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Implementation of the *Erga Omnes* Principle on the Decision of the Constitutional Court (MK) concerning the Supreme Court's SE (MA) regarding Judicial Review

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Abstract

This study aims to analyse the decisions of the Constitutional Court (MK) and Circular Letters (SE) of the Supreme Court (MA) regarding Judicial Review (PK) in criminal cases. In March 2014, through decision No. 34/PUU-XI/2013, the Constitutional Court stated that in a criminal case, a PK may be conducted more than once. The verdict states that Article 268 paragraph (3) of Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) is contrary to the 1945 Constitution of the Republic of Indonesia. Interestingly, the Supreme Court issued SE No. 7 of 2014 which stipulates that PK is only allowed once. SEMA was signed on December 31, 2014, Chairman of the Supreme Court, Hatta Ali. The existence of the Constitutional Court and SEMA decisions has implications for the dualism of legal practice between only one time and maybe more than once in a PK application. Until now, the SEMA has not been revoked. The existence of the dualism of these rules seems to create

uncertainty in the practice of PK law enforcement in Indonesia. Analysing the two legal products from two conflicting state institutions is very important to clarify the procedure for review. The review, which is also often called an extraordinary legal effort, is essential to maintain legal justice and safeguard the basic rights of citizens. In reviewing this fact, we will refer to the principle of *Erga Omnes* and its correlation with the protection of the basic rights of citizens. The principle of *Erga Omnes* (applies to everyone in the same case) must be heeded by all state institutions including the Supreme Court. In addition, regulation and its implementation must still pay attention to human rights. So this study uses the normative legal method. Based on the provisional facts presented, the authors hypothesise that SEMA should support the Constitutional Court's decision on PK as an implementation of the principle *Erga Omnes* and protect the basic rights of citizens. The principle of *Erga Omnes* and the framework for protecting basic human rights are two things that must be signed in the practice of review.

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Penelitian ini bertujuan untuk menganalisis putusan Mahkamah Konstitusi (MK) dan Surat Edaran (SE) Mahkamah Agung (MA) tentang Peninjauan Kembali (PK) dalam perkara pidana. Pada Maret 2014, melalui putusan No. 34/PUU-XI/2013, MK menyatakan bahwa perkara pidana, PK boleh lebih dari satu kali. Putusan itu menyatakan Pasal 268 ayat (3) Undang-Undang No. 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP) bertentangan dengan UUD NRI 1945. Menariknya, MA menerbitkan SE No. 7 Tahun 2014 yang menentukan bahwa PK hanya dibolehkan satu kali. SEMA ditandatangani pada 31 Desember 2014 Ketua MA, Hatta Ali. Adanya putusan MK dan SEMA itu berimplikasi pada dualisme praktik hukum antara hanya satu kali dan boleh lebih dari satu kali dalam permohonan PK. Hingga kini, SEMA tersebut belum dicabut. Adanya dualisme aturan tersebut seakan menimbulkan ketidakpastian praktik penegakkan hukum PK di Indonesia. Menganalisis dua produk hukum dari dua lembaga negara yang

bertentangan itu sangat penting untuk menjernihkan tata cara peninjauan kembali. Peninjauan kembali yang juga kerap disebut upaya hukum luar biasa pada hakikatnya untuk menjaga keadilan hukum dan menjaga hak-hak dasar warga negara. Dalam mengkaji fakta ini, akan merujuk asas erga omnes dan korelasinya dengan perlindungan hak dasar warga negara. Asas erga omnes (berlaku bagi semua orang dalam perkara yang sama) harus diindahkan oleh semua lembaga negara termasuk MA. Selain itu, dalam sebuah aturan dan pelaksanaannya harus tetap memperhatikan hak asasi manusia. Sehingga kajian ini menggunakan metode hukum normatif. Atas fakta sementara yang tesaji, penulis berhipotesa bahwa SEMA seharusnya mendukung putusan MK tentang PK sebagai implementasi asas erga omnes dan melindungi hak-hak dasar warga negara. Asas erga omnes dan kerangka perlindungan hak dasar manusia merupakan dua hal yang harus menjadi rambu-rambu dalam praktik peninjauan kembali.

