JUSTICE AS A BASIS FOR JUDGES TO PROVIDE A BALANCE FOR JUSTICE SEEKERS IN A CRIMINAL CASE SUBMITTED THROUGH A REVIEW

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Abstract

A request for a review should not be allowed to drag on without a solution, the request for review must be limited also, and it does not mean limiting the space for justice seekers to reach justice. The results of the study of the decision of the review conducted by the Supreme Court revealed that the Supreme Court of the Republic of Indonesia through the PK Decision in both the Mochtar Pakpahan and Polycarp cases had largely applied substantial procedural justice by interpreting justice. That every person has the right to get what is his right and use that right to obtain a share in proportion to it in this case the Prosecutor. Substantial procedural justice should be inspired by the flow of natural law, the flow of positivism law and responsive legal flow. In its development, a theory of justice is needed roommates Provides Balanced rewards to the parties in the effort to re-examine the case in the Supreme Court of the Republic of Indonesia. Justice seekers in submitting Efforts Reviews their review as extraordinary legal remedies are not limited only based on the provisions of Article 263 Criminal Procedure Code but are also based on the decision of the Constitutional Court Number 34/PUU-11/2013. However, based on the principle of freedom of judges where judges in accordance with the provisions of Law Number 48 of 2009 concerning Judicial Power are required to explore the values that grow and develop in society. A proof that the judge is required to be Able to implement an article with full care, prudence and fulfill a sense of fairness is the existence of Article 5 of Act Number 48 of 2009 concerning Judicial Power that the judge is obliged to explore the values of justice that grow and develop in the middle of society. Judges must be Able to absorb people's inner aspirations or voices about truth and justice, so that legal certainty can always guard justice, so that the objectives of the law to create justice can be fulfilled.

Keywords: ***Justice, Criminal, Review***

INTRODUCTION

The balance needs to be achieved to fulfill a sense of justice[1] essential to consider the interests of society and the interests of the State when the filing of an application for review of criminal cases that have been legally binding. It is necessary wisdom judges to exercise its powers in check; hearing and deciding the case reconsideration not just focus on the interests of the convict or his heir, but also for the interests of the State as well the interests of victims of crime and the interests of justice itself.[2]

The review body is intended as an extraordinary legal remedy that is not only for the sake of the law but also for the sake of justice. Initially, in Indonesia, the reviewing provisions in criminal cases or often known as herziening are regulated in Article 15 of Law Number 19 of 1964 concerning the Principles of Judicial Power, which states:

> "In the case of a court decision that has permanent legal force, it can be requested for a review, only if there are matters or conditions determined by the law".

With the enacted Basic Law of Judicial Authority No. 14 of 1970, re-stated on reconsideration, which in Article 21 shall:

> "If there are things or circumstances determined by the Law on court decisions that have obtained the force of law that can still be asked for a review of the Supreme Court, in civil and criminal cases by the parties concerned" .[3]

In its development of the Code of Criminal Law to guide judges in decisions on case-criminal matters. Judges are human too limited in accordance with the nature in check, hearing and deciding a criminal case, not immune from errors or omissions or errors in either a mistake about the person, analyzing the juridical facts and application of the law. Such circumstances associated with efforts to what is provided by the State for justice seekers who wish to obtain legal protection and justice and the courts. On the other hand, need to be observed, mistake or error in the application of the law judge when examining a criminal case can occur because of an element of intent or because of the partiality or inaccuracy of the judge in examining juridical facts or lack of consideration, as well as knowledge of the rule of law which is also the starting point for deciding a case. Legally, the Criminal Procedure Code which is promulgated through Law Number 8 of 1981 concerning Criminal Procedure Law regulates extraordinary legal efforts, namely reviewing court decisions that have obtained permanent legal force as in Article 263 paragraph (1) of the Criminal Procedure Code states:

> "With respect to court decisions that have obtained permanent legal force, except those which are free or acquittal and all legal claims, the convict or heir may submit a request for reconsideration to the Supreme Court".[4]

When this provision is observed, only to convict or their heirs who opened the opportunity to file a reconsideration request. Understanding heirs to file a judicial review is intended to replace the position of the convict who is still alive and are in the status of the detained or convicted person to be passive with no reaction, or also because the convicted person has died, it is not clearly stipulated in the Act.[5]

In the case of convicted as a review of the applicant's death, while the reconsideration request has been sent and received by the Supreme Court, pursuant to Article 268 (2) Criminal Procedure

