

**FORMULATIVE POLICY REMEDIES  
INDEPENDENT DECISION OF PUBLIC PROSECUTOR FOR  
PERSPECTIVE IN THE CRIMINAL JUSTICE SYSTEM OF INDONESIA**

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**ABSTRACT**

This dissertation is a research of acquittal (*vrijspraak*) in some criminal cases that were made by the judge, and related with the law effort of appellate and cassation. Due process of law in criminal justice of Indonesia tends to be not giving satisfaction for the justice seekers. The many amount of criminal cases that get acquittal (*vrijspraak*) such as the cases of corruption, narcotic, murder, and others got opinion and contra from broad society. The practitioners and theoreticians of law and so does the justice seekers often spotlight the judge's verdict which is judged as the engineering of justice, full of mafia and fraudulence.

The Procedure of Criminal of Indonesia based on the Criminal Code stills seem to contain disharmony of law norms such as not to give the authority to general prosecutor to submit law effort of appellate and cassation upon the acquittal (*vrijspraak*) as written in the Article 67 and Article 244 of Criminal Code, so it creates the disharmony or injustice in the existing law norms about the acquittal (*vrijspraak*) arrangement, it seems that there is an empty norm, even there is a blur norm in the procedure of criminal with Criminal Code as the basis.

This research has purpose to give solution upon disharmony that happen in the acquittal (*vrijspraak*) and its law effort for the general prosecutor. Beside that, it also gives a scientifically input for the theoreticians and practitioners. In studying of this acquittal (*vrijspraak*), it uses some approaches, such as the statute approach, the analytical and conceptual approach, the case approach, the comparative approach, and the philosophical approach. The source of the researched law materials related with the primary, secondary, and tertiary law material.

The future perspective of acquittal (*vrijspraak*) arrangement construction related to appellate is: "To criminal case verdict given in the first stage court, the defendant or the general prosecutor is able and or has authority to submit the appellate request to the high court including for free verdict". And the construction of article for acquittal (*vrijspraak*) for cassation is: "To the criminal case verdict given in the last stage by other court except the Supreme Court, the defendant or general prosecutor is able and or has authority to submit the request for cassation to the Supreme Court including the acquittal (*vrijspraak*)".

**Key words:** formulation policy, acquittal, procecutor, criminal justice system.

## **I. Preliminary**

Handling a variety of legal cases that occurred in Indonesia, often considered to be ignoring the values of justice that should be felt and the hope of seeking justice. The legal process in the courts to date is considered not fully reflect the values of the intrinsic justice. Fair trial (due process of law) is expected by the Indonesian Criminal Justice System in its implementation has not been obtained by any justisiabellen. Justice as a "rare and expensive" is still far from the reach of the general public seeking justice.

Some facts of the case could harm the public's sense of justice in the form of a few vonnis judges to acquit the defendants. The situation triggers and invite the public reaction, the pros and cons, and even controversy. Coupled with the presence of some criminal cases having the feel of the settlement process and the eventual apostasy law gave birth perverted justice. Such cases are indicated containing shades of judicial mafia practices. Public accusations against the image of the judiciary with the increasingly

widespread negative connotations and often end up with harassment and contempt of the authority of the court or judge credibility. In the language of the judicial practice of law has occurred cotempt of court action. The symptoms appear as a result of one of the frequent causes less even considered the judge's decision does not reflect justice for the wider community.

Phenomenon occurs on the fact that the spotlight and review not only by the law of the common people, also from the scientific community as such law states Harkristuti Harkrisnowo:

"Culmination lack of justice (the absence of justice) as a description of the situation of law enforcement in Indonesia has entered the situation and alert law (vigilante justice). In other languages, the symptoms are a result of the neglect of the law (the law disgarding), disregard for the law (disrespecting the law), distrust in law, (distrusting the law), and in some case law abuse (misuse of the

law ) that had occurred by the parties in power or have access to power ".<sup>1</sup>

Not surprisingly, individual and collective conflict resolution tend to not be done through a legal settlement, because the public does not believe that the existing legal institutions are able to resolve their conflict based on justice.<sup>2</sup>

