LIMITATION OF THE SUPREME COURT'S AUTHORITY IN THE CRIMINAL VERDICT IMPOSITION IN THE DRAFT OF INDONESIAN CRIMINAL PROCEDURE LAW (RKUHAP)

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Abstract

The Draft of Criminal Procedure Law (RKUHAP) has raised a lot of comments, both pros and cons. The counter parties assess that the RKUHAP exercises a lot of restrictions on authority so it is deemed to amputate the authority or weaken the authority of the law enforcers. Among them is a prohibition for the Supreme Court Judge to impose a more severe criminal penalty than the decision that has been handed down by the High Court (PT).

The draft cannot be separated from the fact that many of the Supreme Court decisions, which overturn the verdicts of PT without going through the corridor function of the Supreme Court as judex juris. The Cassation Judge as if acting as level III justice. On the other hand, the drafters of RKUHAP do not see what if the cassation judges find an error in the application of the procedural law. This paper will discuss the restrictions of the Supreme Court's authority in imposing criminal verdict in the Criminal Procedure Law Draft, by giving an overview of practices and case studies of the Supreme Court's decisions which convict higher than the previous decision. So further, the restriction in question is understood and the formulation of recommendations for improvements in RKUHAP.

Keywords: Criminal Procedure Law Draft (RKUHAP), the Cassation, the Supreme Court (MA), *Judex facti*, *Judex juris*

A. Introduction

After the Indonesian Criminal Procedure Law (Law No.8 Year 1981) has been applying for more than 30 years, now the Government and the House of Representatives (DPR) are discussing the Criminal Procedure Law Draft (RUU KUHAP) to replace the old law. The draft raises many comments, both pros and cons.

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The counter parties assess that the draft exercises a lot of restrictions on the authority so that it is deemed to amputate or weaken the authority of the law enforcers.

The removal of the investigation concept for example, protested by the KPK, the Attorney General Office (AGO) and Indonesian Financial Transaction Report and Analysis (INTRAC), because it is considered cutting back their authority. The reason is that, they cannot trace by requesting for information as well as collecting two items of evidence that can be upgraded to an investigation. The Police objects to the Preliminary Examination Judge (HPP), with the reasons for cases occur in remote areas where HPP do not exist, it will make it difficult for the Police to work in the field. And the Supreme Court (MA) also objects to the prohibition of the Supreme Court judges to impose more severe criminal penalties than the decision that has been handed down by the High Court.

The author's tentative conclusion, is that the counter parties to the renewal of the criminal procedural law, - regardless of the reasons they pointed out- , that with the new rules, their authority is limited, which has been deemed quite lose all this time. In the opinion of the author, the criminal procedure law has to be strict, because it will regulate the authority of high level rulers, dealing with the rights of the accused or weaker suspects. Many examples of how the actions of the law enforcers have been mistaken, for example, false arrest, false raids, and others. However, it is just the current social condition is not possible to apply the strict rules of one hundred percent, so that the transition rules are necessary. In general, the author argues that for any action taken by the law enforcement officials, whether the Police, KPK, AGO, INTRAC, the Court or Judge, there must be rules that can control the actions. Without the restriction rules, there will always be the potential for abuse of authority.

Restrictions should not be regarded as an attempt to weaken an institution upon violation of an independency, unless we really want a state of power, not a state of laws. The State of laws mainly lies in how far the state is able to protect and uphold human rights, and to avoid arbitrary actions of the authorities. Therefore it is necessary for the rules that limit the authority of the rulers. This paper will discuss the restrictions on the authority of the Supreme Court in the criminal verdict imposition in the Draft of Indonesian Criminal Procedure Law (RKUHAP).

B. Judicial Power

Article 24 paragraph (2) of the 1945 Constitution states that: "the Judicial Authority is carried out by a Supreme Court and the judicial bodies underneath it in the general courts, religious courts, military courts, administrative courts, and by a Constitutional Court". In the previous paragraph it is stated that "The judicial power is an independent power to organize judicial administration to uphold law and justice".

From these provisions it is clear that the Supreme Court as the organizer of the judiciary to uphold the law and justice. What this means is that although the judicial power is an independent power, it remains bound and obedient to the existing legal provisions. So the Supreme Court also must obey and submit to the rules that limit it, including in reviewing and deciding a case. Similarly, if the future Article 250 of the Criminal Procedure Law Draft becomes law, then it will become binding provisions. Of course that such provisions are general in nature, as casuistry of course it is open to the judges to find the law (*rechtsvinding*) or create law (*rechtsschipping*).

