



Rejection of Cassation Application by The Supreme Judge Because The Defendant Was Not Legally Proven To Have Committed A Criminal Act (Study Of Supreme Court Decision Number 2205k/Pid.Sus/2022)

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Abstract: The Supreme Court is the pinnacle of (legal) efforts in seeking justice through the judicial process, both as a cassation court and a court for judicial review. The Supreme Court in carrying out its judicial function does not always meet the expectations of justice seekers in particular, and the public in general. The method used in this writing is the normative legal approach method where the research conducted is by examining existing library materials (library research), which are related to the title being studied. The results of this study indicate that the Supreme Court's Cassation Decision No. 2205 K/Pid.Sus/2022, stated that it rejected the cassation from the Cassation Applicant/Public Prosecutor to the Corruption Eradication Commission, with the consideration that the Cassation Applicant/Public Prosecutor could not prove that the *judex facti* decision did not meet the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law. The Public Prosecutor at the KPK filed an appeal in case number 2205k/Pid.Sus/2022, namely that 1) the reason for the Public Prosecutor's appeal was because the *judex facti* (District Court) was wrong in applying the law, the *judex facti* had tried the Defendant in the *a quo* case not in accordance with the applicable criminal procedure law, and the *judex facti* did not exceed its authority, 2) That the reason for the Public Prosecutor's appeal was basically regarding the *judex facti* not applying the law or applying the law improperly because the *judex facti* stated that the Defendant was proven to have committed a crime as charged by the Public Prosecutor.

Keywords: Rejection of Application; Cassation; Not Proven.

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Received: Jan 24, 2025;

Revised: Jan 28 2025;

Accepted: Feb 02, 2025;

Published : Feb 28, 2025;



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1. Introduction

In criminal law, there are formal criminal law and material criminal law. Formal criminal law is the law that regulates how the state, through its apparatus of power, carries out criminal punishment, while material criminal law is the criminal law that contains instructions on acts that can be punished and how long a person who commits a criminal act must serve a sentence (Sumaryanto & SH, 2019),(Zaidan, 2022). In relation to the understanding of formal criminal law, hereinafter referred to as criminal procedural law, various understandings have been conveyed by legal experts, in general the understandings given by these experts refer to the provisions that apply in criminal procedural law and how the law enforcement process must be carried out (Muhtar et al., 2023),(Panjaitan, Budi Sastra, 2018).

Legal remedies against an acquittal based on the provisions of criminal procedure as regulated in Article 67 of the Criminal Procedure Code stipulate that "The Defendant or Public Prosecutor has the right to appeal against the decision of the first instance Court except for a decision of acquittal, free from all legal charges concerning the issue of inappropriate application of the law and the Court's decision in a fast procedure" (Basri, 2021), (Rizal, 2021). Furthermore, it is explained in Article 244 of the Criminal Procedure Code, which states that "Regarding a criminal case decision given at the final level by a court other than the Supreme Court, the defendant or Public Prosecutor may file an appeal to the Supreme Court except against an acquittal decision" (Wijaya, 2020), (Ardelia & Rustamaji, 2023).

Based on the first paragraph of the letter from the Deputy Attorney General for General Crimes Number B-736/Opt/E/11/1983, dated 15 October 1983 regarding the Request for Cassation Against the Decision of Acquittal, it explains "Based on Article 67 of the Criminal Procedure Code, a decision of acquittal and release from all legal charges cannot be appealed, but according to Article 244 of the Criminal Procedure Code, only a decision of acquittal cannot be appealed, so that means a decision of release from all legal charges can be appealed (Arief, 2021), (Korea, 2020). Observing the provisions of Article 67 and Article 244 of the Criminal Procedure Code shows that against an acquittal decision, no appeal can be made, so why has the Public Prosecutor been able to file a legal appeal against an acquittal decision to the Supreme Court? (Musa, Thalib, & Yunus, 2021), (Adiyaryani, 2010).

