

Casation in Civil Procedure Law is Reviewed from a Legal Logic Perspective

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ABSTRACT

Cassation is the final legal remedy submitted by a party who feels aggrieved by the decision of the court of first instance or appeal to be re-examined by the Supreme Court. This research aims to determine the effectiveness of the application of cassation in correcting legal errors that occur as a result of ignoring legal facts at the appeal level, as well as a comparison between cassation and judicial review in dealing with discrepancies between legal facts and the application of legal rules. This research uses normative juridical methods with a qualitative analysis approach to court decisions, legal literature and applicable laws and regulations. The research results show that cassation has an important role in ensuring the consistency of legal policy, but its effectiveness is greatly influenced by the quality of the cassation petition, the judge's ability, and the caseload at the Supreme Court. On the other hand, judicial review (PK) offers a wider scope in measuring misjudgments of legal facts by considering new evidence or obvious judge errors.

Keywords- Cassation, Legal Logic, Judicial Review, Supreme Court.

INTRODUCTION

It should be understood that cassation is an important mechanism in the justice system which allows parties who feel aggrieved by a decision of the court of first instance or appeal to submit a request to have the decision re-examined by the Supreme Court. Second, cassation aims to ensure consistency, fairness and legal certainty, by reviewing whether decisions issued by courts at lower levels are in accordance with applicable law. In this case, legal logic becomes an important basis in the process of assessing the suitability of decisions with relevant legal norms.¹

Over time, the history of the development of cassation reflects significant changes in legal paradigms and increasingly complex demands for justice. Initially, cassation was seen as an instrument to ensure consistency in the application of the law and to correct errors that may have occurred in lower courts. However, along with the evolution of the justice system and changes in the understanding of justice, the role of cassation has also evolved. Not only correcting technical errors, cassation has also begun to consider broader aspects such as substantial justice, protection of human rights, and the suitability of decisions with developing social values.²

In addition, changes in the procedures and criteria for accepting cassations over time reflect dynamics in legal thinking as well as social changes in society. For example, in some modern legal contexts, cassation not only considers formal legal issues, but also takes into account the social, economic and humanitarian implications of the decision. This change is reflected in the formation of more inclusive cassation acceptance criteria, which take into account substantial aspects and values developing in society. Therefore, updates in cassation procedures reflect the adaptation of the justice system to contemporary demands in ensuring fairness and accuracy in law

¹ Navisa, F. D., & Fauziah, U. *Pengaturan Asas Cepat, Sederhana Dan Biaya Ringan Dalam Hukum Acara Perdata dan Hukum Acara Pidana. Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 2023. 21(2), 84-99.

² Rahim, A., & Rahim, M. I. F. *Pokok-Pokok Upaya Hukum Terhadap Putusan Pengadilan Dalam Perkara Perdata*. (Humanities Genius, 2021: Jakarta) hlm. 45-47

enforcement.³

The institutional and procedural context surrounding the cassation process also needs to be considered. This includes factors such as the authority of the Supreme Court, limitations in submitting cassation requests, as well as procedures for examining cassation by the Supreme Court. By understanding this context, we can evaluate the role of cassation in ensuring the success of the justice system in achieving its fundamental goals, namely justice, legal certainty and the protection of individual human rights. Thus, further research that integrates aspects of legal logic in cassation analysis can provide deeper insight into its contribution in the context of civil procedural law.

RESEARCH METHODS

The research method used in this paper is a normative juridical method, which aims to analyze the concept of cassation in civil procedural law from a legal logic perspective. This approach involves reviewing applicable laws and regulations, court decisions, and related legal literature to understand the legal principles underlying the use of cassation. The data collected will be analyzed qualitatively, with a focus on the application of legal logic in the interpretation and implementation of cassation by the judiciary, in order to obtain a comprehensive understanding of the validity of legal arguments in the cassation process.

DISCUSSION

Effectiveness of the Application of Cassation in Correcting Legal Errors Due to Ignoring Legal Facts at the Appeal Level

Cassation is the last legal remedy available for the parties to fight for their rights in court. This effort aims to correct appellate court decisions that are considered legally flawed or contrary to applicable law. One of the common reasons for filing a cassation is when certain legal facts are not properly considered at the appeal level.⁴ The effectiveness of the application of cassation in correcting legal errors resulting from ignoring legal facts at the appeal level can be assessed from the following aspects:

1. Possibility of Acceptance of the Cassation Application

Cassation requests are not always accepted by the Supreme Court. Applications are only accepted if they meet the formal and material requirements specified in the law. Formal requirements include the existence of clear reasons for cassation that are in accordance with legal provisions, while material requirements include the existence of legal defects or real legal violations in the decision of the appellate court.

2. Opportunities for Cancellation of Appeal Decisions

Even if the cassation request is accepted, the chance of annulment of the appeal decision is not always guaranteed. The Supreme Court will only overturn an appeal decision if it finds legal defects or real legal violations in the decision. This means that the Supreme Court will not only review legal facts that were ignored at the appeal level, but will also assess whether the decision is appealable is in accordance with applicable law as a whole.