As such, Article 244 of the Criminal Procedure Law which states that "the criminal case verdict given in the last level by other courts other than the Supreme Court, the defendant or the prosecutor can file a request for examination of cassation to the Supreme Court, except against the acquittal". Along the way, the jurisprudence accepts the opinion that what meant by acquittal in that article is a pure acquittal (*vrijspraak*), with consequences if the prosecutor can prove that the decision is a veiled acquittal (*verkapte vrijspraak*), not a pure acquittal, then the cassation can be accepted. As a result, cassation submitted to the Supreme Court for almost all the court judgments. And strangely, the Supreme Court judges accepted it, which sometimes regardless of whether the decision was a pure acquittal or not. The issue of pure acquittal and not pure acquittal also raises the problems, because proving that the decision was not a pure acquittal, the entrance is a matter of proof. And the issue of proof lies in the jurisdiction of *judex facti*. Even this phenomenon is allowed by the legislators (DPR and Government), because if they see this awkwardness, it should have been corrected at the time of revising the Law No. 3 Year 2009 on the Supreme Court. Article 45 A of the Supreme Court Law stipulates the three types of cases that cannot be appealed, namely: (a) Decision on pretrial; (b) Case of criminal punishable with imprisonment of 1 year and/or a fine; and (c) Case of State administration which the object of the lawsuit is in the form of the local authority's decision which is applicable in the local territory concerned. If the lawmakers are consistent with the provisions of article 244 of the Criminal Procedure Law, then they should also include "acquittal" as the type of case that cannot be appealed.

However, in the opinion of the author, there is no strong legal logic, stating acquittal may not be appealed or cassation. In the age of HIR (*het Herziene Inlands Reglement*), all of the judge's decisions may be appealed or cassation. This is understandable, because in each case there is a benefit of another party that must also be protected. This system actually reflects the principle of *accusatoir* wherein the interests of the accused equated with the rights of the interest of the public or the state. Which actually should be considered by the lawmakers is the limitation of appeal according to the type and value of the case, not the form of the verdict.

The authority of the Supreme Court in carrying out the judicial functions in the field of cases, is set forth in Article 28 of the Supreme Court Act, which specifies that the Supreme Court is authorized to examine and decide: (a) A request for an appeal; (b) a dispute about jurisdiction to judge; (c) Application for a review of the court judgment that has permanent legal power.

C. The authority of the Supreme Court in Appeal (Cassation)

When viewed from the juridical historical aspect, the cassation was initially a legal institution that was born, grown and developed in France that uses the term "*Cassation*", which the verb is "*casser*" which means "cancel" or "break". This means, that the cassation is "an authority possessed by the Supreme Court as the highest supervisor on court judgments that exist below it, so that the "appeal" is not "the third justice level". Below we will see how the judges of cassation are very limited in the scope of authority.

The authority of the Supreme Court in an appeal if they would **annul** a court ruling or court order of all justices, in accordance with article 30 of the Supreme Court Law, only possible if: (a) not authorized or overreaching; (b) Misapply or violate the applicable law; and (c) Negligent to meet the conditions required by the legislation that threatens the negligence with the cancellation of the decision in question.

The formulation of the article is a little different from the formulation of Article 253 paragraph (1) of the Criminal Procedure Law, but according to the author the point is the same. In Article 253 of the Criminal Procedure Law, it is formulated that "The examination of the appeal made by the Supreme Court upon the request of the parties, as referred to in Article 244 and Article 248 of the Criminal Procedure Law in order to determine: (a) whether or not a rule of law is not applied or not applied as it should; (b) whether the correct way to adjudicate not executed according to the provisions of law; and (c) whether the court has exceeded its authority.

