

## **THE REVITALIZATION OF EXTRAORDINARY LEGAL REMEDIES CASSATION FOR LEGAL INTERESTS IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA**

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### **Abstract**

*The decision of judges are not free from errors or mistakes, and often even shows partiality (not neutral) towards certain parties. Extraordinary legal action: cassation for legal purposes can be filed against all decisions that have obtained permanent legal force from other courts, apart from the Supreme Court. Great. The purpose of this research is to determine the factors that cause the Attorney General to rarely use the extraordinary legal remedy of cassation for legal purposes. To revitalize the extraordinary legal effort of cassation for legal purposes so that it can run effectively in the criminal justice system in Indonesia. The findings from this research are that revitalization can be carried out by providing adequate explanations, especially the phrases "legal interests" and "must not harm interested parties" or even eliminating the provisions of Article 359 paragraph (2) of the Criminal Procedure Code, so that it does not give rise to different interpretations and judges can give fair decisions, without being shackled by the phrase "must not harm interested parties".*

**Keywords:** Criminal; Extraordinary; Justice; Revitalization.

### **A. INTRODUCTION**

Indonesia as a legal state has guaranteed its citizens the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law, as regulated in the Constitution Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This means that Indonesia as The rule of law, especially in the material sense, sees that law is not only that which is formally established by the legislative body, but also that which has the value of justice and is made important. Therefore, it can be said that formal law does not necessarily have justice values so that to achieve justice values, in this case, judges are required to be able to explore the values and sense of justice that grow and live in society.<sup>1</sup>

Law enforcement in courts in a constitutional state such as Indonesia places judges as the main actors who have a greater role than other law enforcers, such as prosecutors and police as well as legal advisors. In Law no. 8 of 1981 concerning Criminal Procedure Law or the Criminal Procedure

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<sup>1</sup> Moh. Mahfud MD., *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta, Pustaka LP3ES, 2006, page.187-188

Code (KUHAP) confirms that judges are given the authority to examine, try and decide and resolve criminal cases brought before them.<sup>2</sup>

When making a decision, judges are expected to be able to combine three aspects of law enforcement, namely justice, legal certainty and expediency, so that the legal considerations outlined in the decision must also be prepared as well as possible, by accommodating these three aspects. In reality, we find a judge's decision which is not free from errors or mistakes, and often even shows partiality (not being neutral) towards certain parties. Based on this reality, every judge's decision needs to be given the opportunity/opportunity to be re-examined, so that errors or errors that occur in the judge's decision can be corrected. For every judge's decision, legal remedies are generally available, namely efforts or tools to prevent or correct errors in a decision.<sup>3</sup>

In the criminal punishment process there are several stages that must be passed.<sup>4</sup> According to the provisions of the Criminal Procedure Law, legal action is the right of the Defendant/Convict and the Prosecutor/Public Prosecutor, which can be used by parties who are dissatisfied with the decision given by the judge/court. Law no. 8 of 1981 concerning Criminal Procedure Law (KUHAP) defines legal remedies for criminal punishment into two types, namely first, ordinary legal remedies, in the form of appeals, as regulated in Chapter, Article 244 of the Criminal Procedure Code to Article 258 of the Criminal Procedure Code and secondly, extraordinary legal remedies, namely Judicial Review (PK), as regulated in Chapter KUHAP up to Article 262 KUHAP.<sup>5</sup>

Extraordinary legal measures: Cassation for Legal Interests can be filed against all decisions that have obtained permanent legal force from other courts, other than the Supreme Court and in accordance with the provisions of Article 259 paragraph (1) of the Criminal Procedure Code, a single request for Cassation for Legal Interests can be submitted by the Prosecutor. Great. In summary, cassation for legal purposes is a legal effort given to the Attorney General to straighten out court decisions of the first level or appeals that have permanent legal force (*inkracht*) and contain errors in the application of the law or contain legal questions that are important for the development of the law, because the function of cassation is for the sake of interests. Law is to maintain the unity of the application of the law, without harming interested parties.<sup>6</sup>

Previous research by Muhammad Ridha in a journal entitled "Effectiveness of Cassation for Legal Interests in the Criminal Justice System" stated that "legal remedies in the form of cassation for legal

