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Juridical Review by Public Prosecutors in the Criminal Justice System

Dinda[1], La Ode Awal Sakti[2], Irabiah[3]

[1,2,3]*Faculty of Law, Universitas Sembilanbelas November, Kolaka, 25163, Indonesia*

** Corresponding author's e-mail : irajunus@gmail.com*

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ABSTRACT

Constitutional Court Decision Number 20/PUU-XII/2023 states that article 30C letter h and explanation letter h of Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia are contrary to the Constitution of the Republic of Indonesia Year 1945 and have no binding legal force. So this is considered contrary to the purpose of law and legal principles, namely the principle *of equality before the law* and the principle *of equality of arms principle*. Therefore, this encourages the author to analyze the concept of judicial review carried out by the Public Prosecutor who actually represents the victim and even the state. The writing of this thesis uses normative juridical research methods with methods of approaching laws and regulations, cases, historical and conceptual. This legal research found that the Criminal Procedure Code for victim protection has not been optimal compared to perpetrators of crimes, where the Criminal Procedure Code only identifies or tends to lead to perpetrators only. Then, with the decision of the Constitutional Court No. 20/PUU-XII/2023, it has the effect of closing the prosecutors authority to be able to apply review as a return of position to the convict.

1. Introduction

According to Gustav Radbruch wrote that in law there are 3 (three) basic values, namely:[1] justice, expediency and providing legal certainty, these three things are the main objectives in law enforcement. The application of the law is basically in accordance with the provisions of the law that apply to both citizens and state institutions required to submit to and be bound by the law (*Ius Constitutum*).

One form or characteristic of a state of law is that there is a criminal justice institution. The criminal justice institution consists of police/investigators, prosecutors/prosecutors and public society/criminal

[1]Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning", *Crepido Journal,* Vol. 01,No.01 (July 2019), p. 14.

enforcement institutions. However, especially the Prosecutor's Office of the Republic of Indonesia as one of the State Institutions that exercise state power in the field of law enforcement has an important and vital role. Then, the enforcement of this law is carried out freely (moral independence) from the influence of other parties' power. The Prosecutor's Office is the controller of the case process (*dominus litis*) which means that no other institution has the right to carry out prosecutions as stated in article 140 paragraph (2) of the Criminal Procedure Code.[2]

The Code of Criminal Procedure (KUHAP) in Indonesia consists of 2 (two) legal remedies, namely ordinary legal remedies and extraordinary legal remedies. For ordinary legal remedies, they are divided into 2 (two) parts, namely "appeal" and "cassation" while extraordinary legal remedies consist of 2 (two) parts as well, first is the examination of the Cassation Level for legal purposes and the second is Review of Court Decisions that have obtained permanent legal force. Cassation for legal purposes is filed if there is no ordinary legal remedy that can be used,[3] The application for cassation is submitted by the attorney general through the clerk who has decided a case after passing through the first instance, accompanied by a note that is the reason, then the clerk forwards it to the interested person (Article 260 of the Code of Criminal Procedure), then a copy of the decision of the Supreme Court is submitted to the Attorney General and to the court concerned, accompanied by a case file (Article 261 of the Code of Criminal Procedure) so that it is generally the same as ordinary cassation, except in cassation for the sake of this law legal counsel is no longer involved.[4]

In criminal justice practice in Indonesia, the public prosecutor acts as a state attorney who replaces the victim and the public interest should be given protection because of the victim's position as the aggrieved party. Where the Prosecutor's Office has the authority as a government institution in Pre-Prosecution and Prosecution. This is because the prosecutor's office acts as the front line representing victims of crime in law enforcement in order to achieve justice. Then in its development, violations of rights committed by someone not only have an impact on the victims themselves, but can also have an impact on the wider community.

The Criminal Procedure Code has not discussed the importance of protecting witnesses and victims. Protection of witnesses and victims is only found in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims. It was this regulation that introduced the law into the criminal justice system in Indonesia. The principle *of equality before the law* is one of the characteristics of the rule of law as well as for victims who must receive legal services in the form of legal protection. Not only suspects or defendants are protected their rights, but also victims and witnesses must be protected which sometimes their rights begin to be neglected. This can be seen in articles 50 to 68 of the Criminal Procedure Code only regulating the protection of suspects or defendants to get protection from various possible human rights violations while legal remedies for victims to fulfill the aspirations or satisfaction of victims to take legal remedies have not been regulated in the Criminal Procedure Code.

