LIMITATION OF THE AUTHORITY OF THE SUPREME COURT IN ADDRESSING CASSATION APPLICATIONS FOR EXCEPTIONAL DECISIONS POST THE NEW KUHAP

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ABSTRACT
This study constructs a critical analysis of the legal implications of Article 299 paragraph (2) letter a of Law Number 200 of 2026 concerning the Criminal Procedure Code (New Criminal Procedure Code), which limits the absolute competence of the Supreme Court in examining cassation requests against acquittals (vrijspraak). Using a normative-doctrinal legal research method, this study identifies legal loopholes through the integration of the statute approach, the conceptual approach, and the case approach. The legal materials are analyzed descriptively-qualitatively using the deductive-syllogistic reasoning method to test the consistency of norms from the perspective of principles, theories, and judicial dynamics. The results of the study suggest that the regulation of restrictions on cassation against acquittals is intended to protect the defendant's rights to legal certainty and the principle of finality of court decisions. However, on the other hand, there are four fundamental weaknesses in the regulation of these restrictions, namely: First, macro-principally, the norm triggers an asymmetry of justice and degrades the right to access to justice for the Public Prosecutor as a representative of the victim and the state. Second, theoretically, this restriction distorts the essential function of the Supreme Court as the guardian of the unity of law (judex juris). Third, vertically, this rule creates disharmony with the ratio decidendi of the Constitutional Court Decision Number 114/PUU-X/2012. Fourth, practically, the absolute firmness of this norm actually contains a historical risk in the form of the re-emergence of anomalous contra legem decisions at the lower court level, replicating the historical precedent of the Supreme Court Decision Number 275 K/Pid/1983.

INTRODUCTION

At the beginning of January 2026, the Indonesian Government enacted Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code). This KUHAP replaces the old KUHAP (Law Number 8 of 1981). One of the principles in the content that changes the provisions of the Old Criminal Procedure Code is regarding

strengthening the rights of Defendants and Victims with the aim of ensuring justice, transparency, and protection of human rights in law enforcement, as well as providing an equal position between Defendants and Victims with law enforcement officials (see General Explanation of the New Criminal Procedure Code).

The problem is, there is one part of the regulations in the New Criminal Procedure Code which does not reflect the implementation of the principle of strengthening the rights of defendants and victims as well as equal position with law enforcement officials, namely related to limiting cassation legal remedies for acquittals. As determined by Article 299 paragraph (2) letter a of the New KUHAP which states "*a cassation examination as intended in paragraph (1) cannot be submitted against an acquittal decision*". This regulation is intended to protect the defendant's rights to legal certainty and the principle of finality of court decisions.[1]

If examined carefully, there is a disparity where the defendant has more rights than the victim[2] and/or the Public Prosecutor (JPU) who represents the interests of the victim, community and state[3] in accessing legal remedies to the high court[4] and/or submitting a cassation request to the Supreme Court (MA) so that decisions can be corrected if there are errors in the application of the law[5] or the assessment of facts in the trial by the judge at the previous court.[6] The provisions of the New Criminal Procedure Code regulate that defendants who have been sentenced to a criminal sentence can file appeals and cassation, while prosecutors are not given the right to cassation legal action against an acquittal, so access to justice at the cassation level is restricted or closed to the Supreme Court.

In the development of academic discourse, it was debated that prosecutors were not given the right to cassation against the acquittal because of their (more) superior ability (compared to the defendant) in coordinating legal developments[7] so that it was seen as unfair when faced with the defendant's competence. But on the other hand, there are rights of victims, society and the state as seekers of justice, also represented by the prosecutor, who need access to cassation legal action against acquittal decisions. However, restrictions on cassation efforts create legal problems for people seeking justice,[8] both as defendants and victims.

In the previous era, the Old Criminal Procedure Code also regulated limitations on cassation legal action against acquittal decisions. As stipulated in Article 244 of the Old Criminal Procedure Code which reads "*Regarding decisions in criminal cases given at the final level by a court other than the Supreme Court, the defendant or public prosecutor may submit a request for a cassation hearing to the Supreme Court except for acquittal decisions.*"

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[1] I Komang Adi Purnawan, Kadek Ayu Malika Alya Putri dan I Gusti Agung Ayu Dike Widhiyastuti, "Analisis Yuridis Upaya Hukum Terhadap Putusan Bebas (Vrijspraak) Dalam Sistem Peradilan Pidana Indonesia", *Jurnal Media Akademik* Vol.4, No.6 Juni 2026, p.2

[2] Nandang Sambas dan Dian Andriasari, *Kriminologi: Perspektif Hukum Pidana* (Jakarta: Sinar Grafika, 2021) p.105

