

## ANALYSIS OF THE LEGAL AMBIGUITY OF JUDGES' ETHICS VIOLATIONS IN PERMANENT CRIMINAL VERDICT

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Article	Abstract
<b>Keywords:</b> <b>Criminal Verdict; Code of Ethics; Judge</b>  <b>DOI:</b> <b>10.28946/scls.v2i1.3629</b>	<p>The judge's verdict in the judicial system in a legal country has an important meaning in realizing justice and public order. The judge, in carrying out his obligation to decide a criminal case, besides guided by Indonesian Code of Criminal Procedure (KUHP) and the Indonesian Criminal Code (KUHP) rules, must also be guided by the Code of Ethics and Code of Conduct for Judges (KE and PPH). This article analyzes legal certainty regarding criminal verdicts from judges proven to have violated the code of ethics. This research method uses normative Judicial legal research. The research results show that in recent times, there has been a lot of public news regarding alleged KE and PPH violations. Some of this resulted in verdicts against several judges the Judicial Commission sanctioned. This report also found several reports of alleged violations of the Judge's Code of Ethics related to criminal cases. Apart from that, conditions were also found where the judge's code of ethics was questioned because the judge violated the judge's duties and authority, namely accepting, examining, and deciding criminal cases based on the principles of freedom, honesty, and impartiality in court. The suggestion put forward is the need for regulation in the Criminal Procedure Code regarding the issue of whether a criminal verdict is valid or not if a judge is proven to have violated the code of ethics.</p>

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### A. INTRODUCTION

Normatively, the law allows judges to decide according to their opinions and beliefs without being influenced by anyone. Judges may not receive outside intervention in deciding cases based on their thoughts and conscience because all interference in judicial cases carried out by other parties outside of judicial authority is prohibited, except in cases specified in law.<sup>1</sup> However, what happens in practice in these normative provisions does not fully show the truth. At a practical level, some judges still have not thoroughly carried out their duties to achieve the fundamental goals of the law. The function of law enforcement, which should be directed at achieving the objective of the law, namely "FOR JUSTICE BASED ON GOD ALMIGHTY," in its

<sup>1</sup> Sudikno Mertokusumo, "The Judicial System in Indonesia," *Law Journal FH-UII* 9, no. 4 (1997), <https://journal.uii.ac.id/IUSTUM/article/view/6927/6114>.

implementation experiences distortion, dysfunction, and even malfunctions carried out by law enforcers themselves, including in this case judges.

Until September 2023, the Judicial Commission received 1,592 public reports and 1,062 copies of letters regarding requests for trial monitoring and alleged violations of the Code of Ethics and Code of Conduct for Judges (KE and PPH).<sup>2</sup> This shows an increase in reports compared to the previous year, which amounted to 1,158 reports. The Judicial Commission verified that the 204 reports to be registered met administrative and substantive requirements based on the reports received. There were 844 reports regarding civil cases, with 397 criminal cases. Furthermore, there were 71 complaints about criminal acts of corruption, 62 complaints about state administration, 61 about religion, and 41 about commercial matters. The cases reported included 20 industrial dispute cases reported to the Judicial Commission, 11 tax cases, 10 environmental cases, seven military cases, five Sharia cases, four criminal and civil cases, two election cases, and 57 other cases.

In the Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number 02/PB/MA/IX/2012 - 02/PB/P.KY/09/2012 on Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges regulates how judges carry out their duties and authority. KE and PPH is a cumulative obligation that is binding for judges to be implemented because it has become a norm that has been established to direct or provide instructions to its members on how they should act and behave while maintaining the moral quality of their profession in the eyes of the public<sup>3</sup> and is the right of the community and everyone who sues. It is called a right because the party suing depends on their future, even their survival, on a fair process and the judge's verdict.

