

Juridical Analysis of Judicial Review as a Legal Effort in Fighting for the Rights of Narcotics Convicts

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ABSTRACT

In general terms, narcotics are defined as types of drugs derived from natural, synthetic, or semi-synthetic substances that may cause decreased appetite, altered or impaired consciousness, relieve pain, and potentially lead to dependency. The criminal offence of narcotics abuse is regulated under Law Number 35 of 2009 concerning Narcotics. the impact of punishment for narcotics crimes includes severe punishment and the death penalty. narcotics and liquor crimes must indeed be eradicated and are not the task of the security forces alone but the task of the entire community. Pursuant to the provisions of the 1945 Constitution (UUD 1945), Article 28D paragraph (1) stipulates that every person has the right to recognition, guarantees, protection, and certainty of fair law, as well as equal treatment before the law. The primary issue examined in this normative legal research concerns the process of judicial review (Peninjauan Kembali, PK) as a legal remedy in upholding the rights of narcotics convicts, and the extent of legal protection afforded through judicial review to narcotics convicts in Rokan Hilir. In conducting research, the author uses Normative Legal research methods, namely by examining / literature or secondary data, primary data in this study in addition to examining related legislation by using book literature related to criminal acts of narcotics abuse. while the nature is descriptive analytical, namely the author provides a detailed description of the juridical analysis of judicial review as a legal effort in fighting for the rights of convicted narcotics (Study of Supreme Court Decision No. 1004 PK/PID.SUS/2022 of Rokan Hilir District Court): 1004 PK/PID.SUS/2022 Rokan Hilir District Court). And drawing research conclusions inductively or deductively according to the real conditions of the object of research. The findings of this study indicate that judicial review serves as a legal remedy for narcotics convicts seeking to assert their rights, with its implementation in the Rokan Hilir District Court exemplified by the case of Decision Number 1004 PK/Pid.Sus/2022 concerning the convict Raja Muddin alias Raja bin Baharuddin. The judicial review process in this case was carried out by referring to the provisions of Law Number 35 of 2009 on Narcotics, particularly Article 127 paragraph (1) letter a; Law Number 8 of 1981 on Criminal Procedure Law (KUHP), specifically Article 266 paragraph (3); Law Number 48 of 2009 on Judicial Power; and Law Number 14 of 1985 on the Supreme Court as amended by Law Number 5 of 2004. As a result, the judicial review (PK) decision led to a reduction in the period of detention imposed on the convict.

Keyword: Judicial Review, Convict's Rights, Narcotics

1. Introduction

The public is familiar with the term Narcotics because there is a lot of news circulating, both in the media such as newspapers and electronic media that can provide information about the use of narcotics by victims. Narcotics have many benefits in the medical world but on the other hand narcotics abuse can have a negative impact on users so it needs to be monitored. The provisions of the definition of Narcotics are

contained in article 1 paragraph (1) of Law Number 35 of 2009, that the definition of Narcotics is a drug derived from plant species that synthetically or semisynthetically can cause a behavior, loss of consciousness, and reduced appetite and can eliminate pain or pain that can cause dependence on narcotics consumption.¹

Narcotics and drugs stands for drugs and there are no restrictions on the types of narcotics consumed for health. But on the other hand, narcotics can cause a dependency for the body if misused and the effects caused by narcotics abuse are very dangerous for the body because it can result in death for its users. Therefore, the dangers that exist can threaten the existence of the younger generation who will be the successor of the nation in the future. To prevent and eradicate the abuse and circulation of narcotics can be regulated in Law No. 35 of 2009.²

Narcotics abuse is a criminal offense that has been regulated in Law No. 35 of 2009. The provisions regarding criminal acts in Indonesia have sanctions and have been regulated according to the application of the law. In general, criminal sanctions are strict sanctions in order to comply with the norms that have been enacted as well as the objectives pursued, namely the application of guidance efforts.³ In Indonesia, the penalties given to drug offenders include imprisonment and the most severe is the death penalty. However, in Indonesia, if someone is a victim of narcotics abuse, they can be sentenced to rehabilitation. In accordance with the provisions contained in Article 54 of Law Number 35 of 2009 concerning Narcotics, it states that addicts and victims of narcotics abuse must undergo medical and social rehabilitation.