In line with the law enforcement situation illustrated above Moh. Ali concretize the state of the rule of law enforcement in Indonesia to borrow a phrase from Charles Sampford has occurred "the disorder of law", marked by widespread violence and unrest, people tend to resolve legal problems on their own with the term "self help", which is called the normative juridical vigilante or eigenrechting.<sup>3</sup>

In handling a variety of cases that occurred, often sticking a matter of public debate, because the court considered ignoring the values of justice that should be felt by the

people and justice seekers. Fair trial (due process of law) in the courts until now considered not fully reflect the values of justice. Such a situation, according to Bambang Sutyoso to mention that: Justice seems to be "expensive stuff" is far from the reach of the public.<sup>4</sup>

Any disharmony in the legal norms regarding substance KUHAP one acquittal, as expressed in Article 67 and Article 244 Criminal Procedure Code, which in principle governing legal remedies against the acquittal either appeal or cassation primarily by public prosecutors. Explicit formulation of the formal legalistic arrangements as follows, Code of Criminal Procedure Article 67: "The defendant or the prosecutor has the right to ask for an appeal against the decision of the trial court except against the acquittal, separated from all lawsuits and court decisions in the proceeding." Furthermore Article 244 Criminal Procedure Code expressly: "against the criminal verdict given on the last

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<sup>1</sup> Harkistuti Harkrisnowo, *Sistem Peradilan Pidana Terpadu (Intergrated Criminal Justice System)*, In: News Letter, KHN – Komisi Hukum Nasional Republik Indonesia, Edisi Mei, (Jakarta, 2002), page: 10.

<sup>2</sup> *Ibid*, hlm: 11.

<sup>3</sup> Achmad Ali, (I), *Keterpurukan Hukum di Indonesia, Penyebab dan Solusinya*, (Jakarta: Ghalia Indonesia, 2002), page: 63.

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<sup>4</sup> Bambang Sutyoso, *Reformasi Keadilan dan Penegakan Hukum di Indonesia*, (Yogyakarta: UII Press, 2010), page: 1.

level by other courts other than the Supreme Court, the defendant or the prosecutor may request an appeal to the Supreme Court examination except against the acquittal." in the essence of Article 67 of the Criminal Procedure Code contains things about the principle of legal efforts associated with acquittal. Like the defendant or the prosecutor is entitled to request an appeal, unless the acquittal can not be appealed. Only the form of rights, there is no form of authority granted by the legislature to the public prosecutor to file an appeal against the acquittal. Should conform to the theory of the prosecution authority as law enforcement, public officials, and as a state representative in the fight for the interests of every individual in the legal proceedings, which are clearly based on the various laws and regulations in performing its duties, functions, and authority. Like the law of judicial authority, the Criminal Procedure Code, and the law prosecution. Policies criminal (penal policy) to remedy the acquittal for the future

and the need to reformulate the construct of Article 67 and Article 244 Criminal Procedure Code, the authorizes attributive to the public prosecutor to file an appeal and the usual form of an appeal against acquittal. Similarly, formulated in the Code of Criminal Procedure Article of the criminal case with qualitative and quantitative qualifications can be submitted an appeal or an appeal by the public prosecutor against the acquittal.

Background exposure problems described above, the writer can formulate the problem as follows:

1. Why did not the prosecutor may be authorized by the Criminal Procedure Code to file an appeal and appeal against the acquittal?
2. How to formulate the legal construction of criminal law as a formal policy measures (penal policy) to remedy the acquittal order to realize a fair trial (due process of law) in the Indonesian Criminal Justice System ius constituendum perspective?

## II. RESEARCH METHODOLOGY

### 2.1 Research Type

Dissertation research is classified into types of normative legal research or legal research library, because legal research is done by researching the literature (library research) consisting of primary legal materials and supported by secondary legal materials.

According Soerjono Soekanto and Sri Mamudji, normative legal research or the literature include:

1. Study of the principles of law.
2. Systematic study of the law.
3. Research on the level of vertical and horizontal sync.
4. Comparative law.
5. Legal history.

In connection with the above classification of the normative legal research involves the study of vertical sync level above the norm is disharmony between the decision of the Minister of Justice with the Law. A legislation that belong to the primary legal materials. By examining several laws such as Law.