Keywords: Constitutional Court Decision No. 34/PUU-XI/2013, SEMA No. 7 of 2014, *Erga Omnes*, Review

Introduction

On Thursday, March 6, 2014, the legal public in Indonesia was shocked by the decision of the Constitutional Court (MK) regarding the Judicial Review (PK). The Panel of Judges of the Constitutional Court stated that Article 268 paragraph (3) of Law no. 8 of 1981 concerning the Criminal Procedure Code or what is commonly referred to as the Criminal Procedure Code, is contrary to the 1945 Constitution of the Republic of Indonesia. The article is considered contrary to the 1945 Constitution of the Republic of Indonesia because it limits a person's right to take extraordinary legal remedies. The PK, which was originally only allowed once, is considered not to fulfill the element of justice and ignores the basic rights of the convict.

On that basis, the Court canceled the article because it was considered detrimental to the position of the victim.

It should be noted that the applicant for the judicial review of Article 268 paragraph (3) is the former Commissioner of the Corruption Eradication Commission (KPK), Antasari Azhar (Chakim, 2015: 337).

Antasari's submission of a judicial review to the Constitutional Court by Antasari has been carried out since April 25, 2013. With the regulation that it is only allowed to submit a PK once, it is considered an obstacle for Antasari Azhar to file a PK for the second time regarding the case that happened to him. According to Antasari, at that time there was new and strong evidence. Meanwhile, KUHAP stipulates that PK is limited to only one time. On that basis, he conducted a material test.

The following is an excerpt from the Constitutional Court's Decision No. 34/PUU-XI/2013: *"Accept the applicant's application in its entirety. Article 268 paragraph (3) of the Criminal Procedure Code is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force"* (Harsanto, Jubair and Sulbadana, 2017: 3).

With this decision, it is clear that a PK can be submitted more than once, as long as it fulfils the conditions specified in Article 263 paragraph (2) of the Criminal Procedure Code. (Law No. 8 of 1981 concerning the Criminal Procedure Code).

A few months later after the Constitutional Court's decision, the Supreme Court issued a SE which contradicted the Constitutional Court's decision. MA issued SEMA No. 7 of 2014 which stipulates that a PK application is only allowed once. The SEMA was signed on December 31, 2014, by the Chief Justice of the Supreme Court, Hatta Ali. The issuance of SEMA No. 7 of 2014 has created a debate among the legal community. Moreover, SEMA was published shortly after the Constitutional Court decided that a PK could be more than once (Adila, Jaya, Sukinta, 2016: 2).

The Supreme Court issues the SEMA concerning "Article 24 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power and Article 66 paragraph (1) of Law no. 14 of 1985 concerning MA". This rule has been amended twice, the last being Law no. 3 of 2009 concerning the Supreme Court. In the opinion of the Supreme Court, the two articles in the two laws and regulations do not include the address (object) which was canceled by the Constitutional Court.

With the existence of these two conflicting regulatory references, until now there has been dualism regarding extraordinary legal remedies, PK. The Panel of Judges in several cases also rejected the PK a second time, based on the Supreme Court's SE. The contradiction is interesting to analyses. The decision of the Constitutional Court or vice versa SEMA is following the principles of justice and the protection of human rights. This problem will be studied with the framework of the principle *erga omnes* and the protection of human rights.

Research Method

This research is legal. Regarding the term "normative legal research", according to Peter Mahmud Marzuki, there is no need. The term legal research said Marzuki, which in Dutch *rechtsonderzoek* means always normative. Therefore there is no need to add the word "normative". (Ibrahim, 2006: 45).

Likewise, the term juridical-normative this is also unknown in legal research. Following the opinion of Marzuki, the author calls this research "legal research". With this statement, it is clear that this research is normative. To answer the legal issues mentioned above, the researcher will use three approaches. First, the statutory approach (Kurnia, Dwiyatmi, and Hapsari, 2013: 129.)

This legislative approach to answer legal issues in the Constitutional Court Decision No. 34/PUU-XI/2013 concerning the SE Supreme Court (MA) No. 7 of 2014 concerning contradictory reviews.