A person who is caught using narcotics if he is only a victim and can prove that he is a victim, not a dealer, the judge can impose a sentence of treatment and / or treatment in the form of rehabilitation (Article 103 and Article 127 paragraph 2 and paragraph 3 of Law No. 35 of 2009 concerning Narcotics). This article is also reinforced by Supreme Court Circular Letter (SEMA) Number 27 of 2009.⁴ Article 103 grants the authority to judges adjudicating narcotics cases to order that a narcotics addict undergo medical treatment and/or rehabilitation. This authority may be exercised whether the addict is found guilty of committing a narcotics offence or is not proven guilty of such an offence. Narcotics use as a victim, so that the handling of rehabilitation becomes the main thing until the rehabilitation stage, and there needs to be an assessment (assessment) involving BNN and the victim's family against victims caught for narcotics abuse cases. Through the assessment, the authorities can immediately know if the person arrested is a user (victim) or dealer (perpetrator).

However, the application of rehabilitation for drug abusers in Indonesia is still not evenly applied. The implementation of the Narcotics Law is an effort to rehabilitate

¹ Ar. Sujono, *Komentar Dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika* (Sinar Grafika, 2011).

² Siswanto Sunarto, *Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum* (Raja Grafindo Persada, 2004).

³ Moh. Taufik Makaro, *Tindak Pidana Narkotika* (Ghalia Indonesia, 2005).

⁴ Setiyono, *Menghadapi Kasus Pidana* (Raih Asa Sukses, 2010).

narcotics abusers, currently not all narcotics abusers get rehabilitation and are instead subject to prison sanctions as punishment for narcotics abusers. For this reason, there needs to be legal efforts made to overcome this, especially if the decision is already inkrah. The legal remedy that can be taken is judicial review. The determination of the Judicial Review (PK) does not have a specific understanding of the Judicial Review (PK), the opinion of the expert and hamzah states that the Judicial Review (PK) is something that is obtained such as the right of the convict to be able to apply to fix a court decision that has an inkrah, due to the negligence of the judge in imposing his decision.⁵ Because basically the judge is a foundation for the mouthpiece of the law but the foundation of justice, propriety, public interest, and public order, therefore the judge must provide a fair and acceptable decision to the community.

Therefore, the judicial power in article 14 paragraph (2) of Law Number 48 of 2009 explains that each judge is obliged to provide a written consideration or opinion on a case being examined and becomes an integral part of each decision. One of the narcotics cases is carried out at the stage of judicial review (PK), so based on the background description, the author is interested in taking the title, namely "Juridical Analysis of Judicial Review as a Legal Effort in Fighting for the Rights of Narcotics Convicts (Study of Supreme Court Decision No. 1004 PK/Pid.Sus/20)": 1004 PK/Pid.Sus/2022 Rokan Hilir District Court)".

2. Research Method

This research is included in the class of research conducted Normatively. This research examines Judicial Review as a Legal Effort in Fighting for the Rights of Narcotics Convicts (Study of Supreme Court Decision No. 1004 PK/Pid.Sus/2022 of Rokan Hilir District Court): 1004 PK/Pid.Sus/2022 Rokan Hilir District Court). This research uses library data, namely primary data in the form of related regulations and secondary data in the form of literature and related research results.

3. Result and Discussion

3.1 The Judicial Review Process as a Legal Effort in Fighting for the Rights of Convicted Narcotics Offenders

Judicial Review (PK) is an extraordinary legal remedy in a decision that has permanent legal force (Inkrah) in the judicial process at the first level, appellate level, or cassation level decided by the Supreme Court (MA).⁶ Judicial review is an extraordinary legal remedy designed to protect the interests of convicted persons and ensure that convicted persons receive substantial justice. Judicial review is classified as an extraordinary legal remedy due to its distinctive nature, as it enables the reopening or re-examination of a court decision that has obtained permanent legal force. In

⁵ A. Hamzah and Irdan Dahlan, *Upaya Hukum Dalam Perkara Pidana* (Bina Aksara, 1087).

⁶ Rambe Manalu, *Hukum Acara Pidana* (Novindo Pustaka Mandiri, 2011).

principle, a decision with permanent legal force must be enforced in order to uphold legal certainty. However, judicial review serves as a legal instrument through which a final and binding court decision (*inkracht van gewijsde*) may be annulled or set aside under specific circumstances.

Inkracht van gewijsde/res judicata is a verdict that has permanent legal force even if objections can be made to the verdict or re-examined. So the legal force applies from *res judicata* in criminalibus, namely the finality of the decision in criminal cases, therefore the rights of a person to carry out and execute the claim are not based on a correct and precise decision, so it is not that the court's decision applies as absolute truth, called *res judicata pro veritate habetur*.⁷ Judicial Review (PK) is a decision that has permanent legal force and who is entitled to receive it, namely a person who is convicted or his heirs, the Judicial Review generally wants to make changes to the mistakes and negligence of the judge in making a determination decision. As it is known that Judges are the main actors of law enforcement in court who have more roles when compared to Registrars, Prosecutors, and Lawyers.