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[1]Soerjono Soekanto dan Purnadi Purbacaraka, *Perihal Kaidah Hukum,* (Bandung: Alumni, 1978), hal. 19. Sifat hukum acara pidana haruslah memberikan kepastian prosedur dan rasa keadilan baik dari anasir yang dituntut maupun dari kepentingan masyarakat itu sendiri, karena keadilan adalah hak semua orang dan tidak dikecualikan dari hal-hal apapun sebagai bagian dari hak dasar yang tidak boleh diganggu karena bertujuan untuk menciptakan suasana damai dikalangan masyarakat yang dapat diperoleh lewat panggung peradilan.

[2]Pasal 10 ayat (1) Undang-undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, TLN Nomor 5076, menyatakan : Pengadilan dilarang menolak untuk memeriksa, mengadili, dan memutus suatu perkara yang diajukan dengan dalih bahwa hukum tidak ada atau kurang jelas, melainkan wajib untuk memeriksa dan mengadilinya".

[3]Undang-undang Nomor 14 Tahun 1970 tentang Ketentuan-ketentuan Pokok Kekuasaan Kehakiman, Lembaran Negara Republik Indonesia Tahun 1970 Nomor 74, TLN Nomor 2951.

[4]Pasal 263 ayat (1) Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, Lembaran Negara Republik Indonesia Nomor 76 Tahun 1981, TLN Nomor 3209.

[5]M.Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali),* (Jakarta: Sinar Grafika, 2001), hal.93

Code, it is passed or not filing the reconsideration submitted to the will of the heirs.

Proportional distribution of justice is an appreciation and at the same time uphold the values of justice, because if it is implemented will achieve a balance for justice seekers. As stated by John Rawls' theory of justice, obstruction of justice others are tantamount to refusing to recognize as equivalent. There is no reason to only think and impose the arrival of justice only for a particular party and neglect justice that should be part of the other party. If done denial of justice that should be applied, will be the same as restricting the balance between justice seekers who should be treated equal.[6] John Rawls developed the idea of justice as fairness, a theory of justice which generalizes and raised conception traditional about the social contract to a higher level of abstraction. Society is replaced by the initial situation involving certain procedural restrictions on the arguments that are designed to bring up the initial agreement on the principle justice.[7]

The Constitutional Court ever issued a decision in relation to the judicial review filed by Antasari Azhar, et al, in essentially legal considerations declared Justice cannot be limited by time or the provision of formalities which limit that extraordinary legal remedy (judicial review) may only be submitted one time, because it may be after the filing Reconsideration and disconnected, there is a new state (Novum) which substantially recently discovered that when a judicial review had not previously review.[8]

Based product in the form of a Constitutional Court decision would lead to thinking for justice seekers are convicted or their heirs even for law enforcement agencies are concerned that the prosecutor's office as an opportunity to apply for judicial review as many times. Observing this situation, researchers will analyze around risks and public health and connect with the principles of justice quick, simple and low cost that is the principle adopted in the justice sector in Indonesia who definitely wanted to be on a case including a criminal case can be completed with no lengthy yet fulfilling sense of justice.

A request reconsideration should not be allowed to protracted without a settlement, request reconsideration should also be limited, it does not mean limiting the space for seeking justice in achieving justice, this is in line with the theory of justice by John Rawls in his theory says when law and policy deviates from recognized standards of public, appeal to the sense of justice is considered possible to a limited extent. When repeatedly asked again reconsideration of a criminal case that has binding either by Convict/heirs or by the Public Prosecutor, it would raise the question until when it will be completed (terminated) a criminal case. Therefore, application of a sense of justice also needs to have a certain limit if not done would lead to discrimination among the seekers of justice, and if given the opportunity many times the application of justice will be protracted. This means that after being given a chance in a balanced propose a review of each of once the prisoners or their heirs and to the prosecutor/prosecutor representing the interests of the state prosecutor/prosecutor representing the interests of the State and the interests of the victims, the demand repetition reconsideration to stage The next must be terminated. 9 This means that after being given a chance in a balanced propose a review of each of once the prisoners or their heirs and to the prosecutor/prosecutor representing the interests of the state prosecutor/prosecutor representing the interests of the State and the interests of the victims, the demand repetition reconsideration to stage The next must be terminated. 9 This means that after being given a chance in a balanced propose a review of each of once the prisoners or their heirs and to the prosecutor/prosecutor representing the interests of the state prosecutor/prosecutor representing the interests of the State and the interests of the victims, the demand repetition reconsideration to stage The next must be terminated.[9]

Research of justice as an excuse the judge give a balance to the seeker of justice in a criminal case filed by way of judicial review, will answer the research question is how the judges to guarantee and safeguard the values of justice to receive, examine, hear and decide an application for review on a case filed criminal justice seekers? and why the search for justice in a criminal case which is legally binding is restricted to apply for a review of the different as the Constitutional Court decision No. 34/PUU-X/2013?

