JILS (JOURNAL *of* INDONESIAN LEGAL STUDIES)

Indonesian Legal Thoughts Amid Various World Legal Thoughts

Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 6 Issue 2, November 2021 ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

RESEARCH ARTICLE

REFORM REGULATION OF NOVUM IN CRIMINAL JUDGES IN AN EFFORT TO PROVIDE LEGAL CERTAINTY

Rian Saputra[1]✉, Muhammad Khalif Ardi[2], Pujiyono Pujiyono[3], Sunny Ummul Firdaus[4]

[1] Faculty of Law, Universitas Slamet Riyadi, Indonesia

[2,3,4] Universitas Sebelas Maret, Indonesia

✉ rians050595@gmail.com

Submitted: August 8, 2021 **Revised**: October 29, 2021 **Accepted**: Oct 20, 2021

ABSTRACT

The research stems from Decision Number 224 PK/PID.SUS/2018 which grants the application for judicial review (hereinafter abbreviated as PK) by a suspected narcotics abuser with a novum (new evidence) in the form of previous judges' decisions. In this case, this study aims to conceptualize how the regulation of PK legal remedies in criminal cases should be. This research is a normative

legal research, the approach used is a case approach, a comparative approach, and a conceptual approach, with a literature study research technique. After knowing the arguments for the admissibility of submitting a PK in the form of a District Court Decision, the author makes several comparisons with the Criminal Procedure Code (America and France), and concludes based on this comparison that the use of the basis for submitting a PK should be regulated clearly and firmly in the Criminal Procedure Code, because the two countries in its criminal procedural law it expressly states that the submission of a PK must be based on new facts and evidence which, if presented at the previous trial, has the potential to reduce or even abort the prosecution's charge

Keywords: District Court Decision, Novum, Review

TABLE OF CONTENTS

HOW TO CITE:
Saputra, R., Ardi, M. K., Pujiyono, P., & Firdaus, S. U. (2021). Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty. *JILS (Journal of Indonesian Legal Studies)*, *6*(2), 437-482. https://doi.org/10.15294/jils.v6i2.51371

INTRODUCTION

THE IDEA AND MAIN IDEA that the authors want to include in this paper begins with Decision Number 224 PK/PID.SUS/2018 which grants the request for judicial review (hereinafter abbreviated as PK) by a suspected narcotics abuser with a novum (new evidence) in the form of decisions former judge. The problem of drug abuse and illicit trafficking has now become a global problem that has hit all regions and countries around the world. This was stated at the Commission on Narcotic Drugs (CND) session in Vienna on 11-12 March 2009 which resulted in a Political Declaration and Plan of Action of 2009 which contained a political declaration and action plan regarding international cooperation in the framework of a balanced and comprehensive strategy for solve the problem of narcotics in the world.[1] The problem is, narcotics is a problem that must be handled seriously by all components of society. Such handling is not only for users, but also the development of the narcotics business that exists in Indonesia has begun to be disturbing. The National Narcotics Agency (BNN) has mapped 72 drug networks in Indonesia. This was stated by the Head of BNN, Commissioner General Budi Waseso. The Deputy for Drug Eradication at the National Narcotics Agency, Inspector General Arman Depari, said that if the assumption is that one network generates Rp 1 trillion per year from the illicit business, the assets of the 72 drug networks could reach Rp 72 trillion per year.[2]

Meanwhile, when looking at the population aspect, Indonesia has a population of more than 200 million people with a fairly large proportion of young people (about 40 percent) with a relatively low

[1] Didik Ariyanto, *Putusan Pengadilan Negeri Sebagai Novum Pengajuan Peninjauan Kembali Pada Tindak Pidana Narkotika*. 13 (2021)

[2] KOMPAS, http://megapolitan.kompas.com/read/2016/08/19/16473361

level of prosperity or economy. This is a huge market potential for the illicit trafficking of narcotics and psychotropic substances and encourages traffickers who want to get rich quick with less effort.[3] Since 1998 there have been indications that Indonesia is no longer just a transit country, but is already a destination country, even for psychotropics, Indonesia can be said to be a source country (place of production). The problem of illegal trade and narcotics crime is a very complex problem because there are 3 (three) factors that cause the increase in the illegal circulation of narcotics, namely weak interdiction capacity which will result in an increase in the risk of illicit narcotics trafficking, an increase in narcotics abuse, and a lack of cooperation between enforcement agencies. law, both national and international, which results in a lack of effectiveness in the implementation of interdiction tasks.

Based on this, it is not wrong to say that narcotics crimes are transnational in nature which are carried out using high modus operandi, advanced technology, supported by an extensive network of organizations, and have caused many victims, especially the nation's young generation which is very dangerous to the life of the community, nation. and the state so that Law Number 22 of 1997 concerning Narcotics is no longer in accordance with the development of the situation and conditions that develop to overcome and eradicate these criminal acts. Instead, Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law) was issued which regulates Narcotics and Psychotropics. The purpose of Law Number 35 of 2009 concerning Narcotics as regulated in Article 4, namely:

1. Guarantee the availability of narcotics for the benefit of health services, and/or the development of science and technology.

[3] AR. Sujono & Bony Daniel, *Komentar dan Pembahasan Undang Nomor 35 Tahun 2009 Tentang Narkotika*, 19 (2013).

2. Prevent, protect, and save the Indonesian people from narcotics abuse.
3. Eradicating illicit trafficking of narcotics and narcotic precursors.
4. Guarantee the arrangement of medical and social rehabilitation efforts for narcotics abusers and addicts.

The general explanation of Law Number 35 of 2009 concerning Narcotics states that narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases, but if misused or used not in accordance with treatment standards, they can have very detrimental consequences for individuals or society. especially the younger generation. Based on the description in the explanation, it clearly shows that narcotics are really needed in human life, namely for treatment. But what is dangerous is when narcotics are misused in a way that is not in accordance with the rules of circulation. In this case what is prohibited is the abuse and illicit trafficking of narcotics. Regulations and threats for narcotics abuse are regulated in the Narcotics Law, including those regulated in the provisions of the Narcotics Law:

> Article 112 paragraph (1) "without rights or against the law owning, storing, controlling or providing Narcotics Category I is not a plant".
> Article 114 paragraph (1), namely "without rights or against the law, offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging or delivering Narcotics Category I";

The minimum fine is Rp. 800,000,000,- (eight hundred million rupiah) and a maximum fine of Rp. 8,000,000,000,- (eight billion rupiah). Criminal fines that are not paid by the perpetrators of narcotics crimes will be replaced with imprisonment according to the provisions:

> Article 148, namely "*If the criminal penalty as stipulated in this Law is not paid by the perpetrator of the crime of Narcotics and Narcotics Precursor, the perpetrator is sentenced to a maximum imprisonment of 2 (two) years as a substitute for a fine that cannot be paid.".*

Based on this formulation, perpetrators of criminal acts tend to prefer to undergo imprisonment as a substitute for fines. In the Narcotics Law, narcotics users are also referred to as victims of the narcotics circulation. Due to the increasing number of narcotics trafficking, the more abusers or addicts are ensnared. Therefore, the state/government in this case intervenes in the prevention and eradication process, but also in the massive rescue/protection process for the young generation who have become victims of narcotics. This is also the basis for the establishment of a special agency, namely the National Narcotics Agency (BNN) with the main task of dealing with Narcotics problems, not only prevention and eradication, but also to the rescue/rehabilitation stage for people who have been exposed to narcotics abusers or addicts. The government also provides a large enough budget to build rehabilitation homes, and cooperates with public and private hospitals to help save victims of narcotics abusers or addicts. With regard to someone who is proven to be a narcotics abuser, the person concerned is obliged to undergo medical rehabilitation and social rehabilitation. This can be seen in Article 127 of the Narcotics Law, namely::

1. Any Abusers:
   a. Narcotics Category I for oneself shall be sentenced to a maximum imprisonment of 4 (four) years;
   b. Narcotics Category II for oneself shall be sentenced to a maximum imprisonment of 2 (two) years; and
   c. Narcotics Category III for oneself shall be sentenced to a maximum imprisonment of 1 (one) year.

2. In deciding the case as referred to in paragraph (1), the judge must pay attention to the provisions as referred to in Article 54, Article 55, and Article 103.
3. In the event that the abuser as referred to in paragraph (1) can be proven or proven as a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation.

However, in practice, especially in the first instance court, Article 127 of the Narcotics Law is rarely used, judges and prosecutors tend to use Article 112 of the Narcotics Law, which says that:

> "Any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I which is not a plant, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of Rp800,000,000. ,00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah)".