The provisions of Article 67 and Article 244 clearly indicate that an acquittal is something that can be excluded from legal efforts, both appeal and cassation. Therefore, the public prosecutor has never been given the authority by law to file an appeal, or cassation, and also to file a judicial review (ATMAJA, nd), (Hanin & SH, 2024). The sentence used as the basis for stating that an acquittal cannot be appealed, and the cassation is the same principle between Article 67 and Article 244 of the Criminal Procedure Code, except for using the word "except", "except for an acquittal", meaning that an acquittal cannot be appealed (Article 67) and an acquittal cannot be appealed (Article 244).

Legal remedies, both ordinary and extraordinary, can only be taken against decisions that contain criminal penalties. If linked to the provisions of Article 191 paragraph (1) of the Criminal Procedure Code which stipulates that if the court is of the opinion that from the results of the trial examination, the defendant's guilt for the act charged against him has not been proven legally and convincingly, then the defendant will be declared free, then the basis of the problem which later developed into a pure and impure acquittal decision, comes from the formulation of Article 191 paragraph (1) of the Criminal Procedure Code (Diamond, Milono, & Prihatini, nd), (Ardhan, 2020). The word "error" has multiple interpretations because it can only be called offset and culpa or it can be called a loophole in the perpetrator of a criminal offense.

A verdict of acquittal only in cases of offset and culpa becomes the core part of the crime and a verdict of release from all legal charges in cases of offset and culpa becomes a tacit element of a crime (Hamzah, 2024), (Charity, nd). So, the basis for the existence of a pure acquittal and an impure acquittal is actually the understanding of guilt, which if the

guilt becomes an element of a crime, when the element is not proven, then the crime is not proven. But when the guilt becomes a silent element, when the guilt is not proven, then it is decided onslag, as in Article 191 paragraph (2) of the Criminal Procedure Code (NATSIR, 2024),(SPIRITUAL, 2020).

Taking into account the provisions of Article 91 paragraph (1) and Article 91 paragraph (2) of the Criminal Procedure Code, then basically even if the legal effort of cassation can be carried out against a verdict of impure acquittal, then in fact both are against a verdict that does not contain a criminal sentence, namely a verdict that should be decided as onslag, then the legal practice that differentiates between a verdict of pure acquittal and an impure acquittal must be abandoned. The birth of the legal practice that differentiates between a verdict of pure acquittal and an impure acquittal does not originate from a legal conception that in the verdict there is an error regarding the verdict that should contain a criminal sentence, but is imposed by the judge as an impure acquittal (Waluyo, 2022),(Ristiana, 2016).

Regarding this problem, in fact, the reason the Public Prosecutor again filed an appeal against the acquittal verdict was because he considered that the first instance court decision was in the category of an impure acquittal verdict. For example, in the case of Samin Tan, which was appealed by the public prosecutor in the corruption case Number (2205 K/Pid.Sus/2022). After previously at the first instance, the District Court Judge decided the defendant's case was acquitted, because it did not fulfill the elements of a crime based on the tools and evidence submitted by the Public Prosecutor. Then the Supreme Court Judge again decided the case by stating that the Applicant/Public Prosecutor could not prove that the *judex facti* decision did not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law. Thus, based on Article 254 of Law Number 8 of 1981 concerning Criminal Procedure Law, the Public Prosecutor's cassation request was rejected (Santos, 2021).

Referring to the explanation above, it is clear that Article 244 of the Criminal Procedure Code cannot be appealed against an acquittal. This results in legal uncertainty in practice due to the contradiction in the implementation of the article. On the one hand, the article prohibits appeals, but on the other hand, the Supreme Court in practice accepts and adjudicates appeals against acquittals issued by lower courts. Therefore, in order to guarantee fair legal certainty and equal treatment before the law, the Court needs to determine the constitutionality of Article 244 of the Criminal Procedure Code, especially the phrase "except against an acquittal" (Musa et al., 2021).