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[6]Muhammad Syukri Albani Nasution, *Hukum Dalam Pendekatan Filsafat*, (Jakarta: Kencana, 2016), hal. 317.

[7]John Rawls, *A Theory of Justice,* diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan,* (Yogyakarta: Pustaka Pelajar, 2011), hal. 3

[8]Putusan Mahkamah Konstitusi Republik Indonesia, Nomor 34/PUU tanggal 06 Maret 2014, hal. 8.

[9]*Ibid*, hal 456.

METHODS

Research is included in the form of normative juridical research is research that emphasizes the use of legal theory, legal principles and legal norms are written.[10] The study refers to the legal norms contained in the legislation and rulings court. In connection with it is emphasized in this study was the subjective aspect of the prosecutor/prosecutor in filing an application for review and subjective aspects of the judges to their reconsideration by the prosecution/public prosecutor to determine the relevance around fairness and balance to reconsideration.

Data used is secondary data that is supported by primary data as well as an attempt to answer or solve problem raised in this study, we used the method analysis qualitative data, because the data obtained is qualitative not required statistical data.

RESEARCH RESULTS AND DISCUSSION

Judges Must Ensure and Maintain Justice Values in Receiving, Examining, Judging and Deciding Requests for Review of a Criminal Case Filed by a Justice Seeker

The development of justice upheld by judges in criminal justice boils down to two types of justice namely procedural justice and substantial justice. Procedural justice that is if someone has been able to carry out fair deeds with the procedures that have been applied, then procedural justice has been created. Procedural justice is also related to disputes and other abuses, but this justice must not always be related to the law. The fairness of the procedures used to decide on the distribution process and how it applies must be based on procedural rules, for example in distribution. This relates to making and implementing decisions in accordance with a fair process. Procedural justice involves fairness and transparency in the process by which decisions are made and can be compared with distributive justice (fairness in the distribution of rights or resources), and retributive justice (fairness in giving punishments for mistakes). Procedural justice determines that the process is carried out fairly, for example hearing all parties before a decision is made is one step that will be considered appropriate that must be taken so that the process can then be characterized as procedural fair.

The develompment of thinking about the procedural fairness raised by the philosopher John Rawls in the journal entitled Philosophy of John Rawls's Theory of Justice distinguishes three ideas of procedural justice, namely procedural justice is perfect which has two characteristics: First, independent criterion for what constitutes a fair result or simply procedure, and procedures that ensure a fair result to be achieved. Imperfect procedural justice shares characteristics. Second, perfect procedural justice is no independent criteria for a fair result but there are methods that ensure that the fair will be achieved. Third, describe pure procedural justice a situation in which there are no criteria for what constitutes a fair result other than the procedure itself.

The theory of procedural justice is still controversial, namely first with various views on what makes the procedure fair. Second, traditionally there is a view that would likely put procedural justice into three main families, which can be called the model results, balancing models, and models of participation. First, the idea of the model results where justice procedural fairness is that the process depends on the procedure that produces the correct result. For example, if the procedure is in the case

Criminal, then the correct result will be a conviction of guilt and innocence of the accused. Second, the idea of balancing the model is that the procedure yang fair is one that reflects a fair balance between the cost of the procedure and benefits that it produces. Third, the idea of participation model is that procedural fairness is one that gives them benefits that are influenced by the opportunity to participate equally in decision-making.

Meanwhile, substantial justice based on fairness in the enforcement procedures in the handling of criminal cases, but to the things outside the procedures based on the belief the judge was right. So substantial justice is justice essential that grows within each of judge of the guilt or innocence of a defendant. The judge observed not only in the fact of the trial but freely beyond the facts of the law. Because the material truth which is not tested in the fact of the trial according to the procedure can be observed by judges as the judge's conviction of the truth of the material itself.