[3] Dani Durrahman, Eni Dasuki Suhardini and Dini Ramdania, *Etika Profesi dan Tanggung Jawab Hukum* (Depok: Rajawali Pers, 2022) p.133

[4] Adam ilyas, *Hukum Acara Pidana: Dari Penyelidikan hingga Eksekusi Putusan* (Depok: Rajawali Pers, 2023) p.145

[5] Tri Cahya Indra Permana, *Beberapa Pemikiran tentang Peradilan Administrasi dan Keadilan Administratif* (Depok: Rajawali Pers, 2022) p.90

[6] Pardamaean Harahap dan Sidi Ahyar Wiraguna, *Hukum Acara Pidana* (Purwokerto: Revormasi, 2026) P.110

[7] Nancy J. King, and Michael Heise, "Appeals by the Prosecution", Journal of Empirical Legal Studies Volume 15, Issue 3, (September 2018) p.485

[8] Agus Budi Susilo, "Pembatasan Hak Kasasi dan Konsekuensi Hukum bagi Pencari Keadilan dalam Sistem Peradilan Tata Usaha Negara di Indonesia", *Jurnal Hukum dan Peradilan,* Vol. 4 No. 2 (Juli 2016) p.299

Approximately 2 (two) years after the implementation of the Old Criminal Procedure Code, there was a judicial practice where the Public Prosecutor (JPU) filed a cassation legal action regarding the acquittal decision in the Sonson Natalegawa case, and the Supreme Court in its decision No. 275 K/Pid/1983 dated 15 December 1983 decided to grant the prosecutor's appeal. This decision was later followed by other Supreme Court decisions so that it was designated as jurisprudence.[9]

In fact, prior to this decision, Decree of the Minister of Justice of the Republic of Indonesia No.M.14-PW.07.03 of 1983 dated 10 December 1983 was issued which provided justification for the Supreme Court's decision granting the cassation request for the acquittal mentioned above. As stated in number 19 of the attachment to the Decree of the Minister of Justice, "*an acquittal decision cannot be appealed, but based on the situation and conditions, for the sake of law, justice and truth, an acquittal decision can be appealed for. This will be based on jurisprudence*."[10]

Furthermore, there is the Constitutional Court (MK) Decision No. 114/PUU-X/2012 which tried and examined judicial review cases regarding Article 244 of the Old Criminal Procedure Code. The Constitutional Court in its decision stated that the phrase "*except for acquittal decisions*" in Article 244 of the Old Criminal Procedure Code is contrary to the 1945 Constitution of the Republic of Indonesia (UUD NRI) and has no binding legal force. In one of its considerations, the Constitutional Court criticized the provisions of Article 244 of the Old Criminal Procedure Code which eliminated legal remedies for cassation of acquittal decisions, and also distorted the function of the Supreme Court as a cassation court for acquittal decisions handed down by lower courts. In fact, the Supreme Court as the highest state court must function to administer cassation trials regarding acquittal decisions for the sake of law enforcement and justice.[11]

Based on the facts regarding judicial practice (jurisprudence) in the previous period and the Constitutional Court's decision which declared unconstitutional the regulation of restrictions on cassation legal remedies for acquittal decisions as mentioned above, problems or (potential) legal loopholes emerged in the New KUHAP, especially in the regulation of restrictions on the authority of the Supreme Court in adjudicating acquittal decisions from lower courts. This article presents a new academic discourse that criticizes the existence of Article 299 paragraph (2) letter a of the New Criminal Procedure Code from the perspective of principles, theory, norms and judicial practice so that it can be used as input or reference material for law enforcement policy makers and judicial institutions to address limitations on cassation legal remedies for acquittal decisions.

Previously, there were several articles resulting from previous research that discussed similar issues, including: *first*, Aristo Pangaribuan who provided critical notes on the Constitutional Court's decision to decide (the admissibility of) cassation of acquittal decisions;[12] *second*, Janpatar Simamora who discussed the legal certainty of filing a cassation by the public prosecutor against an acquittal;[13] *third*, Yohanis Sudiman Bakti who discussed acquittal decisions (vrispraak) in criminal cases and legal remedies;[14] *fourth*, Ignatius Harbrian Hutomo, Thomas and Vishnu Erlangga who discussed filing a cassation based on the

[9] Abdul Latif, *Hukum Administrasi dalam Praktik Tindak Pidana Korupsi,* (Jakarta: Kencana, 2014) p.144