The problem of law enforcement related to the public prosecutor's appeal against the acquittal decision is what then became the basis for the author's argument to conduct a legal study related to the enforcement system of Article 67 and Article 244 of the Criminal Procedure Code that has occurred in legal practice so far. Thus, in this study, the author will conduct a legal study related to the submission of an appeal by the Public Prosecutor, with the research title "Rejection of the Cassation Application by the Supreme Court Justice Because the Defendant Was Not Proven Legally to Have Committed a Criminal Act (Study of Supreme Court Decision Number 2205k/Pid.Sus/2022).

2. Materials and Methods

The type of research used in this study is normative legal research, Normative legal research is legal research conducted by examining library materials or secondary data only. The approach in this study uses the Legislation Approach, namely by examining all laws and regulations related to the legal issues in this study. With data collection techniques through library studies, documents and archives. Research Data Sources use secondary data sources. While the analysis of research data, namely data and legal materials that have been obtained, both primary legal materials and secondary legal materials are qualitative data, which are then processed and analyzed descriptively according to the problems discussed. So this research is descriptive analysis.

3. Results and Discussion

3.1 Legal Reasons for the Supreme Court Judge to Reject the Public Prosecutor's Cassation Because the Defendant Was Not Proven Legally to Have Committed a Criminal Act

The judge's decision or court decision is an important and necessary aspect to resolve criminal cases, so it can be stated that the judge's decision on the one hand is useful for the defendant to obtain legal certainty about his status and at the same time can prepare the next steps regarding the decision in the sense that it can be in the form of accepting the decision or making legal efforts to appeal, cassation, and so on (Zainal, 2021).

As explained above, the contents of a court decision should reflect a sense of justice for the parties, in this case the defendant, convict, public prosecutor and also for the community. Dissatisfaction with the court decision is a reason for the parties (defendant, convict and public prosecutor) to file an objection to the court decision which they consider is not in accordance with what it should be, the objection is submitted through legal remedies (Budiarta, & Suardana, 2020).

Regarding what is meant by legal remedies, it is regulated in Article 1 paragraph 12 of the Criminal Procedure Code, which is complete: Legal remedies are the rights of the accused or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the right of the convict to file a judicial review in the case and according to the method regulated in this law. From the formulation above, it is concluded that legal remedies are intended to protect the legal interests of the accused or convict and also to protect the interests of the law itself (Fahmi, 2024).

According to the Criminal Procedure Code, there are two types of legal remedies, namely, ordinary legal remedies (gewone rechtsmiddelen), which consist of: resistance (verzet), appeal (revision/hoger beroep), cassation (cassatie) and extraordinary legal remedies (buiten gewone rechtsmiddelen) which consist of: examination of the cassation level in the interests of the law (cassatie in het belang van hetrecht) and review of court decisions that have obtained permanent legal force (Putra, 2023).

In relation to the acquittal, in theory, there is no opportunity for the public prosecutor to file a cassation appeal to the Supreme Court against an acquittal (vrijspraak), which is conceptualized in the formulation of Article 244 of the Criminal Procedure Code, namely "Regarding a criminal case decision given at the final level by a

court other than the Supreme Court, the defendant or public prosecutor may submit a request for a cassation examination to the Supreme Court except for an acquittal." (Musa, Thalib, & Yunus, 2021)

Based on the wording of Article 244 of the Criminal Procedure Code, the legislators (formers of the Criminal Procedure Code) as policy makers who formulate ideas regarding the essence of cassation legal efforts against the acquittal decision, conceptually and theoretically, appear to firmly disallow the public prosecutor to file a cassation legal effort against the acquittal decision. Several doctrinal circles view the version and arguments in line with the legislators who formulated the formulation of Article 244 of the Criminal Procedure Code with the core essence that against the acquittal decision, the public prosecutor cannot file another legal effort, either in the form of an appeal or cassation (Suci, 2022).