The frequent use of this article in every judge's decision and the demands of the public prosecutor in narcotics crimes is accompanied by strong reasons, in addition to fulfilling the elements in Article 112 of the Narcotics Law, it is also due to the fact that the defendant's trial or the defendant's attorney cannot prove that the defendant is a victim of narcotics abuser. as required by Article 127 of the Narcotics Law.[4] In terms of demands by the Public Prosecutor, it is known that the application of Article 112 of the Narcotics Law as a Primary claim in many narcotics crimes is because the elements in Article 112 of the Narcotics Law have been fulfilled, namely:

[4] I Made Tambir. Pendekatan Restorative Justice dalam Penyelesaian Tindak Pidana di Tingkat Penyidikan. *4 JMHU (Jurnal Magister Hukum Udayana)*, 8 339-358. (2019)

1. Everyone
   that what is meant by everyone is every person individually as a supporter of rights who is able to account for his actions before the law and for that it is required to have spiritual or mental health of the person concerned and an age limit so that that person can be subject to criminal sanctions.
2. Without rights or against the law.
   that this second element is alternative, meaning that if one of the components of the element has been proven, then what is desired by that element is fulfilled, and the component of elements without rights or against the law must be directed against acts of using narcotics based on article 7 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, determines that Narcotics can only be used for the benefit of Health Services and / or the development of Science and Technology while in the provisions of Article 41 of Law of the Republic of Indonesia Number 35 of 2009 it is stated that Narcotics Category I only can be distributed by certain pharmaceutical wholesalers to certain scientific institutions for the benefit of developing science and technology. From the provisions of the articles above, it is clear that Narcotics Category I is only allowed to be used for the benefit of Health Services and / or the development of Science and Technology, and its distribution can only be distributed by certain pharmaceutical wholesalers so that using or distributing narcotics outside the above provisions is contrary to laws or regulations which are also referred to as against the law.
3. Possessing, storing, controlling or providing Narcotics Category I
   What the author described also happened in the case with the defendant Andy Suntoro who was tried at the Surakarta District Court with Decision Number: 125/Pid.Sus/2017/PN Skt where based on the court's decision the defendant was at that time found

guilty and proven legally and convincingly. guilty of committing the crime of "Owning, Storing Narcotics Category I" and therefore with imprisonment for 4 (four) years and 6 (six) months and a fine of Rp. 800,000,000,- (eight hundred million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.[5]

Then after some time the convict through his legal counsel submitted an application for judicial review to the Supreme Court (MA) which the Supreme Court granted the request and then the Supreme Court tried again, through Decision Number: 244 PK/Pid.Sus/2018 with a command:

1. To declare that the convict Andy Suntoro has been legally and convincingly proven guilty of committing the crime of "Abuse of Narcotics Class I for Yourself".
2. Imposing imprisonment for 1 (one) year and 6 (six) months.

However, the author's question is when talking about extraordinary legal remedies for judicial review, the main conditions that must be met as stipulated in Article 263 of the Criminal Procedure Code (hereinafter referred to as KUHAP) are:

1. Against a court decision that has obtained permanent legal force, unless the decision is acquitted or released from all legal claims, the convict or his heirs may submit a request for review. back to the Supreme Court.
2. Requests for reconsideration are made on the basis of:
   a. if there are new circumstances that give rise to a strong suspicion, that if the situation was known at the time the trial was still ongoing, the result would be an acquittal or an acquittal of all lawsuits or the demands of the public prosecutor could not

[5] See Decision Number 125/Pid.Sus/2017/Pn.Skt

be accepted or lighter criminal provisions were applied to the case ;

b. if in various decisions there are statements that something has been proven, but the things or circumstances as the basis and reasons for the decisions which are stated to have been proven, are in fact contradicting one another;
c. if the decision clearly shows a judge's error or a real mistake.

3. On the basis of the same reasons as referred to in paragraph (2), against a court decision which has permanent legal force, a request for reconsideration can be submitted if in that decision an act that has been accused has been declared proven but is not followed by a conviction.

Article 263 Paragraph (2) of the Criminal Procedure Code clearly states that the PK request was submitted based on a new situation (novum) and so on, but the PK petition submitted by Andy Suntoro through his attorney and granted by the Supreme Court was only limited to explaining the decision of the previous District Court Judge without being followed up. with corroborating evidence. The decisions of the previous District Court Judges include:

1. Decision on Case Number 462/Pid.Sus/2017/PN.Skt
2. Decision on Case Number 454/Pid.Sus/2017/PN.SKt
3. Decision on Case Number 10/Pid.Sus/2018/PN.Skt
4. Decision on Case Number 36/Pid.Sus/2018/PN.Skt

However, if borrowing a statement from one of the notions of jurisprudence, Soebekti said that the definition of jurisprudence is the decisions of judges or courts that are permanent and justified by the Supreme Court (MA) as a court of cassation, or the decisions of the Supreme Court itself are permanent. Therefore, it would not be appropriate if the Court's Decisions at the first level as the author described above are considered as jurisprudence. However, the question arises, then what is the basis for the judge to accept the

application for judicial review in the narcotics crime case with a novum in the form of previous judges' decisions at the first level court. Here, the author describes the decisions that are used as the basis for the PK application in the form of legal considerations in the district court's decision:

1. Decision on Case Number 454/Pid.Sus/2017/PN.SKt regarding the abuse of narcotics by brother (hereinafter referred to as Br) Irawan Kusuma That the PK-2 novum, the judge in his consideration related to the element of "abusing Narcotics Category I type of shabu for Considering, whereas based on the statements of the witnesses and the defendant, it was found that the defendant Irawana Kusuma Alias Irawan Bin Darseno on Wednesday, October 11, 2017 at around 15.30 WIB was arrested by the police in front of the BCA Center Point Jalan Slamet Riyadi Purwosari Surakarta:…… .;

   Considering, whereas based on these facts, the panel of judges is of the opinion that the element of "abusing class I narcotics type shabu for oneself" has been fulfilled in the series of actions of the defendant;

   Considering, that because all the elements of the subsidiary indictment have been fulfilled, the series of actions of the defendant, the defendant must be declared legally and convincingly guilty of committing a criminal act of abusing class I narcotics for himself "so that the sentence handed down against the defendant is in the form of imprisonment for 1 (one) year (evidence of 4 packets of methamphetamine weighing 0.596 grams and 1 inex).[6]
2. Decision on Case Number 10/Pid.Sus/2018/PN.Skt which decided that Mr. Ari Yudianto Als suwung in the case of the Narcotics

[6] Look at The Considerations and Rulings on The Decision on Case Number 454/Pid.Sus/2017/Pn.Skt

Crime where that the PK-3 novum is the judge in his consideration regarding the element for oneself;

Considering, whereas the element "for oneself" contains the meaning that the narcotics abuser of class I type of methamphetamine does not have the intention of persuading or offering to other people to participate in abusing narcotics but solely for himself;

Considering that from the testimony of the witnesses related to the testimony of the defendant at trial, there was no legal fact that the defendant wanted to sell or trade the shabu he had taken, but that the shabu was solely for the defendant's own consumption;

Considering, that from the series of actions of the defendant, it was related to the defendant's intention to buy methamphetamine with the intention of consuming it himself, which turned out to be when the defendant was arrested by officers from the Narcotics Unit of the Surakarta Police and then during the search of the defendant the officer found, then in the search at the defendant's house and in the room of the house found 1 (one) small transparent package containing methamphetamine which was stored in the front right pocket of black jeans hanging in the room, a glass pipette with shabu residue/crust was found in jeans,…., so According to the Panel of Judges, the defendant did not have any intention to offer methamphetamine to others but solely to be used for himself;

Considering, based on the description, the defendant's actions are legally and convincingly proven guilty of committing a "criminal act of narcotics abuse of class I for himself". So that the verdict handed down against the defendant is in the form of imprisonment for 1 (one) year (evidence 1 small plastic shabu).[7]

[7] Look at The Considerations And Rulings on The Decision on Case Number 454/Pid.Sus/2017/Pn.Skt

3. Decision on case No. 36/Pid.Sus/2018/PN.Skt dated March 8, 2018 on behalf of Chris-tian Adi Nugroho Alias Babahong Bin Sudarwanto. Whereas the PK-4 novum, the judge in his consideration relates to the elements of each class I narcotics abuser:

   Considering, that from the legal facts that were revealed at the trial as mentioned by the Panel above, it has been found that: that …..;;

   Considering, that based on the description of the legal facts as mentioned, it has been found that the defendant is not one of the people who has the right to use the methamphetamine and the suspected ecstasy/index, because the defendant does not have a permit or legal document related to ownership/control. a number of methamphetamine and goods suspected of being ecstasy/inexperienced and not undergoing medical treatment or rehabilitation and the defendant's intention to buy methamphetamine and goods suspected of being ecstasy/inexist is solely for personal consumption, not for trading. The judge in his considerations regarding the elements for himself:

   Considering, that based on the legal facts as already considered in element 1 (one), where the defendant has purchased methamphetamine from Tromol with the intention of being consumed by himself;

   Considering, that from the series of actions of the defendant, it was related to the defendant's intention to buy methamphetamine with the intention of being consumed by himself, which turned out to be when the defendant was arrested by officers from the Narcotics Satres of the Surakarta Police and then searched the defendant, the police officers found shabu in purpose, so that instructions can be obtained that the shabu weighing 0.139 grams is planned to be used entirely by the defendant there is no intention to offer shabu to others, but solely to be used for himself;

Considering, that from the description of the considerations above, according to the Panel of Judges, the defendant's actions have fulfilled the "for oneself" element, thus the 2nd (two) element has also been fulfilled according to law;

Considering, that because all the elements of the article indicted by the Public Prosecutor as in the Subsidiary Public Prosecutor's indictment have been fulfilled, the defendant's actions must be declared to have been legally and convincingly proven based on valid evidence and therefore found guilty of committing a criminal act as stated in -the purpose of the Subsidiary Public Prosecutor's indictment, with the qualifications of a criminal act as will be stated in the verdict. So that the verdict handed down against the defendant was in the form of imprisonment for 1 (one) year and 4 (four) months (evidence 1 small plastic shabu, 5 inex pills).

4. Decision on case No. 462/Pid.Sus/2017/PN.Skt dated December 20, 2017 on behalf of Edi Susanto Alias Kemin Bin Marjani.

   Whereas the PK-1 novum, the judge in his consideration related to the elements of having abused narcotics class I for himself: based on the facts revealed at trial, the statements of the witnesses, and the testimony of the defendant, the fact that the defendant used or consumed shabu-shabu was obtained. the last time on ……, that the act of using or consuming narcotics class I (shabu) is a narcotics abuser of class I for himself, because the defendant does not have a permit/prescription from a doctor or legal document from the authorities, to commit the crime. the act; Considering based on the description, the defendant's actions have been legally and convincingly proven guilty of committing a "criminal act of abusing class I narcotics for himself" as regulated in Article 127 paragraph (1) letter a of the Law of the Republic of Indonesia Number 35 years. 2009 on Narcotics-ka; So that the verdict handed down against the

defendant is in the form of imprisonment for 1 (one) year (evidence 1 small plastic shabu).

In addition, the granting of the PK Application on the basis of a novum in the form of a previous first-level court decision is also deemed inappropriate considering that if you intend to examine the judge's error in applying the law, the instrument in the form of an element of judge's oversight in deciding can be used as an option as accommodated in Article 263 Paragraph (2) letter c KUHAP.[8] Based on the background of the problems that have been described above, the problems that can be raised to be further studied and investigated in more detail in this study are "How is the Ideal Reconstruction of a review in a criminal case on the grounds of a novum?"

COMPARISON OF NOVUM ARRANGEMENTS IN AMERICAN & FRENCH CRIMINAL PROCEDURE

THE AMERICAN CRIMINAL Procedure Code does not recognize the term novum, but if new evidence or testimony is found that was not known at the time of trial, a new trial will be held to examine new evidence or testimony submitted by the convict.[9] This provision has changed since the 1993 death penalty case (Herrera vs. Collins), the Supreme Court determined that new evidence leading to a plea of not

[8] Muhar Junef, Forum of MAKUMJAKPOL-Narcotic National Board-The Ministry Of Health-The Ministry of Social Affairs In Handling of Narcotics Crime. *3 JIKH (Jurnal Ilmiah Kebijakan Hukum)*, 11. 394–423 (2017)

[9] MULADI, *KAPITA SELEKTA SISTEM PERADILAN PIDANA*, 108. (1995)

guilty was no reason for the federal court to order a new trial. This is because:[10]

> In any event, because the defendant has already been found guilty, the presumption of innocence no longer applies during the appellate process, and the burden of showing why the conviction should be overturned shifts to the defendant.

So, if new evidence or facts are found that are submitted by the convict to reverse the court's decision, the convict can ask the court to hold a new trial based on the new evidence or facts, without closing the possibility for the federal court to hold an appeal. According to the United States legal system, the party entitled to appeal is the defendant who is dissatisfied with the court's decision and hopes that a higher court can give a more just or appropriate decision. The public prosecutor could not appeal because it would lead to a second prosecution of the same case (double jeopardy) which is prohibited in the United States constitution. Most states deal with this by providing opportunities for public prosecutors to appeal only to pre-trial or post-conviction rulings.[11] Therefore, new evidence or facts can only be submitted by convicts who have been found guilty by the court. In this case, it can be seen that in the PK legal system in America, the main requirement in filing a PK is new evidence or new facts. Unlike in Indonesia, which still has multiple interpretations related to the meaning of the word novum in the Criminal Procedure Code (KUHAP).

---

[10] KAHN-FREUND; LEVY; DAN RUDDEN. A SOURCE-BOOK ON FRENCH LAW, 3RD ED., 73 (1991)

[11] MULADI, *Supra note* 9.

On the other hand, in the context of the French state, it is known that France has a dual system of courts with different jurisdictions between general courts (judicial courts) and administrative courts. The judicial courts are under the authority of the Cour de Cassation as the highest court. The Cour de Cassation in France has the same function and position as the Supreme Court in Indonesia, namely as the highest state court of all judicial circles that fosters uniformity in the application of law so that all laws and laws are applied fairly, precisely and correctly. The Cour de Cassation does not examine the facts but rather the application of the law that has been applied by the judiciary under it. Courts under the Cour de Cassation include the Cours d'appel (court of appeal or in Indonesia also known as the High Court); Tribunaux de Grande Instance (court of first instance with general jurisdiction), which when it comes to criminal cases are called Tribunaux Correctionnels; Tribunaux d'instance (court with limited jurisdiction); and several other special courts.[12]

Not different from Indonesian procedural law, French procedural law recognizes legal remedies such as appeal, cassation, cassation for legal purposes and review. Legal efforts for review in French procedural law are referred to as revisions. Both legal efforts are equated because they have the same philosophical basis. Provisions regarding revision are regulated in Article 622 to Article 625 of the French Penale Code de Procedure (Criminal Procedure Law).[13] Article 622 of the Penal Code de Procedure stipulates that a revision of a final criminal decision may be submitted for the benefit of a person who is found guilty of a crime or offense which:

[12] KAHN-FREUD, *Supra note* 10.

[13] OEMAR SENO ADJI, *HERZIENING, GANTI RUGI, SUAP, PERKEMBANGAN DELIK*. 99 (1981).

1. After the verdict for the crime of murder is handed down, documents that are likely to give rise to the suspicion that someone suspected of being a murder victim is still alive.
2. After the verdict or verdict is handed down, whether it is a crime or a violation, the court of first instance or an appeal has rendered a decision with the same charge on a different defendant, because the verdict is different, then the conflicting decision becomes evidence that one of the parties or parties who have been found guilty will become not guilty.
3. Since the verdict was handed down, one of the witnesses who testified has been charged and sentenced to give false testimony against the defendant; the witness will not be heard at the new trial.
4. After the verdict is handed down, a new fact emerges or is discovered that was not previously known by the court in the trial, which is likely to raise doubts or doubts about the guilt of the convict.