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2 Undang-undang No. 8 Tahun 1981 tentang Hukum Acara Pidana Pasal 1 angka 8

3 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta, Liberty, 1998, page.168

4 Andri Winjaya Laksana, Keadilan Restoratif Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana Anak, *Jurnal Pembaharuan Hukum*, Vol. IV, No. 1, 2017, page.57-65

5 Bilryan Lumempouw, Hak Terdakwa Melakukan Upaya Hukum Dalam Proses Peradilan Pidana, *Lex Crimen*, Vol. 2, No. 3, 2013, page 185-195

6 Rendi Renaldi Mumbunan, Upaya Hukum Biasa Dan Luar Biasa Terhadap Putusan Hakim Dalam Perkara Pidana, *Lex Crimen*, Vol. 7, No. 10, 2018, page.40-47

purposes do not work effectively when compared to other legal remedies. This is confirmed by the fact that cassation for legal purposes is only carried out in two decisions, namely decision No. 186 K/Kr/1979 and decision no. 1828 K/Pid/1989, where the cassation decision for legal purposes must not harm the convicted party so that the court decision in the form of conviction, acquittal or release from all legal charges, will not change. Therefore, the Public Prosecutor is more likely to use extraordinary legal measures, namely judicial review."<sup>7</sup>

Another research from Monica Sara Konardi in a journal entitled "Legal Efforts for Cassation in the Interests of Law in Indonesia," states that "the implementation of cassation in the interest of law is the authority of the Attorney General that the decision should not be detrimental to the interested parties that Defendants/Convicts. It is based on Article 259 Act 8 of 1981. The reason Attorney General filed a cassation in the interest of the law began in Article 253 paragraph (1) Act 8 of 1981. Cassation in the interest of the law is indispensable because this provision which will ensure the holding of an appeal if the probability of legal issues that led to the occurrence of irregularities affecting justice area for the interest of law. Cassation in the interest of law is also important because the law should provide a means of exhaustive legal remedy in the law for justice in Indonesia."<sup>8</sup>

Based on the background description above, the purpose of this research is to determine the factors that cause the Attorney General to rarely use the extraordinary legal remedy of cassation for legal purposes. To revitalize the extraordinary legal effort of cassation for legal purposes so that it can run effectively in the criminal justice system in Indonesia.

## **B. RESEARCH METHODS**

This research is normative legal research with the research approach used is a statutory approach. This research data was obtained through literature study and document/decision study which was then analyzed qualitatively.

## **C. RESULTS AND DISCUSSION**

### **1. Existence and Implementation of Extraordinary Legal Measures of Cassation for Legal Interests in the Criminal Justice System in Indonesia**

The criminal justice system is an institution that plays its function as a means of resolving conflicts between two parties, and also upholding truth and justice. In essence, the criminal justice system is identical to the criminal law enforcement system, where to carry out its functions, the criminal justice system requires several interrelated sub-systems, namely sub-police, sub-prosecutor and sub-court which will

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7 Muhammad Ridha, Efektivitas Kasasi Demi Kepentingan Hukum Dalam Sistem Peradilan Pidana, *Lex Renaissance*, Vol. 6, No. 1, 2021, page.42-56

8 Monica Sara Konardi, Upaya Hukum Kasasi Demi Kepentingan Hukum di Indonesia, *Jurnal Hukum Universitas Atmajaya Yogyakarta*, 2017, page.1-11

tackle crime and control the occurrence of crime, so that it is within limits. -the tolerance limit that can be accepted.<sup>9</sup>

Based on the idea that the criminal justice system is a means of resolving conflict, guidelines are needed in carrying out its functions so that there is no arbitrariness between law enforcers and civil society (interested parties). Therefore, a rule or guideline was formed for law enforcers within the realm of the criminal justice system so that it is within the limits provided by legislation. In upholding and realizing justice, legal certainty and usefulness, formal law enforcement actions must have regulations, so that their actions do not contradict the law, that is, they do not only refer to material criminal law provisions, but also need to refer to formal criminal law. The formal criminal law is regulated in Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which regulates the provisions of the procedural process in the context of enforcing material criminal law.