Judges are obliged to enforce justice not just law in the criminal justice process. In relation to the review effort, the role of the Supreme Court as the party that receives, examines and decides the judicial review case is not only bound by the procedural provisions of the review effort but also must examine the values that grow and develop in society about justice itself as determined in Article 5 of Law Number 48 Year 2009 concerning Judicial Power.

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[10]Dian Puji Simatupang, *Modul Perkuliahan Metode Penelitian,* (Jakarta: Program Studi Magister Ilmu Hukum Unkrisna, 2010), hal. 2

Judicial remedies based on the Supreme Court Circular Letter Number 10 of 2009, are intended only for the benefit of the convicted and heirs only. According to the SEMA, the review effort was only one time. Prosecutors as public prosecutors are not allowed to submit extraordinary remedies because they already have the right to submit extraordinary remedies namely cassation in the public interest, so it is very strange to re-submit extraordinary remedies in the form of reconsideration.

In the case of Djoko Tjandra. Djoko is a convicted Bank Bali case who was convicted through a Supreme Court review decision filed by the Prosecutor for and on behalf of the state in a corruption case. Djoko has not used his right to submit a review in accordance with the provisions of Article 263 of the Criminal Procedure Code. the first court and the cassation court acquitted Djoko. But in the reconsideration decision, Djoko was sentenced to 2 (two) years in prison.

The then Chief Justice of the Supreme Court, Harifin A Tumpa, signed the Supreme Court Circular (SEMA) regarding Submission of Requests for Reconsideration. The SEMA was given number 10 of 2009. In the letter addressed to the Chair of the District Court and the Chair of the High Court in Indonesia, the Supreme Court prohibited the submission of PK more than once in the same case, both criminal and civil. The concrete form of the prohibition is that the Supreme Court instructs the Chairperson of the PN and the Chairperson of PT not to accept and send PK files to the Supreme Court. But this SEMA gives an exception. Specifically for PKs that is based on reasons for conflicting decisions, the Supreme Court still provides an opportunity to accept the PK files. The reason for the birth of SEMA was that PK cases in the Supreme Court did not pile up. As well as to prevent the accumulation of requests for reconsideration in the Supreme Court, according to the SEMA consideration in the first paragraph.

The author is of the opinion that SEMA Number 10 of 2009 does not fulfill a sense of justice that provides a balanced appreciation for those who submit extraordinary remedies. The enforcement of justice to be built in the spirit of SEMA Number 10 of 2009 is procedural justice which actually removes the substance of the value of justice itself, namely the enforcement of human rights. Prosecutors are victims' representatives in criminal cases who also act for and on behalf of the state to protect the rights of victims who have been neglected. So that forbid prosecutors to submit a review is clear according to the authors of violations of the values of justice substantively. If the prosecutor has been given the opportunity to submit a PK, for example in the Djoko Tjandra case, then against Djoko Tjandra who was proven not to have committed a criminal act of corruption in the Supreme Court's appeal, then Djoko Tjandra should also be given the opportunity to file a PK. If only one PK criminal justice process can be submitted once, SEMA Number 10 the Year 2009 is legitimizing the castration of the rights of the convicted person. Because the actions of the prosecutor who submitted the PK is a mode to eliminate the right of the convicted person to submit a PK. This SEMA means to legitimize the prosecutor's mode of eliminating the rights of the convicted person. In fact, the PK mechanism was born from the needs of convicts who felt disadvantaged by the court's decision. As the case of Sengkon-Karta as a case of the birth of PK. Sengkon and Karta were sentenced for allegedly robbing and killing Sulaiman and Siti Haya. But later when Sengkon and Karta served their sentence, someone claimed to have killed Sulaiman and Siti Haya namely Gunel. this case triggered the inclusion of a review body in the Criminal Procedure Code. Thus SEMA Number 10 of 2009 violates the nature of the existence of PK in our criminal procedure law.

The reconsideration conducted prosecutor and subsequently accepted Supreme Court, some experts believed was destructive to the laws of Indonesia until now. Formulation and historical background of the Criminal Code is clear that PK should have right convicts or their heirs. The Supreme Court ruling that has received a PK by prosecutors in the case of Muchtar Pakpahan and Polycarp considered wrong and violated the law. Rudi Satrio Mulkantardjo argues, and then Even if the Supreme Court accepted the prosecution in the case of PK Muchtar Pakpahan and Polycarp and the verdict became jurisprudence, this argument is less powerful. Indonesian judges are basically independent and not tied to jurisprudence. Moreover, a wrong decision may not be used as jurisprudence. If the case Muchtar Pakpakan used jurisprudence and then followed by judges, meaning there error. It was wrong, and no good, said the Faculty of Law University of Indonesia.