When compared with the provisions of the Indonesian criminal procedure law which broaden the notion of novum as the basis for filing a PK, the French criminal procedure law narrows the notion of novum or fait nouveau as the basis for filing a revision. Novum as the basis for PK according to Indonesian criminal procedure law can be anything as long as it is not known beforehand and has the quality to change the judge's decision

IDEAL FORMULATION OF NOVUM ARRANGEMENTS IN CRIMINAL JUSTICE

JUDICIAL REVIEW in criminal procedural law is a right granted by law to the convict or his heirs with the aim of providing an

opportunity for the convict who is sentenced in a case to apply for a decision that has permanent legal force to be annulled with the argument that the decision contrary to the real situation.[14] The term Judicial Review (PK), which was previously known as Herziening, is a bit difficult to define because the Criminal Procedure Code does not provide a definition of this term, so several legal experts have tried to provide a definition of PK. According to Soenarto Soerodibroto, as quoted by Parman Soeparman:[15]

> *Herziening is a review of criminal decisions that have obtained definite legal force which contains a sentence, which cannot be applied to decisions where the accused has been released (vrijgrespoken).*

It is different with the opinion of Andi Hamzah and Irdan Dahlan, as quoted by Parman Soeparman, who define PK as:[16] "The right of the convict to ask to correct a court decision that has become permanent, as a result of the judge's error or negligence in making his decision". When considering the two definitions put forward, the definition expressed by Andi Hamzah emphasizes the party who can apply for a PK, namely the convict. Meanwhile, Soenarto Soerodibroto emphasized more on the decisions that the PK could request. KUHAP stipulates provisions for judicial review in Articles 263 to 269 of the Criminal Procedure Code. These articles contain matters concerning decisions that can be requested for a PK, the

[14] Stefanus Roy Rening, *Pembaharuan Politik Hukum Peninjauan Kembali dalam Perkara Pidana dan Perlindungan Hak Asasi Manusia di Indonesia*, 110 (2019).

[15] PARMAN SOEPARMAN. *PENGATURAN HAK MENGAJUKAN UPAYA HUKUM PENINJAUAN KEMBALI DALAM PERKARA PIDANA BAGI KORBAN KEJAHATAN*, CET.1, 73 (2007)

[16] *Id.*

reasons for submitting a PK, procedures for submitting a PK, the principles in a PK and the forms of decisions in a PK.

Article 263 paragraph (1) of the Criminal Procedure Code states "*Against court decisions that have permanent legal force, except for decisions that are acquitted or free from all lawsuits...*". Broadly speaking, some of the contents of Article 263 paragraph (1) of the Criminal Procedure Code can be divided into two elements. The first element contains the conditions for filing a PK legal action, namely a court decision that has obtained permanent legal force. Court decisions in this case include decisions made by all court institutions, starting from the District Court, High Court, to the Supreme Court. All decisions of the judicial institutions can be requested for PK, as long as they meet the requirements, namely they have permanent legal force and as long as this has not happened, PK legal remedies cannot be used.[17]

As an extraordinary legal remedy, the Criminal Procedure Code limits the reasons on which the PK is filed. This is regulated in Article 263 Paragraphs (2) and (3) of the Criminal Procedure Code. Mangasa Sidabutar divides the basic requests for PK legal remedies into two groups based on the time (moment) the emergence of the intended things, namely:[18]

1. Based on things that really only emerged after the court examination or the Court ended (after the court or Court gave a decision), namely things in the form of new circumstances or novum. This provision is regulated in Article 263 paragraph (2) letter a of the Criminal Procedure Code.

---

[17] M. YAHYA HARAHAP, *PEMBAHASAN, PERMASALAHAN DAN PENERAPAN KUHAP: PEMERIKSAAN SIDANG PENGADILAN, BANDING, KASASI DAN PENINJAUAN KEMBALI, CET. 2*, 220. (2001).

[18] MANGASA SIDABUTAR, *HAK TERDAKWA, TERPIDANA, PENUNTUT UMUM, MENEMPUH UPAYA HUKUM, CET. I,* 164 (1999).

2. Based on things that have actually appeared or existed at the time or while the examination is still ongoing. So before the court or the Court gives a decision, but it is only found out after the decision occurs, the provisions of which are regulated in Article 263 paragraph (2) letters b and c and paragraph (3) of the Criminal Procedure Code.

The basis for the first-mentioned PK request in the Criminal Procedure Code is the existence of a new situation or novum. A new situation that can be used as the basis for a request for a PK is a new situation that has the nature and quality of "raising a strong suspicion".[19] The second reason is that in various decisions there are conflicts. This reason is a takeover of Article 356 paragraph (1) number 1 RSv which is adapted to Article 263 paragraph (2) letter b of the Criminal Procedure Code. The three main elements contained in it are the statement that something has been proven; then a statement regarding the proof of this matter is used as the basis and reason for the decision in a case; however, in the decisions of other cases, the things that are stated to be proven contradict each other between the decisions. So, it can be concluded that the contradictions contained in the various decisions that will be reviewed must be really real in nature, in this case based on a fact or condition that is legally proven. Based on Article 263 paragraph (2) sub c of the Criminal Procedure Code, an application for PK legal remedies can also be submitted if there is a judge's error or an obvious error in the decision that is requested for review.

The basis for filing a PK legal action on this one caused a lot of debate during the formulation of the Criminal Procedure Law Plan. In the RSv there is no provision that the judge's oversight and obvious error is one of the reasons for submitting Herziening. This is different

[19] M. YAHYA HARAHAP, *Supra note* 11.

from Perma No. 1/1969 which contains reasons for the judge's oversight and obvious mistakes as one of the bases for submitting a PK. In 1980, the Supreme Court was considered to be thinking back to the RSv period when it issued Perma No. 1/1980 because the Perma did not include reasons for judges' oversight or obvious mistakes as the basis for submitting a PK application. The submission of a PK can also be based on the conditions as stipulated in Article 263 paragraph (3) of the Criminal Procedure Code, namely if in the decision an act that has been accused has been declared proven but is not followed by a conviction. Parman Soeparman relates this reasoning to the need to give the Attorney General the right to file a PK request. According to him, "Convicts who are not sentenced will certainly not be in a hurry to ask for a PK".[20]

However, the question is, whether the decision of the previous district court can be submitted as a novum in the request for review, as happened in the Judicial Review Decision Number: 885/TU/2019/244 PK/PID.SUS/2018 in which the judge accepted and granted application for reconsideration with a novum submitted in court in the form of a previous District Court Judge's Decision. This can be seen in the Decision for Judicial Review and the Memorandum of Review submitted by the convict through his attorney, which states that in this application for judicial review, the applicant submits a new situation that gives rise to a strong suspicion (novum) which, if it had been known at the time of the trial, was still ongoing. , then in this case a lighter criminal provision is applied. that the novum is in the form of a copy of the decision on a narcotic crime case which includes:

1. Decision Number 462/Pid.Sus/2017/PN.Skt
2. Decision Number 454/Pid.Sus/2017/PN.Skt
3. Decision Number 10/Pid.Sus/2018/PN.Skt

[20] PARMAN SOEPARMAN, *Supra note* 15.

4. Decision Number 36/Pid.Sus/2018/PN.Skt.

In order to answer this question, the author conducted a literature search related to the meaning of novum, and the characteristics of the novum, it is known that the term novum (singular form) or novi (plural form) which comes from Latin.[21] Grammatically it means something new or new facts, including new legal conditions.[22] Novum in Latin has the full term *noviter perventa*, which means "newly discovered facts, which are usually allowed to be introduced in a case even after the pleadings are closed".[23] Article 263 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) mentions the term novum with "new circumstances" as one of the reasons or the basis for submitting a Judicial Review (PK). The definition of a new situation or novum as the basis for submitting a PK is not explicitly given by the Criminal Procedure Code which only provides limitations when a new situation is considered a novum, namely:

> "If there are new circumstances that give rise to a strong suspicion that if the situation had been known at the time the trial was still ongoing, the result would be an acquittal or a verdict of acquittal of all lawsuits or the demands of the public prosecutor could not be accepted or lighter criminal provisions were applied to the case".

It can be concluded that a new situation or novum as the basis for submitting a PK is a new condition or novum that fulfills the elements, namely having the power to change the judge's decision

[21] MANGASA SIDABUTAR, *HAK TERDAKWA, TERPIDANA, PENUNTUT UMUM, MENEMPUH UPAYA HUKUM, CET. I,* 164 (1999).

[22] VAN DALE LEXICOGRAFIE BV., *VAN DALE HANDWOORDENBOEK NEDERLANDSENGELS VER. 1.0, 3RD ED.*, 118 (2003).