8 of 1981 (Criminal Code), Law no. 48 of 2009 (Judicial Authority Law), Law no. 3 of 2009 (Supreme Court Act), and the Law. 49 of the General Court. Particularly relevant to an appeal or an appeal against the acquittal (*Vrijspraak*) by the Public Prosecutor in the criminal justice system is integrated.

### 2.2 Approaching Methodology

According to the characteristics and nature of normative research (literature), so in this study will use multiple methods approach, including:

- The Statue Approach
- The Analytical and Conceptual Approach
- The Case Approach or Case Approach.
- The Comparative Approach
- Philosophical Approach namely:
  - a. *Ontology*
  - b. *Axiology*
  - c. *Epistemology*
  - d. *Teleology*
  - e. *Ideology*
  - f. Logic
  - g. *Science*

### 2.3 Sources of Legal Materials

Law research is normative, then the type of law materials which prevalent used are:

- a. Premier Law materials.
- b. Materials-materials secondary legal.
- c. Materials-legal materials tertiary.<sup>5</sup>

In connection with this dissertation research the legal normative use of legal source material :

1. Primary Legal Materials, such as:
  - Law no. 8 of 1981 on Criminal Procedure.
  - Law no. 48 of 2009 on Judicial Power.
  - Law no. 16 of 2002 on the Attorney
  - Law no. 49 of 2009 on the General Court
  - Law no. 3 of 2009 on the Supreme Court
  - Decree of the Minister of Justice of the Republic of Indonesia No.: M.14.PW.07.03 1983, number 19.
  - Several Supreme Court Jurisprudence
  - Decisions of the Court as the District Court (Justice Level I) and the decision of the Supreme Court (MA) or appeal the decision.

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<sup>5</sup> Ronny Hamijoyo Soemantri, *Metode Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1998), page : 11-12

2. Secondary legal materials, which provide a description of the primary legal materials.
3. Legal materials tertiary, in relationship this research concerns such as dictionaries or encyclopedias.

### 2.4 Legal Materials Collection Methods

This study for the collection of legal materials using a systematic method, which is a collection of material legislation.

### 2.5 Technical Analysis of Law Material

Using analytical as technical:

- Technical description
- Techniques of interpretation
- Technical evaluation
- Techniques argument
- Engineering systematization
- Method of construction law

## III. DISCUSSION

### 3.1 Existence of Verdict In Criminal Justice System Perspective In Indonesia

#### 3.1.1 Basic understanding of conception Verdict

KUHAP recognize three decisions (vonnis) judges. Judge's ruling that a decision containing liberation (vrijspraak), Article 191 paragraph (1) Criminal Procedure Code, the decision contains a release of all legal claims (ontslag van alle

rechtsvervolging), Article 191 paragraph (2) Criminal Procedure Code, and the decision containing a punishment (veroordeling), Article 193 paragraph (1) Criminal Procedure Code. Verdict against the three forms above, one of which became the core of the study is acquittal, or the judge's decision with the contents containing the release. Acquittal in the Continental European legal family is taken from the translation of the Dutch language in the family *vrijpraak* or common law / anglo saxon commonly known as the acquittal which also means 'acquittal'.<sup>6</sup>

Law enforcement acted on the basis Procedure Code, in accordance with the letter and spirit of Article 191 paragraph (1) Criminal Procedure Code only familiar with the term "free decision", according *vrijpraak* original meaning of the word (the Netherlands), and acquittal (UK) is. Acquittal is a series of two words, namely "verdict", and "free". Said the verdict means the Latin etymology of the word "vonnis", which is the scope of the law means is the end result of the examination of the case in court

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<sup>6</sup> Lilik Mulyadi (I), *Putusan Hakim Dalam Hukum Acara Pidana, Teori, Praktek, Teknik Penyusunan dan Permasalahannya*, (Bandung : PT. Citra Aditya Bakti, 2007), page : 40.

P recognize three decisions (vonnis) judges. Judge's ruling that a decision containing liberation (*vrijpraak*), Article 191 paragraph (1) Criminal Procedure Code, the decision contains a release of all legal claims (*ontslag van alle rechtsvervolging*), Article 191 paragraph (2) Criminal Procedure Code, and the decision containing a punishment (*veroordeling*), Article 193 paragraph (1) Criminal Procedure Code.