According to Moeljatno, criminal procedural law is part of the overall law in force in a country which provides the basics and rules that determine in what manner and procedure the criminal threat that exists in a criminal act can be carried out if there is a suspicion that a person has committed the offense.<sup>10</sup>

Thus, it can be said that criminal procedural law is used to enforce, maintain or ensure that material criminal law provisions can be implemented, bearing in mind that without criminal procedural law, material criminal law provisions are only empty written provisions or become dead regulations.<sup>11</sup>

The birth of the Criminal Procedure Code replaced the *Het Herzien Inlandsch Reglement (HIR)* as the umbrella for criminal procedural law in Indonesia considering the cruel regulations in the HIR such as prolonged arrests without end, detention without a warrant, and without explanation of the alleged crime, as well as rules on extortion or forced confessions. Therefore, the presence of the Criminal Procedure Code aims to correct the experience of past judicial practices which were full of errors and not in line with human rights, as well as providing human rights legislation for suspects or defendants to defend their interests in the legal process. Protection of human rights is one of the main foundations in modern legal concepts that regulate social order.<sup>12</sup> The current Criminal Procedure Code regulates investigations, investigations, prosecutions, trials, examination proceedings at the District Court, appeals at the High Court, as well as cassation and judicial

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9 Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana*, Cet Pertama, Jakarta, Buku Kedua, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 1994, page.140.

10 Moeljatno, *Azaz-Azaz Hukum Pidana*, Jakarta, Bina Aksara, 1995, page.1-6.

11 Didik Edro Purwoleksono, *Hukum Acara Pidana*, Surabaya, Airlangga University Press, 2015, page.13

12 Andri Winjaya Laksana, The Protection of Human Rights in the Case of Non-Criminal Narcotics Users, *SASI*, Vol. 29, No. 4, December 2023, page.790-801

review to the Supreme Court.<sup>13</sup>

The criminal justice system opens up space for litigants not to accept the decision or to defend themselves from the judge's decision which is deemed not to be in line with what they expect in the form of legal action. Legal remedies are a means of implementing the law, namely the right of the defendant/convict or Prosecutor/Public Prosecutor not to accept the court's determination or decision because they are not satisfied with the determination or decision.<sup>14</sup> Legal efforts are also all efforts to achieve legal objectives that actually run as they should and to prevent errors or mistakes by judges in a judge's decision.<sup>15</sup>

Sudikno Mertokusumo put forward legal efforts or tools to prevent or correct errors in a decision. Thus, legal remedies are given to the defendant/convict and also the Public Prosecutor not to accept or oppose the judge's decision in stages or tiers based on the provisions established by law.<sup>16</sup>

Ordinary legal remedies are legal remedies for decisions that have not been implemented and the use of one of these legal remedies can postpone the execution of the sentence, while extraordinary legal remedies can be taken after other legal remedies have been used so that the court decision can be implemented.<sup>17</sup>

Muhammad Taufik Makarao and Suhasril have different opinions regarding these legal remedies, namely first, ordinary legal remedies are filed against court decisions that do not yet have permanent legal force, while extraordinary legal remedies are filed against court decisions that already have permanent legal force. Second, ordinary legal remedies do not require special conditions or certain conditions, while extraordinary legal remedies can only be submitted with special conditions or certain requirements. Third, ordinary legal remedies are not always directed to the Supreme Court, while extraordinary legal remedies are submitted to the Supreme Court and examined and decided by the Supreme Court as the first and final institution.<sup>18</sup>

In relation to these legal remedies, Article 1 point 12 of the Criminal Procedure Code states that the right of the defendant or public prosecutor not to accept a court decision in the form of a challenge or appeal or cassation or the right of the convict to submit a request for review in the case and according to the method stipulated in the law.<sup>19</sup>

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13 Andi Sofyan dan Abd Asis, *Hukum Acara Pidana Suatu Pengantar*, Jakarta, Edisi Kedua, Kencana, 2014, page.48.