[10] De Had, *Mengadili Alibi Menguji Bukti.* (Indonesia: Guepedia, 2020) p.44

[11] Putusan MK No. 114/PUU-X/2012

[12] Aristo Pangaribuan, "Appeal Against Acquittal By The Prosecutor: Critical Comments on The Indonesian Constitutional Court Decision", *Jambe Law Review*, Vol. 2 No. 1 (2019) pp.1-17

[13] Janpatar Simamora, "Kepastian Hukum Pengajuan Kasasi oleh Jaksa Penuntut Umum terhadap Vonis Bebas", *Jurnal Yudisial,* Vol. 7 No. 1 April (2014): pp. 1- 17

[14] Yohanis Sudiman Bakti, "Putusan Bebas (Vrispraak) dalam Perkara Pidana dan Upaya Hukumnya", *The Juris,* Vol. VIII, No. 2, Desember (2024) pp. 712-721

authority of the court;[15] and *fifth*, Yuni Priyono who discussed the urgency of cassation efforts against the acquittal decision by the public prosecutor.[16] Even though these fifth studies discuss legal remedies for cassation of acquittal decisions, they are in the context of the time when the Old Criminal Code was implemented so that it is different from this research which analyzes the regulations and prospects for the implementation of the New Criminal Procedure Code.

RESEARCH METHOD

This research is a type of normative legal research (doctrinal legal research) focusing on the status of norms and systemic consistency in criminal justice. Legal reasoning is constructed in an integrated manner through three main approaches: First, a statute approach to examine the principles,[17] ratio legis,[18] validity,[19] hierarchy,[20] and vertical-horizontal harmonization of norms limiting the absolute competence of cassation appeals against acquittals. Second, a case approach to explore and extract the ratio decidendi[21] in judicial reasoning related to the application of laws[22] and legal discovery (rechtsvinding)[23] in vrijspraak cases. Third, a conceptual approach to explore the terminological boundaries used by statutory provisions and court decisions,[24] and legal doctrine[25] as the theoretical basis for restructuring the Supreme Court's authority.

Documentary studies were used to collect legal materials. This collection of legal materials was conducted systematically through document study (library research). All legal materials obtained were inventoried, classified, and analyzed descriptively and qualitatively using the syllogistic deductive reasoning method. This analytical approach aims to critically evaluate the anomalies in the Supreme Court's authority limitations following the enactment of the New Criminal Procedure Code, ultimately resulting in conclusions in the form of theoretical prescriptions and formulative policy recommendations for future criminal law enforcement.

RESULT AND DISCUSSION

1. Limitations on Cassation of Free Decisions Judging from the Principle of Fair Legal Treatment

In general, court decisions in criminal cases can be divided into two, namely criminal decisions (*veroordeling*) and non-sentencing. Furthermore, non-conviction decisions are divided into three, namely acquittal (*vrijspraak*), release from all legal demands (*ontslag van alle*

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[15] Ignatius Harbrian Hutomo, Thomas dan Wisnu Erlangga, "Pengajuan Kasasi atas Dasar Kewenangan Pengadilan", *Verstek,* Vol. 2, No. 3, (2014) pp. 71-84

[16] Yuni Priyono, "Urgensi Upaya Hukum Kasasi terhadap Putusan Bebas oleh Penuntut Umum", *Klausula,* Vol 1 No. 1 April (2022) pp. 30-48

[17] Suyanto, *Metode Penelitian Hukum: Pengantar Penelitian Normatif, Empiris dan Gabungan* (Gresik: Unigres Press, 2022) p.124

[18] Peter Mahmud Marzuki, *Penelitian Hukum,* (Jakarta: Kencana, 2014), p.93

[19] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undnagan: Dasar-Dasar dan Pembentukannya.* (Yogyakarta: Kanisius, 2014) p.19

[20] Hans Kelsen, *General Theory of Law and State* (New York. Russell & Russell, 1945) p.113

[21] Peter Mahmud Marzuki, *Op. Cit.*, p. 64.

[22] Morris L. Cohen dan Kent C. Olson, *Legal Research in A Nutshell*, (St. Paul Minnesotta: West Publishing Company, 1992) p.5.