The first PK was requested by the public prosecutor. The consideration of the Pakpahan decision became widely referred to by the decision that accepted and granted the request for review by the public prosecutor, for example the case of Joko Soegiarto Tjandra (decision No. 12 PK/Pid.Sus/2009). Interestingly, there are many other cases or cases where the supreme court carries the attitude of not

[2] Article 140 paragraph (2) of Law No.8 of 1981 concerning the Code of Criminal Procedure.
[3] Andi Hamzah, *Indonesian Criminal Procedure Law*, Second Edition (Jakarta: Sinar Grafika, 2017), p. 303.
[4] Ibid.,p. 304.

accepting judicial review by the public prosecutor, sometimes the supreme court does not accept PK from the prosecutor due to different considerations, for example, in the case of Mulyar bin Samsi (Decision No. 84 Pk / Pid / 2010).[5] This is because the supreme court relies on the Criminal Procedure Code that those who have the right to apply for PK are convicts or their heirs. However, it is different from Law of the Republic of Indonesia Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, which inserts additional authority for prosecutors to apply for Judicial Review (PK) contained in article 30C letter h "applying for judicial review", which in full reads as follows "Review by the prosecutor's office is a form of duty and responsibility of the prosecutor's office representing the state in protect the interests of justice for victims, including for the state, by placing the prosecutor's authority proportionately on an equal and balanced position (*equality of arms principle)* with the right of the convicted person or his heirs to apply for judicial review.

But now, after the Constitutional Court Decision No. 20/PUU-XII/2023, a firm regulation has been born that contains regulations or norms that the door to Review by the JPU has been closed with a meeting emphasizing that those who have the right to apply for PK are "convicts" or "heirs" (article 263 paragraph 1 of the Criminal Procedure Code) which means that prosecutors do not have the authority to submit PK to the Supreme Court (MA). Where, in the judge's decision stated that "Article 30C letter h and the explanation letter h of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia are contrary to the Constitution of the Republic of Indonesia Year 1945 and have no binding legal force".

Then, the author's research focus also juxtaposes it with issues related to justice or injustice as stated by the Constitutional Court in its legal considerations which states "Different interpretations of the norms of article 263 paragraph (1) of the Criminal Procedure Code actually cause legal uncertainty and injustice". Because according to the author, the inability of the Public Prosecutor to submit a judicial review effort has the potential to narrow the duties and responsibilities of the Prosecutor representing the state in protecting the interests of justice for victims, including for the state. Where legal certainty always clashes with justice, because the purpose of the Public Prosecutor (JPU) is to realize justice in accordance with the goals and ideals of the State of Indonesia as a State of law so that legal certainty, justice and expediency must be balanced with each other.

2. Method

The type of research that will be used by researchers is normative juridical research which includes the systematics of a law. Normative legal research (*legal research*) is usually "only" a dukumen study, which uses sources of legal materials in the form of laws and regulations, court decisions / decisions, legal theories and opinions of scholars. Another name for normative legal research is doctrinal legal research, also referred to as literature research or document study.[6]

In the normative legal research method, there are several kinds of approaches, namely the statutory approach, the case approach, the historical approach and the conceptual approach. While the sources of legal materials used are as follows:

a. Primary legal materials

[5]Asep Nursobah, *Judicial Review by the Prosecutor,* (https://kepaniteraan.mahkamahagung.go.id/artikel-hukum/2045-peninjauan-kemsbali-oleh-jaksa-binziand-kadafi, was diagnosed on October 21, 2023, 08:42 WITA).

[6] Muhaimin, *Legal Research Methods,* (Mataram: Mataram University Press, 2020), p. 45

The primary material itself is the main legal material and as the main basis for writing this research. The primary legal materials used in this study are binding legal materials, including:

1. The Constitution of the Republic of Indonesia of 1945;
2. Law Number 8 of 1981 concerning the Code of Criminal Procedure;
3. Law Number 48 of 2009 concerning Judicial Power;
4. Law Number 3 of 2009 concerning the Supreme Court;
5. Law Number 8 of 2011 concerning the Constitutional Court.
6. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
7. Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia.