In line with Rudi Satrio, Laica Marzuki argued that the PK decision in the Muchtar Pakpahan case included other cases such as Djoko Tjandra and Syahril Sabirin where the PK submitted by the prosecutor could have been a judicial error (rechtelijke dwaling). Such a prosecutor's step is like breaking through the Criminal Procedure Code. And the prosecutor's actions are the arbitrariness of the law. If the Supreme Court granted the PK by the prosecutor, then the convict or heir would be entitled to submit the PK. The rights of convicts were clearly formulated by the Criminal Procedure Code. So the PK appears above the PK or the second PK. According to Laica Marzuki, the damage to the PK legal order must be ended. The Supreme Court must have the courage to admit justice in error.

Laica considers the Supreme Court Circular Letter (SEMA) No. 10 of 2009 which prohibits PK more than once cannot be used as a strong grip.

Existence SEMA No. 10 of 2009 is no longer tenable in view of already existing Constitutional Court Decision No. 33/PUU-XIV/2016 namely "To grant the petition, Article 263 paragraph (1) Code of Criminal Procedure is contrary to the 1945 Constitution and not legally binding on parole, namely along the interpreted other than those explicitly (strictly) expressed in norms quo, "Article 263 paragraph (1) Code of Criminal Procedure states that" to the decision of the court who has obtained permanent legal force, except acquittal or separated from all charges, convicted or expert the next of kin can file a request for review to the Supreme Court. "

Anna Boentaran, as the heir of Djoko Tjandra, questioned the constitutionality of Article 263 paragraph (1) of the Criminal Procedure Code because her husband's case was considered unfair. Initially, Djoko was terminated freely by the South Jakarta District Court until the cassation level in 2001. The reason was that the actions charged were not criminal acts, but the scope of civil actions. A lapse of 8 years later, the Public Prosecutor submitted a PK request for the cassation ruling that released Djoko Tjandra in 2008. In 2009, the PK panel sentenced Djoko to 2 years in prison because he was considered to have participated in committing criminal acts of corruption. "The essence of the philosophical foundation of this PK institution is aimed at the interests of the convicted or heir as a form of human rights protection, not the interests of the state or victims. If this essence is removed, the PK institution will lose its meaning and not mean it. "

The author is of the opinion that the Constitutional Court Decision Number 33/PUU-XIV/2016 does not provide substantial justice for the prosecutor as the victim's representative. In the case of Mochtar Pakpakahan, the Supreme Court's consideration in accepting the request for a review of the Prosecutor/Public Prosecutor was appropriate taking into account that various interests in

Obtaining a fair law must be observed as well as possible. The Supreme Court in the opinion of the author has applied substantial procedural justice. The author believes that substantial procedural justice is justice that gives a balanced appreciation in the efforts of prosecutors as representatives of the state or representatives of victims based on a principle in the public interest to conduct extraordinary legal remedies.

In the Case of Policarpus, the author is of the opinion that the argument built by Gabriel Mahal is incorrect, because it seems clear that his concept of thought is very legalistic and positive. Justice as if according to Gabriel can only be created through formal procedural, where the judge is not allowed to make any interpretation of the Criminal Procedure Code. Even though justice is not so true. True justice must be put on a formal procedural path, but creating justice is not merely procedural. Another thing that is more important is the substance of the case itself. So procedural justice must consider substantial matters. Upholding substantial justice is also clearly not true when it hits procedures. So that justice is more precisely realized through a substantial procedural process in which contains values of dignified justice and restorative justice.

In the Antasari Azhar Case, the author believes the considerations in the aforementioned decision have been right in the sense that the review must be given the same rights to the parties concerned namely the convict or his heirs, prosecutors and victims of crime or his heirs. Thus a review is possible three times while still emphasizing substantial procedural justice. If using the justice approach according to Aristotle is not appropriate because Aristotle in principle puts forward procedural justice and distributive justice which are actually based on formalistic/legalistic justice.