14 Andi Hamzah dan Irdan Dahlan, *Upaya-Upaya Hukum Dalam Perkara Pidana*, Jakarta, Bina Aksaran, 1987, page.3

15 Ramiyanto, *Upaya-Upaya Hukum Perkara Pidana Di Dalam Hukum Positif dan Perkembangannya*, Bandung, Citra Aditya Bakti, 2019, page.5

16 Rocky Marbun, Deni Bram dkk, *Kamus Hukum Lengkap*, Transmedia Pustaka, Jakarta, 2012, page 322.

17 Ramiyanto, *Op.Cit.*, page 11.

18 *Ibid.*

19 Andi Sofyan dan Abdul Asis, *Op. Cit.*, page 268.

The legal remedies regulated in the Criminal Procedure Code are divided into two parts, namely, ordinary legal remedies which include appeals and cassation, and extraordinary legal remedies in the form of cassation for legal purposes and judicial review. Extraordinary legal remedies are exceptions and deviations from ordinary legal remedies, appeals and cassation.<sup>20</sup>

In this discussion the focus is more on extraordinary legal measures, namely cassation for legal purposes. Extraordinary legal remedies Cassation for legal purposes is one of the extraordinary legal remedies, which is an exception to ordinary legal remedies. This effort is submitted against a court decision which has permanent legal force.<sup>21</sup>

Initially the extraordinary legal action of cassation for legal purposes was regulated in Article 17 of Law no. 1 of 1950 concerning the Supreme Court, which explains that a cassation can be made at the request of an interested party or at the request of the Attorney General because of his position. The foregoing means that cassation at the Attorney General's request is solely for legal purposes and cannot harm the parties concerned. With these provisions, party cassation can be distinguished from cassation due to the position of Attorney General and cassation due to this position is called cassation for legal purposes.

After the enactment of the KUHAP, extraordinary legal remedies for cassation for legal purposes are regulated in Chapter XVIII, part one, from Articles 259 to Article 262 of the KUHAP. The arrangements for extraordinary legal remedies, cassation for legal purposes in the Criminal Procedure Code, are the shortest compared to the arrangements for other legal remedies (appeals, cassation and judicial review). The legal action of cassation for legal purposes can be submitted against all decisions that have obtained permanent legal force other than from the Supreme Court and can only be submitted once by the Attorney General. Thus, cassation for legal purposes can only be filed against decisions made by the Court of First Instance (District Court) and the Court of Appeal (High Court), while against decisions issued by the Supreme Court (Kasasi) only legal action can be taken for review. Return.

The provisions for cassation legal action for legal purposes are actually obtained from the Dutch legal system, which, when compared with its authority, is certainly not owned by the prosecutor's office as the prosecutor, but is owned by the prosecutor's office at the Supreme Court (*parket bij de hoge raad*) as if it were an institution headed by the Attorney General (procureur general). The *bij de hoge raad parquet* institution, or what is usually called the prosecutor's office at the Supreme Court, does not have a prosecutorial function and is of course different from the Attorney General's Office which has a prosecutorial function. The prosecutor's office at the Supreme Court is given special exceptions for serious crimes committed by royal or state officials with the prosecution process directly before the Supreme Court (*forum*

20 M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Peninjauan Kembali*, Jakarta, Sinar Grafika, 2012, page.607.

21 YLBHI dan PSHK, *Panduan Bantuan Hukum di Indonesia*, Jakarta, YLBHI, 2007, page.252.

*privilegiatum*). The *bij de hoge raad parquet* institution has the main authority to provide legal opinions to the Supreme Court in every cassation case, submit cassation for legal purposes (*cassatie in het belang der wet*), and can also act as a prosecutor if a judge commits a serious violation which could result in dismissal. The problem of violating the law or in other words crime is the responsibility of every element of society. Because apart from crime, it is as old as the history of social life and also the embryo and construction of society itself.<sup>22</sup> position and for criminal cases prosecution is carried out by a prosecutor under the Minister of Justice.<sup>23</sup>

According to Eddy O.S. Hiariej, if we look at the historical aspect of the formation of the Criminal Procedure Code, Cassation for Legal Interests is an instrument to balance legal efforts for Judicial Review, where both are extraordinary legal efforts, but the difference is that Judicial Review is the right of the convict or his heirs, while Cassation for Legal Interests is the right of the Public Prosecutor whose authority is vested in the Attorney General. Although the legal remedy of cassation for legal purposes is the right of the Public Prosecutor whose authority is vested in the Attorney General, it must not be detrimental to the convicted person in accordance with the principle of *reformaso immelius*, which means that extraordinary legal remedies must not be more severe than the previous decision.<sup>24</sup>

The regulation of cassation legal remedies for legal purposes in the Criminal Procedure Code, in practice, has the potential to cause problems, because several provisions in it have multiple interpretations. According to the author, there are at least 2 (two) problems arising from the regulation of cassation legal remedies for legal purposes, especially the interpretation of the provisions of Article 259 of the Criminal Procedure Code, namely:

Firstly, in Article 259 paragraph (1) of the Criminal Procedure Code it is stated that: "For the sake of legal interests regarding all decisions that have obtained permanent legal force from courts other than the Supreme Court, a cassation request can be submitted once by the Attorney General."