In addition to the above regulations, the author also uses an analysis of the judge's decision approach, this decision aims to assist the author in researching legal issues in this study, as for the decision that the author uses, namely:

1. Supreme Court Decision Number 55 PK/Pid/1996.
2. Constitutional Court Decision Number 33/PUU-XIV/2016.
3. Constitutional Court Decision Number 20/PUU-XXI/2023.

b. Secondary Material

Secondary legal materials in this study are all legal materials obtained from conducting literature studies both through the internet, book literature, research results, works from legal circles, theses, legal journals and expert opinions.

c. Tertiary Materials

Tertiary legal materials are legal materials that provide instructions or explanations to primary legal materials and secondary legal materials such as the Big Indonesian Dictionary, English Dictionary and Legal Terms Dictionary.

The technique used to obtain primary legal material in this writing is carried out by searching literature studies or document studies related to laws and regulations governing parties who can apply for judicial review. As for obtaining secondary legal materials, the author obtained them from literature studies in libraries, downloading various books, articles, theses and journals on the internet related to the topic in this study. The research uses data analysis in this study, namely qualitative analysis methods.

3. Result and Discussion

1.1 The concept of judicial review by the public prosecutor in the perspective of victim protection

1. Public prosecutors have the same rights as convicted parties in the criminal procedure law

The Code of Criminal Procedure does not provide a definition of criminal procedural law but its parts such as investigation, prosecution, trial, pretrial, court decision, legal remedy, seizure, search, arrest, detention and others. However, experts define criminal procedural law, one of which according to Prof. Dr. Wirjono Prodjodikoro, argues that criminal procedural law is a regulation that regulates how government equipment carries out guidance, obtains court decisions, by whom the court decision must be implemented, if there is a person or group of people who commit criminal acts.[7] . To find the truth, there are several stages in the process. In order to protect the rights of the parties in the process, criminal procedural law has several principles that must be applied.

[7] Riadi Asrab Rahmad, *Criminal Procedure Law*, First Print (Depok: Rajawali Pers, 2019), p. 1.

Then, the Criminal Procedure Code when examined both in thought and view currently seems to emphasize too much on the protection of the rights and interests of suspects, accused and defendants, but very poorly paid attention to the efficiency of the mechanism for solving criminal cases themselves by law enforcement officials or victims of abuse of power of law enforcement officials.[8]

In article 263 paragraph 1 of the Code of Criminal Procedure, if correlated with the principles contained in the criminal procedural law, it is not in accordance with especially the principle of *equality before the law* or the principle of equality before the law. In this principle, as written in article 4 paragraph 1 of Law No. 48 of 2009 concerning judicial power, explains that "The court adjudicates according to law without discriminating people", it means that everyone is treated equally or equally by impartiality, not differentiating social level, race, ethnicity, religion, rich, poor and others.[9]

Then in addition to the principle of *equality before the law*, the universal principle in international standards of modern criminal justice believes in the principle *of equality of arms* principle or the principle of equal arms (equality of opportunity) for both parties who "fight" at a criminal trial, namely the public prosecutor and the defendant or his legal counsel. The same opportunity here is in all aspects, both the opportunity to file charges, charges, evidence, and supporting and replicating witnesses as well as the opportunity and opportunity for the defendant to submit exepsies, pledoi, duplics, buki tools and evidence that supports his defense with the same amount allowed by the judge to the public prosecutor.

The principle in criminal procedural law is one of the benchmarks for whether the court has been fair in trying a case. Both principles essentially state that in all judicial proceedings the parties must be given equal opportunities. In conclusion, the Public Prosecutor can apply for judicial review based on one of the principles in *Fair Trial* or fair and impartial trial, namely *the equality of arms principle* and the principle in criminal procedural law, namely *equality before the law*. The argument from this is that both principles call for and even require the judicial process to be impartial and provide equal treatment and opportunity in every procedure in the trial. It is on the basis *of this principle of equity of arms* principle and *equality before the law that the* Prosecutor and the Convicted or their heirs can apply for judicial review. The legal effort is carried out by the Public Prosecutor to realize the purpose of the criminal procedural law, namely seeking material truth or the true truth to achieve justice.

