The Verdicts of Criminal Court Judges that are Lighter Than The Prosecution of General Prosecutor in Relation to Law No. 48 of 2009 on Judiciary Power

By:

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Abstract

The high criminal level that occurs in Indonesia today makes criminal justice as a part of general justice to be a spotlight of diverse people. The ensuing reality often makes community disappointed on legal uncertainty and the unfairness of judges as the holder of authority in adjudicating a lawsuit, in this case criminal lawsuit. There are two interests in a criminal lawsuit, each of which certainly has a right to be attended, namely, the victim of crime and the doer of crime. On the one hand, the victim of a crime wants that the doer (the prosecuted) is punished as heavy as possible by judges through a criminal trial process, as a form of retaliation and to frighten the doer, and also in considering the suffering borne by the victim and/or his or her families, both physically and psychically, materially and immaterially. However, on the other hand, the wrongdoer also has a right to make defense, based on a presumption of innocence principle before there is a court verdict of permanent, definite legal force. In practice, there are some lawsuits where the verdict of judges punish the doer lighter than the prosecution by general prosecutor. There are some problems, among others: Why criminal justice judges can impose a punishment or sentence that is lighter than the prosecution of general prosecutor; and what legal action that may be taken as a consequence of a verdict by judges that impose a punishment that is lighter than the prosecution of general prosecutor.

The research conducted by the writer was descriptive-analytical in nature, with a juridical-normative and normative approaches. The data collected was then analyzed juridical-qualitative way so that the hierarchy of legislation could be attended and might ensure legal certainty.

Based on a legal analysis it was concluded that the basis of consideration of judge verdict that is lighter than the prosecution of general prosecutor was conducted based on customary law, that is, if there is no legal provision in formal (positive) laws then judges are obliged to be creative, to explore, to follow, and to understand legal values and sense of justice prevailing in community as the basis of their verdict (Article 5 paragraph (1) of Law No. 48 of 2009 on Judiciary Power. Under such condition, judges serve a function of *rechtsvinding*, and even judges should not reject to hear, adjudicate, and decide a lawsuit that has been filed by a reason that there is no law or the existing law is obscure, instead they should hear and adjudicate (*ius curia novit* principle, Article 10 paragraph (1) of Law No. 48 of 2009). The legal remedy that the parties in a lawsuit, either general prosecutor or the prosecuted, can take over a verdict of judges that is less than the prosecution of general prosecutor are to an usual legal remedy, that is, appeal to Court of Appeal, and legal remedy of cassation to Supreme Court. In addition, an unusual legal remedy can also taken such as judicial review over a verdict that has had a permanen, finite legal force.