In practice, the phrase "legal interest" in this provision can cause problems, because there is no further explanation in the general provisions, general explanation and article by article explanation in the Criminal Procedure Code, regarding what is meant by "legal interest". According to the author, the phrase "legal interests" is a material requirement/reason for submitting a cassation legal action for the sake of legal interests, so clear boundaries should be given, whether related to formal (procedural) law or material law. This is different from the legal action of cassation where the material requirements/reasons for filing are

22 Andri Winjaya Laksana, *Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif*, *Jurnal Hukum Unissula*, Vol. 35, No. 1, 2019, page.52-76

23 Monica Sara Konardi, *Op. Cit.* page 1-11

24 *Ibid.*, page 9.

regulated in detail in Article 253 paragraph (1) of the Criminal Procedure Code and Judicial Review which is regulated in Article 263 paragraph (2) of the Criminal Procedure Code.

As regulated in Article 253 of the Criminal Procedure Code, examination at the cassation level is carried out by the Supreme Court at the request of the parties as intended in Article 244 and Article 248 of the Criminal Procedure Code in order to determine: whether it is true that a legal regulation is not applied or is not applied properly; is it true that the trial method was not carried out according to the provisions of the law; Is it true that the court has exceeded the limits of its authority?

Regarding court decisions that have obtained permanent legal force, except for decisions of acquittal or release from all legal claims, the convict or his heirs can submit a request for review to the Supreme Court. The request for reconsideration is submitted simultaneously with the review memo and based on the applicant's reasons, the Supreme Court judges only on the reasons determined by the Criminal Procedure Code.

Meanwhile, the opinion states that the material reasons/requirements for a cassation request for legal purposes refer to the material reasons/requirements for cassation as regulated in Article 253 paragraph (1) of the Criminal Procedure Code. According to the author, this cannot be justified, because with the material reasons/requirements of the cassation, the judge can decide on the cassation application according to whether or not the material reasons/requirements of the cassation are proven and according to his sense of justice, while the judge's decision in the cassation application for legal purposes must not be detrimental.

Second, in Article 259 paragraph (2) of the Criminal Procedure Code it is stated that: "Cassation decisions for legal purposes must not harm interested parties."

From these provisions, the phrase "harming interested parties" gives rise to different or debatable interpretations among legal experts and practitioners. The meaning or interpretation of the phrase "harming interested parties" has never been explained in the general explanation or article by article explanation in the Criminal Procedure Code. What is meant by the word "harm" in the context of the cassation decision for legal purposes is also not explained. Likewise, there is no further explanation for the words "interested parties" in the Criminal Procedure Code or Government Regulation no. 27 of 1983 concerning Implementation of the Criminal Procedure Code. When referring to the criminal justice system regulated in the Criminal Procedure Code, there are three "interested parties", namely the state (represented by the Attorney General), the convict (perpetrator of a crime) and the victim of a crime.

In this regard, M. Yahya Harahap stated that the interested party is the convict who should not be harmed by the cassation decision for



legal purposes.<sup>25</sup> In line with M. Yahya Harahap's opinion, Adami Chazawi further believes that the Cassation decision for legal purposes should not change the verdict of acquittal into punishment, including the decision to be released from all legal demands.<sup>26</sup> Thus, the point is that this cassation for legal purposes is solely for legal purposes in order to create a unified interpretation of the law and to have unity in how to implement the law.<sup>27</sup>

If the regulation of cassation for legal purposes is compared with the regulation of judicial review as an extraordinary legal remedy in criminal cases, the difference is very clear. The party with an interest in the Judicial Review legal action is of course the convict, because the only person entitled to submit a Judicial Review legal action is the convict or his heirs (Article 263 paragraph (1) KUHAP) and it is explicitly stated that the decision handed down in the Judicial Review decision must not exceed the punishment that had been imposed in the original decision (Article 266 paragraph (3) of the Criminal Procedure Code).