Referring to the previous regulation governing the issue of Judicial Review, namely article 4 paragraph 1 of PERMA No. 1 of 1969 as mentioned in the background of chapter 1 of the introduction which explains that the party who can apply for Review is the interested party or the Attorney General. If examined according to the parties in the trial are the Prosecutor and the Convicted / defendant. Thus, the article has given equal rights to both parties and has fulfilled the principles in the criminal procedure law as mentioned by the author. However, the article was not used as a basis for consideration in accepting the application for judicial review by the Public Prosecutor.

[8] Ajie Ramdan, "The Authority of the Public Prosecutor to Apply for Review After the Constitutional Court Decision N. 33/PUU-XVI/2016", *JIKH,* Vol. 11, No. 2, (July 2017), p. 185.

[9] Article 4 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power.

2. The shift in thinking of judicial review efforts undertaken by the Public Prosecutor is examined from the perspective of victim protection

Victims are those who suffer physically, mentally and/or economic losses as a result of the actions of others who are considered to have committed a crime.[10] So that the interests of victims who have human rights must be fulfilled properly. The perpetrator's actions can result in others becoming victims, as Samuel Welker argued, that the relationship between victim and perpetrator is a causal relationship.[11]

Since the problem of victims is a human problem, it is possible that legal protection is defined by all rights owned and given to every legal subject based on applicable laws and regulations. The Code of Criminal Procedure (KUHAP) is one of the provisions of positive criminal law as a formal law. Providing legal protection to the community and especially victims of criminal acts, it is not enough just to apply imprisonment and fines to perpetrators but many victims' rights must be protected, especially in the course of criminal justice. There are several rights of victims that need to be considered including the provision of restitution and compensation, counseling services, medical services / assistance, legal assistance and providing information.[12] In the Criminal Procedure Code, victim protection is not optimal compared to perpetrators of crimes, where criminal procedural law only ioerminates or tends to lead to perpetrators only. Therefore, investigators only look for criminal offenders, so victims of criminal acts are not their priority.

The articles in the Criminal Procedure Code and their explanations show that the Criminal Procedure Code is indeed more oriented towards the interests of the convicted or perpetrator. First, in Chapter I on the general provisions of article 1 which consists of numbers 1 to 32 and contains various kinds of understandings related to the judicial process with all its aspects, none of them formulate the definition of victim. Second, in Chapter VI on suspects and defendants consisting of 19 articles containing rules that provide human rights to perpetrators. Third, Chapter VII on legal assistance in its provisions regulates the rights and obligations of legal counsel during judicial proceedings. These rights also support the implementation of the rights of perpetrators. The four chapters XII on compensation and rehabilitation also indicate the existence of several rights for perpetrators as a form of legal protection. Fifth, Chapter XIV on investigation found provisions oriented towards the rights of perpetrators.

The formulation of articles in the Criminal Procedure Code tends to dwell on the formulation of criminal acts, responsibility and criminal threats or in other words the system adopted by the current Criminal Procedure Code is retributive justice, which is a policy whose protection point is the perpetrator (offender oriented), not restorative justice that focuses on protection policies for victims of criminal acts (victim oriented).[13] This is inseparable from the underlying criminal law doctrine. This is because the protection of witnesses and victims is only found in Law No. 31 of 2014 on amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims.

[10] Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

[11] Rara Prilestari etc., "Criminological Study of Criminogenic Factors in Victims in the Occurrence of Rape Crimes (Study of Verdict Number: 2029/PID. SUS/2014/PN/TNG)", *Diponegoro Law Journal*, Vol. 6, No. 1, (2017), p. 2.

[12] Fuad Nur et al, "Access to Justice for Victims of Crime in Human Rights Perspective", *Journal Of Social Sciences Research,* Vol. 3, No.5, (2023), h. 8.