[23] Sulistyowati Irianto dan Lim Sing Meij, *Praktik Penegakan Hukum: Arena Penelitian Sosiolegal Yang Kaya.* Dalam Sulistyowati Irianto dan Shidarta, *Metode Penelitian Hukum (Konstelasi dan Refleksi).* (Jakarta: Yayasan Pustaka Obor Indonesia, 2011) p.191

[24] Peter Machmud Marzuki, *Op Cit,* p.178

[25] Kristiawanto, *Memahami Penelitian Hukum Normatif* (Jakarta: Prenada, 2022) p.31

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rechtsvervolging) and judge's forgiveness (*rechterlijk pardon*). In relation to the acquittal, there are 2 (two) reasons that influence it, namely: *first*, being acquitted of the charges because they do not fulfill the principles of proof or the existing evidence is inadequate[26] so that it is considered invalid and does not meet the judge's confidence; *secondly*, acquitted of the charges because they did not meet the minimum requirements for evidentiary limits, such as unus testis nullus testis (a witness is not a witness).[27]

Furthermore, in judicial practice based on the jurisprudence of Supreme Court decision no. No. 275 K/Pid/1983 dated 15 December 1983 states that acquittal decisions are divided into 2 (two) types, namely pure acquittal decisions (*zuivere vrijspraak*) and impure acquittal decisions (*niet zuivere vrijspraak*).[28] In one of the legal considerations of the decision, it is explained that a pure acquittal decision, namely acquittal is based on the unproven elements of the act charged, so the cassation request must be declared inadmissible.[29] The acquittal is impure, namely if there is an error regarding the designation of the criminal act in the indictment, or if the court exceeds the limits of its authority in handing down its decision, and/or if there are non-juridical elements which are also taken into consideration in the court's decision.[30]

In more detail, J.M. van Bammelen explains the qualifications for an acquittal in 4 (four) matters or conditions, namely:[31]

a. *The acquittal was purely a final decision, the judge confirmed the legal facts (feiten), but the Public Prosecutor's accusations were not legally and convincingly proven. In other words, the judge has the belief that the criminal act charged against the defendant is not proven.*
b. *An impure acquittal decision, namely in the case of the cancellation of a hidden accusation or an acquittal decision which, according to the judge's belief, is not actually based on the fact that what is contained in the indictment is not proven.*
c. *An acquittal decision is based on considerations of its usefulness, that is, the judge's decision is taken based on the consideration that a prosecution must be terminated which will definitely have no results.*
d. *A disguised acquittal is where the judge makes a decision about legal facts and gives a decision free from all legal demands, even though the decision contains a genuine acquittal.*

Examining the doctrine above, there is room for the prosecutor not to accept the decision of an acquittal, especially one that is impure in nature, and then use legal action to be tried again by a higher court, namely cassation to the Supreme Court. However, the acquittal decision benefits the defendant on the one hand so that it will not be possible to use legal remedies for the acquittal to the fullest, but on the other hand the prosecutor certainly feels at a loss because his prosecution efforts failed so he will try to submit a request for maximum judicial examination, especially to cassation the acquittal.[32]

If we compare the regulation of legal remedies in the New Criminal Procedure Code between the rights possessed by defendants in legal remedies against conviction decisions (in the form of appeals and cassation) on the one hand with the rights possessed by prosecutors who represent victims, the community and the state in legal remedies against acquittal decisions (which cannot be appealed) they are in fact unequal. Based on these facts, it can be

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[26] James Chalmers and Fiona Leverick, "When Should a Retrial be Permitted After a Conviction is Quashed on Appeal?", *The Modern Law Review,* Vol.74 No.2 (2011) p.721

[27] M. Yahya Harahap. *Pembahasan Permasalahan dan Penerpaan KUHAP* (Jakarta: Sinar Grafika, 2010) p.347

[28] Adami Chazawi, *Kemahiran dan Keterampilan Praktik Hukum Pidana* (Malang: Media Nusa Creative, 2019) p.237

[29] Putusan Mahkamah Agung No. No. 275 K/Pid/1983 tanggal 15 Desember 1983, p.30-31

[30] *Ibid*

[31] In Martiman Prodjohamidjojo. *Komentar Atas KUHAP* (Jakarta: Pradnya Paramita, 1982). See also in Rahmat Hi Abdullah dan Abdul Mutalib, *Hukum Acara Pidana* (Bantul: Selat Media Patners, 2023) p.163

[32] H.M.A. Kuffal, *Penerapan KUHAP dalam Praktik Hukum* (Malang: UMM Press, 2022) p.235

said that these differences in regulation cause inequality in access to justice or unfair legal treatment.

If there is a violation of fair legal treatment then this can be qualified as violating the rights of citizens as stipulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "*all citizens have the same position under the law and government and are obliged to uphold the law and government without exception*". Apart from being a citizen's right, fair legal treatment is also one of the human rights that must be guaranteed by the state, as determined by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "*everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law*".

Regulations regarding fair legal treatment are also confirmed in Article 5 paragraph (2) of Law Number 39 of 1999 concerning Human Rights (Human Rights Law) which states "*every person has the right to receive fair assistance and protection from an objective and impartial court*". Apart from that, it is also specifically regulated in Article 17 of the Human Rights Law which states "*every person, without discrimination, has the right to obtain justice by submitting applications, complaints and lawsuits, whether in criminal, civil or administrative cases and to be tried through a free and impartial judicial process, in accordance with procedural law which guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision*."