Second, the conceptual approach conceptual (approach). This approach is used to analyses statutory issues regarding the decisions of the Constitutional Court and the Supreme Court regarding judicial review by referring to theoretical legal principles or principles. Third, the case approach. Using a case approach, because the main issues studied are the decisions of the Constitutional Court and the Supreme Court. This case approach will analyses the SE MA with the opinion of the judge who has decided on a judicial review lawsuit regarding judicial review.

Normative legal research (legal research) is usually "only" a document study, using sources of legal material in the form of laws and regulations, court decisions or decisions, contracts or agreements or contracts, legal theories, and the opinions of scholars (Waluyo, 1996: 13)

Fajar and Yulianto explain that normative legal research is “legal research that places law as a system of norms (Muhaimin, 2020: 46). The system of norms in question is about principles, norms, rules, from laws and regulations, court decisions, agreements, and doctrines (teachings) (Fajar and Yulianto, 2010: 34).

Discussion

Extraordinary Legal Remedies Legal

Remedies are the right of the defendant or public prosecutor not to accept the court's decision. The form of not accepting the decision is in the form of resistance or appeal or cassation or the right of the convict to submit a request for reconsideration according to the procedures regulated in the legislation. Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) determines that ordinary legal remedies are regulated in chapter XVII and extraordinary legal remedies are regulated in chapter XVIII.

Ordinary legal remedies include examination at the level of appeal and examination at the level of cassation. Meanwhile, extraordinary legal remedies include examining the level of cassation in the interest of law and justice for court decisions that have permanent legal force (Meutia, 2019: 227). A decision can be submitted for review based on the reasons as specified in Article 263 paragraph (2) of the Criminal Procedure Code, as follows;

a. If there are new circumstances that give rise to strong suspicion, that if the circumstances were known at the time the trial was taking place, the result would be an acquittal or a verdict of acquittal of all lawsuits or the demands of the public prosecutor cannot be accepted or lighter criminal provisions are applied to the case;

b. If in various decisions there are statements that something has been proven, but the things or circumstances as the basis and reasons for the decisions which are stated to have been proven, are contradicting one another;

c. If the decision clearly shows a judge's error or a real mistake. Those who can submit a request for PK to the Supreme Court against a court decision that has permanent legal force, unless the decision is acquitted or free from all legal claims is the convict or his heirs (Article 263 paragraph (1) KUHAP).

The purpose of PK is to fulfill a sense of justice for justice seekers through the judiciary. Through the PK, there is the possibility of reopening cases that have been decided by the court and decisions that have permanent legal force.

In Indonesia, the term PK for court decisions that have obtained permanent legal force has been known since the country's independence period. A judicial review is an extraordinary legal remedy that is requested against a decision that has obtained permanent legal force (*inkracht van gewijsde*).

In contrast to the PK, ordinary legal remedies are court decisions with an appeal or cassation that are not yet legally binding and can be filed

against all decisions. So, that in a criminal case, it can be filed either by the defendant or by the public prosecutor.

The Constitutional Court's Decision on Judicial Review

The Constitutional Court ruled that a PK rule may only be one time and does not have binding legal force. The panel of judges of the Constitutional Court stated that Article 268 paragraph (3) of Law no. 8 of 1981 concerning the Criminal Procedure Code or what is commonly referred to as the Criminal Procedure Code, is contrary to the 1945 Constitution of the Republic of Indonesia because it limits the review by the defendant to only one time. For reasons of justice, the Court canceled the article, because it was considered detrimental to the position of the Petitioner, which in this case was Antasari Azhar. The Constitutional Court's decision paved the way for Azhar to conduct a PK on the PK decision from the Supreme Court which still gave him a sentence.

It took Azhar a long time to wait for the Constitutional Court's decision. Antasari Azhar's application for a judicial review to the Constitutional Court was made on April 25, 2013. With only being allowed to file a PK once, it became an obstacle for Azhar to file a judicial review of the case that happened to him. According to Azhar at that time, he already had new and strong evidence. However, they cannot do a second PK because of the provisions of the legislation.