Based on these considerations, it is not surprising that the Attorney General rarely uses the legal remedy of Cassation for Legal Interests, because the legal remedy of Cassation for Legal Interests is seen as ineffective compared to other legal remedies. Its ineffectiveness stems from the provisions of Article 359 of the Criminal Procedure Code which have multiple interpretations, and ultimately relates to the judge's decision which must not harm interested parties. As the author explained above, the author's search to date has only found two cassation decisions for legal purposes, namely Decision No. 1828 K/Pid/1989, dated 15 July 1990 and Decision no. 4399 K/Pid.Sus/2021, dated 21 December 2021. In decision no. 1828 K/Pid/1989, dated 15 July 1990, the Cassation Panel granted the petition of the applicant (Attorney General), while in decision No. 4399 K/Pid.Sus/2021, dated 21 December 2021, the applicant's (Attorney General's) application was declared inadmissible.

This condition is inversely proportional to cassation requests (some of the applicants are prosecutors/public prosecutors) and judicial reviews, which are always high every year. In 2021, the Supreme Court received requests for cassation in criminal cases as many as 6,707 cases and requests for judicial review of criminal cases as many as 624 cases, in 2022, the Supreme Court received requests for cassation in criminal cases as many as 9,279 cases and requests for review of criminal cases as many as 1,517 cases, while in 2023, the Supreme Court accepted requests for cassation in criminal cases totaling 8,087 cases and requests for judicial review of criminal cases totaling 1,593 cases.<sup>28</sup> It would be understandable if the Prosecutor/Public Prosecutor chooses the normal

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25 M. Yahya Harahap, *Op. Cit.*, page 610.

26 Adami Chazawi, *Lembaga Peninjauan Kembali (PK) Perkara Pidana (Penegakan Hukum Dalam Penyimpangan Praktik & Peradilan Sesat)*, Jakarta, Sinar Grafika, 2011, page.107.

27 Andi Hamzah dan Irdan Dahlan, *Op. Cit.*, page 113.

28 Laporan Tahunan Mahkamah Agung Tahun 2022, 2023 dan 2024.

legal remedy, namely cassation, because by carrying out the cassation legal remedy, the Cassation judge can give the desired decision, for example increasing the length of the sentence, so that it is not too far apart from the criminal charges he has submitted.

Some time ago, even the Prosecutor/Public Prosecutor was able to go beyond the provisions in the Criminal Procedure Code, namely carrying out extraordinary legal measures in the form of Judicial Review which normatively is the right of the convict or his heirs, but in the end this request was granted by the Supreme Court. In case no. 12 PK/Pid.Sus/2009, Djoko Tjandra, who was originally tried at the South Jakarta District Court, was declared acquitted, then the Prosecutor/Public Prosecutor took the usual legal action, namely an appeal to the High Court, but the result of the decision was also acquittal, then the Prosecutor/Public Prosecutor filed cassation to the Supreme Court and the resulting decision rejects the Prosecutor's/Public Prosecutor's cassation request or confirms the previous decision.<sup>29</sup> Furthermore, the Prosecutor/Public Prosecutor submitted a request for a judicial review of the decision to acquit Djoko Tjandra in the Bank Bali cessie corruption case, and the Judicial Review Panel granted the Prosecutor/Public Prosecutor's request by imposing a sentence of 2 years and a fine of IDR 15 million with an additional penalty of confiscation of money amounting to IDR 546,000,000,000.00. In the case of Muchtar Pakpahan (No. 55 PK/Pid/1996) and Pollycarpus (No. 109 PK/Pid/2007), the Supreme Court also granted the request for judicial review submitted by the Prosecutor/Public Prosecutor and sentenced the convicts as previously stated by the court free.

