

THE MECHANISM FOR EXAMINING APPELLATE REMEDIES IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM AND THE CRIMINAL PROCEDURE CODE OF THAILAND

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Abstract. Appeal remedies constitute an important component of the criminal justice system aimed at ensuring justice, legal certainty, and the protection of the rights of the accused. This article seeks to analyze and compare the operation of appeal mechanisms within the criminal justice systems of Indonesia and Thailand. The research adopts a normative legal approach by examining the Indonesian Indonesian Criminal Procedure Code (KUHP) and the Criminal Procedure Code of Thailand (CPC), particularly Sections 193 to Section 202. The findings indicate that in Indonesia, the High Court is vested with broader authority to re-examine both the application of law and the facts of a case as a means of correcting decisions rendered by courts of first instance. In contrast, Thailand applies a more selective appeal mechanism, especially in minor criminal cases, while still providing exceptions for matters of significant legal importance. This comparison demonstrates that, despite differing approaches, both countries regard appeals as a crucial instrument for achieving justice and safeguarding the rights of the accused.

Keywords: appeal remedies, criminal procedure law, Indonesian Criminal Procedure Code (KUHP), Criminal Procedure Code of Thailand.

I. INTRODUCTION

As a means of prevention and correction of potential judicial errors, criminal procedural law provides various mechanisms known as legal remedies. Legal remedies constitute rights granted by law to individuals or parties who feel dissatisfied with or harmed by a court decision, allowing them to request a review by a higher court. The principle of due process of law represents a recognition of human rights within the criminal justice process and is a fundamental principle that must be respected by all parties, particularly law enforcement institutions. This principle serves as a primary safeguard for citizens' rights through a fair legal process and ensures the protection of the rights of suspects and defendants. [1]

Indonesian Criminal Procedure Law recognizes two types of legal remedies: ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies are further divided into two categories, namely appeal and cassation. The examination at the appeal level is, in accordance with the law, within the authority of the High Court (Pengadilan Tinggi), which reviews and decides cases through a panel of appellate judges. An exception applies to acquittal verdicts (*vrijspraak*), against which the Public Prosecutor is not entitled to file an appeal. Meanwhile, extraordinary legal remedies consist of cassation in the interest of law and judicial review (*peninjauan kembali*). [2]

Based on this explanation, this article specifically discusses ordinary legal remedies, particularly appeals in criminal cases. The filing of an appeal in criminal proceedings constitutes a crucial aspect of the judicial system. This study examines the procedures that must be followed by parties intending to submit an appeal through the District Court. The appellate review process in Indonesia aims to reassess whether the judgment rendered by the court of first instance is appropriate and to re-examine the case as a whole. These objectives are intended to ensure that the legal process at this stage proceeds correctly, efficiently, and fairly, in line with constitutional objectives, while safeguarding public rights and freedoms within the criminal justice system in the future. [3]

The legal basis for appeals is regulated under Articles 414 to 428 of the Indonesian Criminal Procedure Code (KUHP). Appeals may be filed by either the defendant or the public prosecutor against judgments of the court of first instance, except for decisions that result in a pure acquittal. An appeal must be submitted through the court of first instance within fourteen days after the judgment is pronounced or notified, and it is recorded administratively by the court clerk. The appellate examination is conducted by the High Court based on the case file. The High Court has the authority to re-evaluate both factual findings and the application of law, without necessarily summoning the parties, unless deemed necessary. The High Court may affirm, amend, or annul the judgment of the court of first instance. An appellate decision

replaces the previous judgment and may subsequently be challenged through cassation, in accordance with prevailing statutory provisions. Throughout this process, the principles of protection of the defendant's rights and legal certainty are upheld (p. 173).