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### **3.1.2 *Vrijpraak / acquittal, As The term of the Constituent***

Criminal Procedure Code that the legislature has committed in constructing the acquittal substance as set forth in the text of Article 67, 244, 233 paragraph (1) Criminal

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<sup>7</sup> Leden Marpaung (I), *Proses Penanganan Perkara Pidana*, (Jakarta: Sinar Grafika, 1992), page : 14.



Procedure Code only uses standard term "acquittal". Without any frills affixes word behind the word acquittal.

Disconception acquittal by forming the draft Criminal Procedure Code to expressly use the term acquittal (corresponding meaning etymology meaning *vrijspraak / acquittal*), without qualification pure and impure. This was said by the government VB Da Costa from Golkar faction, by outlining the purpose of Article 67 and Article 233 paragraph (2) of the Criminal Procedure Code interpretatie historical angle as follows:

1. Purpose of Article 67 and Article 233 paragraph (2) of the Criminal Procedure Code the formation history of these provisions can not be separated from the difficulty of interpreting (get interpretation) the right of acquittal. If there is no pure free qualifying the original draft of Article 67 is Article 64 uses the term: "liberation from accusation" is taken from Article 19 of Law no. 14 of 1970, it also took on the formulation of Article 6, paragraph (2) of Law 1951 Drt *mutatis mutandis*.
2. Former Act does not use the term "liberation from accusation", the purpose is not known term and provision of "liberation pure" and "impure", as known in the doctrine and jurisprudence.

Former Act requires the term "free" means without qualifications and pure with impure.<sup>8</sup>

The existence of the Criminal Procedure Code only legislator to formulate the term "acquittal (*vrijspraak / acquittal*)" with the meaning of acquittal without qualifying it pure with impure, Martiman Prodjohamidjojo found:

1. Former Act only want the one term that is: "acquittal".
2. To avoid the difficulty of proving the argument that free is not pure.
3. Avoid the use of improper interpretation would not be a pure acquittal.
4. The term free pure and impure known only in doctrine and jurisprudence.<sup>9</sup>

Phenomenon and the fact that surfaced that law enforcement fair (due process of law), which marked one of them is the rise of acquittals in cases large and small, the government responded through the release of Justice Decree No.. M.14.PW.07.03 1983 dated December 10, 1983 jo No. MA Jurisprudence. Reg 275 K/Pid/1983 dated December 15, 1983. The

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<sup>8</sup> Martiman Prodjohamidjojo (I), *Komentar Atas KUHP*, (Jakarta: Pradnya Paramitha, 1984), page : 50-51.

<sup>9</sup> *Ibid*, page : 52.

juridical basis as an executive policy initiatives with consideration for the situation, the condition of truth and justice, there was a paradigm addressing acquittal by a judge to begin to be corrected, by means of legal remedy. And started to change the mindset of the essence and meaning of acquittal (*vrijspraak*), with no additional qualifications are not pure free and pure free .

However, in principle, that according to the former Criminal Code definition or the term "free" is free in the sense *vrijspraak* or acquittal. Which in the opinion of Marpaung Leden, *vrijspraak* verdict is that the defendant was not proved by the proceedings unauthorized acts which indicted him .... and so on.<sup>10</sup>

View of the legislator mindset when forming the essence editorial article by Mustafa Bachsan stated: "Agency of the legislators (Parliament) established common law (abstract), while the judges forming special law, applicable to certain people (concret)...."<sup>11</sup>

Respect of legislators when formulating Article 67 in conjunction with Article 244 Criminal Procedure Code, which is only seen in terms of

"rights" for the acquittal of the accused. And did not provide an opportunity for the prosecution authorities to make efforts in order to fight for the rights of law seeking justice, without anticipating possible developments in the future of law enforcement.

Because its products are designed legislation is still abstract, then the reasonable development of preventive law after the enactment of Article 67 of the Code of Criminal Procedure 244 jo grow much controversy, disagreement, pros and cons, even triggering widespread impression of unfairness in the judge's decision with qualified exemption (*vrijspraak*).

### 3.1.3 Decision-Free Pure

The term pure acquittal, thrive on practitioners. Legal practitioners in law enforcement (due process of law) based on the development of doctrine and jurisprudence. Definition of "free" is a colloquial term, which includes also confused by the verdict loose sense.