The construction of conceptual theoretical thinking of legal experts each provides justification for their arguments about the ratio legis or basic idea of the acquittal (*vrijspraak*) which cannot be requested for legal action by the Public Prosecutor. According to Van Bemmelen as quoted by Moeljatno which is published in his book Harun M. Husein said "By the memory of van toelichting, the decision to acquit the defendant is felt as a right that is obtained and cannot be contested." (Putra, 2023)

Oemar Seno Adji (Former Chief Justice of the Supreme Court), in relation to the acquittal verdict, stated: For a defendant, an acquittal verdict, where the criminal act accused of him cannot be proven is more of a major factor, so an acquittal verdict as a right obtained and eliminating the alleged criminal act should not be used as a basis for filing a cassation request as stated in the Basic Law on Judicial Power and the Criminal Procedure Code (Article 244 in conjunction with 67 of the Criminal Procedure Code).

According to the Criminal Procedure Code, there is no opportunity for the Public Prosecutor to file a cassation appeal to the Supreme Court against an acquittal verdict. Thus, at the judicial normative level, the right or opportunity for the Public Prosecutor to file a cassation appeal against an acquittal verdict (*vrijspraak*) by the Criminal Procedure Code can be said that in fact the path or door is already closed. This condition is reflected by Soedirdjo as a sub-chapter title in his book with the chapter title, "Acquittal is a Closed Legal Path."

However, in fact, there has been a development in the practice of Indonesian criminal justice, namely that the provisions of Article 244 of the Criminal Procedure Code have finally been broken through so that a cassation appeal can be requested to the Supreme Court against an acquittal decision. This is a step to overcome the crisis of injustice according to public perception of the excesses of acquittal decisions which tend to pattern negative situations and conditions for the world of justice in particular and law enforcement in general (Priyono, 2022).

The cassation legal effort in criminal cases against criminal decisions can be requested by the defendant or legal counsel and the prosecutor or public prosecutor. According to Article 244 of the Criminal Procedure Code, it is stated that, against a criminal case decision given at the final level by a court other than the Supreme Court, the defendant or public prosecutor can submit a request for a cassation examination to the Supreme Court, except for an acquittal (Sangkay, 2018).

The cassation appeal can be made against all decisions of the final court or high court or by other courts other than the Supreme Court, against all decisions of the high court or appeal level, except for the acquittal decision, which can be appealed to the Supreme Court of the Republic of Indonesia (RI). The cassation appeal is regulated in Articles 244-258 of the Criminal Procedure Code as an ordinary legal remedy and in Articles 259-262 of the Criminal Procedure Code, cassation in the interests of the law as an extraordinary legal remedy. The purpose of cassation is to create a unity in the application of law by canceling decisions that are contrary to the law or are wrong in applying the law (Lamsu, 2020).

Oemar Seni Adji, put forward three reasons for filing an appeal, namely: (a) If there is an oversight in the event (*vorniverzuim*). (b) Legal regulations are not implemented or there are errors in their implementation. (c) If the trial is not carried out in accordance with the method determined by law.

Examination at the cassation level is carried out by the Supreme Court at the request of the parties as referred to in Article 244 and Article 248 in order to determine: (a) Is it true that a legal regulation is not implemented or is not implemented properly? (b) Is it true that the trial was not carried out according to the provisions of the law? (c) Is it true that the court has exceeded its authority?

Based on the provisions above, we can see that the Criminal Procedure Code allows for cassation because it is recognized that there is a possibility that an error will occur in the criminal justice process. Thus, it can be seen that the Criminal Procedure Code provides an indicator that contains or contains the value of justice must be based on applicable law or statutes. According to the Criminal Procedure Code, an appeal and cassation are the rights of every defendant who has been sentenced, this right is also given to the public prosecutor. Therefore, the legal remedies for appeal and cassation must be imposed on those who request it according to the requirements determined by law.

On December 15, 1983, the first jurisprudence was born in the Supreme Court Decision Reg. No. 275 K/Pid/1983. Only 5 days after the Decision of the Minister of Justice, the Supreme Court welcomed it positively. The Supreme Court has accepted the prosecutor's cassation request against the acquittal of the defendant Natalegawa which was handed down by the Central Jakarta District Court. The Supreme Court's considerations in breaking through Article 244 are in line with what was stated by the Minister of Justice that based on the situation and conditions, for the sake of law, justice and truth, an examination of the acquittal decision can be requested in a cassation trial.

