

Juridical Strength of the Verdict Excerpt As A Basis of the Implementation of Court Judgement Having Permanent Legal Force in the Criminal ACT of Corruption

Agus Subagya, Supanto, Sh, M.Hum, Widodo T. Novianto, Sh, M.Hum

Abstract: *This study aims to examine verdict excerpt as a basis to implement final jurisprudence having permanent legal force. This study recommends that the clerk of a court immediately to send a copy of the decision within a period of time in accordance with the Supreme Court Circular Letter No. 01 of 2011 concerning Amendments to Supreme Court Circular Letter (SEMA) No. 02 of 2010 concerning Submission of Copies and Verdict ("SEMA 01/2011") within 14 (fourteen) days of verdict recitation. The purpose is to avoid execution delinquent due to objectivity of execution verdict by convict.*

Keywords: *Verdict Excerpt, Copies of Verdict, Prosecutor, Court Judgement Having Permanent Legal Force*

I. INTRODUCTION

A. Background of Study

The criminal act of corruption is a part of special crime law and the provisions of positive criminal law in Indonesian regulated in Law Number 31 of 1999 concerning the eradication of criminal act of corruption as amended and supplemented by Law Number 20 of 2001 concerning the amendment to Law No. 31 of 1999 concerning the Eradication of Criminal Act of Corruption is further referred to as the Criminal Act of Corruption Law in which anyone who violently acts of enriching oneself or another person or a corporation that can harm finance or economy of state.

Criminal act of corruption is a form of crime committed by people who have an important position and role in the social order of society. This crime is often also called as the white-collar crime. In practice, it has a crime mode which is elegantly appointed and has quality crimes, which is hard to prove or reveal.

The handling of corruption cases starts from the Investigation, enquiry and subsequent prosecution happens when the court judgment having permanent legal force is in presence; therefore, it is the duty of the prosecutor to carry out jurisprudence. Not until the end of 2017 Banjarmasin district attorney had delinquent executions of 7 (seven) convicted corruption cases from several corruption cases that have been finalized by the court and the decisions were already final. All of the delinquents were the decisions of the Supreme Court because Banjarmasin district attorney could not execute the convicts based on the excerpts of the verdict.

Revised Version Manuscript Received on 24 November, 2018.

Agus Subagya, Master Student, Department of Law, Sebelas Maret University Surakarta, Indonesia.

Prof. Dr. Supanto, Sh, M.Hum, Master Lecturer, Department of Law, Sebelas Maret University Surakarta, Indonesia

Dr. Widodo T. Novianto, Sh, M.Hum, Master Lecturer, Department of Law, Sebelas Maret University Surakarta, Indonesia

The convicts refused to be executed with the excerpts of verdict and requested a copy of the court's verdict as the basis of execution.

B. Research Question

Based on the description above, the problem in this study is formulated as follow:

Can the Attorney General use verdict excerpt in the corruption cases as the basis for the execution?

C. Research Objectives

To find out the research, review and analyze the final verdict in corruption cases were used as Attorney General utilized it as the basis of execution.

D. Research Method

Because this legal research is normative juridical, qualitative analysis that is focused on the substance with reasoning process in drawing conclusions, deductive thinking method was used based on submitting a major premise in the form of a legal rule and submitting a minor premise, namely legal facts, and conclusions were drawn from both.

II. RESULTS AND DISCUSSION

A. Excerpts and Copies of Court's Verdict as a basis for Execution in a Criminal Case

The justice system in Indonesia adheres to simple, fast and low-cost justice. The principle of simple, fast and low-cost justice is intended so that the settlement of cases in court is carried out efficiently and effectively and not complicated with the simplification of the judicial process which can have implications for during case handling. In the process of handling criminal cases the principle of simple, fast and low-cost justice applies from the investigation, enquiry, prosecution, trial and execution of court decisions.

The implementation of court decisions that is final (execution) in the criminal justice system in Indonesia is part of the enforcement of criminal law. By law or the implementation of the law in-concreto by the criminal law officers. In general, it is known, the apparatus or a legal institution that carry out the final jurisprudence is the Attorney General of the Republic of Indonesia.