Meanwhile, the appellate system in Thailand plays an important role in ensuring justice and legal consistency within criminal proceedings. This system is not only intended to correct decisions of courts of first instance but also functions as a mechanism for supervising the exercise of legal authority, particularly by public prosecutors. However, studies indicate that prosecutorial authority in filing appeals still presents deficiencies, especially regarding the absence of clear guidelines, undefined time limits, and an internal supervisory system that lacks transparency and effectiveness. As a result, the mechanism of checks and balances has not been optimally implemented.[4]

Both countries adopt different legal systems. Thailand applies a constitutional monarchy system that represents a combination of common law and civil law traditions, whereas Indonesia adheres to the civil law system. These differences in legal systems result in variations in appellate examination procedures in the two countries. Accordingly, Thailand's legal basis for appeals is governed by the Criminal Procedure Code of Thailand.

This article aims to examine the provisions contained in the Criminal Procedure Code of Thailand. Sections 193 to 202 of the Code comprehensively regulate the procedures for filing appeals against judgments or decisions of courts of first instance, including the rights and limitations related to appeals, procedural requirements, and the authority of appellate courts. These provisions stipulate that appeals are generally submitted in writing through the court of first instance within a specified period, with particular restrictions on appeals concerning factual issues in minor cases, unless certain conditions are fulfilled. Several sections also regulate which interlocutory decisions may or may not be appealed, the screening and verification of appeals by the court of first instance, the opposing party's right to submit a response, and the possibility of suspending the enforcement of judgments during the appellate process. Ultimately, the Code provides that appellate court decisions are final, unless otherwise stipulated by law, and regulates the legal consequences of appellate decisions for the parties involved.

II. RESEARCH METHODS

This study employs a normative legal research method with This research employs a normative juridical method with a descriptive character, focusing on the analysis of positive legal norms through the examination of statutory regulations, legal doctrines, and relevant court decisions. The approach used is a statutory approach, which involves studying and comparing the compatibility of applicable legal regulations. The data are obtained through library research of primary, secondary, and tertiary legal sources and are analyzed qualitatively. Qualitative analysis involves processing data in the form of words to systematically and objectively describe

and analyze legal phenomena, as explained by Syaodih Sukmadinata.

III. RESULTS AND DISCUSSION

Mechanism for Filing Ordinary Legal Remedies (Appeals) in the Indonesian Judicial System.

The appeal process demonstrates the significant role of the High Court in reviewing both the technical and legal aspects applied by the District Court. This can be observed from the various grounds raised in appeals, such as improper examination of witnesses, inadequate evaluation of evidence, and objections to excessively severe sentencing. Appeals serve as a mechanism for defendants or public prosecutors to seek a re-examination of judgments deemed unjust. Decisions that may be appealed include: (a) judgments imposing criminal sanctions; (b) judgments declaring an indictment legally invalid; (c) judgments in summary proceedings that result in deprivation of the defendant's liberty; and (d) judgments concerning the legality of the termination of an investigation or prosecution.[5]

Within the criminal justice system, appeals reflect the openness of corrective mechanisms against first-instance judgments in order to achieve material truth and substantive justice. This principle aligns with the notion that evidentiary processes are not absolutely closed, but rather allow for correction when significant facts or evidence have not been properly assessed. In this conceptual framework, novum may be understood as an affirmation that the legal system prioritizes substantive justice through more comprehensive and accurate evidentiary assessment.[6]

The Indonesian Criminal Procedure Code (KUHP) regulates appeals as one of the legal remedies available to the public prosecutor or the defendant, or their legal counsel, against judgments rendered by courts of first instance. However, the right to appeal is not granted to defendants who have been fully acquitted of all charges. An appeal must be submitted through the District Court and forwarded to the High Court within a maximum period of fourteen days from the pronouncement of the judgment or from notification to parties absent at the hearing. Every appeal application must be administratively recorded by the court clerk and notified to the opposing party as well as to victims who have submitted restitution claims, who are also entitled to file an appeal if either the public prosecutor or the defendant submits one.[7]

Once an appeal application is received, the clerk is required to provide copies of the judgment to the public prosecutor, the defendant, and the victim seeking restitution. The appeal case file is subsequently transmitted to the High Court within the prescribed time limit, while still allowing the appellant the opportunity to verify the completeness and authenticity of the case file. If the appeal is filed by the public prosecutor, the submission of an appeal memorandum (*memori banding*) is mandatory, whereas for appeals filed by the defendant, submission of such a memorandum is optional.[8]

The appeal memorandum must be submitted within seven days of filing the appeal. If the public prosecutor fails to submit the memorandum, the appeal is deemed void.