Justice Seekers In Criminal Justice and binding Limited Asking for Reconsideration Request Different As the Constitutional Court Decision No. 34/PUU-XI/2013

The author argued the Supreme Court should allow PK twice. First filed by the convict or their heirs and the second filed by the prosecutor as a representative of the victim, acting for and on behalf of the state. So the Constitutional Court Decision No. 34/PUU-X/2013 were appropriate.

The author argues Decision Number 167 PK/Pid.Sus/2009 Defendant Syahril Sabirin Imran Nawawi consideration Chief Justice has the right because it has a substantial procedural uphold justice by making legal interpretation in the cavity of the independence of judges. While the author does not agree with the arguments put forward by Abdul Kadir Mappong as very legalistic and uphold justice solely in terms of formal legalistic aspect without regard to the values of justice grow and develop in society. As mandated by Law No. 48 of 2009 on Judicial Power. The author thus advance the arguments of a substantial procedural justice in order to create legal certainty and legal expediency in order to uphold human rights. The approach used in this case is the theory of natural law.

Justice substantial procedural appear in the Court decision Sarpin Rizaldi. The role of the judge as a digestive legislation cannot be avoided anymore. The judge is not only required to be able to

read every word of an article, but are also required to be able to peel the meaning of an article such that the introduction of a clause has a value of justice. The judge also asked to be able to use his ability in the field of empirical laws. Being able to apply the theory of legal interpretation and legal discovery so well that when deciding a case by applying an article of the article used or applied conforms to the sense of justice.

An evidence that judges are required to be able to apply an article with care, prudence and fulfill a sense of justice is the existence of Article 5 of Law Number 48 of 2009 concerning Judicial Power that judges are obliged to explore the values of justice that grow and develop in the midst of middle of the community. Judges must be able to absorb the people's inner aspirations or voices about truth and justice so that legal certainty can always guard justice so that the purpose of a law creating justice can be fulfilled.

The application of responsive legal theory seems less meaningful when it is associated with the flow of legal theory of positivity that ignores substantial justice. Meanwhile, substantial justice was inspired by natural law theory/natural law theory. Substantial procedural justice is the concept of justice which includes natural law theory, positivism legal theory, and responsive legal theory. Through the results of this study, the author presents the theory of justice that provides a balanced appreciation for the parties in the effort to review the case in the Supreme Court of the Republic of Indonesia.

CONCLUSION

Based this dissertation research results expressed in the discussion of chapters can be deduced as follows:

1. Based on the results of research on the judicial review decision conducted by the Supreme Court, it appears that the Supreme Court of the Republic of Indonesia through the PK Decision both in the case of Mochtar Pakpahan and Policarpus has mostly implemented substantial procedural justice by interpreting justice. That everyone has the right to obtain what is his right and to use that right to obtain a proportion in accordance with his proportions, in this case, the Prosecutor. Substantial procedural justice should be inspired by the flow of natural law, the flow of positivism and responsive legal flow. In its development, a theory of justice is needed that gives a balanced award to the parties in the effort to review the case in the Indonesian Supreme Court.
2. Seekers of justice in filing an effort to review again as extraordinary legal efforts are not limited only based on the provisions of Article 263 of the Criminal Procedure Code but also based on the decision of the Constitutional Court Number 34/PUU-11/2013. However, based on the principle of freedom of judges where judges in accordance with the provisions of law No. 48 of 2009 concerning Judicial Power are required to explore the values that grow and develop in society. Evidence that a judge is required to be able to apply an article with great care, caution and fulfill a sense of justice is the existence of Article 5 Law Number 48 of 2009 concerning Judicial Power that judges are obliged to explore the values of justice that grow and develop in the midst of society. Judges must be able to absorb the people's inner aspirations or voices about truth and justice so that legal certainty can always guard justice so that the purpose of a law creating justice can be fulfilled.

SUGGESTION

From the above conclusion the authors propose some suggestions:

1. It is recommended to the government and the Parliament to revise the Criminal Procedure Code in order to uphold justice substantial procedural related efforts to reconsideration.
2. It is recommended that the Indonesian Supreme Court gave freedom to the judge as to the inventor of the law, and the law digger interpreter of the law to determine the law or the legal form not only based legislation provided but also the confidence of judges based understanding of justice espoused. However, the Supreme Court need to create guidelines on justice adopted in the criminal justice regime in Indonesia. These guidelines are not binding only give out material or input for the judge to not only enforce the law but justice as fairly as possible in order create human rights, although there is a maxim/proverb maximum of justice is an injustice.

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