It is also regulated in Article 30 paragraph (3) letter (b) of Law Number 16 of 2004 concerning the attorney office of the Republic of Indonesia which reads:



Juridical Strength of the Verdict Excerpt As A Basis of the Implementation of Court Judgement Having Permanent Legal Force in the Criminal ACT of Corruption

"In criminal justice, the attorney office has the duty and authority: Carrying out the final jurisprudence and court decisions having permanent legal force."

The end of a process of handling criminal cases including corruption cases is the presence of court decisions. After judges reading off the verdict, the clerk of a court

immediately gives verdict to the defendant or legal advisor and also provides a copy of the verdict to the public prosecutor and investigator.

No. Matters contained in the excerpt of the Decision Copy of the Decision Letter

Table 1: Differences in Excerpt and Copy of Verdict

No.	Content	Excerpts of Verdict	Copy of verdict
1.	The head of the verdict written reads: "FOR JUSTICE BASED ON BASED ON THE SUPREME DIVINITY"	exists	exists
2.	Full name, place of birth, age or date of birth, sex, nationality, residence, religion and occupation of defendant;	exists	exists
3.	Indictment, as written on indictment letter;	does not exist	exists
4.	Finely appointed consideration regarding facts and condition of proof obtained from investigation on court as the basis of defendant's entrenchment;	does not exist	exists
5.	Crime demand as written on demand letter;	does not exist	exists
6.	Law articles as the basis of criminal accusation and law articles as the basis of verdict.	exists	exists
7.	State of receive and recharge.	does not exist	exists
8.	Day and date of judge consensus except the case is reconsidered by one judge;	does not exist	exists
9.	Defendant's statement of guilty, the statement has been fulfilled by all elements in the formulation of criminal acts accompanied by their qualifications and convictions or actions taken	exists	exists
10.	Provisions to whom case fees are charged by stating the exact amount and provisions concerning evidence;	exists	exists
11.	Information that all the letters are found to be false or a description of where the falsehood is located, if an authentic letter is considered false	exists	exists
12.	Order that the defendent be detained or remain in detention or be exempted from;	exists	exists
13.	Day and date of verdict, name of public prosecutor, name of judge on charge and name of clerk of court.	exists	exists

Source: Processed from Criminal Code Procedure and examples of verdict and copy of verdict

Referring to the Supreme Court Circular Letter (SEMA) No. 01 of 2011 concerning Amendments to SCCL No. 02 of 2010 concerning Submission of Copies of Verdict and Verdict excerpts ("SEMA 01/2011"). In SEMA 01/2011, among others, it was stated that:

1. Court that examines and adjudicates Civil cases must provide a copy of the verdict for the parties within 14 (fourteen) working days after the verdict is read off. Because the copy of verdict in the civil case is subject to Non Tax Revenues fees, then the copy of the decision must be at the request of the party concerned;
2. For a Criminal Case the Court is obliged to submit a copy of verdict within a period of no later than 14 (fourteen) working days after verdict is read off to the Defendant or Legal Advisor, Investigator and Public Prosecutor, except for cases resolved in no time in accordance with the provisions of the Criminal Procedure Code;
3. Criminal Case verdict is given to Defendant, Public Prosecutor and State Detention House or Correctional Institution as soon as the Decision is read off.

If referring to SEMA No. 01 of 2011 in criminal cases including cases of corruption, the clerk must submit a copy of verdict no later than 14 (fourteen) not only to the Public Prosecutor and Investigator but also to the defendant. This reinforces and broadens the provisions of Article 226 of the Criminal Procedure Code. In the SEMA it also extends the provisions because verdict is also given in addition to the defendants, Public Prosecutors and State Detention Houses.

The implementation of verdict is carried out in accordance with the Criminal Procedure Code, this is confirmed in article 197 paragraph (3) of the Criminal Procedure Code:

Decisions are carried out immediately according to the provisions in this law.

Therefore, related to the implementation of final jurisprudence has been strictly regulated by the Criminal Procedure Code carried out with a copy of verdict.

In the Supreme Court Circular Letter (SEMA) No. 01 of 2011 concerning Amendments to SCCL No. 02 of 2010 concerning Submission of Copies of Verdict and Verdict ("SEMA 01/2011") does not expressly state that excerpts of decisions can be used as a basis for prosecutors to carry out final criminal decisions. The Supreme Court Secretary Nurhadi explained the Prosecutor can use that verdict as a basis for execution.