[23] BRYAN A. GARNER, ED., *BLACK'S LAW DICTIONARY, 7TH ED.,* 217 (1999).

and being known after the trial process ends. The provisions regarding the novum as the basis for submitting a PK application in the colonial law are contained in Article 457 RSv. In Indonesian legal products, prior to the enactment of the Criminal Procedure Code, the Elucidation of Article 15 of Law (UU) Number 19 of 1964 concerning the Basic Provisions of Judicial Powers has alluded to the novum which is known as nova. The definition of nova is the same as what is currently called novum, namely "new facts or circumstances, which at the time of the previous trial, did not appear or received attention". Not much different from the formulation of the Criminal Procedure Code and Law Number 19 of 1964, Hadari Djenawi Tahir provides the following definition of novum:[24]

> "A new thing that arises later after a court decision has obtained permanent legal force that has never been discussed before or has never been questioned in court. The novum had never been known before by the judge examining the case, while the new situation, either alone or in relation to the previous evidence, could not be adjusted to the judge's decision, thus giving rise to a strong suspicion that if the situation had been known at the time of the While the trial is still in progress, the court's decision will be different from the decision that has been taken".

The definition of novum based on the opinion of Hadari Djenawi Tahir is not limited to new evidence, but is broader, namely a new matter that is known or emerged after the judge's decision has permanent legal force. Hadari Djenawi Tahir also emphasized that the word 'new' must be compared with the circumstances that were discussed at the time and during the trial process where the decision

[24] HADARI DJENAWI TAHIR. *BAB TENTANG HERZIENING DI DALAM KITAB UNDANG-UNDANG HUKUM ACARA PIDANA*. 95 (1982)

was not yet final and binding. The judge who has the authority to decide a case before the decision is legally binding is considered not to know the circumstances other than those in question in the trial, so it is the duty of the interested parties to bring the matter to trial. The element known in Article 263 paragraph (2) letter a of the Criminal Procedure Code has the meaning that it has never been discussed in the trial because it has not been questioned by one of the parties.

Starting from the provisions of Article 263 paragraph (2) letter a of the Criminal Procedure Code, the elements of the novum as the basis for submitting a judicial review can be divided into two discussions, namely the scope of the novum related to the element of 'new circumstances' and the strength or quality of the novum related to the element of 'generating strong suspicions'. '. Article 263 paragraph (2) letter a of the Criminal Procedure Code explicitly mentions the term novum with new conditions so that the scope of the novum is much wider and not only limited to new evidence found. In some community opinions, there is often a misinterpretation of the mention of the term novum which is interpreted as new evidence.

New evidence can be referred to as novum, but novum cannot be called or interpreted as new evidence, because it has a broader meaning than that, namely new circumstances. A new situation that is not included in the category of evidence according to the provisions of the criminal procedure law and has legal consequences for the judge's decision is also included in the scope of the novum as the basis for submitting a PK. Novum in the form of new evidence is a number of new evidence as determined in a limited manner by law. Indonesian criminal procedure law distinguishes two types of evidence, namely evidence and evidence. The Criminal Procedure Code as a general law (lex generalis) divides evidence into five types, namely witness testimony, expert testimony, letters, instructions and

statements of the defendant. In addition to the five types of evidence mentioned, there are other types of evidence that are specifically regulated by law outside of the Criminal Procedure Code. For example, in Law Number 25 of 2003 concerning the Crime of Money Laundering, information and documents are also recognized as evidence.

In contrast to evidence, the regulation of evidence is not explicitly stated in the Criminal Procedure Code, so there are many doctrines that have developed in defining evidence. In short, Martiman Prodjohamidjojo defines evidence or corpus delicti as evidence of a crime.[25] In contrast to Martiman Prodjohamidjojo, legal scholars such as Ansori Sabuan, Syarifuddin Petanasse and Ruben Achmad more specifically define evidence, namely:[26]

"Evidence is goods used by the defendant to commit an offense or as a result of an offense, confiscated by investigators to be used as court evidence". Meanwhile, Sudarsono argues that "evidence is an object or goods used to convince the judge of the defendant's guilt in the criminal case handed down to him".[27] So it can be said that evidence is items related to criminal acts and contain elements of evidence. In addition to providing their respective definitions, legal scholars also relate the provisions in Article 39 paragraph (1) of the Criminal Procedure Code which regulates the provisions regarding confiscated objects as the definition of evidence according to the Criminal Procedure Code. Article 183 of the Criminal Procedure Code stipulates that evidence that can be the basis for a judge to make a decision is evidence, while evidence does not have the power of proof and only serves as a support for the evidence. In imposing a sentence,

---

[25] MARTIMAN PRODJOHAMIDJOJO, *PEMBAHASAN HUKUM ACARA PIDANA DALAM TEORI DAN PRAKTEK*. 19 (1982)

[26] ANSORI SABUAN, ET.AL., *HUKUM ACARA PIDANA*. 23 (1990).

[27] SUDARSONO, *KAMUS HUKUM CETAKAN KEDUA*. 32. (1999).

the judge is bound by the minimum provisions of proof, namely that there are at least two valid pieces of evidence. Based on the two pieces of evidence, the judge obtained the belief that the defendant was guilty of committing the crime that occurred.

In connection with Article 183 of the Criminal Procedure Code, the judge is also bound by the minimum provisions of evidence in terms of imposing a criminal if the PK application submitted is based on the reason for the existence of a novum in the form of new evidence in the form of evidence, as stated by the panel of judges in the decision of the Supreme Court Number 109 /PK/Pid/2007 with former defendant Pollycarpus. The panel of judges in their consideration held the following opinion:[28]

> "is a valid evidence, because the information is in accordance with Article 185 and Article 186 of the Criminal Procedure Code, which is a new situation as referred to in Article 263 paragraph (2) letter a of the Criminal Procedure Code, which can be used as material in forming the evidence guide".

Based on the explanation of the novum above, the author feels that he has found reasons and arguments that are quite clear regarding the reasons why district court decisions can be used as a novum in a PK application for narcotics crimes, among which the author will describe as follows:

[28] LOOK SUPREME COURT DECISION NUMBER 109/PK/PID/2007 DATED JANUARY 25, 2008.

I.
Substances that are still unclear regarding the characteristics of novum

The character of modern law is identical to legal positivism, where the law is required to be written, firm and clear. The position of the written law tends to be substantial because it is an instrument used for the enforcement of the law itself. The teaching of legal positivism began in the 18th century and became stronger along with the progress of the modern state which was marked by the very rapid development of science and technology. The birth of the modern state as a sovereign territorial organization, here is related to the background of these social changes, and will be more clear in the economic field. Therefore, the combination of technological progress, industrialization and capitalism is moving so fast. The presence of a state that provides a centralized structure and is supported by modern law, then the need for industrialization that is hungry for central management land can be overcome.[29]

The impact of the development of this understanding on Indonesia, with the influence of the teachings of legal positivism, emerged the rigidity of legal rigidity which is considered that the law in Indonesia is not able to create justice, the source of the dominance of the paradigm of positivism and modern legal science.[30] We know legal doctrines inspired by the teachings of positivism such as: "equality before the law or justice for all" (all are equal before the law), making these doctrines which are good in theory, but not in fact, the

[29] Asep Bambang Hermanto, Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya, 4 *JS (Jurnal Selisik)* 2, 89-112. (2016)

[30] FX AJI SAMEKO, *KEADILAN VERSUS PROSEDUR HUKUM: KRITIK TERHADAP HUKUM MODEN*, 73 (2011)

law is only sharp towards the law. downward and blunt law upward, because the law is not neutral. The operation of the law is strongly influenced by other forces. The main character of modern law is its rational nature. Rationality is characterized by the procedural nature of rules. Procedural thus becomes an important legal basis for upholding justice, safeguarding human rights, and finally procedures become more important than talking about justice which is the substance of the law itself.[31]

Article 263 paragraph (2) letter a of the Criminal Procedure Code stipulates that a novum that can be used as the basis for filing a judicial review is a novum with circumstances that can give rise to a strong suspicion, where if the situation is known while the trial is still ongoing, the result will be an acquittal or a acquittal of all lawsuits or demands of the public prosecutor cannot be accepted or to that case lighter criminal provisions are applied. Based on these provisions, a novum will deserve to be accepted as the basis or reason for submitting a judicial review if it is qualified, i.e. it has the determining power to change the previous judge's decision which has permanent legal force. Departing from Article 263 Paragraph (2) letter a of the Criminal Procedure Code, it can be seen clearly that there is no confirmation of what is included in the novum, finally various interpretations and views of legal experts become the judge's reference in looking at the meaning of the novum.[32]

For example, in the view of P.A.F Lamintang who stated that the novum was interpreted using the Systematische Interpretatie at

---

[31] LILI RASJIDI, *DINAMIKA SITUASI KONDISI HUKUM DEWASA INI DARI PERSPEKTIF TEORI DAN FILOSOFIKAL*, 4-5. (2009)