In Indonesia at the end of 1980 at the time of the formulation of the Criminal Procedure Code by stating that the PK has the authority to correct the judge's decision if the decision is not in accordance with what is expected and the judge can give a decision due to errors and negligence that can harm someone who is innocent or someone who is convicted.⁸ Because a judge's decision is not free from mistakes or mistakes, even impartial, therefore a review is a re-examination to check whether there is a mistake or mistake that occurred and correct it to get substantial justice.

Criminal offenders are part of the government's responsibility as well as the responsibility of law enforcers, including drug offenders in the State of Indonesia. The perpetrators of narcotics crimes have the rights of convicts, but the rights of criminal offenders are partly ignored due to the bad moral behavior of criminal offenders. Therefore, the Supreme Court Circular Letter (SEMA) No. 7 of 2014 has regulated the limitation of Judicial Review (PK) by stating that PK in criminal cases can only be submitted 1 (one) time.⁹

Application for Judicial Review (PK) has a limitation through the Circular Letter (SEMA) is a policy of the Supreme Court (MA) in the quantity effort of the Application for Judicial Review (PK) if the application for Judicial Review (PK) can be submitted more than 1 (one) time if there is a conflicting decision in the provisions of Constitutional Court Decision No. 34/PUU-XI/2013. With the decision of the Constitutional Court's decision No. 34 / PUU-XI / 2013, it gives the convicted person the right to use legal remedies in a review that can be carried out twice because the extraordinary legal remedies can protect the rights of the convicted person's interests.

⁷ Jan Rammelink, *Hukum Pidana Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Indonesia* (Gramedia Pustaka Utama, 2003).

⁸ Leden Marpaung, *Perumusan Memori Kasasi Dan Peninjauan Kembali Perkara Pidana* (Sinar Grafika, 2004).

⁹ Binsar M. Gultom, *Pandangan Kritis Seseorang Hakim Dalam Penegakan Hukum Di Indonesia* (Gramedia Pustaka Utama, 2015).

but in the process of reviewing the second time, it must be fulfilled with a conflicting decision and there are new circumstances (Novum) that the basic provisions of the application for Reconsideration (PK) contained in Article 263 paragraph (2) of the Criminal Procedure Code are a first requirement for the parties who submit it and substantial.

The system of Request for Reconsideration (PK) which is carried out more than 1 (one) time is allowed but on the grounds that if there is an object of the case there are 2 (two) or more PK decisions that contradict each other both in civil cases and criminal cases as regulated in SEMA No.10 of 2009 concerning Reconsideration (PK).

Reconsideration (PK) process that is not in accordance with the provisions of the determination of the Chairman of the Court of first instance, the application cannot be accepted as regulated in SEMA No.10 of 2009. SEMA No. 7 of 2014 with the provisions contained in Article 24 paragraph (2) of Law No. 48 of 2009, and Article 66 paragraph (1) of Law No. 14 of 1985 as amended by Law No. 5 of 2004 as amended by Law No. 3 of 2009 concerning the Supreme Court.¹⁰

3.2 Legal Protection of PK (Judicial Review) for Narcotics Convicts in Rokan Hilir

Narcotics crime constitutes a criminal act that encompasses elements of international crime and organized crime, characterized by extensive networks, substantial financial resources, and the use of modern technology. The adverse effects of narcotics are far-reaching, impacting individuals physically, psychologically, economically, socially, and culturally, among other dimensions. If narcotics abuse is not effectively prevented, it poses a serious threat to the integrity of the nation and the state. Therefore, strong and coordinated efforts from all components of the nation are essential to combat narcotics abuse.¹¹

However, on the one hand, not all drug users can be called perpetrators and given prison sentences, but there are also victims so that the action given is rehabilitation. Therefore, the judge's decision must be in accordance with the facts and fair considerations. A judge's decision on punishment, the judge is obliged to inform the defendant of his rights. Therefore, both the defendant and the public prosecutor can use legal remedies if there is an error in the judge's decision. Therefore, in the provisions of the Criminal Procedure Code (KUHP) regarding the rights that can be obtained by the defendant after the judge makes a decision as a convict that has permanent legal force. One of them is regarding the right of the convicted person to request a request which is regulated in Article 196 paragraph (3) which reads Immediately after the verdict of punishment is pronounced, the presiding judge is

¹⁰ B.Suhariyanto, 'Aspek Hukum Peninjauan Kembali Lebih Dari Satu Kali Dalam Perkara Pidana Perspektif Penegakan Keadilan, Kepastian Dan Kemanfaatan Hukum', *Jurnal Hukum Dan Peradilan*, 4.2 (2015).