3. Recovery Of The Parties' Rights

If the Supreme Court decides to cancel the appeal decision, the decision of the court of first instance will be reinstated. This means that the rights of the parties that were violated in the appeal decision will be restored. However, it is important to remember that canceling an appeal decision does not always mean that the parties will get the decision they want. The Supreme Court can also order the case to be re-examined at the appeal

³ Syarkowi, H. A. I. *Mengenal Putusan (Peradilan) Perdata*. (Pustaka Pelajar, Bandung: 2018) hlm. 35

⁴ Widjaja, G. *Banding Dan Kasasi Dalam Hukum Acara Perdata; Ditinjau Dari Perspektif Logika Hukum*. *Innovative: Journal Of Social Science Research*, 2023, 3(3), 4724-4735.

level with a different panel of judges.

4. Factors Affecting Effectiveness

The effectiveness of the application of cassation in correcting legal errors resulting from ignoring legal facts at the appeal level is influenced by several factors, including:

- i. **Quality of the cassation request:** A cassation request that is well drafted and accompanied by strong evidence will be more easily accepted and granted by the Supreme Court.
- ii. **Judge's ability:** The ability of Supreme Court judges to understand legal facts and apply applicable law appropriately will greatly determine the effectiveness of the appeal.
- iii. **Case load at the Supreme Court:** A high case load at the Supreme Court can cause the cassation case examination process to take longer and be less than optimal.

The application of cassation can be an effective effort to correct legal errors resulting from ignoring legal facts at the appeal level. However, its effectiveness is influenced by several factors, such as the quality of the cassation petition, the judge's ability, and the caseload at the Supreme Court. It is important to note that the above description only provides a general idea of the effectiveness of cassation applications. Each case has unique characteristics and requires in-depth legal analysis to determine the effectiveness of cassation in that case.⁵

Comparison of Judicial Review (PK) and Cassation in Handling Discrepancies in Legal Facts and Application of Legal Rules

Both cassation and judicial review are extraordinary legal remedies submitted to the Supreme Court. However, both have different approaches in dealing with situations where there is a discrepancy between the selection of certain legal facts and the application of legal norms (rules of law). Let's compare the two:

1. Legal Basis

- i. **Cassation:** Based on the Code of Procedure, especially Chapter XVIII concerning Cassation.
- ii. **Judicial Review:** Based on Law Number 14 of 1985 concerning the Supreme Court, especially the provisions regarding Judicial Review.

2. Reason for Submission

- i. **Cassation:** Focuses on errors in the application of the law or violations of the law by the appellate court. This could be an error in the interpretation of legal rules, or an error in applying legal rules to established legal facts.

3. Scope of Examination

- i. **Cassation:** The Supreme Court is limited to examining appeal decisions and first instance decisions related to the reasons for the cassation submitted. The examination is focused on aspects of legal application, not on re-proving legal facts.
- ii. **Judicial Review:** The Supreme Court has a wider scope of examination. Apart from examining the application of the law, the Supreme Court can also review legal facts, especially if a novum is submitted.

4. Impact on Decisions

- i. **Cassation:** If granted, the Supreme Court can decide to cancel the appeal decision and revive the first

⁵Ardiansyah, F. H. *Upaya Hukum Peninjauan Kembali Dalam Perkara Perdata (Studi Putusan Mahkamah Agung Nomor 118/PK/Pdt/2018)* (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

- ii. instance decision, cancel the appeal decision and order a re-examination at the appeal level, or reject the cassation request
- iii. Judicial Review: If granted, the Supreme Court can cancel the entire decision, both appeal and first instance, and order a re-examination at the first instance. The PK cannot revive a decision that was previously annulled.

5. Proof Difficulty Level

- i. Cassation: The level of difficulty of proof is higher. The cassation applicant must be able to clearly demonstrate the error in the application of the law by the appellate court...
- ii. Judicial Review: The level of difficulty of proof depends on the reasons for the PK proposed. For a novum, the applicant must prove the validity and relevance of the new evidence. For the judge's error, the applicant must show a very basic and detrimental error.

Application to situations of inconsistency with legal facts and application of legal rules

For example, in a civil case, the court of first instance decided that the defendant had committed a breach of contract (broken promise) based on conversation evidence. However, the appeals court considered the conversation evidence to be inauthentic and overturned the first instance decision.⁶

- i. Cassation: The aggrieved party can file an appeal on the grounds that the Supreme Court made a mistake in assessing the validity of the conversation evidence. They must show other evidence that substantiates its authenticity.
- ii. Judicial Review: If new evidence is found in the form of an original recording of the conversation, a PK can be submitted for novum reasons.

Cassation is more suitable for correcting errors in the application of the law, while PK is more suitable for correcting errors in assessing legal facts or generating significant new facts. In cases of inconsistency between legal facts and the application of legal rules.

- i. Kasasi A cassation can be filed if the error lies in the process of applying legal rules to existing facts.
- ii. Judicial Review can be submitted if there is a novum that can change the assessment of legal facts or there is a clear error by the judge in assessing legal facts.