[32] This can be seen from the decision of the supreme court judge based on the PK decision Nmber 71/PK/Pid/2005 on behalf of the convict margelap as a PK applicant who submitted the regional regulation (Perda) of the Pamekasan Madura Regency Government Number 9 of 2001 concerning procedures for nomination, election, inauguration and dismissal of village heads as novum.

the time of the PK Application by the Supreme Court decision Number 109/PK/Pid/2007 with the former defendant Pollycarpus with the novum in the form of expert testimony presented by the defendant. The purpose of P.A.F Lamintang's interpretation in the form of a *Systematische Interpretatie* is to find a relationship between part of a law and the law itself.[33] This serves to see the relevance of Articles 184, 185, 186, and Article 263 paragraph (2) of the Criminal Procedure Code, in submitting applications for judicial review. Where the review can be carried out on the grounds that there is a novum in the form of new evidence in the form of evidence. As for the evidence, it is stated in Article 184 of the Criminal Procedure Code, namely:

a. Legal evidence is:
   1) witness testimony
   2) expert testimony
   3) letter
   4) hint
   5) the defendant's statement.

b. What is generally known does not need to be proven. Article 185 of the Criminal Procedure Code, namely:
   1) Witness testimony as evidence is what the witness stated in court.
   2) The testimony of a witness alone is not sufficient to prove that the defendant is guilty of the act he is accused of.
   3) The provisions as referred to in paragraph (2) shall not apply if accompanied by other valid evidence.
   4) The statements of several witnesses who stand alone regarding an event or condition can be used as a valid evidence if the witness testimony is available. The relationship with one another

[33] P.A.F. LAMINTANG DAN C. DJISMAN SAMOSIR, *DELIK-DELIK KHUSUS KEJAHATAN YANG DITUJUKAN TERHADAP HAK MILIK DAN LAIN-LAIN HAK YANG TIMBUL DARI HAK MILIK*, 89 (2010)

is such that it can justify the existence of a certain event or situation.

5) Neither opinion nor fiction, which is obtained from the result of thought alone, is not a witness statement.
6) In assessing the truth of the testimony of a witness, the judge must pay serious attention to it. a) the correspondence between the testimony of one witness to another, b) conformity between witness testimony and other evidence, c) reasons that may be used by witnesses to give certain information, d) the way of life and morality of the witness as well as everything that in general can affect whether or not the information can be trusted.
7) Statements from witnesses who are not sworn in even though they are in accordance with one another are not evidence, but if the information is in accordance with the statements of witnesses who are sworn in, they can be used as additional legal evidence.

Article 186 of the Criminal Procedure Code: "Expert testimony is what an expert states in a court hearing", and Article 263 paragraph (2) letter a of the Criminal Procedure Code:

> "If there is a new situation (novum) which gives rise to a strong suspicion, that if the situation was known at the time the trial was still ongoing, the result would be an acquittal (*vrijspraak*) or an acquittal decision (*ontslag van alie rechtsvolging*) or the prosecution's claim was not acceptable (*niet ontvvankelijk verklaring*) or to the case lighter criminal provisions are applied".

Based on the interpretation of P.A.F Lamintang, it can be said that what is meant indirectly by novum is what the Criminal Procedure Code says is evidence as stipulated in Article 184 of the Criminal Procedure Code. In contrast to the view of Komariah

Sapardjaja which states that:[34] "*Novum is never the same as one another because it can take the form of anything, for that reason, the proposed novum is really a substantial new thing*".

Komariah is of the view that the benchmark of a novum is what is presented before the court and the extent to which the quality of the novum is concerned with liberating in what form the novum is. In addition, in assessing the novum submitted, the judge is also bound by the facts or circumstances that were revealed during the trial before the decision has permanent legal force. The substance that Komariah Emong Sapardjaja said was related to the fulfillment of the elements of the crime committed. Novum which is accepted as the basis or reason for submitting a PK must have the quality of eliminating errors if it is submitted by the convict as an applicant for PK. If the applicant for PK is not a convict or his heirs are interested, then the novum submitted must have appropriate quality in fulfilling the elements of a criminal act based on the provisions of the legislation.

So, the assessment of the quality of the novum that is submitted to be accepted as the basis for submitting the PK is related to the elements of the criminal act that was indicted against the convict or former defendant or it can be said that the assessment of the quality of the novum is very casuistic. Article 263 paragraph (2) letter a of the Criminal Procedure Code requires that a novum that can be accepted as the basis for submitting a PK is a novum with a quality that leads to the condition for an acquittal, or the condition for the decision to be free from all legal claims, or the conditions for the prosecution's claim cannot be accepted, or which apply lighter criminal provisions. Mangasa Sidabutar interprets Article 263 paragraph (2) letter a of the Criminal Procedure Code as:[35]

---

[34] MULADI, *KAPITA SELEKTA SISTEM PERADILAN PIDANA*, 91 (1995)

[35] MANGASA SIDABUTAR, *HAK TERDAKWA, TERPIDANA, PENUNTUT UMUM, MENEMPUH UPAYA HUKUM, CET. 1*, 125 (1999)

"So, in compiling the basis for the reason for reconsideration in the form of a novum or novi, it must really show concrete things that lead to the existence of strong evidence that is a condition for an acquittal, or a condition for a decision to be free from all lawsuits, or a condition for a decision or determination to be granted an acquittal. stating "the demand of the public prosecutor is unacceptable" or the terms of the decision containing a lighter criminal provision". Based on this view, we can conclude that there are 2 (two) major views from experts in Indonesia in viewing the novum, as a condition for submitting an application for reconsideration (PK), which include: a. in the event that the PK novum application submitted is evidence, and b. in the case that the PK novum application submitted is not only bound as evidence (free) as long as it has a correlation with the decision and has the quality as a novum.

II.
The Principle of Judges May Not Reject Cases (Principle of *Ius Curia Novit*)

In the dynamics of everyday life, conflicts often occur in society. Conflicts that occur often cannot be resolved by the parties involved. To be able to resolve the conflict, it is often necessary to intervene by a special institution that provides an objective resolution, the resolution of which is of course based on objectively applicable guidelines. This function is usually carried out by an institution called the judiciary, which is authorized to examine, assess and make decisions on conflicts. This authority is known as judicial power which in practice is carried out by judges.[36] Thus, it is clear that the

[36] Firman Floranta Adonara, Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi, 2 JK (*Jurnal Konstitusi*) 12, 365-393 (2015)

judge or judges have great power over the disputing parties regarding the problem or conflict that is brought before the judge or judges. However, this also means that the judges in carrying out their duties fully bear a great responsibility and must be aware of this responsibility, because the judge's decision can have far-reaching consequences on the lives of other people affected by the scope of the decision. An unfair judge's decision can even leave an imprint on the minds of the yastisinbel concerned throughout his life journey.[37]

As the author explained earlier, it is related to the lack of clear understanding and regulation of the novum in the case of a judicial review application (PK) in a criminal case which leads to various different interpretations between law enforcers.[38] Differences in interpretation that arise either by judges, public prosecutors or advocates cause each of them to have their own criteria which often contradict one another regarding the meaning and purpose of the novum in the PK application in criminal procedural law. The open space for interpretation which is so wide and without any standard guidelines will be problematic when it is clashed with the Ius Curia Novit Principle which is derived from Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Law), which means the interpreter sole lies in one judge. The judge as the final decision maker is considered to know the law so that he cannot refuse the case because of the unclear rules.[39] Instead, they must continue to make decisions by exploring, following and understanding legal values and a sense of justice that live in

---

[37] SUHRAWARDI K. LUBIS, *ETIKA PROFESI HAKIM*, 42 (2002)

[38] Yuristyawan Pambudi Wicaksana, Implementasi *Asas Ius Curia Novit* Dalam Penafsiran Hukum Putusan Hakim Tentang Keabsahan Penetapan Tersangka, 1 LR (*Lex Reinnaisance*), 3. 19-38. (2018).

[39] M. NATSIR ASNAWI, HERMENEUTIKA PUTUSAN HAKIM, CETAKAN PERTAMA, 78. (2014)

society.[40] The principle of Ius Curia Novit views that every judge knows the law and must try every case that is brought to him. This principle was first discovered in the writings of medieval jurists (glossators) on ancient Roman law.