The issue of the Supreme Court's authority to examine cases that were acquitted was then tested materially at the Constitutional Court, where based on the Constitutional Court Decision Number 114/PUU-X/2012 dated March 28, 2013, the phrase "except for acquittals" in Article 244 of Law Number 8 of 1981 concerning Criminal Procedure Law does not have binding legal force. This means that the Supreme Court has the authority to examine cases that were acquitted by the Court (Handoko, 2018).

Referring to the cassation application Number 31/Akta.Pid.Sus/TPK/2021/PN JKT PST made by the Clerk at the Corruption Crime Court at the Central Jakarta District Court, which states that on August 30, 2021, the Public Prosecutor at the Corruption

Eradication Commission filed a cassation application against the decision of the Corruption Crime Court at the Central Jakarta District Court.

That in the first indictment the Defendant was charged with Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code, the Article is a bribery crime. The requirement for a bribery crime is an agreement (meeting of minds) between the giver and receiver of the bribe, in this case the Defendant and Eni Maulani Saragih in relation to the provision of money amounting to Rp. 4,000,000,000.00 (four billion rupiah).

Furthermore, in the second indictment, Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code, because the element of "giving" in the first indictment was not proven, the element of "giving" in the first indictment applies *mutatis mutandis* to the consideration of the element of "giving" in the second indictment. Therefore, the consideration of *judex facti* is correct and proper.

The defendant was declared not proven guilty of committing the act as in the Public Prosecutor's indictment by the *judex facti*. The consideration of the First Instance Court's *judex facti* which stated that the Defendant was not proven guilty of committing the act as in the First and Second indictments was that in the crime of gratification, the act of giving gratification is not punishable because it is not a crime. The main purpose of the crime of gratification is to maintain the honesty of every civil servant in carrying out their work from giving gratification. Thus, by considering Article 1 paragraph (1) of the Criminal Code, the *judex facti* stated that the Defendant could not be charged with the crime of gratification if it was linked to the giving of money to Witness Eni Maulani Saragih, who had been convicted in another case.

Based on the description of the Panel of Judges' considerations contained in the cassation case file, the Applicant for Cassation/Public Prosecutor was unable to prove that the *judex facti* decision did not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law. Thus, based on Article 254 of Law Number 8 of 1981 concerning Criminal Procedure Law, the Public Prosecutor's cassation application was rejected.

From the perspective of the defendant's legal interests, it means that the defendant has the right not to accept the court's decision because according to reality and according to the applicable legal rules, the defendant cannot be blamed as stated in the court's decision. Meanwhile, from the perspective of the legal interests themselves, legal efforts are intended to protect the implementation of the legal rules themselves, in the sense of whether it is true that a legal regulation is not applied or is not applied properly.

The first Supreme Court jurisprudence above became a reference and normative legal justification for the Public Prosecutor to utilize the rights and space in filing a cassation appeal against the judge's decision which at the district court examination level

received an acquittal (*vrijspraak*). In this case, the role of the Minister of Justice's Decree became the starting point for determining the birth of a very historic jurisprudence in the context of law enforcement.

Observing the wording of Article 244 of the Criminal Procedure Code and the views of the experts above, it appears that the legislators (Criminal Procedure Code legislators) and the experts only view it from the perspective of the interests of the accused so that they have not yet created a balance in fulfilling the rights of other parties, such as the Public Prosecutor as the rights holder also to fight for justice from the victim or the community seeking justice through corrections to every judge's decision in this case through filing an appeal against the acquittal (*vrijspraak*). As a link to the rights that each person has before the law as stated in the content and essence of distributive justice which in its application cannot always be true, the possibility of an element of error from the implementer (Human Error) can appear at any time, so this is where there needs to be control or correction from other parties, especially by the perpetrators of the Criminal Justice System or between the sub-system structures, there needs to be mutual control vertically and horizontally in the implementation of the criminal justice process.