Doctrinally, procedural law regulations that do not provide equal legal rights between contesting parties seeking justice in the justice system, such as between defendants and prosecutors who represent victims, society and the state mentioned above, in fact distort the realization of 2 (two) basic principles, namely the protection of human rights and equality before the law. These two principles, doctrinally, are one of the elements of the rule of law.

As stated by Julius Stahl, the protection of human rights is an element of the rule of law (*rechtsstaat*).[33] Furthermore, it was also stated by A.V. Dicey said that the principle of equality before the law is one of the main elements of a rule of law based state.[34] This means that if this is not addressed through regulatory reform, ignoring equality before the law will result in the distortion of the Indonesian legal state, both in the context of *rechtsstaat* and the rule of law.

2. Limitations on Cassation of acquittal Decisions Viewed from the Perspective of the Authority of the Supreme Court as the Highest State Court

Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "*judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court, and by a Constitutional Court*." The use of the words "*subordinate judicial bodies*" in this constitutional provision emphasizes the position of the Supreme Court as the superior, peak (highest)[35] or final place[36] of justice previously held by lower judicial bodies.

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[33] Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis* (Jakarta: PT. Bhuana Ilmu, 2009) p.199. Lihat juga dalam Faisal Akbar Nasution dan Andryan, *Hukum Tata Negara* (Jakarta: Sinar Grafika, 2023) p.22

[34] *Ibid*

[35] Nur Dianna Daulay, "Wewenang Mahkamah Agung: Kajian Fiqh Siyasah Dan Konstitusi Di Indonesia", *Jurnal Dunia Ilmu Hukum*, Vol 3, No. 1, (Juni 2025) p.17

[36] Rinsofat Naibaho and Indra Jaya M. Hasibuan, "Peranan Mahkamah Agung dalam Penegakan Hukum dan Keadilan melalui Kekuasaan Kehakiman". *Nommensen Journal of Legal Opinion*, Vol. 02 No. 02, (Juli 2021) p.203

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As the superior or peak of the judiciary mentioned above, the Supreme Court has strategic duties and authority in carrying out the highest supervision,[37] guidance and evaluation of the administration of justice carried out by the courts below it. In connection with the implementation of the Supreme Court's function as the highest supervisor of the administration of justice, the Supreme Court is given the authority to try cases at the cassation and review levels. Specifically for cassation, the Supreme Court has the authority to cancel decisions or determinations of courts from all judicial environments because (vide Article 30 paragraph (1) of the Supreme Court Law):

a. not authorized or exceeding the limits of authority;
b. misapplies or violates applicable law;
c. failure to fulfill the requirements required by statutory regulations which threatens such failure with the cancellation of the relevant decision.

Specifically for criminal cases, a cassation request to the Supreme Court is made at the request of the parties to determine, namely: *first*, whether it is true that a legal regulation has not been applied or has not been applied properly; *secondly*, is it true that the trial method was not carried out according to the law; and *third*, is it true that the court has exceeded the limits of its authority (*vide* Article 253 paragraph (1) of the old KUHAP or Article 308 paragraph (1) of the New KUHAP).

M. Yahya Harahap believes that the main objective of cassation efforts can also be intended as follows:[38]

a. *As a correction to errors in subordinate decisions. For this purpose, cassation legal action is intended to straighten out (correct) errors in the application of the law, so that the law is truly implemented as it should be and the way to try cases is carried out in accordance with the provisions of the applicable law.*
b. *Creating and forming new laws. Apart from being a corrective action, sometimes cassation at the Supreme Court also plays a role in creating new law in the form of jurisprudence. Based on the position and authority attached to it in the form of judge making law, it is not uncommon for the Supreme Court to create new laws called "case law" or case law.*
c. *Supervision of the creation of uniform application of the law. Another aim of the cassation examination is to create awareness of the uniform application of law or unified legal frame work and unified legal opinion. Through cassation decisions in the form of jurisprudence, it will lead to uniformity of views and starting points for the application of the law.*

In connection with the restrictions on the regulation of cassation remedies against acquittal decisions and related to the authority of the Supreme Court as the highest court, acquittal decisions should be tried at the cassation level by the Supreme Court. If in a criminal decision there is a chance that the judge will make a mistake in judging or deciding, then the same as with an acquittal there is also the potential for the judge to apply the law incorrectly so that testing, assessment and retrial is needed by the Supreme Court as the highest state court. Therefore, granting (regulating) cassation authority to adjudicate acquittal decisions is an effort to realize fair legal treatment and provide equal access to justice between defendants and prosecutors who represent the legal interests of victims, society and the state.

