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3rd ImCoSS

THE THIRD INTERNATIONAL MULTIDISCIPLINARY
CONFERENCE ON SOCIAL SCIENCES

5 - 7 JUNE 2015

BANDAR LAMPUNG UNIVERSITY
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PROCEEDINGS

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3rd IMCoSS 2015

**THE THIRD INTERNATIONAL MULTIDISCIPLINARY
CONFERENCE ON SOCIAL SCIENCES**

5, 6 June 2015
Bandar Lampung University (UBL)
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PROCEEDINGS

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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3rd IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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ANALYSIS OF CONVICT'S RIGHTS IN JUDICIAL REVIEW OF NARCOTICS CRIMINAL CASE

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ABSTRACT - Implementation Act in people's daily life has great significance, because the purpose of the law lies precisely in the implementation itself. Criminal act law that is laid down by courts of law often causes problems, especially if the verdict contains elements of a mistake. But in the Act, it still provides remedies for the convict to hold self-defense. Legal remedies are some rules that intended to defend the convicted person or his heirs. The last legal remedy provided by law is Judicial Review. The problem of this thesis is how the legal power of the Supreme Court of Cassation in a criminal case, what factors that make the defendant doing Reconsideration of narcotics criminal cases, and how the rights of the accused in Narcotics Reconsideration. Discussion of criminal case in this study is known that the force of law by the Supreme Court of Cassation decision on the criminal case is legally binding, under Article 263 Paragraph (1) Code of Criminal Procedure a.k.a KUHAP), which is: Against the court decision which has obtained permanent legal force, unless acquittal or separated from all charges, convicts or their heirs may file a request for judicial review to the Supreme Court. Factors underlying the defendant does Reconsideration Criminal Case under Article 263 Paragraph narcotic (2) Criminal Procedure Code, there are three reasons, new evidence (Novum), difference verdict, judge's mistake. And the rights of defendants in legal action, Reconsideration based on the decision of the Constitutional Court that removes Article 268 Paragraph (3) Criminal Procedure Code the accused has the right to take legal actions repeatedly Reconsideration more than once. Based on the results of this study, it is suggested that the Constitutional Court gives clarity toward Article 268 Paragraph (3) Criminal Procedure Code (KUHAP) that has been removed with the aim of creating legal certainty and justice for the accused or the victims of crime.

keywords: Law, Criminal Procedure Code (KUHAP), Criminal Code (KUHP), The Convict, Crime, Narcotics

1. INTRODUCTION

The law is the governing power and force. There are legal throughout the world, where there are human social lives. Law according to their contents is divided into two parts, namely:

- a. Private law (civil law), the law that governs the relationship of one to the other by focusing on the interests of individuals.
- b. Public law (the State), the law that governs the relationship of State with the tools equipment or the relationship between the State with the individual (citizen). Public law itself consists of Constitutional Law, State Administration Law, Criminal Law and International Law.

Van Hamel criminal offense or called by *strafbaar feit* is an attack or a threat to the rights of others. *Pompe strafbaar feit* can be theoretically formulated a violation of the norms that intentionally or unintentionally been committed by an offender, where the sentencing of the perpetrators is necessary for the maintenance of law and order and guaranteeing public interest.

According to Wirjono Prodjodikoro, criminal act is an act which the perpetrator may be subjected to criminal penalties. And offenders can be said is a "subject" of a criminal offense.

Criminal liability in a foreign language referred to as *toereken-baarheid*, *criminal reponsibilty*, criminal liability, and criminal liability are intended to determine whether a person can give responsibility to his criminal or action that he has done.

According to Ruslan Saleh, in the sense of excluding liability of crime, He said that people who commit

criminal acts and does have mistakes are the basis for criminal liability.

Unwritten principle says, "There is no crime if there is no error." It is the basis of the liability of crime.

Law is to regulate the relationship between man with the other man and the relationship between man and state so that everything is running well. Therefore, the purpose of law is to achieve peace by realizing assurance of law and justice in society. Legal certainty requires the formulation of principles in legislation that should be implemented firmly. The principle of legal certainty makes citizens being free from government action and its officials that are unpredictable and arbitrary.

