

Therefore appeal usually called as revision.

Appeal hearing actually is a new examination (*judicium novum*). Thus in appeal hearing, new witness, expert and letter can be presented.<sup>3</sup> But the first examination is the basis of appeal hearing. Detention period in the appeal hearing is 150 days.

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<sup>1</sup> Luhut M.P. Pangaribuan, *Hukum Acara Pidana Surat-surat Resmi di Pengadilan oleh Advokat*, Djambatan, Jakarta, 2006, p. 84.

<sup>2</sup> *Ibid.* p. 287.

<sup>3</sup> *Ibid.*

The existence of Appeal Verdict makes the first verdict has no execution power.

#### **b. Cassation**

If appeal court called as *judex factie* since the appeal court examines all aspect with or without the presence of all parties, cassation court can be called as *judex jurist* because it just examine legal implementation as done by the subordinate court.

There are three reasons of the cassation submission:

1. If the law was not applied or applied not as its supposed to be
2. If the proceeding was not executed as regulated
3. If the court has overlapped its authority

In criminal case, verdicts that can be submitted for cassation is the verdict of the last trial phase given by the other court despite the Supreme Court.

Defendant and Public Prosecutor can submit the cassation despite regarding Verdict acquitted defendant from accusation

Detention period for this phase is 170 days.

### **1. Extra Ordinary Legal Remedy**

Extra ordinary legal remedy is a legal remedy submitted upon a verdict that already has execution power. Extra ordinary legal remedy has certain requirements and submitted to Supreme Court as the first and last court that examines and decides the case.

Extra ordinary legal remedy consists of:

#### **a. Cassation for legal benefit.**

For legal benefit, toward all verdicts that have execution power from other courts but Supreme Court, Supreme Public Attorney may submit for cassation at once. Thus cassation must not inflict loss to the parties. The purpose of cassation for legal benefit is to reach unity of legal interpretation by the Supreme Court so that it can be used as guidance by subordinate court.

#### **b. Judicial review**

Toward verdicts that already has execution power, despite acquittal and release verdict, the convict or his/her heir may submit judicial review to the Supreme Court. Therefore judicial review can only be submitted toward the verdict that already has execution power. One thing to be noted is that Judicial Review can not be submitted toward acquittal or release verdict, since Judicial Review is aimed to give chance for the convict to stand for his interest.

Judicial Review application can be submitted by the convict or his heir upon the basis that there is a new condition that creates a strong suspicion, that if this condition was known at the previous trial the result would be acquittal or release verdict or the claim from public prosecutor is unacceptable or toward the case, a lighter sentence is imposed; there was a conflicted evidence used the basis of verdict; the verdict has shown a distinct erroneous.

Supreme prosecutor can not submit any judicial review since he already has a chance to submit cassation for legal benefit. But the fact that Supreme Prosecutor also submits a judicial review and even accepted by Supreme Court has shown that Indonesia Criminal Legal System has put justice over legal certainty.

## **2. Special**

Clemency is a mercy in form of alteration, lighten, degradation, or elimination of the sentence given by the president regarding a verdict that already has execution. Clemency can be submitted upon Death sentence, life sentence and imprisonment for at the least two years verdicts. Clemency can be done only for once, except:

- a. The clemency submission has been refused and it's been 2 years since the date of its refusal.
- b. The convict has received clemency, from death penalty to life sentence and it's been two years since the date of received clemency.

## **II. Legal remedy Proceeding**

### **a. Appeal**

Appeal application can be submitted to appeal court by defendant or his attorney or public prosecutor. This submission can be submitted in written or oral. Appeal submission can be submitted in 7 days period, if its exceed 7 days, thus the appeal submission can't be accepted by the registrar and the first verdict has already has execution power.

IN the appeal hearing, party that submit appeal is not obliged to provide memory appeal. The hearing of appeal court can be done by three judges. The verdict might be emphasizing the first verdict, repairing or null the verdict.

### **b. Cassation**

Cassation submission is extended by the submitter to the registrar of the first court in 14 days period. If it exceeds the period, thus the party is considered as accepting the verdict and the verdict has an execution power.

Memory of cassation is a must for the submitter in submitting cassation. Negligence in submitting memory of cassation may result into the elimination of the right to submit it. The verdict at the cassation court might be statement of unacceptable cassation, refuse the cassation or grant the cassation.

### **c. Cassation for legal benefit**

The submission of cassation for legal benefit is submitted in written by Supreme Attorney to Supreme Court through the registrar at the first court enclosed with a resume explaining the submission.

### **d. Judicial Review**

The submission of judicial review has no time limit. The submission is extended by the submitter to the registrar of the first court and it is being sent by the head of the County Court to Supreme Court.

The head of county court would then appoint panel of judges to examine the submission, if the judicial review has fulfilled the requirements as follow:

- there is a new condition that creates a strong suspicion, that if this condition was known at the previous trial the result would be acquittal or release verdict or the claim from public prosecutor is unacceptable or toward the case, a lighter sentence is imposed;

- There was a conflicted evidence used the basis of verdict;
- The verdict has shown a distinct erroneous.

If the Supreme Court disregards submitter's reason, the refusal must be extended with the consideration, but if the Supreme Court accepted the submission, Supreme Court nulls the verdict and imposes a new verdict in form of:

1. Acquittal Verdict;
2. Release from all claims verdict;
3. Can not accept the claim from the public prosecutor verdict;
4. Lighter sentence verdict.

The sentence impose by the judicial review verdict must not exceed the previous verdict. Judicial review can only be submitted for once, but in fact there are several cases which inflict more than one judicial review, e.g. Amrozy case and Pollycarpus case.

#### **e. Clemency**

Clemency submission does not postpone the execution of punishment but death sentence. The convict or his lawyer or his family by convict's consent may submit the clemency. Despite death sentence, convict's family may submit the clemency without his consent. The submission of clemency has no time limit. President may accept or refuse the submission after considering Supreme Court consideration.

Clemency from the President can be in form of:

- a. Lightening or alternating the sentence;
- b. Degrading the sentence; or
- c. Eliminating the sentence.

In relation to extra ordinary legal remedy, the submission of clemency is postponing the execution; it means there is no execution before the clemency is submitted. But different with the clemency, the submission of judicial review does not postpone the execution of the sentence.