Correlation explanation of Article 191 paragraph (1) of the

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<sup>10</sup> Leden Marpaung (II), *Putusan Bebas Masakah dan Pemecahannya*, (Jakarta: Sinar Grafika, 1995), page: 23.

<sup>11</sup> Bachsan Mustafa, *Sistem Hukum Indonesia Terpadu*, (Bandung : PT Citra Aditya Bakti, 2003), hlm: 88.

Criminal Procedure Code with pure free verdict, not proven beyond reasonable doubt by the judges in the process of proof at trial, because the 2 (two) things such principles:

1. The absence of evidence that the minimum set by law (at least two valid evidence), for example, there is only the testimony of a witness or a defendant's instructions or information only, not corroborated by other evidence.
2. Minimum proof above have been met, but the court was not convinced of the guilt of the accused.
3. One or more elements of criminal liability, criminal acts that are against the law, able to be responsible, deliberate or negligent no excuses can not be proven.<sup>12</sup>

In connection with the existence of Article 67 and Article 244 Criminal Procedure Code and the Decree of the Minister of Justice of the Republic of Indonesia Number: 1983 M.14.PW.07.03 item 19 on Supplementary Guidelines for Implementation of the Criminal Procedure Code causing disharmony norm (norm setting are not) fully and fairly on the right and authority an

appeal of the prosecutor against the acquittal (leemeten van normen / vacuum of norm) to the Criminal Procedure Code.

Also in the Code of Criminal Procedure Article 244 specifically birth vagueness or lack of clarity makes the essence of the article, when it was closed to the public prosecutor filed an appeal against the acquittal (vrijspraak).

But the publication of Decree of the Minister of Justice No.. M.14.PW.07.03 1983, the Public Prosecutor is granted / allowed by the Supreme Court, so that the decision of the Supreme being jurisprudence.

First jurisprudence on this subject contained in the Supreme Court decision No.. K/Pid/1983 275 dated December 15, 1983. Prosecution guidelines in this appeal refers to the Criminal Procedure Code Guidelines Additional attachment point 19 which states: "Against acquittal can not be appealed, but based on the circumstances by operation of law, justice and truth, against the acquittal may be requested cassation".

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<sup>12</sup> Martiman Prodjohamidjojo (II), *Kemerdekaan Hakim Keputusan Bebas Murni (Arti dan Makna)*, (Jakarta : Simplex, 1984) page : 24

Any breach of Article 244 of the Criminal Procedure Decree of the Minister of Justice of Republic of M.14 PW.07.03 1983 dated December 10, 1983 the existence of discrepancies over again will add to the legal norms of the legal efforts for acquittal (*vrijspraak*) by the Public Prosecutor.

### **3.1.4 Free Verdict Not Pure**

Another term exemption is not pure essence, more attached and appeared to the common law practitioners. According to M. Yahya Harahap, explains: impure exemption is considered an acquittal if the exemption is not pure :

- Exemption decision was based on a mistaken interpretation of the predicate offenses referred to in the indictment..
- In the imposition of acquittal, the court has exceeded its authority, whether it involves lending authority absolute or relative competence, as well as the lending authority within the meaning of the exemption if the decision had been taken into account and incorporated elements of non-judicial.<sup>13</sup>

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<sup>13</sup> M. Yahya Harahap (III), *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, (Jakarta: Sinar Grafika, 2003), page : 545.

## **3.2 Judging from the Nature of decision-Free Multi Dimensional Theoretical**

### **3.2.1 Decision Free Review of Criminal Law Dimension Material**

Contents according to the criminal law as public law always protect the dignity of every individual as a supporter of the rights and duties before the law. Criminal law in the main function is to uphold truth and justice. For those who break the law will be liable to a penalty. In contrast to those suspected and accused of having committed a crime, but after the trial demonstrated through proven not guilty, then he will be freed from legal charges.

### **3.2.2 Decision Free Review of Criminal Law Dimension**

One type of court (judge) criminal as expressed in Article 191 paragraph (1) is the decision of the Criminal Code exemption (*vrijspraak*).