Let us try to analyze the reasons mentioned above, but the author will discuss specifically the reason of "misapplied or violation of the applicable law". For this reason relates to the restrictions on the authority of the Supreme Court in criminal verdict imposition. Described as follows:

1. Not authorized or exceed the limits of its powers

   A court is not competent to adjudicate a case, if the case has expressly mentioned the authorized institution to adjudicate it. For example in the absolute competence. The jurisdiction of the religious court (PA) has been expressly referred to in the Article 49 of Law No.7 Year 1989 as amended by Law No. 51 Year 2009. When then the PA prosecutes a case, example a case of property dispute that is beyond its authority, then it may be the reason the case is overturned by the Supreme Court. Vice versa, if the District Court (PN) hears the case of inheritance which is included in the scope of the PA, then the decision of the District Court can be canceled by the Supreme Court. If a case in which there is still a dispute over ownership, but submitted to the State Administrative Court (PTUN), then the administrative court ruling that is in favor of the claimant may be canceled by the Supreme Court. So as if in an agreement contains a clause that authorizes the arbitration, in the event of a dispute over the agreement (article 3 of Law No. 30 Year 1999). If there is such a clause, then the general courts are not competent in the absolute terms.

   The Supreme Court has ever cancelled a decision that is voluntary in nature, because the District Court granted a petition stating "a lawful community organization", whereas the authority to determine the validity of a social organization, lies with the Department of Human Rights.

2. Negligent to meet the conditions required by the legislation that threatens the cancellation of the negligence with the cancellation of the decision in question. For example, in article 197, paragraph 1 of the Criminal Procedure Law determined a number of conditions, namely:

   a. The head of the ruling which says "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD";
   b. Full name, place of birth, age or date of birth, sex, nationality, place of residence, religion and work of the accused;
   c. Charges, as contained in the indictment;

d. Consideration arranged briefly about the deed and the circumstances as well as verification tools derived from the examination before the court on which the determination basis of guilt of the accused;
e. Criminal charges as contained in the warrant;
f. The article of the legislation that becomes the basis of punishment or action and the article of the legislation that is the legal basis of the decision, accompanied by the aggravating and mitigating circumstances of the defendant;
g. Day and date of the holding of the judges deliberation except for cases examined by a single judge;
h. Statement of guilt of the accused, the statement of the fulfillment of all of the elements in the formulation of offenses accompanied by the qualifications and punishment or imposed actions;
i. Provisions to whom the court fees charged by mentioning the exact amount and the provision of evidence;
j. Remarks that the entire letter turned out to be false or description of where the falsity is located, if there is an authentic letter which is considered false;
k. Orders that the accused be detained or kept in custody or released;
l. Day and date of the judgment, the name of the prosecutor, the name of the judge who decides and the name of the clerk;

Then in paragraph 2 of Article 197 of the Criminal Procedure Law it is stated that the non-compliance with the provisions of paragraph (1) letter a, b, c, d, e, f, g, h, i, k, and l of this article causing the decision null and void.

These requirements have been a heated debate, i.e. at the time the criminal verdict to be executed (SD Case). It turned out the decision to be executed, did not fulfill the conditions mentioned in Article 197 paragraph (1) letter k, then the defendant/legal advisors, believed the decision was null and void.

Although paragraph 2 of Article 197 of the Criminal Procedure Law threatens the cancellation of the decision by law, but such article does not apply absolutely to all cases, but it applies in casuistry. Article 197 paragraph (1) letter k is not required, if:

a. At the time of the decision the defendant is not in custody, and the judge considers it is not necessary to hold him in custody. Detention of an accused can be done because of the objective requirements i.e. having sufficient evidence and subjective requirement that there are concerns that the accused will flee, or the accused will damage or destroy evidence, or the defendant would repeat the crime.

b. The article imposed on the defendant does not allow him to be detained based on the provisions of article 21 of the Criminal Procedure Law. For example light maltreatment, minor theft, contempt.

c. Decision of Cassation or decision of a judicial review, since the decision is final and binding which must be executed.

3. Misapplied the law or violation of the applicable law. Here the Supreme Court is called *judex juris*, meaning the Supreme Court Judges are only in charge of examining the legal issues of a case. This is different from the function of the first-level court or appeal which acts to examine the case which is commonly referred to as *judex facti*. The authority of the Supreme Court is only in charge of checking whether the judex facti has applied the material law appropriately and correctly, or whether the first-level court judge and the appeal judge do not violate the existing procedural law. The Supreme Court as the *judex juris* is no longer allowed to assess the results of verification, should no longer judge things that mitigate and aggravate the position of an accused, except of course if the *judex juris* finds violations of the material law or procedural law committed by the judex facti, so then the decision of the judex facti should be canceled and the Supreme Court should adjudicate the case back. Apart from the reason on applying the fault grounds of the procedural law or the material law that can be the reason for the *judex juris* cancelling the decision of the judex facti, another reason is also known, that is "insufficient consideration (*onvoldoende gemoiveerd*)".