Examination at the appellate level is conducted by a panel of judges of the High Court based on the case file received from the District Court. Nevertheless, KUHAP grants the High Court authority to re-hear statements from the defendant, public prosecutor, witnesses, or experts if necessary to ensure a just decision. The High Court also has the authority to correct procedural errors, order the District Court to rectify deficiencies, or directly examine and assess the case.[9]

Based on the results of the examination, the High Court may affirm, amend, or annul the judgment of the District Court and issue its own ruling. Every appellate judgment must be accompanied by clear and rational legal reasoning and pronounced in an open court session. Such decisions are published through the judicial information system and officially notified to the parties, reflecting the enforcement of transparency, accountability, and legal certainty within the Indonesian criminal justice system.[10]

Overall, the appeal process plays a crucial role in ensuring justice within Indonesia's criminal justice system. This mechanism provides an opportunity to review judgments considered unfair, thereby allowing legal or factual errors to be corrected. However, the effectiveness of appeals in safeguarding justice continues to face challenges, including limited access, high costs, lengthy procedures, and inconsistencies as well as a lack of transparency in appellate decisions. Through reforms in case management, enhanced access to legal aid, the utilization of technology, improved transparency, and strengthened judicial quality, the appeal mechanism can be reinforced to better serve justice. Accordingly, appeals may function as a more effective instrument in achieving balanced justice for all parties requiring legal protection in Indonesia.

The Criminal Justice System of Thailand in the Mechanism of Appellate Review.

In Thailand, the rights of suspects or defendants to defend themselves in criminal cases are regulated under various legal instruments, including the 2017 Constitution of the Kingdom of Thailand, the Criminal Procedure Code of Thailand, and other relevant regulations. However, in practice, violations of these rights still frequently occur. Examples include the presentation of suspects in arrest press conferences, which undermines the presumption of innocence, and criminal cases in which defendants are not provided with legal counsel. Such practices create an imbalance in legal standing and undermine the objective of justice in judicial proceedings.[10]

Sections 193 to 202 of the Criminal Procedure Code of Thailand regulate the procedures for filing appeals in criminal cases, particularly when a defendant is dissatisfied with a judgment or decision of the Court of First Instance and seeks review by the Court of Appeal. Appeals may be filed on grounds of misapplication of law or errors in fact-finding, provided that such appeals are not prohibited by law. Each appeal must be presented concisely and systematically so that the appellate court can clearly identify the contested issues and conduct an effective review.[6]

Restrictions on appeals based on factual issues are emphasized in Section 193 bis, particularly in cases involving minor offenses. In cases punishable by a maximum of three years' imprisonment or a fine not exceeding 60,000 baht, appeals based on factual grounds are generally not permitted.

However, exceptions are provided where the defendant is sentenced to imprisonment, substituted imprisonment, suspended imprisonment, or certain fines. This regulation reflects an effort to maintain judicial efficiency while safeguarding the rights of defendants.[11]

Furthermore, Section 193 ter allows appeals in cases that are normatively non-appealable if the judge of the Court of First Instance issues a dissenting opinion or if the Attorney General or an authorized prosecutor certifies that the case involves significant legal interest warranting appellate review. This mechanism aims to prevent serious legal errors that may substantially affect justice.

Procedurally, Sections 198 to 201 regulate the method of filing appeals, including a one-month time limit following the pronouncement of judgment, the obligation of the Court of First Instance to assess the admissibility of appeals, and the right of detained defendants to submit appeals through the head of the correctional institution. These provisions affirm that access to appellate remedies remains guaranteed, even for defendants in constrained circumstances.