The importance of granting authority to the Supreme Court to adjudicate at the cassation level regarding acquittal decisions is also based on Constitutional Court Decision No. 114/PUU-X/2012 which states the unconstitutionality and norms for limiting cassation

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[37] Rheina Aini Safa'at, "Graciella Azzura Putri Ananda, and Rasji, Kedudukan dan Kewenangan Mahkamah Agung dalam Menyelenggarakan Kekuasaan Kehakiman di Indonesia", *Jurnal Kewarganegaraan*, Vol. 8 No. 1 (Juni 2024) p.303

[38] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali.* Edisi Kedua. (Jakarta: Sinar Grafika, 2006) p.539-542

of acquittal decisions (Article 244 of the Old Criminal Procedure Code). In the legal considerations of its decision, the Constitutional Court emphasized that "*In upholding law and justice, there is also the meaning that what is right must be declared right, and what is wrong must be declared wrong. In this connection, an acquittal decision handed down by a court below the Supreme Court and then requested for a cassation examination, should not be interpreted as meaning that the Supreme Court will definitely declare the defendant guilty and be sentenced to a crime. It could be that the Supreme Court agrees with the court below it. This means that the defendant is still acquitted in the cassation decision. In this situation, it means that the function of the Supreme Court as the highest state court remains intact, and law and justice will continue to be upheld*."

The consequences of the Constitutional Court's decision and legal considerations above are general in nature and relate to the authority of the Supreme Court in hearing cassation requests for acquittal decisions. Specifically, the Constitutional Court did not mention whether a cassation request could be submitted only for impure acquittal decisions, as has been followed based on the jurisprudence so far, but more than that, by not mentioning this, it also applies to cassation of pure acquittal decisions, the prosecutor can also submit an application to the Supreme Court.

In practice, MK decision no. 114/PUU-X/2012 causes the issue of pure acquittal and impure acquittal to be no longer relevant because it is no longer a problem for the Supreme Court to try it at the cassation level. In this regard, Artidjo Alkostar emphasized that all acquittal decisions may be appealed, because there is no longer any difference between pure acquittal decisions and impure decisions.[39] After the Constitutional Court's decision, the Supreme Court has changed the format of the decision regarding the filing of an appeal against an acquittal decision with a ruling that it cannot be accepted (niet ontvankelijk).[40]

3. Limitations on Cassation of Free Decisions Judging from the Harmonization of Norms

In principle, legal harmonization is the key to developing national law based on legal certainty. Legal disharmonization can occur when there is overlapping regulations between one statutory regulation and another statutory regulation. Legal disharmonization can involve disharmonization of norms vertically, namely between lower and higher legislation, or horizontally, namely legislation within the same level or hierarchy that has conflicting regulations. If legal disharmony, both vertical and horizontal, is allowed, it will give rise to multiple interpretations and inconsistencies in law enforcement as well as legal uncertainty in society.

Legal disharmonization must be avoided in the case of forming a statutory regulation, and must be immediately addressed if it has already been passed (enacted) by means of a mechanism determined by law, either through legal updates carried out by the government and the DPR (*as positive legislator or legislative act*)[41] or through judicial review at the Constitutional Court (*as negative legislator*).[42] The problem is, if the Constitutional Court

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[39] Hukumonline.com, *Bebas Murni atau Tidak Murni Sudah Tidak Relevan,* Berita, 28 Oktober 2014. Diakses dari hukumonline.com/berita/a/bebas-murni-atau-tidak-murni-sudah-tak-relevan-lt526dcda563378/ pada tanggal 6 Maret 2026 Pkl.09.01 WIB

[40] *Ibid*

[41] Muhamad Arya Wijaya, "Fungsi Konstitusional DPR dalam Perspektif Hak Rakyat: Antara Representasi dan Resistensi", *Journal Evidence of Law,* Vol 4 No. 2 (Mei-Agustus 2025) p.941. Arief Rachman Hakim and Yulita Dwi Pratiwi, "Positive Legislature dalam Putusan Mahkamah Konstitusi Mengenai Upaya Hukum Putusan Penundaan Kewajiban Pembayaran Utang", *Jurnal Konstitusi,* Vol. 9, No. 4 (Desember 2022) p.936

[42] Adena Fitri Puspita Sari and Purwono Sungkono Raharjo, "Mahkamah Konstitusi Sebagai Negative Legislator Dan Positive Legislator", *Souvereignty*, Vol. 1, No. 1 (2022) p.681. Lutfiya Yuni Rahmawati et al. "Pergeseran Fungsi Peran Mahkamah Konsitusii dari Negatif Legislator menjadi Positif Legislator", *Dekrit,* Vol.

decides and declares the unconstitutionality of a norm in a law, it turns out that at a later date the canceled norm is "revived" again by a new law (re-regulated). In this context, there is disharmonization of norms between the Constitutional Court's decision and the new law.