Implementation of this principle demands fulfilled:

- a. legalistic and constitutional condition, governmental actions and its officials based on the legislation in the framework of the constitution.
- b. condition of legislation establishes various devices of how the government and its officials take action.
- c. legalistic condition bind citizens only after promulgation and is not retroactive.
- d. The principle of free judicial ensures objectivity, justice and humanism.
- e. The principle that a judge may not refuse to hear the case with no legal reason or the law is not clear.

Therefore the legal regulate citizen's interest and it is established for an event that happened in the present and future, then the implementation must be strictly carried out in accordance with the existing provisions in the legislation to achieve a certainty of law and order in society.

Implementation of the law in people's daily life has great significance, because the purpose of the law lies precisely in the implementation of law itself. Order and comfort can only be realized in reality if the law is implemented, because the law is created to be implemented. If the law is not implemented, then the law or the act is simply an arrangement of words that have no meaning in people's lives. Legal regulations or legislations will die by itself.

Basically every human being has a desire to live a decently and orderly. But the view of the desire to live a decent and regular life is not the same as the one with the other man. Therefore we need a guideline in order to live among humans becomes regular. These guidelines are rules of law that become a hope for every human being. The rules of the law can be a religion that comes from God and also the norms that prevails in society.

Along with the crime in terms of *criminology crimes* or offenses is better known as crime. A real offense in the community is much more than a real crime in the record security forces. Another fact is also contained in the society is the increasing crime rate both in quality and quantity, as well as by the offense of crimes are more sophisticated and professional. The perpetrators of the criminal act itself consists of people who are not educated to educated people are better known as "white collar".

Offenses established by the court often raise legal issues, especially if the verdict contains elements of error. However, space of law still provides the opportunity to convict to do self-defense when the verdict given to him containing elements of error, as an example, the case of Sengkon and Karta.

Space of law which are some rules that intended to defend the convict or his heirs are the rules contained in the Criminal Procedure Code of Indonesia a.k.a. KUHAP (Kitab Hukum Acara Pidana Indonesia). Many principles contained in the Criminal Procedure Code a.k.a KUHAP which one of is the principle that every suspect or accused person is entitled to legal aid.

As a judicial institution, the authority of the prosecutor can be directly felt by many people. Therefore, as one of law enforcement, the prosecutor's role is expected to uphold the values of justice. Integrated criminal justice system is an integral part of law enforcement.

Judiciary is as one part of the criminal justice system that has authority in the field of prosecution and executor, and plays a very important role in the process of law enforcement. As a judicial institution, the authority of the prosecutor can be directly felt by society a lot. Therefore the role of the prosecutor as one of law enforcement is expected to uphold the values of justice who live in the community. In this case the prosecutor can conduct a judicial review remedy against a court decision that has obtained permanent legal force so that victims get justice represented by the attorney of a law such.

Criminal procedure law allows a person who feels aggrieved as a result of the judge's decision can bring a legal action that the usual remedies consisting of inspection and examination of cassation appeals and

extraordinary legal remedy which consists of examining the appeal in the interest of law and a review of court decisions that have gained strength permanent legal.

Extraordinary legal remedy regarding a review of court decisions that have got permanent legal force, as described in Section 263 act(1) Code of Criminal Procedure. Court decisions that have obtained permanent legal force, unless acquittal or separated from all charges, convicts or their heirs can file a request, Reconsideration to the Supreme Court with due regard to Article 263 act (1) Code of Criminal Procedure.

Based on the reality and the facts mentioned above, then this thesis entitled "Analysis of Rights of the Defendant in Criminal Narcotics Judicial Review"

2. MODEL AND STATISTICAL ANALYSIS

In this study, the author uses two (2) approaching the problem is the normative juridical approach and empirical juridical approach.

Normative approach is the study of law doctrine that is also referred to as research or study document library (Library Research). Approach is to examine the rules or norms, rules that is related to the issues to be discussed. The approach is intended to collect a wide variety of regulatory legislation, theories and, literature is closely related to the issues to be discussed.

Collecting primary data that is directly obtained from the object of study is based on observations and interviews with respondents or sources associated with the analysis of the authority of the Prosecutor in the review of criminal cases of narcotics.

Success in a research relies heavily on data collection and processing data that are relevant and accurate. The author in this study uses data collection and processing as follows:

1. Procedure secondary data collection is done by conducting a literature study (library research). Literature study is intended to obtain the direction of thought and purpose of the research done by reading, studying, and cites, examines the literature that support, legislation and materials other scientific literature that have a relationship with the issues to be discussed.