After the Constitutional Court's decision, it implies that the PK can be submitted more than once as long as it fulfills the conditions stipulated in Article 268 paragraph (2) of the Criminal Procedure Code. The following is an excerpt from the Constitutional Court's decision No. 34/PUU-XI/2013:

> "Accept the applicant's application in its entirety. Article 268 paragraph (3) of the Criminal Procedure Code is contrary to the 1945 Constitution and has no binding legal force." The Constitutional Court believes that the extraordinary legal remedy for Judicial Review is historically and philosophically a legal remedy that was born to protect the interests of the convict (National.kompas.com).

This is different from ordinary legal remedies in the form of an appeal or cassation which must be linked to the principle of legal certainty. Because, if there is no time limit for filing ordinary legal remedies, it will result in legal uncertainty that creates injustice because the legal process is not completed. Therefore, legal efforts to find material truth to fulfill legal certainty have been completed with a court decision that has permanent legal force (*inkracht van gewijsde*) and places the defendant as a convict. This is confirmed by Article 268 paragraph (1) of the Criminal Procedure Code which states, *"A request for a judicial review of a decision shall neither suspend nor stop the implementation of the decision."*

According to the Constitutional Court, there are restrictions on rights and freedoms with the existence of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia. It cannot be misinterpreted to limit the application for PK to only one time a Review of criminal cases is closely related to the most basic human rights concerning freedom and human life (Hukumonline.com).

SEMA on the Review

Supreme Court issued MA Circular Letter (SEMA) Number 7 of 2014 which was signed on 31 December 2014 by the Chief Justice of the Supreme Court, Hatta Ali. The SEMA emphasized that the application for judicial review (PK) was only one time. The release of SEMA raised pros and cons because the Constitutional Court (MK) through its Decision Number 34/PUUXI/2013 decided that a PK application could be made more than once.

The Constitutional Court's decision dated March 6, 2014, has annulled Article 268 paragraph (3) of the Criminal Procedure Code, which states "Criminal PKs may only be submitted once". Meanwhile, SEMA refers to Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (Law No. 48 of 2009) and Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court as already experienced two changes, the last with Law no. 3 of

2009 (Law on the Supreme Court), which was not annulled by the Constitutional Court.

The SEMA has been circulated to all chief justices, both district courts and high courts, throughout Indonesia. Through the SEMA, the Supreme Court also emphasized that the Constitutional Court's decision to allow repeated PKs had no binding legal force.

The Constitutional Court's decision is non-executable because based on Law no. 48 of 2009 and the Law on the Supreme Court, an application for PK can be submitted only 1 (one) time. Not only as a reference for institutions within the Supreme Court but SEMA is also used as a reference by the Attorney General's Office (AGO). (file.dpr.go.id).

Chief Justice of the Supreme Court, Hatta Ali, said that the issuance of this SEMA was a form of response to the confusion of the Attorney General's Office in carrying out executions of death convicts. The Head of the Formulating Team for the Judicial Review, Suhadi, said that the rules in the circular letter of the Supreme Court emphasized that the petition for judicial review submitted by the convict could only be one time.

This means, according to Suhadi, that all this has canceled the judicial review decision of the Constitutional Court on Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code or commonly referred to as the Criminal Procedure Code which allows for judicial review to be submitted more than once. The background of the existence of SEMA is because there is a request for a postponement of the death execution due to a PK which can be done many times.

> "The decision of the Constitutional Court now has no binding legal force". (Tempo.co)

Because the rules for a judicial review request based on the circular letter of the newly issued Supreme Court may only be submitted once, not more than once as in the decision The Constitutional Court.

Erga Omnes Principle the Constitutional Court's decision

Erga Omnes comes from the Latin word which means it applies to everyone (toward everyone). The *Erga Omnes* principle or legal action applies to every individual, person, or country without distinction. The litigants but for all the people of Indonesia. The principle of *Erga Omnes* is basically to provide legal certainty to the Constitutional Court's decision. This is stated in Law No. 8 of 2011 in conjunction with the amendment to Law No. 24 of 2003 concerning the Constitutional Court.

Article 57 paragraph (2) normatively explain how the Constitutional Court's decision should be The very basic difference between the decisions made by the Constitutional Court g issued by the Constitutional Court with other judicial institutions, namely regarding further legal remedies for their decisions. Decisions issued by other judicial bodies such as the Supreme Court and lower courts may be subject to further legal action, either in the form of an appeal to the High Court, an appeal to the Supreme Court, or a review of new evidence (Maulidi, 2019: 341).