As is the case with the regulation of restrictions on cassation legal remedies for acquittal decisions contained in Article 299 paragraph (2) letter a of the New KUHAP which actually contradicts the Constitutional Court's decision no. 114/PUU-X/2012. If examined more deeply, the implementation of the New Criminal Procedure Code which is related to restrictions on cassation of acquittal decisions could result in violations of constitutional principles which in fact are basic norms, both related to citizens' rights or human rights as well as the exercise of judicial power in administering a fair trial.

In connection with the conflict or violation of the basic norms mentioned above, this is one of the considerations in the Constitutional Court's decision which states the unconstitutionality of the regulation of cassation restrictions on acquittal decisions which is based on efforts to provide guarantees of "*fair legal certainty and equal treatment before the law*". Apart from being based on the 1945 Constitution of the Republic of Indonesia, norms regarding guarantees of equal treatment before the law are also regulated in Article 14 paragraph (1) of the International Covenant On Civil and Political Rights (ICCPR) as ratified based on Law Number 12 of 2005 concerning the ratification of the ICCPR which reads "*all people have the same position before the courts and judicial bodies...*". In this context, the substance of the norms for limiting cassation of acquittal decisions in the New Criminal Procedure Code also indirectly deviates from the basic norms contained in the provisions of Article 14 paragraph (1) of the ICCPR a quo Law no. 12 of 2005.

Apart from that, there is disharmonization of other basic norms which are distorted by the New Criminal Procedure Code in regulating restrictions on cassation of free decisions, namely the institutional design of judicial power in which the Supreme Court is positioned as the highest state court by Article 24 paragraph (2) of the a quo constitution Article 32 paragraph (1) of the Supreme Court Law. The regulation of the New Criminal Procedure Code actually distorts the authority of the Supreme Court to carry out its constitutional and institutional duties (at the top of the judiciary) as the highest supervision over the administration of justice by lower courts. In principle, the authority to re-judicate decisions of subordinate courts if there is an error in the application of the law, for example, is an inherent authority (inherent powers) carried by the Supreme Court as the highest state court.

4. Limitations on the Authority of the Supreme Court in Hearing Cassations on Free Decisions Viewed from a Jurisprudential Perspective

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "*judicial power is an independent power to administer justice to uphold law and justice*". Based on this provision, the function of the court in administering justice is not just based on written law in the form of a statute, but must also be in order to uphold justice.[43] In the event that

12, No. 1 (2022) p.43. Muhammad Alief Farezi Efendi, Muhtadi and Ahmad Saleh, "Positive Legislature Decisions by the Constitutional Court Putusan Positive Legislature oleh Mahkamah Konstitusi", *Jurnal konstitusi,* Vol. 20, Issue 4 (Desember 2023) p.622. Al Fadillah Walduda'ini, Idzam Fautanu and Lutfi Fahrul Rizalp. "Kritik Hukum Terhadap Peran Positive Legislature Mahkamah Konstitusi dalam Pengujian Undang-Undang". *Jurnal Ilmu Hukum, Humaniora dan Politik,* Vol. 4 No. 5 (Juli 2024) p.1569. Muhamad Irwan and Moh. Saleh. "Mahkamah Konstitusi sebagai Negatif Legislator: Analisis Peran dan Batasan dalam Pembatalan Undang-Undang", *Legal Standing,* Vol. 9, No. 5 (2025) p.1227.

[43] Arsyad Aldyana dan Abhishek Negi, "The Model of Law Enforcement Based on Pancasila Justice", *Journal of Human Rights, Culture and Legal System,* Vol. 2 No. 3 (November 2012) p.188

the existing law is deemed incomplete, unclear[44] or considered unfair and has lagged behind the development of values and a sense of justice that is developing in society, the judge can or (even) is obliged to make efforts to interpret,[45] form or discover the law through[46] his court decisions. As determined by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states "*judges and constitutional justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society*".