Based on verdict, the prosecutor is able to execute a final verdict. "Excerpts of the verdict can be used as the basis for execution," said the Supreme Court Secretary Nurhadi after inaugurating 20 echelon three officials in the Supreme Court building.

Nurhadi explained that the issue of the execution of criminal cases is the authority of the Prosecutor's office. "We affirm the execution of the criminal case, the executor of the prosecutor's office if the case has been convicted. So please ask the prosecutor, what is the difficulty of the Prosecutor's Office for the execution of criminal cases, especially corruption cases?" Said Nurhadi.

That based on the SEMA No. 01 of 2011 concerning Amendments to SCCL No. 02 of 2010 concerning Submission of Copies of Verdict and Verdict ("SEMA 01/2011"). The Supreme Court and the judicial body conclude that the excerpts of the verdict can be used as the basis for final execution of cases so that clerk of court will not immediately send a copy of verdict to the Public

Prosecutor. Even though the SEMA does not mention this clearly. The Supreme Court and the judicial body are also not entirely obeying the SEMA, it is proven that within 14 (fourteen) days after verdict is read off, it does not immediately send a copy of verdict to the Public Prosecutor. This is the basis of the many delinquent executions of convicts at the Prosecutor's Office. If the convicted person accepts and wants to be executed based on verdict, it may not be a problem, but the problem is when convict refuses and accuses the executor of committing an illegal act for carrying out an execution without the right basis.

B. The Execution at the Banjarmasin District Attorney

There is a difference in the implementation of court decision making (execution) of the convicts who previously had been detained and those who had not been detained. If the convicts were beforehand under detention, the court ruling or decision making on the convicts is carried out by directly doing the execution at the detention center or the correctional facility, in that case executors send warrant for decision implementation (P-48) along with the minutes for decision implementation (BA-8). However, the court ruling will be different to the convicts who previously had not been detained where the convicts will receive a more specific treatment, in this case the executor will take the convicts to correctional facility. In doing so, the executor is required to bring some documents along to be submitted to correctional facility. Those documents are:

1. Copies of court decision which have permanent legal force.
2. Warrant for decision implementation (P-48).
3. Minutes for decision implementation (BA-8).
4. Detention warrant along with official report of detention if the convicts were beforehand under arrest.

Many delinquent executions of the convicts of corruption cases at the attorney's office have led many parties to question the seriousness of the officers in carrying out their duties, that until the end of 2017, Banjarmasin district attorney had 7 (seven) delinquent executions of the convicted corruption of several corruption cases which had been decided by the court and the decision was legally binding. All those delinquent executions are Supreme Court's decisions since Banjarmasin district attorney cannot execute the convicts based on excerpts of the verdict. The convicts refused the execution on the basis of the excerpts of the verdict and requested a copy of the verdict. On the other side, the Banjarmasin district attorney got difficulty in requesting the copy of the verdict to the Supreme Court through Banjarmasin district court. The Banjarmasin district attorney had repeatedly sent the letters to the Supreme Court to request the copy of court's verdicts of the cases which have become delinquent executions.

Based on the research findings carried out by the writers at the Banjarmasin district attorney,¹ it was found that

¹A research at Banjarmasin district attorney on August 25, 2018

Juridical Strength of the Verdict Excerpt As A Basis of the Implementation of Court Judgement Having Permanent Legal Force in the Criminal ACT of Corruption

Banjarmasin district attorney had delinquent executions of corruption convicts which had been decided by the Supreme Court. Banjarmasin district attorney had received the

announcement of the court's verdict and the excerpts of court decision from the Supreme Court in 2016. The above explanations can be restated in the following table:

Table 2. The Execution of the Court's Verdict at the Banjarmasin District Attorney