Meanwhile, the Constitutional Court's decision has no legal remedy. It is stated in the constitution that the Constitutional Court is the first and last level judiciary whose decisions are final and binding (Hapsari, Tukan, Putriyanti, 2017: 5).

The meaning of the final decision, the Constitutional Court's decision also includes binding force. This means that the Constitutional Court's decision can immediately obtain permanent legal force from the moment it is pronounced and there can be no legal action that can be taken as a step to object to the Constitutional Court's decision. Problems then arise when the Constitutional Court's decision cannot be implemented concretely (non-executable) and only floats (floating execution) (Hakim and Rasji, 2018: 48).

The principle of binding decisions *Erga Omnes* mentioned above is reflected in the sentence of final character in the decision of the

Constitutional Court in this Law which also includes binding legal force (final and binding).

A right or obligation that is *Erga Omnes* can be exercised and enforced against any person or institution if there is a violation of that right or does not fulfill an obligation. In empirical reality, the problem of implementing the decisions of the Constitutional Court often experiences difficulties, at least showing many variations of problems and patterns of implementation.

The problem of implementing the Constitutional Court's decision is caused by at least 3 (three) things, namely: (1) as stated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the decision of the Constitutional Court is only final but is not accompanied by the word binding so that it is sometimes perceived as not binding; (2) The Constitutional Court does not have an execution unit tasked with guaranteeing the application of final decisions (special enforcement agencies); and (3) the final decision is highly dependent on other branches of state power, namely the executive and legislative branches, namely the willingness and awareness to implement the decision (Nugroho, 2019).

From the three things mentioned above, it is clear that in the field, the decisions of the Constitutional Court are very vulnerable and have the potential to experience implementation problems. In this case, rely solely on the normative and imperative provisions in the 1945 Constitution, laws.

The Constitutional Court and the decisions of the Constitutional Court are not enough to guarantee that there are no problems in the implementation of the decisions. Imperative normative provisions regarding the final nature and enforceability of the decisions of the Constitutional Court do not necessarily eliminate obstacles in their implementation. Because in reality, the decision of the Constitutional Court cannot be enforced if it is understood as an independent entity, separate from its interactions with other things (Laksono, 2013; 4).

At the implementation level, all government institutions, legislative, executive, and judicial, should be loyal to the principle of *Erga Omnes*. This means that all arrangements regarding judicial review must refer to the decision of the Constitutional Court which allows reviewing more than once.

The position of SEMA in the legal Hierarchy

SEMA is the decision of the Supreme Court, which is a structure in state life that is given independent power by law. SEMA has an internal nature, meaning that it is only a technical guide that is needed internally in a working mechanism within all courts.

However, the letter turned out to have an external impact, namely in the implementation of court decisions. Therefore, the Supreme Court does not need to issue SEMA No. 7 of 2014, which is the ambivalence of the Supreme Court's attitude towards the Constitutional Court, because in the provisions of Article 66 paragraph (2) of the Law on the Supreme Court, it is determined that the petition for review does not suspend or stop the implementation of the Court's decision.

So the PK's efforts will not delay the implementation of decisions that have permanent legal force (*in kracht*). Thus, the submission of a PK will not disturb the balance between legal certainty and justice because legal certainty has in principle been created since there was a decision *in kracht van gewijsde*.

SEMA is not included in the type of legislation as regulated in Law no. 12 of 2011 concerning the Establishment of Legislation. SEMA is more of an MA order or direction to the ranks below it. Marzuki in his legal research book asserts that what is included in the legal hierarchy in Indonesia does not include the existence of SEMA. This means that SEMA has no binding legal force.

Article 7 paragraph (1) of Law number 12 of 2011 stipulates the type and hierarchy of legislation. (file.dpr.go.id). The legal hierarchy is: the decrees of: a) 1945 Constitution of the Republic of Indonesia, b) the People's Consultative Assembly (MPR), c) Laws or Perppu, d)

Government, e) Regulations Presidential, f) Regulations Provincial, and h) Regulations Regency/City Regional Regulations.