Overall, Sections 193 to 202 demonstrate that the appellate mechanism in Thailand's criminal procedural law is designed to strike a balance between judicial efficiency and the protection of defendants' human rights. Appeals function as corrective tools for legal and factual errors, while proportional limitations are imposed to prevent abuse of legal remedies and the accumulation of cases at higher courts.

Comparison of Appellate Review Mechanisms in the Criminal Justice Systems of Indonesia and Thailand.

In criminal law systems, appeals constitute an essential mechanism for correcting first-instance court decisions and ensuring the fulfillment of justice and legal certainty. Although the objective is similar, each country adopts distinct procedures and limitations in appellate review, reflecting the needs and characteristics of its legal system. Therefore, comparing the appellate mechanisms in the criminal justice systems of Indonesia and Thailand provides insight into how both countries safeguard defendants' rights, promote procedural efficiency, and ensure timely resolution of cases.[12]

In Indonesia, the appellate review mechanism is comprehensively regulated under the Criminal Procedure Code (KUHAP) as a corrective measure against judgments of courts of first instance. Appeals may be filed by the public prosecutor or the defendant, except against acquittal verdicts, through the District Court and subsequently examined by the High Court within a period of no more than fourteen days from the pronouncement or notification of the judgment. Indonesian appellate procedures emphasize administrative certainty and the protection of the parties' rights, including victims who seek restitution. Appellate examination is primarily conducted based on the case file; however, the High Court is granted authority to re-hear statements from defendants, witnesses, or experts if necessary. Based on its examination, the High Court may affirm, amend, or annul the District Court's judgment and issue its own ruling, which must be supported by legal reasoning and publicly announced as a manifestation of judicial transparency and accountability.[3]

In contrast, the appellate mechanism in Thailand is regulated under Sections 193 to 202 of the Criminal Procedure Code of Thailand and adopts a more selective approach. Appeals may be submitted on grounds of legal misapplication or factual error, but Thai criminal procedure imposes specific restrictions on appeals based on factual issues, particularly in cases involving minor penalties. Nevertheless, the system allows exceptions where significant legal interests exist, either due to dissenting opinions at the first-instance level or certification by the Attorney General. Procedurally, Thai law provides a one-month time limit for filing appeals and ensures access to appellate remedies for detained defendants.[13]

This comparison indicates that both Indonesia and Thailand regard appeals as corrective mechanisms to address legal and factual errors at the first-instance level. The primary distinction lies in the scope of appellate review: Indonesia grants broader authority to appellate courts, whereas Thailand applies stricter limitations to preserve judicial efficiency. Despite these differences, both systems remain oriented toward protecting defendants' rights and achieving justice within the criminal justice process.

IV. CONCLUSIONS

Based on the comparative analysis of prosecutorial Appeal as a legal remedy constitutes an important instrument in the criminal justice systems of both Indonesia and Thailand, aimed at ensuring justice, legal certainty, and the protection of defendants' rights against judgments rendered by courts of first instance. In Indonesia, the appeal mechanism is regulated under the Criminal Procedure Code (KUHP), which grants relatively broad authority to the High Court to re-examine both the application of law and the assessment of facts in a case, including the possibility of conducting a re-hearing where necessary. This reflects an effort to achieve substantive justice. In contrast, the appeal mechanism in Thailand is governed by Sections 193 to 202 of the Criminal Procedure Code of Thailand and adopts a more restrictive approach, particularly with regard to factual review in cases involving minor criminal penalties. This limitation is intended to maintain judicial efficiency and prevent the accumulation of cases at higher courts. Despite differences in scope and limitations of appellate review, both systems regard appeals as corrective mechanisms for addressing legal and factual errors, while striving to balance substantive justice, the protection of defendants' rights, and the effectiveness of criminal justice administration.

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