Are nominally in judicial practice acquittal caused by two (2) main things like :

1. Non-compliance with the minimum evidentiary requirements as required by Article 183 of the Criminal Procedure Code. For example: in the examination at trial, presented only one witness only and is not supported or corroborated by other evidence, while the defendants deny the charges hard.
2. Even if the evidence has met the minimum requirements (the two (2) evidence), but the judge did not gain confidence in the guilt of the accused. For example: in an offense charged, the element of intent can not be proven performer. Or between the existing evidence does not sinkrun with the facts revealed in the trial.

Dimension of the criminal procedure law allows acquittal handed down as a result of minimum proof is not met, or met the minimum evidence but the judge did not believe the defendant's fault. So the defendant should be acquitted of all charges of legal.

### 3.2.3 Free decision of the Human Rights Dimension

The principle of free-living or independent dikonsepsi John Locke a figure in the field of philosophy, statesmen, and leaders in various life sciences which have 1632-1704 year metelakkan principles of natural human rights. The latter is known to the rights of the most essential in the life of a man called with (human rights / human rights). The rights of human beings from birth it is the right to life, liberty and property. John Locke claimed that humans have a natural right which meant it was the right to life, liberty and property. Independence interpreted in the perspective of human rights with freedom (liberty).<sup>14</sup>

In line with John Locke, leaders in the field of human rights did Jefferson express his conception in the field of human rights with respect to the rights of every human principle. That man was created by the creator (the creator) gives rights to people who should not be taken by anyone.

The right of one of them the right to freedom (liberty), and followed by the destination and the

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<sup>14</sup> J.J. Schmid, *Ahli-Ahli Pikir Besar Tentang Negara dan Hukum (from Plato-Kant)*, translated : R. Wiratno dkk, (Jakarta : PT. Pembangunan, 1965), page : 201-202.

right, which is happiness / well-being for humans.<sup>15</sup>

### **3.3 Public Prosecutor in the Criminal Procedure Code Authority Not Given To File Legal Action Against Appeal and Cassation Decision-Free**

#### **3.3.1 Article 67 of the Criminal Procedure Code regarding the formulation About Remedies Appeal in Decision-Free**

Article 67 of the Criminal Procedure Code core is not given a chance for the authority of the Public Prosecutor to file an appeal against the acquittal. Conception of the Criminal Procedure Code which legislators do not give the prosecutor authority legally historically can be found and studied through the minutes of the Draft Criminal Procedure Code of 1981. Article 67 of the Criminal Procedure Code currently or originally terumus original draft of Article 64 bill.

In the opinion of the House Committee spokesman prac oners III VB da Costa when it stated that the purpose of Article 67 and Article 233

(2) Criminal Procedure Code of the history of these provisions can not be separated from the proper interpretation of the acquittal. Further stated in Article 67 of the Criminal Procedure Code the original design as expressed in Article 64 of the bill uses the term "liberation from accusation", which is taken over from the formulation of Article 19 of Law No.. 14 of 1970 on the Principles of Judicial Power. Similarly, Judicial Authority Law took over the provisions of Article 6, paragraph (2) of Law 1951 Drt mutandis.

Based on the establishment of the Criminal Procedure legislators formulating Article 67 of the Criminal Procedure Code as the basic idea (ratio legislators) explicit and implicit in the minutes / draft / draft Criminal Procedure Code, the legislator's stance looks like, among others :

1. Acquittal by the district court (court of first instance) as if it is final and binding.
2. Legislators theoretical-idealistic stance without thinking of the practical aspects of the fast

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<sup>15</sup> A. Bazar Harahap, Nawangsih Sutardi, *Hak Asasi Manusia dan Hukumnya*, (Jakarta : Pecirindo, 2007), page : 9.

growing and multidimensional effects such as the influence of judicial mafia practices.

3. Legislators in mengkonsepsi Article 67 of the Criminal Procedure Code was adopted soul HIR which adopts an individualistic as the West understand the characteristic features of the Continental European legal family.
4. Legislators Criminal Procedure Code especially in the formulation of Article 67 Criminal Code, which is conceptually patterned individualistic, just looked criminals are protected. Without the other party specifically authorizes prosecutors to conduct corrections on the decision handed down the judges, especially regarding free vonnis.