[13] Herlyanty Bawole, "Legal Protection for Victims in the Criminal Justice System", *Journal of Lex et Societatis*, Vol. 9, No. 3, (July-September 2021), p. 21

So according to the author, it is time for victims to also be given their rights in making legal remedies. The shift in perspective of the criminal justice system is appropriate, reasonable, proportionate, and appropriate if the future formulative policy (ius constituendum) provides a shift in thinking to carry out judicial review not only to the convicted person or his heirs as stipulated in Article 263 paragraph (1) of the Criminal Procedure Code, but also extended to victims. Therefore, with such dimensions, concretely the ideal Criminal Justice System model for Indonesia should adopt aspects of the balance of interests model. Because basically, the law must protect everyone without exception.

In addition, the issuance of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is one of the solos provided by the government in solving legal problems in Indonesia. The rights of witnesses and victims are mentioned in article 5 paragraphs (1) to (3). In the law there are also several articles, but there are still weaknesses or shortcomings. So it needs to be strengthened by improving unclear norms, including:

1. Article 7A on the right to restitution

The article already regulates the mechanism for procedures for submitting restitution by involving the LPSK (Witness and Victim Protection Agency) requested by victims of criminal acts. In legal terms, restitution is the restoration of the victim's condition or compensation for losses suffered by the victim, both physically and mentally.[14] But in practice, victims have to go through a fairly long procedure. In addition, there is a lack of clarity on who restitution is charged to if the perpetrator cannot pay restitution to the victim and the authorized party or institution.[15] There are no derivative laws and regulations that result in the inability to fulfill the rights of witnesses and victims. Especially in terms of fulfillment of restitution, there is no clear Supreme Court regulation regarding the application of restitution for cases that have permanent legal force, there is no guarantee confiscation rule to ensure restitution payments and so on.

2. Article 29 on procedures for obtaining protection

The article regulates the procedures for obtaining protection. However, in Law No. 31 of 2014 concerning the protection of witnesses and victims, there is no mention of temporary protection as well as in the law on domestic violence, it is explained that temporary protection must be carried out immediately after a report to the police, so that victims of crimes other than domestic violence must wait for a long process, which is no later than 7 days after the application for protection is submitted (Article 29 paragraph 1 letter C of Law No. 31 of 2014 concerning protection of witnesses and victims).[16] This slow response does not rule out the possibility of endangering a victim of a crime if he gets an unpredictable threat at that time by the perpetrator.

This is a problem regarding the non-achievement of the constitutional mandate for victims of criminal acts by not providing protection and balanced access by positive law as well as the rights given to perpetrators of criminal acts. In fact, when referring to article 28D paragraph (1) of the

[14]Diva Lufiana Putri, *What is Restitution in Legal Terms,* (https://www.kompos.com/tren/read/2022/09/100000865/apa-itu-restitusi-dalam-istilah-hukum) accessed on May 2, 2024, 08:32 WITA).

[15] Liliy Sania Kawuwung, "Juridical Review of the Principle of Equality Before the Law in the Protection of Victims and Perpetrators of Crime", Vol. 11, No. 5, (June 2023), p. 6.

[16] Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

1945 Constitution, it wants an equal position before the law. This is a problem for the government as a policy holder in dealing with the problem of inequality which has implications for injustice for victims of criminal acts.

1.2 Impact of Constitutional Court Decision Number 20/PPU-XII/2023 on Judicial Review Filed by Public Prosecutors According to the Criminal Justice System in Indonesia

In seeking a truth is the main goal of criminal law, at least approaching the truth by looking for the perpetrator who committed an act of law violation or committed a form of criminal crime. In order to find the truth, an examination must be carried out in court, in which case the Criminal Procedure Code must be used as much as possible to obtain the truth by interpreting the provisions in its articles, especially article 263 of the Criminal Procedure Code concerning Judicial Review. In this case, it must be interpreted as a guarantee of legal certainty and become a human right that must be implemented in law enforcement.