¹¹ Soedjono A, *Patologi Sosial* (Alumni, 2000).

obliged to inform the defendant of all his rights as follows:

1. The right to immediately accept or reject the judgment.
2. The right to study the judgment.
3. The right to request a suspension of the judgment to apply for clemency in the event of accepting the judgment.
4. The right to file an appeal.

A legal remedy refers to a procedural right granted to the defendant or the public prosecutor to either accept or challenge a court decision. The provisions governing legal remedies are stipulated in the Indonesian Criminal Procedure Code (KUHAP), specifically in Article 1, point 12. In delivering a sentencing decision, the judge is obliged to inform the defendant of their right to seek legal remedies. Consequently, both the defendant and the public prosecutor are entitled to pursue such remedies should they find the judge's decision on the imposed sentence unacceptable.

In the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana), there are 2 (two) kinds of legal remedies, namely:¹²

1. Ordinary legal remedies, consisting of appeals and cassations.
2. Extraordinary legal remedies, consisting of cassation appeal for the sake of public interest and judicial review (PK).

Supreme Court Circular Letter (SEMA) No. 7 of 2014 on Application for Judicial Review (PK) in Criminal Cases has caused a polemic in the community. So that the Supreme Court Circular Letter has been considered contradictory to the decision of the Constitutional Court (MK) Number 34 / PUU-XI / 2013, which in principle allows Reconsideration (PK) to be carried out more than once because Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Law. 143The authority of the Constitutional Court (MK) in terms of examining laws (UU) against the 1945 Constitution proves that the decision of the Constitutional Court (MK) also has the same power as the law.

Supreme Court Circular Letter (SEMA) must not contradict the Constitutional Court Decision. consideration by the Supreme Court (MA) to evaluate a decision. Although the Constitutional Court Decision is declaratory in nature without execution, the Supreme Court as one of the state organs that is in direct contact with the decisions of the Constitutional Court follows up and carries out whatever is contained in the ruling of the Constitutional Court.

If PK (Review) is submitted more than once, it is considered to cause legal uncertainty, but the Constitutional Court (MK) in a decision argues that PK (Review) is an extraordinary legal remedy historically philosophically born to protect the interests of convicts in order to fulfill justice and material truth (doelmatigheid). A judge's decision that is not in accordance with statutory regulations is not even in accordance with the

¹² Rendi Renaldi Mumbunan, 'Upaya Hukum Biasa Dan Luar Biasa Terhadap Putusan Hakim Dalam Perkara Pidana', *Jurnal Lex Crimen*, 7.10 (2010).

rules of legal norms that occur in society, so that there are many violations of the rights of convicts that cannot be accounted for. Therefore, it is not only about the judge's decision but also about the charges that occur in court where the judge's decision has many violations so that legal remedies can be taken, especially in extraordinary legal remedies, namely PK (Judicial Review).

An example of such a case in the Rokan Hilir District Court concerns a decision rendered pursuant to the provisions of Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 on Narcotics, as well as Law Number 8 of 1981 on Criminal Procedure Law (KUHP) and other relevant laws and regulations, with the court adjudicating the matter as follows:

1. It is hereby declared that the defendant, Raja Muddin alias Raja bin Baharuddin, has been lawfully and convincingly proven guilty of committing the criminal act of conspiracy to unlawfully and without right possess Category I non-plant narcotics, as set forth in the primary charge;
2. The defendant is hereby sentenced to six (6) years of imprisonment and a fine in the amount of Rp 800,000,000.00 (eight hundred million rupiah), with the provision that in the event the fine is not paid, it shall be substituted by an additional term of imprisonment of three (3) months;
3. It is stipulated that the period of arrest and detention already served by the defendant shall be fully deducted from the term of imprisonment imposed;
4. Determine that the defendant shall remain in detention;
5. Determining the evidence in the form of:
 - 1 (one) unit of Nokia blue cellphone;
 - 1 (one) unit of Nokia silver cellphone;
 - 2 (two) packages containing white crystal beads of methamphetamine of various sizes;
 - 1 (one) sheet of wrapping paper with the writing of the gold star iron shop.