No	Convicts	In Detention	Not in Detention	Executed with Excerpts of the Verdict
Criminal act cases of the misuse of social assistance funds at the Public Secretariat Bureau, Provincial Secretariat of South Kalimantan in the budgeting year of 2010				
1.	DR. H. Luthfy Mahatma Hadi, SP. Rad bin Husni (alm)	-	√	Refused
2.	Dr. H. Suharto, SE.MM bin Suprpto (alm)	-	√	Refused
3.	Drs. H. Anang Bakhraniesh	-	√	Refused
4.	H.FitriRifani, SH	-	√	Refused
5.	Dr. Ahmad Fauzan Saleh, M.Ag bin M. Saleh	-	√	Refused
6.	Sarmili Bin H. Sani	-	√	Refused
7.	Mahliana	-	√	Refused
The corruption case in the procurement and installation of wastewater pipelines by PD PAL of Banjarmasin in the budgeting year of 2014, located in Kelayan Dalam and Basirih, Banjarmasin Sub district, Banjarmasin.				
8.	Taufik Hidayat, ST	√	-	Acceded
9.	Muhammad Muhdin, BE,ST,MM	√	-	Acceded
Criminal act of corruption case in the implementation of the issuance of the sporadic statements of physical land tenure in Pelambuan, West Banjarmasin Sub district, Banjarmasin in 2017.				
10.	Rahmatullah S. Stp. MA als Rahmat bin H. Sayni	√	-	Acceded

Table. Execution with excerpts of court's verdict against the convicts who were in detention and who were out of detention
Source: Banjarmasin district attorney,2018

Based on the interview withTaufik Satia Diputra, SH, the head of Banjarmasin district attorney,²it is informed that Banjarmasin district attorney will execute the court decisions which have been legally binding, whether they are general crimes or special crimes. If Banjarmasin district attorney has received a copy of the court's verdict, it will be used in the execution. But, if they only receive the excerpts of the verdict, the excerpts will be employed as the basis for execution. In case a convict refuses to be executed by using the excerpts of the verdict, the Banjarmasin district attorney will be waiting until the registrar sends a copy of the verdict while still coordinating with the court. For the convicts who are under detention, they generally will not refuse the execution with the excerpts of verdict. However, those who are not under detention, they usually refuse to be executed with the excerpts. This problem becomes obstacle to execution, if the convicts have already known that the will

be executed, it is likely that they will flee, especially in cases of general crimes.

The difficulty encountered by the Banjarmasin district attorney is mainly in obtaining the copy of the verdict decided by the Supreme Court. Dealing with the court's verdict decided by the first level court or the appellate court, Banjarmasin district attorney can ask it directly to high court or district court related to copies of the cases, but for the Supreme Court it can only be done through request letter.

Taufik Satia Diputra, SH., the head of Banjarmasin district attorney,³ informed that before and after the Letter of the Deputy Attorney General for Special Crimes Number: B-146 / F / Fu.1 / 01/2018 dated January 25, 2018, the execution of the special criminal act (corruption), the

³ Interview with Taufik Satia Diputra, SH., the head of Banjarmasin district attorney , on 28 August 2018

² Interview with Taufik Satia Diputra, SH., the head of Banjarmasin district attorney on August 28 Augustus 2018

Banjarmasin district attorney tried to execute several corruption cases by using the excerpts of verdict, but there was resistance from the convicted party. The convicted parties were not willing to be executed when the basis was the excerpt of verdict; they argued that according to article 270 of the Criminal Procedure Code (KUHAP), execution can be carried out on the basis of a copy of the verdict not the excerpts. Those who refused the execution on the basis of the excerpts of the verdict were entirely not under detention, but for those who were under detention, there was no refusal. The delinquent executions at the Banjarmasin district attorney are all based on the decisions made by the Supreme Court, and the Banjarmasin district attorney has tried to request a copy of the verdict either directly or through request letter to Banjarmasin district court.

Based on our interview with Taufik Satia Diputra, SH., the head of Banjarmasin district attorney, it was found that Banjarmasin district attorney got difficulty in obtaining a copy of the court's verdict of the cases decided by the Supreme Court. The Banjarmasin district court argued that they had just received the excerpts, and had not received the verdict yet. Whereas for the cases decided by the first and appellate courts, the Banjarmasin district attorney has no difficulty in obtaining the copy of the verdict, so the cases can as soon as possible be executed.