So, SEMA is not a regulation that must be obeyed by parties outside the Supreme Court. Although the Supreme Court said it did not violate the Constitutional Court's decision, because the articles referred to were different, the provisions (substance) issued by the Supreme Court contradicted the Constitutional Court's decision. The norms issued by the Supreme Court should not conflict with the Constitutional Court's decision.

The issuance of SEMA Number 7 of 2014 can be said as a form of discretion from Government Officials within the Supreme Court to overcome a concrete problem that occurs in the administration of government. However, in practice, the issuance of the SEMA raises problems because of the dualism of regulation in filing for judicial review in criminal cases. (Fajarwati, 2017: 147)

According to Article 10 paragraph (1) of Law no. 24 of 2003 concerning the Constitutional Court, the Constitutional Court's decision is final and binding, meaning that there is no other legal remedy that can be taken after the verdict is read. The Constitutional Court's decision is included in the type of legislation, as stated in Law no. 12 of 2011.

The implementing regulation will contain the definition of novum, time limit, and procedures for submitting PK; and third, the convict is currently unable to apply for a PK more than once because there is no implementing regulation that further regulates the Constitutional Court's decision.

Analysis

Indonesia is a state of law, as stated in Article 1 Paragraph (3) of the 1945 Constitution. Apart from the simplicity of the formulation of the article, it contains a question relating to law enforcement in the context of a state of law, and considering that the Republic of

Indonesia is a democratic state, it means that the law being enforced is within a democratic society.

The firmness of law and justice which guides the people of the Republic of Indonesia cannot be separated from the context of the rule of law and a democratic society embraced in the 1945 Constitution. In this regard, at least in the 1945 Constitution there are five matters relating to law enforcement and justice, namely: 1) regarding the substance, 2) the limits of enforcement, 3) the enforcement authority, 4) the mechanism of law and justice enforcement, and 5) the form of law and justice regulation.

Substantially, the 1945 Constitution affirms freedom and the right to freedom as the essence of law and justice which is regulated in a form of legislation in accordance with the articles related to the matter in question.

In the fourth paragraph of the Preamble to the 1945 Constitution, there is a substantive basis for law and justice, namely law and justice which reflects the existence of people's sovereignty.

Sovereignty is of course based on "Belief in One Supreme God", "Just and civilized humanity", "Indonesian Unity" and "Popularity led by wisdom in deliberation/representation", as well as by "Realizing a social justice for all Indonesian people".

Regarding the limitations of law enforcement and justice, the 1945 Constitution affirms the law and justice contained in the laws and regulations promulgated for that purpose, as well as limitations relating to the recognition and respect for the rights and freedoms of others.

This is in fulfilling fair demands in accordance with considerations of morals, religious values, security, and public order in a democratic society as emphasized in Article 28J Paragraph (2) of the 1945 Constitution. Regarding the authority to enforce law, the 1945 Constitution places institutions that carry out power. The judiciary and the police as law enforcement agencies.

Article 24 Paragraph (2) of the 1945 Constitution affirms that:

> "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court".

Referring to law enforcement and justice as more practical matters than the existence of laws as a forum for regulating law and justice, then "democratic" matters become the main color of the principle of the rule of law, such as in the case of the enforcement and protection of human rights in Article 28I Paragraph (5) of the 1945 Constitution:

> "In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations" (Mukhlishin and Sarip, 2020: 57)

This is then emphasized by the existence of parameters of justice in terms of exercising rights and freedoms, as emphasized in Article 28J Paragraph (2) of the 1945 Constitution: determined by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of morality, religious values, security and public order in a democratic society. (https://surohmatsupadi.wordpress.com)

As mentioned above, in considering its decision, the Constitutional Court is of the opinion that the PK's extraordinary legal efforts are aimed at finding material justice and truth (Chazawi, 2010: 1).

Justice is not limited in time or the provisions of formalities; which limits the PK can only be submitted once. The decision implies conditionally constitutional, that the PK can be submitted more than once as long as it fulfills the conditions stipulated in Article 263 paragraph (2) of the Criminal Procedure Code.