Based on this, the question from the author is answered regarding why the previous decision can be used as a novum in a criminal case review application, regardless of the lack of clarity or still floating regulations regarding the novum in Article 263 Paragraph (2) letter a of the Criminal Procedure Code which causes differences interpretation among legal experts, also in the end opens space for judges to adopt one of these expert interpretations (either pro or contra) in the court decisions being tried by him. The *ius curia novit* principle, as described above, is important to pay attention to, especially in terms of granting the decision of the previous District Court Judge as a novum in the PK application to prevent further wild interpretations of the definition of novum in criminal justice in Indonesia which ultimately leads to legal uncertainty.

III.
Reconstruction of Novum Arrangements in Criminal Cases

As it is known, that in the history of Judicial Review (PK) is not known in criminal justice, PK has just been adopted in the instrument of criminal procedural law as very extraordinary legal tools that should not be used arbitrarily, therefore when opened (*Herzien Inlandsch Reglement*) HIR never had the term PK in the regulation. In historical records, PK was only adopted in criminal procedural law in

[40] H.A. Mukhsin Asyrof, "Asas-Asas Penemuan Hukum Dan Penciptaan Hukum Oleh Hakim Dalam Proses Peradilan", 2 *Varia Peradilan*, 21. 19-41. (2006)

the world as a result of the drives case that occurred in France in 1936. Where drives was accused of leaking secrets in the first world war which was then sentenced to life and some time later found a novum which proved that Actually drives are not the perpetrators of the crime who are then released.[41] According to Eddy O.S Hiariej, the common mistakes made in the judicial review of criminal cases in Indonesia is that in Indonesia, judicial review is generally considered a level 4 (fourth) court. According to the person concerned, because the PK will change the court's decision which has permanent legal force, then in all countries in the world in the PK legal effort, the case will be examined by all the supreme judges and minus the chief justice who examines the case at the cassation level (if the case has been up to the level of appeal).

Based on these historical and comparative factors, the authors conclude that as a very extraordinary legal instrument, the PK instrument should only be taken in circumstances that should have an indication of errors in making decisions or the discovery of a novum that has the quality to at least reduce the detention period of the convict. The author's view is in line with the opinion conveyed by Mangasa Sidabutar which interprets Article 263 Paragraph (2) letter a of the Criminal Procedure Code as:[42]

"So, in compiling the basis for the reason for reconsideration in the form of a novum or novi, it must really show concrete things that lead to the existence of strong evidence that is a condition for an acquittal, or a condition for a decision to be free from all lawsuits, or a condition for a decision or determination to be granted an acquittal. stating "the demand of the public prosecutor is unacceptable" or the

---

41 EDDY O.S HIEARIJ, "*MEMBEDAH KASUS DJOKO TJANDRA DAN PELUANG DILAKUKANNYA CONTRA PENINJAUAN KEMBALI*". 5 (2020)

42 MANGASA SIDABUTAR, *HAK TERDAKWA, TERPIDANA, PENUNTUT UMUM, MENEMPUH UPAYA HUKUM, CET. 1*, 125 (1999)

terms of the decision containing a lighter criminal provision". Thus the author describes the quality of the novum referred to above, including:

a. *Novum* which leads to the terms of acquittal.

The novum that leads to the conditions for an acquittal relates to the elements of a criminal act that are proven and declared to have been fulfilled in the previous trial. This is based on the opinion of Mangasa Sidabutar who stated that:[43]

> "The appointment of this relevant novum must really be aimed at not proving all elements or part of the elements of the criminal act charged with which of course will bring legal consequences in the form of an acquittal".

Regarding the acquittal, Article 191 paragraph (1) of the Criminal Procedure Code stipulates that the acquittal is the result obtained from a trial in which the guilt of the defendant for the actions he is accused of is not legally and convincingly proven. The convict of the crime of murder who was convicted under Article 338 of the Criminal Code (KUHP) submitted a novum in the form of a laboratory result letter indicating that the victim had died before the convict killed him. The proposed novum can cause the element of "taking other people's lives" to be unfulfilled.

b. *Novum* which leads to the condition that the decision is free from all lawsuits

Novum with quality that leads to the condition of the decision being free from all lawsuits is a novum in the form of special circumstances that result in the defendant not being able to be sentenced to a criminal sentence because the act that was accused was proven to be true but not a criminal act, because the law governing the criminal act that was charged at the time the

[43] *Id.*

occurrence of the defendant's actions is no longer valid (revoked)[44], or the defendant cannot be sentenced because he applies the basis for the elimination of the crime, namely the excuse for forgiveness or justification as regulated in Articles 44, 48, 49, 50 and 51 of the Criminal Code.[45]

c. *Novum* leading to the prosecution of the public prosecutor is unacceptable.

According to Hadari Djenawi Tahir, the decision by the public prosecutor to be unacceptable is:[46]

> A statement from the judge stating that the public prosecutor's claim was rejected on the grounds that there was insufficient reason to continue the examination. The difference with other acquittals is that in "the public prosecutor's claim cannot be accepted" the judge's refusal with a decision is made at the beginning of the trial, while other acquittal decisions are made at the end of the trial. The existence of "the public prosecutor's decision cannot be accepted due to differences of opinion between the public prosecutor and the judge regarding the basis of prosecution".

Based on this understanding, it can be taken as an example of a novum which leads to a decision that the public prosecutor's claim cannot be accepted, namely a novum in the form of a fact stating that the complaint letter, in the case that the case is a complaint offense case, was actually made by an unauthorized person. If this fact is known by the judge before the case has

---

44 *Id.*

45 SOEDIRJO. *PENINJAUAN KEMBALI DALAM PERKARA PIDANA: ARTI DAN MAKNA, CET. 1*, 21. (1986)

46 HADARI DJENAWI TAHIR. *BAB TENTANG HERZIENING DI DALAM KITAB UNDANG-UNDANG HUKUM ACARA PIDANA*. 75 (1982)

permanent legal force, then according to a reasonable estimate, the judge will declare the public prosecutor's claim to be unacceptable.

d. *Novum* which leads to a verdict with lighter criminal provisions.

Regarding the quality of this novum, Soedirjo argued:

> "Not every novum that results in the adoption of a lighter sentence is sufficient for review. There must be a legal basis in the law to reduce the crime (wettelijke strafverminderingsgrond), which causes the maximum penalty (those threatened by law) to be reduced.".

Meanwhile, Mangasa Sidabutar linked this novum with changes to the law regarding the sanctions applied. According to him: "What was found was that at the time the decision was handed down, there had actually been a change in the "sanction" (sanctie) which became the basis for the decision of the court concerned". Taking into account the two opinions, Soedirjo's opinion contains a broader meaning or limitation compared to Mangasa Sidabutar's opinion which specifically states that the novum in this case is in the form of changes to the law regarding lighter sanctions for the same crime to the convict.

Therefore, based on this explanation, the judge must be observant in seeing whether a material presented as a novum has accommodated the qualities stated above. As a comparison as the previous author's explanation, the understanding and qualifications of the novum in the Criminal Procedure Code (KUHAP) have not been clearly and firmly regulated whether it is included in the evidence section or can be separated from it, so that various interpretations arise from experts. law and culminate in the judge's efforts to make legal discoveries (rechtvinding) as a result of the void or multiple interpretations of the norms regarding the novum. The Novum in France is the first country in the world to

accommodate the PK instrument in the French Penale Code de Procedure (French Criminal Procedure Code).

Not different from Indonesian procedural law, as a result of historical factors, the Civil Law or Continental European legal system adopted by Indonesia is a legal system originating from France. The French state implemented its legal system in the Netherlands, as a colony, which was later applied to Indonesia as a Dutch colony, so that the Indonesian legal provisions were not so much different from the French legal provisions. French procedural law recognizes legal remedies such as appeals, cassation, cassation in the interest of law and judicial review. Legal efforts for review in French procedural law are referred to as revisions. Both legal efforts are equated because they have the same philosophical basis. Provisions regarding revision are regulated in Article 622 to Article 625 of the French Penal Code de Procedure.[47]

Article 622 of the Penal Code de Procedure stipulates that a revision of a final criminal decision may be submitted for the benefit of a person who is found guilty of a crime or offense which:

a. After the verdict for the crime of murder is handed down, documents that are likely to give rise to the suspicion that someone suspected of being a murder victim is alive
b. After the verdict or verdict is handed down, whether it is a crime or a violation, the court of first instance or an appeal has rendered a decision with the same charge on a different defendant, because the verdict is different, then the conflicting decision becomes evidence that one of the parties or parties who have been found guilty are innocent .
c. Since the verdict was handed down, one of the witnesses who testified has been charged and sentenced to give false testimony

[47] OEMAR SENO ADJI, *HERZIENING, GANTI RUGI, SUAP, PERKEMBANGAN DELIK*. 18 (1981)

against the defendant; The witness will not be heard at the new trial.

d. After the verdict is handed down, a new fact emerges or is discovered that was not previously known by the court in the trial, which is likely to raise doubts or doubts about the guilt of the convicted person.