In the context of correcting errors in the application of the law, cassation is a more appropriate instrument. This is because cassation allows parties who feel aggrieved to submit a request for the Supreme Court to re-examine the process of applying legal rules to existing facts. If there is an error in the determination or application of legal rules by a court at a lower level, cassation can correct the error and ensure that the resulting decision is in accordance with applicable legal norms.⁷

Judicial review (PK) is a more appropriate choice when there is a discrepancy between legal facts and the assessment made by the judge. PK allows parties to a dispute to submit new evidence (novum) which can change the assessment of legal facts or correct the judge's obvious errors in assessing the facts. Thus, PK provides an opportunity to reveal significant new facts or correct errors in the judge's judgment that were not resolved

⁶ Mustakim, M. *Kajian Hukum Penindakan Peninjauan Kembali Dalam Penyelesaian Perselisihan Hubungan Industrial*. *Adhaper: Jurnal Hukum Acara Perdata*, 8, 2022. Hlm. 127-148.

⁷ Putra, R. H., & Hadiati, M. *Analisis Dasar Pertimbangan Hakim Dan Akibat Hukum Dalam Menolak Gugatan Cerai Yang Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Di Pengadilan Dilihat Dari Perspektif Hukum Acara Perdata*. *UNES Law Review*, 6(2), 2023. 4843-4856.

through the cassation process.⁸

Understanding the differences in function between cassation and PK is important in determining appropriate legal steps to correct errors or discrepancies in law enforcement. Cassation focuses more on aspects of the application of legal rules, while PK focuses more on assessing legal facts or the possibility of new relevant facts. By understanding the role of each of these mechanisms, parties to a dispute can choose the most appropriate legal steps to ensure fairness and accuracy in law enforcement.⁹

CONCLUSION

From the analysis that has been carried out, it can be concluded that the appeal and cassation processes have different roles in the justice system to ensure fairness and accuracy in the application of the law. The appeal process focuses more on selecting legal facts and testing lower level court decisions by *judex factie*, while cassation focuses more on the application of legal rules by *judex iuris*. However, there are situations where there is a discrepancy between the selection of legal facts and the application of legal rules, which can result in errors or mistakes in court decisions. In this case, the role of cassation is important to correct these errors and ensure compliance with applicable legal norms. Judicial review is a more appropriate choice when there is a discrepancy between legal facts and the assessment made by the judge. PK allows parties to a dispute to submit new evidence (*novum*) which can change the assessment of legal facts or correct the judge's obvious errors in assessing the facts.

BIBLIOGRAPHY

1. Ardiansyah, F. H. (2020). *Upaya Hukum Peninjauan Kembali Dalam Perkara Perdata (Studi Putusan Mahkamah Agung Nomor 118/PK/Pdt/2018)* (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta).
2. Misran, M. (2023). *Peninjauan Kembali (Request Civil) dalam Perkara Perceraian Perspektif Mashlahat (Analisis Terhadap Putusan-Putusan Peninjauan Kembali di Indonesia)* (Doctoral dissertation, Universitas Islam Negeri Sumatera Utara).
3. Mustakim, M. (2022). *Kajian Hukum Peniadaan Peninjauan Kembali Dalam Penyelesaian Perselisihan Hubungan Industrial*. *Adhaper: Jurnal Hukum Acara Perdata*, 8, 127-148.
4. Navisa, F. D., & Fauziah, U. (2023). *Pengaturan Asas Cepat, Sederhana Dan Biaya Ringan Dalam Hukum Acara Perdata dan Hukum Acara Pidana*. *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 21(2), 84-99.
5. Putra, R. H., & Hadiati, M. (2023). *Analisis Dasar Pertimbangan Hakim Dan Akibat Hukum Dalam Menolak Gugatan Cerai Yang Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Di Pengadilan Dilihat Dari Perspektif Hukum Acara Perdata*. *UNES Law Review*, 6(2), 4843-4856.
6. Rahim, A., & Rahim, M. I. F. (2021). *Pokok-Pokok Upaya Hukum Terhadap Putusan Pengadilan Dalam Perkara Perdata*. *Humanities Genius*.
7. R Soeroso, S. H. (2024). *Praktik Hukum Acara Perdata: Contoh Bentuk-Bentuk Surat di Bidang Kepengacaraan Perdata (Edisi Kedua)*. Bumi Aksara.
8. Syarkowi, H. A. I. *Mengenal Putusan (Peradilan) Perdata*.
9. Widjaja, G. (2023). *Banding Dan Kasasi Dalam Hukum Acara Perdata; Ditinjau Dari Perspektif Logika Hukum*. *Innovative: Journal Of Social Science Research*, 3(3), 4724-4735.

⁸ R Soeroso, S. H. *Praktik Hukum Acara Perdata: Contoh Bentuk-Bentuk Surat di Bidang Kepengacaraan Perdata (Edisi Kedua)*. Bumi Aksara, Jakarta: 2024) hlm. 23

⁹ Misran, M. *Peninjauan Kembali (Request Civil) dalam Perkara Perceraian Perspektif Mashlahat (Analisis Terhadap Putusan-Putusan Peninjauan Kembali di Indonesia)* (Doctoral dissertation, Universitas Islam Negeri Sumatera Utara, 2023).