Historically, on October 25, 1996, a historic verdict was born in the criminal justice system in Indonesia with case number No.55 PK / Pid / 1996 which was the first time a judicial review by the public prosecutor was accepted by the Supreme Court. Departing from the role of the Prosecutor in the criminal justice system is as a state apparatus to act as a public prosecutor and carry out court decisions that have obtained permanent legal force. In the ruling, it can be said to prioritize the legal protection of crime victims. The Public Prosecutor at the Medan State Prosecutor's Office filed a request for judicial review in his capacity to represent the state and public interest in the criminal case settlement process with the defendant Muchtar Pakpahan, as contained in the judgment as follows:[17]

1. The right of the prosecutor in submitting a request for judicial review is in his capacity as a public prosecutor representing the state and the public interest in the process of solving criminal cases. Thus, this request for judicial review is not due to the personal interests of the prosecutor or the prosecutorial agency, but in the public/state interest.
2. The absence of a firm regulation in the Criminal Procedure Code regarding the right of prosecutors to request judicial review, requires a legal action to clarify the right of prosecutors / prosecutors to apply for judicial review implied in several laws and regulations.
3. In the old laws and regulations (before the Criminal Procedure Code), namely in *Reglement op de strafvordering* and Supreme Court Regulation Number 1 of 1969 and Supreme Court Regulation Number 1 of 1980, there is a provision that those who must apply for judicial review are attorneys general, convicts or interested parties. It can be believed that the thoughts contained in the old legislation remain a source of inspiration in formulating the provisions of the Code of Criminal Procedure. Therefore, if a request for judicial review can also be submitted by the prosecutor / prosecutor.

In addition to the above cases, there are many other cases, where the Supreme Court received PK from JPU. This means that the acceptance or rejection of the Public Prosecutor's Review creates a polemic among legal experts and the wider community. Thus, it is inevitable the pros and cons related to PK from JPU. Because on the one hand the

[17] Novi Kusumawati, "Juridical Analysis of Supreme Court Considerations Accepting Submission for Review of Criminal Cases by Public Prosecutors", *Verstek Journal,* Vol. 3. No.1, (2015), p. 15.

judge's decision is a law where the examination of cases in court always ends with the judge's decision. A judge is the main player in law enforcement in court, meaning that judges are also ordinary people who are not free from mistakes or errors, even impartial.

Then, every judge's decision generally provides legal remedies, namely efforts or tools to prevent or correct errors in a decision. So that decisions containing the formation of law, for judges can be followed even though they are not in accordance with explicit or unequivocal stipulated in existing norms or laws and regulations. The final culmination of the pros and cons of PK from the JPU reached the Constitutional Court.

With the Constitutional Court decision Number 20/PUU-XII/2023, it has an impact on the revocation of the authority of the public prosecutor to be able to apply for judicial review is a return of position to the convict, because in this decision PK is the right of the convicted person or his heirs, not the right of the Public Prosecutor. If referring to the judge's consideration of the authority of the public prosecutor to conduct a judicial review, namely: "Moreover, the fact that related to the constitutional issue of PK has been considered by the Constitutional Court Number 16 / PUU-VI / 2008 which was later affirmed in Constitutional Court Decision Number 33 / PUU-XIV / 2016, that by inserting additional authority to the prosecutor's office to submit PK contained in article 30C letter h of Law Number 11 of 2021 concerning The amendment to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia is contrary to the State Constitution of the Republic of Indonesia of 1945 and has no binding legal force.

The author analyzes that with the existence of Judicial Review as an extraordinary legal remedy according to the criminal justice system, it can actually be intended for JPU in representing victims or the state. The reason for the rights of victims according to the Criminal Procedure Code is regulated in articles 98-101 of the Criminal Procedure Code. The article stipulates the only compensation mechanism run by the victim (Article 98) called the merger of compensation lawsuit cases. The merger of these cases was carried out through the presiding judge of the trial at the request of the victim submitted within a predetermined grace period. The award regarding compensation acquires permanent legal force, if the criminal judgment also gets permanent legal force. If the victim does not use the mechanism of the Criminal Procedure Code, the provisions of the civil procedure law apply to claims for compensation as long as the Criminal Procedure Code does not regulate.[18] So the acceptance of the public prosecutor submitting a judicial review effort is a legal breakthrough to protect victims of crime.

So, everyone who seeks justice has a balanced right because it refers to the principle of balance. The right of justice seekers to obtain justice through judicial processes and institutions is the basis and principle of *access to justice.* Access to justice is defined as an opportunity or opportunity for everyone to obtain justice (*justice for all*). Speaking of justice, according to Frans Magnis, Suseno said that justice is a condition between people who are treated equally in accordance with their respective rights and obligations.[19] The

[18] Ajie Ramdan, op.cit, hlm. 187.