D. Practices of Decisions of Cassation Judges

It is undeniable that there is a pretty much of the Supreme Court decisions, which overturn the verdict of the High Court without going through the corridor/ entrance of the Supreme Court function as the *judex juris*. The cassation judges overturn the verdict of the *judex facti*, but do not indicate a faulty implementation of the law. Which considered is only the evidence presented at the trial court. So here the Supreme Court Judges do not through the "cassation" door, but as if acting as the level III justice. Other things can also be seen in terms of the cassation judges do not annul the decision of High Court (PT) or District Court (PN) but consider that the decision of the High Court is too low, not comparable with the guilt of the accused so that increase the sentence imposed by the *judex facti*.

Those facts that may be used as the main reason for the drafters of the RKUHAP, thus prohibiting the Supreme Court to impose a higher sentence than the decision

of the High Court. But on the other hand, the drafters of the RKUHAP do not see what if the cassation judges find an error in the application of the procedural law, for example, so that later the cassation judges conclude that the proven charges are more severe charges. As an illustrative example, in the case of murder. The defendant is primarily charged with murder (Article 340 of the Criminal Code), subsidiary charge of intentional killing (Article 338 of the Criminal Code). In the verdict of the District Court which is reinforced by the High Court, the judges neglect to consider the primary charge, but immediately consider the subsidiary charge, and conclude that Article 338 of the Criminal Code proven and sentenced to 10 years. So here there is a misapplication of the procedural law, because in the subsidiary indictment then the first matter to be considered by the judges is the primary charge. The Cassation judges see this as an error in the application of the procedural law and this is the entrance to cancel the High Court judgment. Based on the examination of the cassation judges, the primary charge is judged proven. Whether in these circumstances the cassation judges should not give a more severe punishment than the high court judgment?. According to the author, in this case the cassation judges do not make mistakes.

If we see that there are some restrictions that must be treated for the cassation judges, then the draft of Article 250 of the RKUHAP, is not new. For example in the Corruption Law there is a limit of the minimum penalty and the maximum penalty that restricts judges in imposing sentences. In my view, the formulation of Article 250 of the Criminal Procedure Law Draft can be assessed:

1. Is positive, if it is intended to prevent the Supreme Court acting as judex facti or level III justice. The Supreme Court should be kept and retained as the *judex juris*.

2. Is negative, when it is unlikely to increase the punishment of an accused, although the article applied is different from the article applied by the *judex facti*, and the article is in fact more severe. But if the penalty imposed by the High Court is the same or lower than what would be applied by the cassation judges, then the punishment should not be higher than the penalty that has been imposed by the High Court judges. In such case, the *judex juris* can only give different considerations, to be a guide for the judges under the Supreme Court. It is certainly important to maintain the unity of the law (unified legal opinion).

Maybe it would be better if the article is formulated, that, "The Supreme Court is forbidden to make a criminal verdict which is heavier than the ruling of the High Court, unless the Court can prove that there are errors/mistakes in the decision of the *judex facti* in applying the law in applying the indicted article

which penalty is more severe",

E. Cassation Decision of the Supreme Court Case Study

In the following case the author will present two cases, describing the state of the Supreme Court in deciding the case which adds penalty, more severe than the penalty imposed by the High Court (PT), while at the same time revealing its conjunction with Article 250 of the Criminal Procedure Law Draft.

1. Case I: A

Case I: A

A defendant (say A) was brought to justice. He was charged with a criminal offense with the subsidiarity cumulative indictment, that is:

First Indictment

Primary, the defendant was charged with violating Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 Year 1999 on Corruption Eradication in conjunction with Law No. 20 Year 2001 on amendment to the Law No. 31 Year 1999 on the Corruption Eradication in conjunction with Article 55 of the Criminal Code.

Subsidiary, the defendant was charged with violating Article 3 in conjunction with Article 18 of Law No. 31 Year 1999 on Corruption Eradication

Second indictment

Primary, the defendant was charged with violating Article 5 paragraph (1) letter a of Law No. 31 Year 1999 on Corruption Eradication.

Subsidiary, the defendant was charged with violating Article 13 of Law No. 31 Year 1999 on Corruption Eradication.

Third Indictment,

The defendant was charged with violating Article 6, paragraph (1) letter a of Law No. 31 Year 1999 on Corruption Eradication

Fourth indictment,

The defendant was charged with violating Article 22 in conjunction with Article 28 of Law No.31 Year 1999 on Corruption Eradication.