2. Observation is collecting data directly of the research object, to obtain valid data using observation method implemented in South Lampung Police, State Attorney and District Court Kalianda

The collection of data is conducted by direct interviews with the tools that are open list of questions. The interview is done by using purposive sampling technique, which is to first determine the respondent / informant who will be interviewed in accordance with the object of research related to problems in the study, the interview conducted by:

- 1). Police investigators of South Lampung = 1 (a person)
- 2). Attorney of Kalianda State Judiciary = 1 (a person)
- 3). Judge of District Court of Kalianda = 1 (a person)

3. RESULTS AND DISCUSSION

From interviews with Ms. Sisca as a prosecutor in the State Attorney of Kalianda and Mr. Heppit as a judge in the District Court of Kalianda, information that is obtained as follows: a cassation can be made when last level court outside of the Supreme Court has given a verdict. The Supreme Court is the last instance courts for all courts. Legal remedy of cassation is a right granted to the accused and the public prosecutor. State courts have an obligation to accept the request of Cassation is valid or not which would be assessed by the Supreme Court, in other words, the District Court may also be said to have properties that administration, notes, a deed, informing the other party of the cassation petition filed by the accused or by the public prosecutor.

An appeal aims to improve and rectify errors application of the law, so the law can actually be applied as it should be and how to judge whether the case really has been made in accordance with the law. Based on the explanation Ms. Sisca, the prosecutor, can do extraordinary legal remedy that is Cassation in the interest of law. It is based on the law No. 8 of 1981 on Criminal Proceedings

a. Cassation is included in the general remedies, article 244-258 of Criminal Procedure Code (KUHAP)

b. Cassation for the interest of law filed by the General Attorney, article 259-262 of the Criminal Procedure Code(KUHAP).

From two types of the cassation were entitled or authorized to examine is the supreme court because the supreme court is the highest judicial or court of cassation in charge of fostering uniformity of the application of the law and keeping all the laws and regulations are appropriately and fairly applied. The Supreme Court also in terms of Cassation has authority to overturn the verdict and establish of lower courts.

Related to the translation above, it can be concluded that the verdict of cassation that has been set by the supreme court has had permanent legal force. In the judicial system, we know two kinds of remedies,

a. Regular legal remedy (appeal and Cassation)

b. Extraordinary legal remedy (Appeal in the interest of law and judicial review).

Judicial Review is a right for defendants or their heirs provided by Law No. 8 of 1981 in order it aims to seek justice in truth. A judicial review carried out based on new evidence or new circumstances that were not present in court before. The new evidence aimed to assess the right or wrong decision given by the court that the absence of judicial decisions that may go astray or harm someone. The second reason for the existence of contradictory decisions, the purpose of the various decision if there is a statement that something has been proven, then a statement on the evidence of things or circumstances that serve as the basis and reason for the decision in a case, then the decision in other cases or circumstances stated case proved that the decision conflicting with each other. The last reason, judicial review is held because there

is judge's mistake in giving the verdict. Judge as man does not escape the error in giving the verdict. It can occur in all levels of the court even the Supreme Court.

Before the constitutional court deleted Article 268 Paragraph (3) of Law No. 8 of 1981 on Criminal Proceedings, this article contains settings of reconsideration remedies that can only be done one time. Reconsideration is an extraordinary legal remedy where it is set in Article 263 to 269 Criminal Procedure Code (KUHAP). Reconsideration is a right granted by law to the defendant or parties who feel aggrieved over the decision laid down by the Court. With the release of the decision set by the Constitutional Court based on decision number 34 / PUU-XI / 2013 allows every criminal who feel disadvantaged by the lack of precise application of the law by the courts of justice to himself or misguided victims can take legal actions repeated reconsideration or more than one occasion. In this case the first man who uses right of Reconsideration repeatedly is Antasari Azhar.

4. CONCLUSION

Reconsideration rights of the accused in a criminal case is the defendant of narcotics case can make legal effort , Reconsideration repeatedly after the decision of the Constitutional Court number 34 / PUU-XI / 2013, but by existing not restrictive reconsideration, it can actually cause harm to the justice seekers in the process of searching for justice because when opportunities are opened for reconsideration more than once in addition to this case violates the Act, it also resulted in the settlement becomes long which does not end without a lead, which it can create legal uncertainty for those seeking justice.

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