In this case, it appears that the legislators (formers of the Criminal Procedure Code) only look at the interests of the accused, so that there has not been a balance of rights for other parties, in this context, namely the Public Prosecutor who did not get the opportunity to make corrections in the form of cassation efforts against decisions containing acquittals (*vrijspraak*) so that there is no reflection of the application of distributive justice or corrective justice for the acquittal decision and it can also be said that the mechanism of the check and balance system in our Criminal Justice System has not been realized.

3.2 Reasons for the Public Prosecutor at the Corruption Eradication Committee to File an Appeal in Case Number 2205k/Pid.Sus/2022

According to Mahfud MD, legal politics is the direction that we will create and implement to achieve the goals of the country. Mahfud MD added that this is very important because in the past we had incredibly complicated legal problems. "Indonesia always displays a changing political system, the factors of change vary but I distinguish two, namely democratic and undemocratic political systems." Mahfud MD. (Law, Indonesia, From, Kelsenian, & Kurniawan, 2024)

Substantially, the judge's decision in a criminal case has only three characteristics, namely: (a) Sentencing (*verordeling*) if the judge/court is of the opinion that the defendant has been legally and convincingly proven guilty of committing the criminal act charged (Article 193 paragraph (1) of the Criminal Procedure Code). (b) A verdict of acquittal (*vrijspraak/acquittai*) if the judge is of the opinion that from the results of the examination at trial the defendant has not been legally and convincingly proven according to law for the act charged (Article 191 paragraph (1) of the Criminal Procedure Code). (b) A decision to release from all legal charges (*onslag van alle rechtsvervolging*) if the judge is of the opinion that the act of which the defendant is accused has been proven, but the act does not constitute a criminal act (Article 191 paragraph (2) of the Criminal Procedure Code).

A criminal sentence is rendered by a judge if the judge is of the opinion that the defendant has been legally and convincingly proven guilty of committing the crime charged. An acquittal is rendered if the judge is of the opinion that from the results of the trial examination the defendant has not been legally and convincingly proven guilty of the act charged. A verdict of release from all legal charges is rendered if the judge is of the opinion that the act charged against the defendant has been proven, but the act does not constitute a crime. In a verdict containing the acquittal of the defendant, the defendant who is in detention status is ordered to be released immediately, unless for a legitimate reason the defendant remains in detention, for example, the defendant is still involved in another case, either for himself or together with the defendant's friends (Article 193 paragraph (3) of the Criminal Procedure Code).

Referring to the Decision of the Corruption Court at the Central Jakarta District Court Number 37/Pid.Sus-TPK/2021/PN Jkt Pst, which stated that the defendant Samin Tan was not legally and convincingly proven guilty of committing a crime as charged in both the first alternative charge and the second alternative charge; Therefore, acquit the Defendant from all charges of the Public Prosecutor. Based on the decision of the first instance court, the Public Prosecutor then filed a cassation application to the Supreme Court with 2205 K/Pid.Sus/2022. That in its considerations, the Supreme Court Judge accepted the Prosecutor's cassation, namely referring to the decision of the Constitutional Court Number 114/PUU-X/2012 dated March 28, 2013 which stated that the phrase "except for an acquittal" in Article 244 of Law Number 8 of 1981 concerning Criminal Procedure Law does not have binding legal force, then the Supreme Court has the authority to examine the cassation application against the acquittal.

The reasons for the cassation application submitted by the Public Prosecutor are as follows; (a) That the reason for the Public Prosecutor's appeal is because the *judex facti* (District Court) was wrong in applying the law, the *judex facti* tried the Defendant in the *a quo* case not in accordance with the applicable criminal procedure law, and the *judex facti* did not exceed its authority; (b) That the reason for the Public Prosecutor's cassation is essentially regarding the *judex facti* not applying the law or not applying the law properly because the *judex facti* stated that the Defendant was proven to have committed a crime as charged by the Public Prosecutor.