Thus, the legal remedy system for asserting the rights of narcotics convicts may be pursued through judicial review (Peninjauan Kembali, PK) in accordance with the applicable laws and regulations. This is exemplified by the application in Decision Number 1004 PK/Pid.Sus/2022 concerning the convict Raja Muddin alias Raja bin Baharuddin, with due consideration of Article 127 paragraph (1) letter a of Law Number 35 of 2009 on Narcotics; Article 266 paragraph (3) of Law Number 8 of 1981 on Criminal Procedure Law; Law Number 48 of 2009 on Judicial Power; and Law Number 14 of 1985 on the Supreme Court as amended by Law Number 5 of 2004 and further amended by Law Number 3 of 2009, as well as other relevant statutory provisions, with the court adjudicating as follows:

- Granting the request for reconsideration (PK) from the applicant for reconsideration / convict Raja Muddin alias Raja bin Baharuddin.
- Cancel the decision of the Rokan Hilir District Court Number 20/Pid.Sus/2021/PN Rhl dated April 14, 2021.

By re-adjudicating as follows:

1. It is hereby declared that the convicted person, Raja Muddin alias Raja bin Baharuddin, has been lawfully and convincingly proven guilty of committing the criminal act of "misuse of Category I narcotics for personal use".
2. Sentenced the convicted person to 2 (Two) years and 6 (Six) months imprisonment.
3. Stipulate that the period of arrest and detention period that has been served by the Convict, shall be fully deducted from the punishment imposed.
4. Determine the evidence in the form of:
 - 1 (one) unit of Nokia blue cellphone;
 - 1 (one) Nokia mobile phone unit of silver color;
 - 2 (two) packages containing white crystal powder of methamphetamine of various sizes;
 - 1 (one) sheet of wrapping paper with the writing of Gold Star Iron Shop;
5. Charged the convicted person to pay the court costs at the level of judicial review amounting to Rp 2,500.00 (two thousand five hundred rupiah).

In fighting for the rights of convicted narcotics in Roka Hilir, it has been granted with a PK (Reconsideration) decision in accordance with the applicable legal bases. Therefore, in the provisions of Article 263 paragraph (2), the conditions for filing a judicial review (PK) are outlined as follows:

1. It is strongly suspected that if there is a new circumstance discovered during the trial process, which is favorable to the defendant or convict, a verdict of acquittal or release from prosecution or a lighter sentence than the previous verdict is possible.
2. The court decision with permanent legal force has a basis of consideration that is stated to be contradictory to one another.
3. The decision is clearly and evidently an oversight and mistake of the Panel of Judges.

The provision contained in Article 263 paragraph (3) of the Indonesian Criminal Procedure Code (KUHAP) stipulates that, on the same grounds as those referred to in paragraph (2), a judicial review (Peninjauan Kembali) may be sought against a decision that has obtained permanent legal force, in circumstances where the charged act has been proven but no sentence has been imposed in the decision.¹³

One of the most fundamental aspects in considering issuing a decision is how to strengthen the institution of the judiciary itself as a goal and implementation of a just application of law, the judge himself carries the mandate and expectations because when someone is tried and has a legal interest in a judicial process, the judge is the last door to uphold justice for the community, strengthening the institution of the judiciary

¹³ Leden Marpaung, *Perumusan Memori Kasasi Dan Peninjauan Kembali Perkara Pidana* (Sinar Grafika, 2014).

is an aspect that must be the focus of studies and policies from lawmakers so that it is no longer found in a case that a judge misapplies the law or is unbalanced between litigants.

4. Conclusion

The judicial review (Peninjauan Kembali) system embodies the principle of an extraordinary legal remedy against court decisions that have obtained permanent legal force (*inkracht van gewijsde*). Its primary objective is to ensure the realization of justice, and it may be initiated by parties to a case in both criminal and civil proceedings. Judicial review constitutes a right of convicted individuals who are already serving their sentence in correctional institutions. As an extraordinary legal remedy, judicial review is characterized by distinctive features that differentiate it from ordinary avenues of appeal. Fighting for the rights of convicted narcotics offenders can be done through judicial review (PK) in accordance with Decision No. 1004 PK/Pid.Sus/2022 against a convict named Raja Muddin Alias Raja Bin Baharuddin by taking into account Law No. 35 of 2009 concerning Narcotics in Article 127 Paragraph (1) letter a, as well as Law No. 8 of 1981 concerning criminal procedure law in Article 266 Paragraph (3), Law No. 48 of 2009 concerning judicial power, and Law No. 14 of 1985 concerning the Supreme Court (MA) as amended by Law No. 5 of 2004.

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