In the case of criminal act of the misuse of social assistance fund at the public secretariat bureau, the provincial secretariat of South Kalimantan in budgeting year 2010 (delinquent execution), Banjarmasin district attorney has received the notification of decision and the excerpts since 2016 from the Supreme Court through the Banjarmasin district court but, the Banjarmasin district attorney just received the copy of the verdict by January 2018 so the convicts who refused execution with the excerpts should wait for the copy of the verdict from the Supreme Court. The Banjarmasin district court argued that they had not received the court's verdict but just the excerpts. All delinquent executions convicts who refused to be executed with the excerpts' of verdict, when the executor had and brought the copy of the court's verdict of their cases, they cooperatively received and carried out the decision regarding their case. Interestingly, among the convicts there were some of them who voluntarily came to the Banjarmasin district attorney to undergo their imprisonment.

Agung Wijayanto, SH., an executor at Banjarmasin district attorney,⁴ elaborated that executors had executed several convicts who were not under detention, and all of them refused to be executed on the basis of excerpts of the verdict so, executors should wait for the copy of the verdict. The executors tried first to execute by using the excerpts of the verdict, if there was a refusal, the executors waited for a copy of the verdict. Meanwhile, there was no convicts who were under detention who refused the execution on the basis of the excerpts of the verdict.

The interview carried out by the researchers with Satriyo Prayitno, SH. MH, a registrar at Banjarmasin district court,⁵

revealed that based on Supreme Court Circular (SEMA), excerpts can be used as the basis of execution, so far court's verdict from the first and second level (appeal level) courts, the panel of judges immediately send the copy of verdict, but for Supreme Court, registrar sometimes only received the excerpts while the copy of the verdict had not been sent or it was sent late. If registrar received the copy of the verdict, he or she would as soon as possible send it to the prosecutor for the execution basis.

In our interview with the head of Banjarmasin correctional facility, Rudi Charles Gill, Bc.IP, SH,⁶ it was also informed that Banjarmasin correctional facility would accept the convicts whether they are executed with excerpts or with copy of verdict. Meanwhile, Erna, SH, as the legal advisor of the social assistance fund case convicts refused if the execution was done on the basis of the excerpts of the verdict, she said that her stance was based on article 270 of Criminal Procedure Code (KUHAP).

Justice is something that is hard to define, but it can be felt. It is an element that cannot be separated from law as a set of principles and rules that ensure a good order in society.⁷ Justice should be the main concern in the execution process since execution is the final goal of the criminal law.⁸ This is aligned with the objectives of the Criminal Procedure Code (KUHAP), those are to seek and to obtain or at least to approach the material truth which is a complete truth of certain criminal case and apply the criminal provisions honestly and precisely,⁹ this is where there is a fundamental difference between KUHAP and *Herziene Inlandsch Reglement*, that the main objective of the HIR is to achieve legal order and certainty without specifically questioning the extent to which there can be protection over the dignity of the suspect, accused, or defendant, and it is totally different compare to KUHAP which is aimed at protecting the dignity of the suspect, accused, and defendant.¹⁰

Regarding the execution of the convicts it has been strictly regulated in KUHAP, it can only be done with copy of verdict but KUHAP does not clearly stipulate the time limit until the copy of verdict must be given. Since there is no time limit stated, it then becomes problem and leads to delinquent executions.

Although the justice system in Indonesia adheres to simple, fast, and low-cost judicial principle, it must not neglect the expectation of justice, the principle of legal certainty, and the principle of benefits. Do not let law enforcement officials violate law when enforcing the law. Legal certainty

⁶Interview with correctional facility staff of Banjarmasin on 29 August 2018

⁷Mochtar Kusumaatmadjadan B. Arief Sidharta, 2009, *Penghantar Ilmu Hukum*, Alumni, Bandung, p. 53

⁸Rusli Muhammad, 2007, *Hukum Acara Pidana Kontenporer*, Citra Aditya Bakti, Bandung, hlm. 5

⁹P.A.F Lamintang, 2010, *Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi*, Sinar Grafika, Jakarta, p. 40

¹⁰Romli Atmasasmita, 1996, *Sistem Peradilan Pidana Prespektif dan Abolitionisme*, Putra Abidin, Bandung, p. 29

⁴ Interview with Agung Wijayanto, SH., as the prosecutor at Banjarmasin district attorney on 28 August 2018

⁵ Interview with a registrar at Banjarmasin district court on 29 August 2018

Juridical Strength of the Verdict Excerpt As A Basis of the Implementation of Court Judgement Having Permanent Legal Force in the Criminal ACT of Corruption

needs to be immediately realized in criminal proceeding, but justice for the convicts should not be ignored.