### **3.3.2 Concerning the formulation of Article 244 Criminal Procedure Code On Top Remedies Cassation Decision-Free**

Legislators in formulating the Code of Criminal Procedure Article 244 Code of Criminal Procedure by

not giving the opportunity and the authority of the prosecutor to file an appeal against the acquittal in the minutes or proposed design involves several considerations such as:

1. Examination of the case is not an appeal court level III, the Supreme Court is the final level of the judiciary in Indonesia.
2. Cassation is the judicial judex juris (law enforcement straighten) the lower courts (judicial judex facti) or to investigate the case that an appeal filed on:
  - a. If the rule of law are not treated by the judge or
  - b. There is a mistake in treating the rule of law, or
  - c. If the judge exceeded the bounds of power..
3. If there are mistakes or errors of judgment the court than the Supreme Court decision can be made extraordinary legal remedy in the form of an appeal in the interest of the law by the Attorney General to the Supreme Court.<sup>16</sup>

Based on the minutes or draft / draft Criminal Procedure Code regarding the formulation of Article 244 Criminal Code reveals the essence of the law substantially related events such as the following cassation :

1. Prosecutor as state agencies, government agencies and law

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<sup>16</sup> Risalah RUU KUHAP Tahun 1981.

enforcement are not authorized by the Code of Criminal Procedure legislators to file an appeal against acquittal.

2. MA function as an institution under the control of the special court verdict regarding free no more legal channels, and MA in performing control functions do not play a role.
3. When there is a court verdict in facti judex indicated astray, it will lead to apostasy law or judicial create perverse

Void of legal norms without giving a chance for an appeal and / or appeal of the prosecutor against the decision freely, felt not last long in law enforcement in Indonesia. Criminal Procedure Code applies officially on December 31, 1981, on December 10, 1983 out of the Minister of Justice Decree No.: 1983 M.14.PW.07.03 number 19.

### 3.3.3 Free verdict of Dimension Doctrine

Experts argue with justification of each of the following acquittal :

1. Van Bemmelen, quoted by Prof.. Moeljatno .... by memorie van

toelichting that "defendant's acquittal verdict perceived as an acquired right and should not be contested".<sup>17</sup>

2. Soedirjo states that "street legal acquittal door closed".<sup>18</sup>
3. Frans Hendra Winarta, outlining and linking human existence in perspective of humanitarian and human rights that will relate to the rights, duties and freedoms of course ... which can not be separated (inalienable right) are inherently and deeply rooted in man.<sup>19</sup>
4. Prof Oemar Seno Adji (former Chief Justice), in connection with the acquittal, stating: "for a defendant's acquittal, which can not be proven criminal acts alleged against him over a major factor, then the acquittal as an acquired right and eliminate the criminal act the accused should not be the basis of an appeal request as stated by the Constitution and the Judicial Power Principal Procedure Code (Article 244 Criminal Code in conjunction with Article 67)"<sup>20</sup>

Implied some opinions or views of legal experts in the doctrine of the conception of the idea of gift giving acquittal for the defendant

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<sup>17</sup> Harun M. Husein (I), *Kasasi Sebagai Upaya Hukum*, (Jakarta: Sinar Grafika, 1992), page : 117.

<sup>18</sup> Soedirjo (II), *Jaksa dan Hakim Dalam Proses Pidana*, (Bandung: PT, Citra Aditya Bakti, 1985), page : 88.

<sup>19</sup> Frans Hendra Winarta (III), *Bantuan Hukum di Indonesia Hak Untuk Didampingi Penasehat Hukum Bagi Semua Warga Negara* (Jakarta : PT. Elex Media Komputindo, 2010), page : 71-72.

<sup>20</sup> Atang Ranumihardja, *Hukum Acara Pidana*, (Bandung : Transito, 1980), page : 116-117.



that he regarded as a right which must be received by the essence of the principle of individual human nature

In order to get that as a reason for the doctrine does not provide authority for the Public Prosecutor filed an appeal and the appeal is conceptually oriented aspects such as substance.:

1. Human Rights (the defendant).
2. For the sake of legal certainty.
3. Because the provisions of the Act.
4. Uphold the principles of justice Trilogy.
5. Avoid stacking cases at higher levels of the judiciary.
6. Authorities independence impartiality of judges in decisions by the judges as a manifestation of Independence Judicial Power.
7. As a form of implementations the judge as corongnya legislation, whatsoever its verdict impressed should not be rebutted (Hakim nature legistik) not yet shows the nature the judge who legalistic.