## **2. Revitalization of Extraordinary Legal Efforts for Cassation for Legal Interests in the Future Criminal Justice System**

Criminal procedural law is a guideline for law enforcement in judicial proceedings in Indonesia which is prepared with high persistence to ensure legal certainty so that it is often seen as a static law and does not require dynamism in its enforcement. In simple terms, the criminal justice system is shackled by legalism-positivism, namely that law enforcers will be fixated on what has been determined in the law, so that judges are only mouthpieces for the law. The possibility of unclear articles in the legislation which are contradictory to each other could result in a judge's decision containing uncertainty regarding the fairness and usefulness of the law. This is confirmed by criticism, both from academics and practitioners, regarding the judge's decision which is deemed not to provide a sense of justice, certainty and legal benefits, even though the root of the problem itself arises from the lack of clarity

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29 Aqshal Muhammad Arsyah, Cora Kristin Mulyani dkk, *Kajian Labirin Hukum Penyelesaian Kasus Djoko Tjandra*, Yogyakarta, Dewan Mahasiswa Justicia Fakultas Hukum UGM, 2020, page 6-7.

in norms that contradict each other.<sup>30</sup> Therefore, it can be seen that talking about certainty, justice and legal benefits is not only seen from the judge's decision but also seen from the clarity of norms and firmness in a statutory regulation, including regarding procedural law.

Jeremy Betham stated that maximizing happiness and minimizing pain means that laws and regulations must be consistent, their implementation is clear, simple and strictly enforced, so that laws without the value of legal certainty will lose their meaning because they can no longer be used as guidelines for law enforcers in the criminal justice system.<sup>31</sup> However, a different view was conveyed by Dworkin who said that law is always interpretive, and also that the textual rigidity of law is very likely to be dissolved so that it becomes a debate and shows a melee reality."<sup>32</sup> For this reason, criminal procedural law is a static law that only cares about legal certainty, and is also trapped in the certainty of legal texts alone, so that in the end it must be overthrown by reforming it.<sup>33</sup>

Revitalization is a process, method and action that revives or reactivates something that was previously powerless, in simple terms making something or an action vital. In this context, it means that the extraordinary legal remedy of cassation for legal purposes which was previously less effective/powerful will be made more effective/powerful again or in other words, revive it in the future.

As explained in the previous discussion, the legal action for cassation for legal purposes which is not effective is not due to the lack of cases submitted, but the problem lies in the regulation in the Criminal Procedure Code which has multiple interpretations, namely in the phrases "legal interests" and "must not harm interested parties." ", so that justice, benefit and legal certainty are not created. For this reason, in order for this instrument to operate effectively in the future, it is necessary to reform the criminal procedural law, especially the provisions governing cassation legal remedies for legal purposes.

Barda Nawawi Arief said that reforming criminal procedural law is essentially part of a rational effort, making law enforcement more effective through/improving legal substance.<sup>34</sup> This means that the aim of legal reform is not only focused on material law, but also procedural law which must be updated. Legal reform in the criminal procedural law

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30 Jeremy Betham, *Teori Perundang-Undangan, Prinsip-Prinsip Hukum Perdata dan Hukum Pidana (The Theory of Legislation)*, diterjemahkan oleh Nurhadi, MA, Bandung, Nusamedia, 2010, page.17.

31 Fence M. Wantu, Antinomi Dalam Penegakan Hukum Oleh Hakim, *Jurnal Berkala Mimbar Hukum*, Vol. 19, No. 3, Oktober 2007, page.395.

32 Ronald Dworkin, *Law's Empire*, Cambridge, The Belknap Press of Harvard University Press, 1986, page.225-227

33 M. Rustamaji, Pembaharuan Hukum Acara Pidana Melalui Telaah Sisi Kemanusiaan Aparat Penegak Hukum, *Kanun Ilmu Hukum*, Vol. 19, No. 1, 2017, page.5.

34 Yaris Adhial Fajrin dan Ach. Faisol Triwijaya, Arah Pembaharuan Hukum Pidana di Tengah Pluralisme Hukum Indonesia, *Jurnal Penelitian Hukum dan Pendidikan*, Vol. 18, No. 1, 2019, page.736

sector is part of national legal development to overcome various problems in the context of law enforcement, namely regarding the process of resolving criminal cases fairly, but apart from that it also aims to revitalize overlapping, disharmonious and multi-interpretive laws and regulations.<sup>35</sup>