In the *requisitoir* of the Public Prosecutor (PP), the defendant A was deemed convicted of criminal offense which is stated in:

- Article 3 in conjunction with Article 18 of Law No. 31 Year 1999 (first indictment Subsidiary)
- Article 5 Paragraph (1) letter a of Law No. 31 Year 1999 (second indictment primary).
- Article 6 Paragraph (1) of Law No. 31 Year 1999 (third indictment)
- Article 22 in conjunction with Article 28 of Law No. 31 Year 1999 (fourth indictment). And the Public Prosecutor demanded that defendant A was sentenced to imprisonment for 20 (twenty) years and a fine of Rp 500,000,000, - (Five Hundred Million rupiah) subsidiary six (6) months in prison.

Furthermore, the District Court had rendered the verdict as follows:

1. Declared that the defendant A had been proven legally and convincingly guilty of corruption offense jointly committed as referred to in the First indictment subsidiary, the Second indictment primary and corruption offense as referred to in the Third indictment as well as giving false information regarding property suspected of having ties with corruption as referred to in the Fourth indictment .
2. Handed down a verdict to defendant A of imprisonment for 7 (seven) years and a fine of Rp. 300,000,000,- (Three Hundred Million Rupiah) subsidiary 3 (three) months in prison.

The defendant and the Public Prosecutor appealed against the verdict. Furthermore, the High Court judge upheld the ruling with improvements of criminal injunction and evidence which reads as follows:

1. Declared that defendant A had been proven legally and convincingly guilty of corruption offense jointly committed as referred to in the First indictment subsidiary and the Second indictment primary and the Corruption offense as referred to in the Third Indictment and the Fourth indictment.

2. Sentenced to imprisonment for ten (10) years and a fine of

Rp.500,000,000,- (Five Hundred Million rupiah) subsidiary four (4) months in prison.

Both the defendant and public prosecutor did not accept the High Court's verdict (PT) and filed an appeal. The Supreme Court rejected the appeal filed by the defendant, but the panel of appeal accepted the appeal of the Public Prosecutor. The judges of cassation cancelled the High Court's verdict that improved the District Court's verdict (PN). In the verdict of the panel of appeal what deemed proven was the First indictment primary, the Second indictment primary, the Third and the Fourth indictment

Now let us try to review the consideration of the cassation judge. The Supreme Court as the *judex juris*, if it is going to cancel (kasser) the decision of the judex facti, there must be first an error of law enforcement made by the judex facti. The cassation assembly gave the following consideration:

"*That in spite of the reasons of the appeal mentioned above and no necessity to consider the reasons for the appeal filed by the Cassation Applicant I/the Prosecutor, in the opinion of the Supreme Court, the judex facti (High Court) has misapplied the law and therefore was sentenced to imprisonment for 12 years and a fine of Rp.500.000.000.- provided that if the fine is not paid it is to be replaced by a confinement for 6 months. The considerations of the panel are as follows:*

- *That the indictment prepared in subsidiarity, hence the juridical consequences of the primary charges should be consideredfirst.*
- *That the defendant actually admitted to act unlawfully by enriching other person or corporation amounting to Rp.570.000.000, - namely by granting the tax objection letter from PT SAT which is not in accordance with the mechanism and legal provision against the tax appeal that should be followed.*"

The author's notes concerning the consideration of the cassation judges are as follows:

First, it is a pity that the cassation assembly did not consider any further the error in law application done by the judex facti Judge, whereas the prosecutor as well as the District Court and the High Court agreed that the item proven was the first indictment subsidiary. If we look at the defendant cassation, the District Court considered among others:

That the first indictment of the Attorney/Public Prosecutor was arranged in subsidiarity, however since the indictment arranged in subsidiarity should contain similar basic elements, while article 2, paragraph 1, and Article 3 of Law No. 31 Year 1999 amended by Law No. 20 Year 2001 containing basic elements which are not similar, then the composition of the indictment which should be used by the Attorney / Prosecutor is the alternative indictment. Therefore the Prosecutor's indictment should be alternatively read and arranged.

.... Based on the above legal facts, the judex facti (District Court) will immediately consider charges having close relationship with the legal facts during the trial that is the First indictment subsidiary which violated the provision of Article 3 of Law No. 31 Year 1999.