### **3.3.4 Verdict Against Free Remedies Jurisprudence Perspective**

According to the findings of research in jurisprudence, there are three (3) types of the Supreme Court decision in respect of legal action against the acquittal with such Supreme Court attitude:

1. Supreme Court to receive and examine and decide themselves on appeal that the prosecutor applied for Decision-Free.
2. Supreme Court declared the appeal of the Prosecutor against the decision unacceptable Free (niet onvankelijke verklaard) / NO.
3. Supreme Court rejected an appeal filed against the decision-Free Public Prosecutor.

### **3.3.5 Correlation and urgency of Theories of Law in Constructing Verdict Against Free Remedies For Fair Litigation (Due Process of Law) Ius constituendum Perspective.**

Some legal theory and other theories in the field of science that is used as a knife in reviewing

acquittals analysis and legal efforts, using theories :

1. Theory of Justice
2. Harmonization of Legal Theory
3. Theory of Punishment
4. Proof theory
5. Theory of Authority
6. Control theory
7. Theory of Criminal Law Policy
8. Reward theory
9. Theory of Legal System

#### **IV. CLOSING**

##### **4.1 Conclusion**

After the authors of the discussion and analysis of the issues presented based on a theoretical foundation, the basic theory and research findings, it can be concluded as follows :

4.1.1 The public prosecutor is not authorized by the Code of Criminal Procedure to file a legal action against the acquittal, either appeal or cassation. Terminated due to acquittal by the judge to the defendant regarded as an absolute right and can not be done again by any legal means, including public

prosecutors. If the acquittal is given to proposed legal action, it would be difficult for the prosecution to prove the impurities on the acquittal. Attitude and consideration as it would lead to apostasy law, justice imbalance, which raises the judicial misguided or mislead the defendant and the prosecutor. When the judge divonnis acquittal does not contain any indication untrue, inaccurate, manipulation procedures and evidentiary requirements or contain indications of judicial mafia practices, it would create inequities in the judicial process, because the prosecution was not given the authority to control the course of a fair trial (due process of law) is performed by an integrated criminal justice system (integrated criminal Justice system).

4.1.2 The formulation as a form of legal construction substance remedy against the acquittal

as a form of penal policies (penal policy) in the CNS Indonesia constituendum ius perspective by giving forsi "authority" for prosecutors to file written legal efforts in the formulation of the Code of Criminal Procedure Article, either the form of an appeal or an appeal against the acquittal. Because of all this, although prosecutors had since December 15, 1983 to file an appeal against the acquittal, but essentially the jurisprudence. The exit of the jurisprudence of the penal policy of the government through the Ministry of Justice of the Republic of Indonesia, the Minister of Justice issued Decree No: M.14.PW.07.03 dated December 10, 1983.

#### **4.2 Recommendation**

4.2.1 In order for former Act to revise, reformulate, and constructs the Code of Criminal Procedure article about setting up legal action

against the acquittal by giving authority to the prosecutor filed an (ordinary) appeal and cassation.

4.2.2 In order for the Code of Criminal Procedure Article regulated and defined criteria for qualitative and quantitative crimes are acquitted to be filed an appeal and an appeal by the public prosecutor.

#### **4.3 Stubs / Ideas**

Pioneering theory acquittal acquittal pollinated essence of truth and justice, based on the four aspects of:

4.3.1 Philosophical justice, intended beresensi acquittal acquittal on the nature of the intrinsic (ontological), and in accordance with the procedural provisions of procedural law (epistemological), as well as acquittal contain the true values (axiological), and also based on the philosophy of the nation's view of life

- Indonesia based on Pancasila (ideological).
- 4.3.2 Legal justice, for the rule of law of acquittal based procedural right to reach the real truth with qualitative and quantitative criteria against which a criminal case can be appealed and the appeal by the public prosecutor..
- 4.3.3 Moral justice, the judge acquitted guided by morals, ethics, and honesty on the essence of religion with elements of judicial self-restrain, conscience judgment, and not influenced by political / pressure judgment. .
- 4.3.4 Social justice, the judge acquitted justiciabellen broadly based interests to avoid a false acquittal of the accused or misleading..
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