Carrying out the revitalization of the Criminal Procedure Code aims to ensure that extraordinary legal measures, namely Cassation for Legal Interests, can be carried out effectively, so that they can be used properly, namely by returning the legal remedy rights for Cassation for Legal Interests to the Public Prosecutor, as well as changing or revising the articles that become The root of the problem of this ineffectiveness is so that the Criminal Procedure Code can be effective in the future, and the Public Prosecutor will no longer step outside of his authority. In designing or forming future laws, it is necessary to pay attention to the principles in the formation of legislative regulations, namely clarity of purpose, appropriate institutions or forming organs, suitability between type and material content, can be implemented, usefulness and usefulness, clarity formulation, and openness.<sup>36</sup>

The goal to be achieved by updating the substance of statutory regulations is essentially to perfect the law enforcement mechanism by law enforcement officials in order to achieve goals that are certain, useful and protect the principles and values of justice. The discussion above shows that reform of criminal procedural law must be guided by good and correct formation and drafting, namely fulfilling the criteria above, so that justice, benefit and legal certainty can be realized. The birth of a future (modern) criminal procedural law has long been desired by everyone, including Prosecutors/Public Prosecutors, so that they can realize the supremacy of law in accordance with Pancasila and the 1945 Constitution, thus raising optimism for better hopes in law enforcement.<sup>37</sup>

According to the author, this revitalization was carried out by providing sufficient explanation of the phrases "legal interests" and "must not harm interested parties" as contained in Article 359 of the Criminal Procedure Code. In the case of the phrase "legal interests" as a material requirement/reason for a request for cassation for legal purposes, you can refer to the provisions of Article 253 paragraph (1) of the Criminal Procedure Code. In the phrase "not to harm interested parties" it can be explained that what is meant by "harm" is loss, for example the penalty is increased, while the "interested party" is the Attorney General, because the person who has the right to submit a request for cassation for legal purposes is the Prosecutor. Great. This

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35 Apri Listiyanto, Pembaharuan Sistem Hukum Acara Pidana, *Jurnal Rechts Vinding*, Vol. 2, No. 1, 2017, page 2.

36 Pasal 5 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

37 M. Zen Abdullah, Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional di Indonesia Yang Lebih Responsif, *Jurnal Ilmiah Universitas Batanghari Jambi*, Vol. 20, No. 1, 2020, page. 284.

refers to Eddy OS Hiariej's opinion above, that the existence of cassation for legal purposes is to balance the convict or his heirs who are given the right to submit a judicial review in criminal cases. Apart from that, the provisions of Article 359 paragraph (2) of the Criminal Procedure Code could also be abolished, so that judges make fair decisions without being shackled by the phrase "must not harm interested parties". Thus, in the end, what differentiates the legal remedy for judicial review from the legal remedy for cassation for legal purposes is the subject who has the right to submit the application, namely the convict or his heirs in the case of judicial review and the Attorney General/Public Prosecutor in cassation for legal purposes.

The novelty of this research is that legal action in the form of cassation for legal purposes can be realized if criminal procedural law is reformed, especially regarding revitalization or returning the right to cassation for legal purposes to the public prosecutor. Reform of criminal procedural law must be guided by good and correct formation and drafting, namely fulfilling the above criteria so that justice, benefit and legal certainty can be realized. The birth of the upcoming criminal procedural law has long been desired by everyone, including public prosecutors, so that it can realize the supremacy of law in accordance with Pancasila and the 1945 Constitution, thus raising optimism for better hope in law enforcement.

#### **D. CONCLUSION**

The ineffectiveness of legal remedies in the form of cassation stems from the regulation of these legal remedies, namely Article 359 of the Criminal Procedure Code which has multiple interpretations, especially from the phrases "legal interests" and "must not harm interested parties", because sufficient explanations have never been given, either in general explanations. or an explanation of article by article in the Criminal Procedure Code. Revitalization needs to be carried out, especially regarding the provisions of Article 359 of the Criminal Procedure Code, so that the implementation of cassation legal efforts for legal purposes can be effective. Revitalization can be carried out by providing adequate explanations, especially the phrases "legal interests" and "must not harm interested parties" or even eliminating the provisions of Article 359 paragraph (2) of the Criminal Procedure Code, so that it does not give rise to different interpretations and judges can give appropriate decisions. be fair, without being shackled by the phrase "must not harm interested parties". Reform of criminal procedural law must be guided by good and correct formation and drafting, namely fulfilling the above criteria so that justice, benefit and legal certainty can be realized.

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