In the first indictment, the Defendant was charged with Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code. This article constitutes a bribery crime. The requirement for a bribery crime is an agreement (meeting of minds) between the giver and recipient of the bribe, in this case the Defendant and Eni Maulani Saragih in relation to the provision of money amounting to Rp. 4,000,000,000.00 (four billion rupiah).

Furthermore, in the second indictment, Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1)

of the Criminal Code, because the element of "giving" in the first indictment was not proven, the element of "giving" in the first indictment applies *mutatis mutandis* to the consideration of the element of "giving" in the second indictment. Therefore, the consideration of *judex facti* is correct and proper.

Based on the considerations of the Panel of Judges regarding the two charges above, the Applicant/Public Prosecutor could not prove that the *judex facti* decision did not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law. Thus, based on Article 254 of Law Number 8 of 1981 concerning Criminal Procedure Law, the Public Prosecutor's cassation application was rejected.

The provisions regarding the cassation application filed by the Public Prosecutor against the acquittal decision based on the provisions of the Constitutional Court Decision Number 114/PUU-X/2012. Which states that the cassation application for an acquittal decision is the authority of the Supreme Court in examining the case, of course will give rise to various stigmas and legal doctrines that do not have legal certainty. On the one hand, Article 244 limits the submission of a cassation against an acquittal decision, on the other hand, the Constitutional Court decision states that Article 244 does not have permanent legal force. This will create legal uncertainty for anyone who wants to obtain justice, certainty and also benefits.

A different opinion regarding decision Number 114/PUU-X/2012. was actually expressed by Constitutional Justice Harjono regarding the decision on the application filed by retired civil servant, Idrus. According to Harjono, the exception to the submission of a cassation appeal against an acquittal as regulated by Article 244 of the Criminal Procedure Code is a protection of human rights for those whose rights have been violated due to their status as defendants, after a valid court decision (Musa, Thalib, & Yunus, 2021). By eliminating the phrase "except for an acquittal" from Article 244 of the Criminal Procedure Code, it has fundamentally destroyed the Criminal Procedure Code system, the implication of which is that it will sterilize many other articles of the Criminal Procedure Code, even though the elimination has no constitutional basis. "Practice is not a reference for declaring a law contrary to the Constitution and in fact, judicial review of laws is often intended to correct prevailing practices that are in accordance with the constitution, therefore it is not uncommon for the Court to decide conditionally constitutionally to correct such incorrect practices and not vice versa,".

Based on the provisions above, regarding the legal regulation of cassation efforts against acquittal decisions, it should be equipped with a strong legal basis, the government and lawmakers must provide legal certainty by creating a new law that specifically regulates the legal status of acquittal decisions, whether in practice cassation can still be filed or vice versa. So that in the future it does not cause different legal interpretations.

4. Conclusions

The reason the Panel of Judges of the Supreme Court rejected the Public Prosecutor's cassation application was because the Defendant was declared not guilty of committing the acts as in the Public Prosecutor's indictment by the *judex facti*. The consideration of

the First Instance Court's *judex facti* which stated that the Defendant was not proven guilty of committing the acts as in the First and Second indictments was that in the crime of gratification, the act of giving gratification is not punishable because it is not a crime. The main purpose of the crime of gratification is to maintain the honesty of every civil servant in carrying out their work from giving gratification. then the Supreme Court's Cassation Decision No. 2205 K/Pid.Sus/2022, stated that it rejected the cassation from the Applicant/Public Prosecutor to the Corruption Eradication Commission, with the consideration that the Applicant/Public Prosecutor could not prove that the *judex facti* decision did not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law.

The reason the Public Prosecutor at the KPK filed an appeal in case number 2205k/Pid.Sus/2022 is that 1) the reason for the Public Prosecutor's appeal is because the *judex facti* (District Court) was wrong in applying the law, the *judex facti* had tried the Defendant in the *a quo* case not in accordance with the applicable criminal procedure law, and the *judex facti* did not exceed its authority, 2) That the reason for the Public Prosecutor's appeal is basically regarding the *judex facti* not applying the law or applying the law improperly because the *judex facti* stated that the Defendant was proven to have committed a crime as charged by the Public Prosecutor.

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