If a court decision containing the above legal formation (rules) is followed by subsequent or future court decisions then its existence can be qualified as jurisprudence. The Supreme Court as the highest state court has the authority to determine whether a court decision is officially recognized and established as jurisprudence. Furthermore, if there has been a ruling from the Supreme Court regarding a jurisprudence, courts throughout Indonesia can (most likely)[47] accommodate the new legal rules in that jurisprudence in their decisions regarding the same type of case. It is said that it is possible or most likely that what is meant is that even though the Indonesian legal system does not adhere to the stare decision doctrine, in practice, if there is jurisprudence, the judges will pay attention and take it into consideration in their decisions.[48] In this context, a unified application of law will be formed in adjudicating the same case throughout Indonesia.

Doctrinally, jurisprudence is a source of law. As a legal source in strengthening and developing laws[49] and law enforcement policies,[50] jurisprudence can be used as a reference (based on the development of legal values that live and develop in society), inspiration or aspirations (from judges or courts) for the government and DPR in formulating or changing laws. Apart from that, the Constitutional Court as a negative legislator also sometimes considers the existence of jurisprudence originating from court or Supreme Court decisions. As the Constitutional Court decision no. 114/PUU-X/2012 which in its consideration accommodates the existence of jurisprudence that accepts the appeal of the prosecutor's acquittal decision.

Even though the New Criminal Procedure Code does not accommodate the jurisprudence and decision of the Constitutional Court no. 114/PUU-X/2012 regarding the authority of the Supreme Court in adjudicating acquittal decisions. However, it does not rule out the possibility that there is a legal breakthrough practice by the prosecutor to file a cassation appeal against the acquittal based on the reason that there is disharmonization of norms between Article 299 paragraph (2) letter a of the New KUHAP and the Constitutional Court decision no. 114/PUU-X/2012. And it is also possible that the Supreme Court will grant the cassation petition against the acquittal decision on the pretext of making efforts to establish a law because the regulation of the New Criminal Procedure Code regarding this matter is deemed not to reflect justice based on the principles of equality before the law,

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[44] Sri Rizki Hayaty, Dedi Iskandar and Nelvitia Purba, "Jurisprudence as a Legal Resource in Indonesia to Handle Cases in Society", *International Journal of Sociology, Policy and Law,* Vol. 2 No. 4 (Agustus 2021) p.55

[45] Moh. Mujibur Rohman, Elladi Mark dan Kailie Maharjan, "The Position of Judges in the Indonesian Legal Idea", *Rechtsnormen Journal of Law,* Vol. 1 No. 2 (2023) p.100

[46] M.Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Jakarta: Sinar Grafika, 2015) p.308

[47] Muhammad Jibril et al., "Jurisprudence as a Source of Law in Indonesia: Lessons from the Common Law", *Jurnal Jurisprudence*, Vol. 13, No. 1, (2023) P.143

[48] Afga Samudera Erlangga and Ellyne Dwi Poespasari, "Comparison of Civil Law and Common Law Legal Systems in the Application of Jurisprudence" *Journal of Law, Politic and Humanities,* Vol. 4 No. 6 (September 2024) P.2234

[49] Sahlan, Ilham Nurman, and Abdul K. Uddin, "The Role of Jurisprudence in the Development of Civil and Criminal Law", *European Journal of Law and Political Science*, Vol. 2 Issue 2 (April 2023) p.53

[50] Dimas Gibran Satrio Utomo, "Peran Mahkamah Agung dalam Menegakkan Prinsip Keadilan dalam Sistem Peradilan Indonesia", *Aliansi,* Vol. 2, No.1 (2025) p.325

equality of access to justice and/or realizing the strengthening of the authority of the Supreme Court as the highest state court.

CONCLUSION

The regulation of limitations on cassation legal action against acquittal decisions in Article 299 paragraph (2) letter a of the New Criminal Procedure Code raises problems from the perspective of principles, theory, norms and practice. Viewed from a principled perspective, this arrangement does not reflect fair legal treatment and equality in access to justice, where for criminal decisions which in fact (generally) benefit the defendant, access to legal remedies from appeal to cassation is opened, on the other hand, prosecutors who represent victims, the community and the state are not given the right to file a cassation request for an acquittal. Viewed from a theoretical perspective, this arrangement distorts the authority of the Supreme Court as the highest state court to correct errors in the application of the law in acquittal decisions from lower courts. Viewed from a norms perspective, this arrangement has led to disharmonization of norms with the Constitutional Court decision no. 114/PUU-X/2012 which incidentally stated that Article 244 of the Old Criminal Procedure Code (which regulates the same thing, namely limiting cassation efforts against acquittal decisions) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Viewed from a practical perspective, there is the potential for repetition of legal discovery efforts from the Supreme Court if there is an appeal for cassation of the prosecutor's acquittal decision, as in Supreme Court Decision No. 275 K/Pid/1983 previously became jurisprudence.

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