Therefore the judex facti had actually taken into consideration why they did not consider the first indictment primary, hence awaited in the consideration of cassation decision are: (1) May the judge interpret a form of the indictment made by the Prosecutor, apart from the form that we have known so far, for example, the charges prepared in subsidiarity, but the judge interpreted them as alternative charges. That means the judge changed the form of charges from subsidiarity charges to alternative charges. And (2) Should the subsidiarity charges, primary charges and subsidiary charges contain similar basic elements. If the theory is correct, what are the legal consequences for the prosecutors making such charges. The aforementioned Supreme Court's consideration seemed very simple, in the opinion of the author it gives the impression that the cassation assembly acting as a third level judicial or as judex facti.

Second, the Supreme Court's consideration very simply declared that the first indictment primary was legally and convincingly proven. There is no adequate consideration of the elements contained in the article, as is usual in a criminal verdict. In the first charge primary (article 2, paragraph (1) of Law No. 31 Year 1999). This article has the following elements: (1) Against the law (2) Enriching oneself or other person or corporation; (3) that can be detrimental to state finance or economy. I think the description of these elements is very important, as this article has never been described in the decision of the judex facti.

Third, the injuction of *judex juris* stated that the defendant was legally and convincingly guilty of "jointly committed corruption," as the first

indictment primary, the Second primary, the Third and the Fourth. The cassation assembly had absolutely no consideration of the Second charges primary, the Third and the Fourth. The question is how the assembly came into conclusion that those charges had been proven.

Fourth, in the consideration of the cassation judge about the aggravating and alleviating factors, it was stated that the alleviating factors were "none". In the judicial practice, if the judge considered that there are no factors alleviating the defendant, the judge will lead to impose the maximum penalty threatened in the Article proven.

2. Case 2

Another case that is no less interesting is the Supreme Court's decision that cancelled the verdict of the High Court (PT) which upheld the ruling of the District Court (PN). Unfortunately, the author obtained the material not from the verdict of the case, because at the time of this writing, the decision has not been published. The decision of this case 2, the author obtained from the book "Annual Report of the Supreme Court" year 2013, pages 251-253. The author quotes in their entirety, as follows:

Case No.: 1616 K / Pidsus / 2013.

Defendant: A

Types of case: Special Crime (corruption).

Panel of Judges: AA, MA, MS....

Rule of Law: maximum penalty feasible to be imposed against the defendant who actively initiated meetings and asked for compensation (*fee*), met the element of corruption crime.

The following is the position of this case:

Defendant A in the prosecutors' indictment which was alternatively prepared was charged as follows:

First violated Article 12 letter a in conjunction with Article 18 of Law no.31 of 1999 on corruption eradication, as amended by Law No.20 Year 2001 in conjunction with article 64 paragraph (1) of the Criminal Code,

or Second violated article paragraph (2) in conjunction with Article 5, paragraph (1) letter a in conjunction with Article 18 Law No.31 Year 1999 on corruption eradication, as amended by Law no.20 of 2001 in conjunction with Article 64 paragraph (1) of the Criminal Code, **or Third** violated Article 11 in conjunction with Article 18 of Law No. 31 Year 1999 on Corruption Eradication, as amended by Law No. 20 Year 2001 in conjunction with article 64 paragraph (1) of the Criminal Code.

The Corruption Court in Central Jakarta in considering the alternative charges had opted for the Third charges to be proved and it was proven to be violated by the defendant so that the defendant was sentenced to prison for 4 years and 6 months and fined for Rp. 250,000,000., If the fine is not paid it will be replaced with imprisonment for 6 months. The verdict upheld in the appellate level by the Jakarta High Court. The Public Prosecutor and the defendant did not accept the decision and filed an appeal. The Cassation Assembly in its decision stated rejecting appeal of the defendant and granted the appeal of the public prosecutor to the Corruption Eradication Commission, stating that the defendant A had been legally and convincingly proven guilty of continuing corruption crime, convicted the defendant to imprisonment for 12 years and a criminal fine of Rp.500,000,000. provided that if the fine is not paid it is to be replaced with imprisonment for 8 months and also sentenced to pay compensation amounting to Rp.12,580,000,000.- and US $ 2,350,000 subsidiary 5 years in prison.