[19] Sri Hartati, *Legal Justice for the Poor,* (https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/keadilan-hukum-bagi-orang-miskin), on May 4, 2024, 05:15 WITA)

purpose of PK legal remedies is closely related to the principle of *access to justice*.[20] The issue *of access to justice* is one side that may seem "luxurious" to be a priority for many poor or developing countries.

According to John Rawl, the program of upholding justice with a popular dimension must pay attention to two principles of justice, namely: first, giving equal rights and opportunities to the broadest range of basic freedoms as well as equal freedoms for everyone. Second, being able to reorganize the socioeconomic disparities that occur so that they can provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups.[21]

Then if based on the principle of *equality before the law* and the principle *of arms principle* and the principle of social contract that has been explained earlier. First, within the framework of justice the state must provide equal services without discrimination to all its citizens. Second, it says that the state can be said to monopolize all social reaction to crime and prohibit acts of a private nature. If a crime occurs and brings victims, the state must also be responsible for paying attention to the needs of these victims.

According to Prof. Mr. Roeslan, Saleh argues that positive legal regulations only have legal meaning if they are related to legal principles. So, legal norms have the meaning of juridical enforceability or have juridical validation if they are related to legal principles.[22] So, according to the author, the existence of Constitutional Court Decision No. 20 of 2023 is contrary to the principle *of equality before the law* and the principle *of arms principle* and the principle of social contract. Where the impact of the verdict closes the return of the Public Prosecutor to apply for judicial review, in this case to represent victims who demand justice, so that now a legal reform is needed. In addition, the Criminal Procedure Code as a law is basically imperative, meaning that the criminal procedure law does not only apply to the community, but must also be obeyed by the government and its law enforcement officials in accordance with other obligations and provisions. So if the Criminal Procedure Code does not represent justice that continues to develop along with the development of society, then judges as the vanguard of justice, should be obliged to create or shape laws that represent justice through legal discovery.

From the ideas described above, it is a reference to be a reference for the Public Prosecutor to submit a review application which is then to obtain legal certainty, justice and expediency. Therefore, with this, there is a need for a revision of the Code of Criminal Procedure related to the expansion of the subject of applicants for judicial review.

Departing from factual and concrete issues, the current Criminal Procedure Bill has given the Public Prosecutor the right to apply for Judicial Review, as article 261 states: "If the convicted person or his heirs do not apply for judicial review of a court decision that has obtained permanent legal force as intended in article 260 paragraph (1), in the interest of the convicted person or his heirs, the Attorney General is authorized to apply for judicial review."[23] Thus, if the Criminal Procedure Bill which later becomes law is expected in the

[20] Dwi Bintang Satrio et al, "Legal Remedies for Review of Court Decisions that Overturned National Arbitration Awards Linked to the Principle of *Access To Justice*", Vol. 2, No. 2, (March 2018), p. 199.
[21] Melisa, "The Position of Law in Realizing Justice and Welfare in Indonesia", *Journal of Islamic Law and Social Institutions,* Vol.5, No. 1 (January-June 2023), p. 251.
[22] Ibid, p. 190.
[23] Article 261 of the Code of Criminal Procedure.

end the substances in it that have regulated the criminal justice system will be better than the Criminal Procedure Code.

4. Conclusion

1. The concept of judicial review by the public prosecutor in the perspective of victim protection is not optimal compared to perpetrators of crimes, where criminal procedural law only ioerentiates or tends to lead to perpetrators only. So that the shift in perspective of the criminal justice system is feasible, reasonable, proportionate, and appropriate if formulative policies come (ius constituendum). Therefore, concretely the ideal Criminal Justice System model for Indonesia should adhere to the principle *of equality before the law* and the principle *of equality of arms*. Because basically, the law must protect everyone without exception.
2. The Constitutional Court Decision Number 20/PUU-XII/2023 has an impact on the revocation of the authority of the public prosecutor to be able to apply for judicial review as a return of position to the convict. In this case, the JPU represents victims who demand justice. The right of justice seekers to obtain justice through judicial processes and institutions is the basis and principle of *access to justice.* Access to justice is defined as an opportunity or opportunity for everyone to obtain justice (*justice for all*).

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