III. CLOSING

A. Conclusions

Based on the description and analysis presented in the previous chapters, the following conclusions are drawn as the answer of the research problem of this current study:

Pursuant to the article 226 paragraph (1) of KUHAP, it is mentioned that the excerpts of verdict are given to the defendants or their legal advisor immediately after the verdict is pronounced while in paragraph (2) it is stated a copy of the excerpts is given to the public prosecutor and investigator while for the defendant or legal advisor will be provided by request. To this point, it is obvious that those who are entitled to the excerpts of verdict are defendant and his legal advisor while public prosecutor has no right to obtain the excerpts. On the other hand, those who are entitled to obtain the excerpts of verdict are public prosecutor, investigator, defendant or his legal advisor at the request. The issuance of Circular of the Supreme Court (SEMA) No 01 of 2011 concerning the amendment of SEMA No 2 of 2010 on submission of copies and excerpts of verdict ("SEMA 01/2011") becomes ambiguous due to the provision of article 226 of the KUHAP because in the SEMA the copy is given to the defendant, public prosecutor, and correctional facility immediately after the verdict is pronounced. However, in the SEMA it is confirmed that the copy of the verdict of the criminal case is given to defendant or his legal advisor, investigator, and public prosecutor within a period of 14 (fourteen) days of working days since the decision is pronounced. Here, it does not explicitly mention that the excerpts of verdict can be used as the basis of execution. Nurhadi, who is the secretary of the Supreme Court opined the excerpts of verdict can be used as the basis of execution but in practice, the prosecutors are still hesitant to conduct execution on the basis of the excerpts. The excerpts of verdict are legal documents but it has been clearly stated that only a copy of the verdict can be used as the basis of execution (article 270 of KUHAP). It is reinforced by article 197 paragraph (3) of KUHAP which states the court's verdict is carried out according to the provisions in this law. Thus, there is no legal basis that execution of criminal cases can be conducted on the basis of the excerpts of the court's verdict.

B. Suggestion

The Criminal Procedure Code (KUHAP) only states that a copy of the verdict is given to public prosecutor, investigator, and defendant or his legal advisor on request while the time limit or period for sending the verdict and the excerpts is not stated in KUHAP. In order to provide legal certainty, the time limit in giving the copy of verdict and excerpts should be included in KUHAP. If the time limit is only stipulated in SEMA, when the rule is disobeyed it will only be the violation of the standard operating procedure (SOP) but, if it is further regulated in Criminal Procedure Code (KUHAP) when someone breaks it, it becomes the violation of procedural code.

REFERENCE

1. A research at Banjarmasin district attorney on August 28, 2018
2. Interview with Taufik Satia Diputra, SH., the head of Banjarmasin district attorney on August 28 Augustus 2018
3. Interview with Taufik Satia Diputra, SH., the head of Banjarmasin district attorney , on 28 August 2018
4. Interview with Agung Wijayanto, SH., as the prosecutor at Banjarmasin district attorney on 28 August 2018
5. Interview with a registrar at Banjarmasin district court on 29 August 2018
6. Interview with correctional facility staff of Banjarmasin on 29 August 2018
7. Mochtar Kusumaatmadjadan B. Arief Sidharta, 2009, Penghantar Ilmu Hukum, Alumni, Bandung, p. 53
8. Rusli Muhammad, 2007, Hukum Acara PidanaKontenporer, Citra Aditya Bakti, Bandung, hlm. 5
9. P.A.F Lamintang, 2010, Pembahasan KUHAP MenurutIlmuPengetahuanHukumPidana&Yurisprudensi, SinarGrafika, Jakarta, p. 40
10. RomliAtmasasmita, 1996, Sistem Peradilan Pidana Prespektifdan Abolisionisme, Putra Abidin, Bandung, p. 29