Consideration of the Assembly:

1. That in accordance with the legal facts and evidence in the form of witness statements, letters and guidance as a member of Commission X Budget Committee of the House of Representative, had received money from PG amounting to Rp.12,580,000,000.- and US $ 2,350,000.- gradually based on evidence of PG cash expense as a fee to the defendant related to his efforts in leading the Budget of Kemenpora Athletes Guesthouse Project and Kemendiknas State University Project.
2. That despite the approval of the budget in the case a quo is the authority of Budget Committee of the House of Representatives and the Government, but as shown by the facts which were supported by valid evidence, then the defendant's acts as a member Budget Committee of the House of Representatives were one of the modes

operandi in committing corruption which have been examined and decided upon by the Court.

3. That in accordance with the above consideration, the judgment of the first level Court in choosing the third alternative charges to prove, was considered appropriate and correct by the High Court, therefore foreclosed and taken into consideration is not right and wrong.

4. That the defendant is actively asking for fees to MR of 50% during the discussion of the House of Representative's Budget and the remaining 50% after DIPA down or approved

5. That the defendant actively initiated meetings to introduce MR to HI, the Secretary of Kemendikbud Director General.

6. That the defendant participated to propose activity programs for a number of universities that were not initially proposed by the Directorate General of Higher Education but was later proposed as a proposal from the Commission X.

7. That the defendant several times calling HI and DS (Head of Planning and Budgeting Directorate General of Higher Education) to the House of Representatives' Office to discuss the allocation of the budget to be proposed to the Ministry of National Education and asked HI and DS to prioritize the provision of budget allocations to several universities.

8. That the defendant actively made several telephone communication or Blackberry Messenger (BBM) messages with MR regarding the follow-up and progress of budget driving effort and delivery of money (fee) with MR.

9. That the defendant actively conducting meetings in the House of Representative's building, NBSS' home, FX Senayan Plaza , Grand Lucky and Belezza Apartment

However, a member of the assembly gave a dissenting opinion basically as follows:

1. That based on the results of verification and appreciation for the fact that sum of money received by the defendant was found only amounting to Rp.2,500,000.000.- and US $ 1,200,000 .

2. That the imposition of additional penalties in the form of payment of compensation as requested by the Public Prosecutor cannot be justified since the judex facti was not wrong in considering the sentence

imposed.

The author made some notes regarding the decision as follows:

1. In the decision it is not mentioned the reason why the judex facti's decision was considered to be improper and wrong by the assembly. The first level court which was confirmed by the High Court chose the Third Alternative charges, but it was deemed wrong by the cassation assembly, but unfortunately there was no explanation of the location of the error.
2. That consideration no.1 to 9 all illustrated facts that are beyond the reach of the *judex juris*, since facts are the judex facti's authority.
3. This decision was considered by the Supreme Court as a "Landmark Decision". Did the Supreme Court conclude that verdict as a Landmark Decision by reviewing "maximum penalty imposed on defendants who are actively initiated meetings and requested for remuneration (fees) met the elements of corruption crime"? As a rule of law, so it is worth viewing it as "landmark decision"? Whether it is a rule of law or just a proposition to determine the size of the punishment (straaf Maat).

Both of the above decisions can be viewed from two sides: First: The imposition of high penalties by the Supreme Court is in the expectation of reducing the level of corruption. Second: The defendants would think deeper in using legal efforts, since they have "fear" to exercise their rights (legal efforts). It is actually harmful for a state of law, because the court is the place to seek justice. If there is fear to use the appeal or cassation, the right to justice has been reduced.

G. Closing

From the description above, the restrictions on the authority of the Supreme Court in a verdict of punishment in the formulation of Article 250 Criminal Procedure Law draft can be assessed as: Positive, if intended to prevent the Supreme Court acting as *judex facti* or level III justice. The Supreme Court should be kept and retained as a *judex juris*. And negative, if making it impossible to increase a defendant's sentence, although the article applied is different from the article applied by the *judex facti*, and the article contains more severe penalties.

But if the penalty imposed by the High Court is the same or lower than what to be applied by the cassation judge, then the punishment should not be higher than the penalty that has been imposed by the high court judge. In such case, the *judex juris* can only give different considerations, as a guide for judges under the Supreme Court. It is important to maintain the unity of the law (unified legal opinion).

Hence based on these considerations, the author recommends Article 250 of the Criminal Procedure Law to be reformulated as: "the Supreme Court is forbidden to rule punishment more severe than the High Court's decision, unless the Court can prove that in the judex facti's decision there are errors / mistakes in applying the article indicted, of which the threat is more severe".