Based on this, the PK cannot be interpreted as being able to be submitted several times immediately because there are conditions that must be met. Meanwhile, the Supreme Court confirmed that SEMA did not violate the Constitutional Court's decision. According

to the Chief Justice of the Supreme Court, Hatta Ali, the issuance of the SE was based on Article 24 paragraph (2) of Law no. 48 of 2009 and Article 66 paragraph (1) of the MA Law which was not annulled by the Constitutional Court (Gumbira, 2016: 113).

The Supreme Court decided that the PK could only be done once because it paid attention to the sense of justice in the community, especially victims, and tried to provide legal certainty (Mertokusumo, 2005: 5).

Historically, philosophical PK is a legal effort that was born to protect the interests of the convict. PK legal remedies are different from appeals or cassations which are ordinary legal remedies. Ordinary legal remedies must be linked to the principle of legal certainty because without legal certainty, such as the time limit in submitting ordinary legal remedies, it will create legal uncertainty, which of course will result in injustice and an unfinished legal process. The extraordinary legal efforts of the PK are aimed at finding justice and material truth.

Justice cannot be limited in time or the provision of formalities that limit that extraordinary legal remedy for PK can only be submitted once because it is possible that after a PK is submitted and decided, there is a substantial Novum found. Novum is a new situation that is put forward by the applicant factually, has value and relevance that can change the circumstances contained in the original decision (Wantu, 2013: 209).

From the explanation above, the decisions of the Constitutional Court and SEMA are both in the name of justice for the victims. For each of these reasons, these two institutions are adamant in their opinion. If you look at the principles of justice in the 1945 Constitution, it can be seen which ones actually contain elements of justice in accordance with the highest constitution (Media Indonesia, January 8, 2021)

However, looking at the background of the existence of these two regulations, it is clear what kind of justice is to be built in the constitution. This country, in the explanation above, it is explained

that this country is a constitutional state based on the 1945 Constitution. So in accordance with Article 28J Paragraph (2) of the 1945 Constitution it is explained that the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, values religious values, security, and public order in a democratic society.

Then look at the background of these two rules, which one is most relevant to the will of the constitution. The death penalty which is the basis for the existence of SEMA is a regulation that has been controversial until now. Because the existence of a rule means that it has violated a person's freedom and rights. State institutions have determined the human rights of a human being. Whereas in the 1945 constitution it is guaranteed by the state.

This means that the existence of SEMA is not actually protecting the victim, but has actually resulted in the loss of other people's lives (Nonet and Selznck, 2008). Then we can see from the background of the emergence of the Constitutional Court's decision. By looking at the background of the Constitutional Court's decision, it is clear that justice is meant for victims' justice. Namely Azhar, who in dealing with his case was unable to do PK twice, even though there, was a new novum.

Conclusion

Indonesia is a state of law (Article 1 Paragraph (3) of the 1945 Constitution). The implications of this article are very broad and require law enforcement in the context of a democratic country. The 1945 Constitution of the Republic of Indonesia affirms that law and justice contained in laws and regulations must take into account morals, local wisdom values, and public order in a democratic society. The principle of the *Erga Omnes* Constitutional Court's decision applies to other people in the same case so that legal certainty cannot limit the right to justice. The existence of contradictory decisions of the Constitutional Court and SEMA regarding PK, must take into

account Article 28J Paragraph (2) of the 1945 Constitution, that the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, religious values, security, and public order in a democratic society. The death penalty which is the basis for the existence of SEMA is a regulation that has been controversial until now. Because the existence of a rule means that it has violated a person's freedom and rights. State institutions have determined the human rights of a human being. This means that the existence of SEMA is not actually protecting the victim, but it has resulted in the loss of other people's lives.

The Supreme Court (MA) needs to revise SEMA No. 7 of 2014, which is an ambivalence to the Constitutional Court's decision. Because in the provisions of Article 66 paragraph (2) of the Law on the Supreme Court, it is determined that the petition for review does not suspend or stop the implementation of the Court's decision. SEMA is not included in the type of legislation as regulated in Law no. 12 of 2011 concerning the Establishment of Legislation. According to Article 10 paragraph (1) of Law no. 24 of 2003 concerning the Constitutional Court, the Constitutional Court's decision is final and binding, meaning that there is no other legal remedy that can be taken after the verdict is read. The Constitutional Court's decision is included in the type of legislation, as stated in Law no. 12 of 2011.

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