Based on Article 622 of the Penale Code de Procedure, it can be said that France is firm in providing the prerequisites for submitting a judicial review in criminal cases, the provisions regarding the novum which in French is called the term fait nouveau are also expressly conveyed, especially in Article 622 of the Penale Code de Procedure, paragraph 1, 3, and 4. As for paragraph 2 in Article 622 of the Penale Code de Procedure, this is for the Indonesian Criminal Procedure Code which regulates the PK requirements, it can be found in Article 263 Paragraph (2) letter b, namely:

> "if in various decisions there are statements that something has been proven, but the things or circumstances as the basis and reasons for the decisions that are stated to have been proven have contradicted each other".

What the author means is in accordance with the view of Oemar Seno Adji which states that the basis for the submission of the revision above (*Les cas de revision*), the second is the basis which according to the Indonesian Criminal Procedure Code is called a judicial conflict, or in French procedural law it is called la contrariete. de jugements.[48]

[48] *Id.*

CONCLUSION

IN THIS STUDY, the author makes several comparisons with the Criminal Procedure Code (America and France) and concludes based on these comparisons that the novum arrangement in the application for judicial review must be clearly and unequivocally regulated in the Criminal Procedure Code, because both countries have their respective criminal procedural laws. explicitly states that in the case of a PK application, it must be based on new facts and evidence which, if presented at the previous trial, has the potential to reduce or even abort the prosecution's charge.

REFERENCES

Adji, O. S. (1981). *Herziening, Ganti Rugi, Suap, Perkembangan Delik*. Jakarta: Erlangga.

Adonara, F. F. (2016). Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi. *Jurnal Konstitusi*, *12*(2), 217-236. https://doi.org/10.31078/jk1222

Arief, D. M., & Gultom, E. (2013) *Urgensi Perlindungan Korban Kejahatan*. Jakarta: PT. Raja Grafindo Persada

Ariyanto, D. (2021). Putusan Pengadilan Negeri Sebagai Novum Pengajuan Peninjauan Kembali Pada Tindak Pidana Narkotika. *Thesis*. Program Magister Ilmu Hukum Fakultas Hukum Universitas Sebelas Maret.

Asnawi, M. N. (2014) *Hermeneutika Putusan Hakim.* Yogyakarta: UII Press.

Badan Pembinaan Hukum Nasional. (1992) *Peningkatan Yurisprudensi Sebagai Sumber Hukum, Penelitian Hukum.* Jakarta: Badan Pembinaan Hukum Nasional.

Fitriana, M. K. (2018). Peranan Politik Hukum dalam Pembentukan

Peraturan Perundang-Undangan di Indonesia sebagai Sarana Mewujudkan Tujuan Negara (Laws and Regulations In Indonesia As The Means Of Realizing The Country'S Goal). *Jurnal Legislasi Indonesia*, *12*(2). https://doi.org/10.54629/jli.v12i2.403

Gafar, Y. (2012). Penanggulangan Peredaran Narkotika di Wilayah Perbatasan Kalimantan Barat (Indonesia)-Sarawak (Malaysia) (Studi Terhadap Peranan Badan Narkotika Nasional). *Jurnal Nestor Magister Hukum*, *2*(2). https://jurnal.untan.ac.id/index.php/nestor/article/view/1035

Garner, B. A. (ed.) (1999) *Black's Law Dictionary, 7th ed.* United States of America: West Group.

Harahap, M. Y. (2001). *Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali.* Jakarta: Sinar Grafika.

Hermanto, A. B. (2016). Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya. *Jurnal Hukum dan Bisnis (Selisik)*, *2*(2), 108-121. https://doi.org/10.35814/selisik.v2i2.650

Hoesein, Z. A. (2012). Pembentukan Hukum dalam Perspektif Pembaruan Hukum. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, *1*(3), 307-327. http://dx.doi.org/10.33331/rechtsvinding.v1i3.87

Indonesia. (1981). *Supreme Court Decision Number 6PK/Kr/1980 Dated January 24, 1981.*

Indonesia. (1997). *Supreme Court Decision Number 14/PK/Pid/1997 dated November 14, 1997.*

Indonesia. (2005). *Supreme Court Decision Number 71/PK/Pid/2005 Dated 28 December 2005.*

Indonesia. (2008). *Supreme Court Decision Number 109/PK/Pid/2007 dated January 25, 2008.*

Indonesia. (2017a). *Decision on Case Number 125/Pid.Sus/2017/PN.Skt*

Indonesia. (2017b). *Decision on Case Number 454/Pid.Sus/2017/PN.SKt.*

Indonesia. (2018a). *Decision on Case Number: 244 PK/Pid.Sus/2018.*

Indonesia. (2018b) *Decision on Case Number 10/Pid.Sus/2018/PN.Skt.*

Junef, M. (2017). Forum MAHKUMJAKPOL-BNN-MENKES-

MENSOS dalam Penanganan Tindak Pidana Narkotika. *Jurnal Ilmiah Kebijakan Hukum*, *11*(3), 305-336. http://dx.doi.org/10.30641/kebijakan.2017.V11.305-336

Kahn-Freund; L., & Rudden, R. (1991) *A Source-Book on French Law, 3rd ed*..New York: Oxford University Press.

Lubis, S. K. (2002). *Etika Profesi Hakim*. Jakarta: Sinar Grafika

Muladi, M. (1995) *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.

Prodjohamidjojo, M. (1982). *Pembahasan Hukum Acara Pidana Dalam Teori dan Praktek*. Jakarta: Pradnya Paramita

Rasjidi, L. (2009) *Dinamika Situasi Kondisi Hukum Dewasa Ini dari Perspektif Teori dan Filosofikal.* Bandung: Mandar Maju.

Rening, S. R. (2019). Pembaharuan Politik Hukum Peninjauan Kembali Dalam Perkara Pidana dan Perlindungan Hak Asasi Manusia di Indonesia, *Dissertation.* Program Doktor Ilmu Hukum Universitas Padjajaran.

Sabuan, A., et.al., (1990) *Hukum Acara Pidana*. Bandung: Angkasa.

Sameko, F.X.A. (2011) *Keadilan Versus Orosedur Hukum: Kritik terhadap Hukum Modern*. Orasi Ilmiah Dalam Rangka Wisuda Sarjana STHM Angkatan XIII, Jakarta.

Saputra, R. (2019). Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif. *Wacana Hukum*, *2*(1). 10-18. https://doi.org/10.33061/1.jwh.2019.25.1.2750

Saputra, R. (2020). Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications. *BESTUUR*, *8*(2), 108-120. https://doi.org/10.20961/bestuur.v8i2.43139

Saputra, R., & Luthviati, R. D. (2020). Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts. *Journal of Morality and Legal Culture*, *1*(2), 104-112. https://doi.org/10.20961/jmail.v1i2.46880

Sidabutar, M. (1999). *Hak Terdakwa, Terpidana, Penuntut Umum, Menempuh Upaya Hukum.* Jakarta: Rajawali Pers

Soedirjo, S. (1986). *Peninjauan Kembali dalam Perkara Pidana: Arti dan*

Makna. Jakarta: Akademika Pressindo.

Sudarsono, S. (1999). *Kamus Hukum*. Jakarta: PT. Rineka Cipta.

Sujono, A. R., & Daniel, D. B. (2013) K*omentar dan Pembahasan Undang Nomor 35 Tahun 2009 Tentang Narkotika*. Jakarta: Sinar Grafika.

Tahir, H. D. (1982) *Bab Tentang Herziening di dalam Kitab Undang-undang Hukum Acara Pidana*. Bandung: Alumni.

Tambir, I. M. (2019) Pendekatan Restorative Justice dalam Penyelesaian Tindak Pidana di Tingkat Penyidikan. JMHU (*Jurnal Magister Hukum Udayana),* 8(4), 549-574. https://doi.org/10.24843/JMHU.2019.v08.i04.p09

Wicaksana, Y. P. (2018). Implementasi asas ius curia novit dalam penafsiran hukum putusan hakim tentang keabsahan penetapan tersangka. *Lex Renaissance*, *3*(1), 86-108. ttps://doi.org/10.20885/JLR.vol3.iss1.art3