Likewise, the general public, who have the potential to encounter the law, have the right to receive similar trust so that in the future, when they encounter the law, the public is equipped with confidence in fair processes and decisions. Meanwhile, a judge must maintain integrity and independence and comply with applicable statutory provisions and regulations in carrying out their functions in a court institution.<sup>4</sup> According to Purwoto S. Gandasubrata, ethics is a moral philosophy for behaving well according to noble values and the rules of good social relations in social and personal life.<sup>5</sup> In criminal cases, for example, the judge is the head of the trial who must actively examine, try, and decide criminal cases. Judges must be competent to read cases comprehensively, not only textually or only with horse glasses. Former Chief Justice Harifin Andi Tumpa emphasized that the issue of the judge's verdict cannot be separated from the judge's independence. Therefore, judges must be able to evaluate and understand the principles of justice that apply in society.

The Indonesian court system has not overturned court decisions that violate the Code of Ethics or fair trial principles. In contrast to developed countries, which firmly guarantee the principle of a fair trial, they have demonstrated moral values and integrity, especially in the role of the middle court judge itself. It has been proven that the Judicial Commission has investigated several judges for allegedly violating the code of ethics, such as the former chief judge of the Constitutional Court, who was dismissed for violating the code of ethics. Constitutional Court Honorary Council regarding political interests in Constitutional Court Decision Number 90/PUU-XXI/2023. Consider again the alleged ethical violations committed by the presiding

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<sup>2</sup> Commission Judicial, "Judicial Commission Receives 1,592 Reports," Judicial Commission Information and Analysis Services Center, 2023, [https://komisiyudisial.go.id/frontend/pers\\_release\\_detail/303/januari-september-komisi-yudisial-terima-laporan](https://komisiyudisial.go.id/frontend/pers_release_detail/303/januari-september-komisi-yudisial-terima-laporan).

<sup>3</sup> K Bertens, *Ethics* (Jakarta: Gramedia Pustaka Utama, 2005).

<sup>4</sup> Cynthia Gray, *Ethical Standards for Judges*, American Judicature Society, 2009.

<sup>5</sup> Purwoto S Gandasubrata, *Guidelines for Judges Conduct, Code of Ethics for Judges and Related Papers* (Jakarta: Supreme Court of Indonesia, 2006).

judge of the panel of judges, Wahyu Imam Santoso, which the attorney of Kuat Ma'ruf reported. The presiding judge was also suspected of violating the judge's independence in handling the Ferdy Sambo case. Another example of violating the code of ethics was committed by the panel of judges Setya Budi Tejo Cahyono and Ramlan Comel in the criminal case of corruption in Bandung City Government social assistance funds in 2009-2010. The two judges were proven to have accepted bribes from the defendant to benefit the defendant's case.

An incident like the example above creates a gap in injustice in society's view because the panel of judges who decide and try a criminal case behave disgracefully and violate the code of ethics in the trial process. So how can society accept this kind of decision? On the other hand, no articles in the Criminal Procedure Code or other statutory regulations regulate this matter to date. So, to fill this legal vacuum, principles guided the panel of judges *res judicata pro veritate habetur*, where the verdict is considered correct and must be implemented. If it is said that the previous verdict was *res judicata*, it means that the proper claim has been tried and can no longer be pursued by the same parties. Therefore, if the first-level verdict is deemed incorrect, it must be proven at the appeal or cassation level to confirm that the first-level assessment is wrong.

This research intends to discuss the importance of studying in depth and filling legal gaps regarding the relationship between ethics trial decisions handed down to judges who violate the code of ethics and criminal penalties allegations issued by the judge. This is intended to maintain basic legal values in society. As stated by Gustav Radbruch, the law that is enforced must include justice (philosophical), legal certainty (juridical), and benefits for society (sociological).<sup>6</sup> So, a judge can include these three enforcement components proportionally or in balance in their verdict.

## B. RESEARCH METHODS

This research uses normative juridical research methods that prioritize secondary data. Normative juridical research uses literature studies or secondary data from books, legal journals, research results, theories, concepts, legal principles, and existing laws and regulations. The approaches used in this legal research are the statutory and historical approaches. The legal approach is approached by analyzing statutory rules related to legal issues. Statutory regulations relating to legal matters. The historical approach is an approach taken by looking at the background of the problem being studied and the development of order pertaining to problems occurring in society.

## C. ANALYSIS AND DISCUSSION

### 1. Implementation of Criminal Verdicts that have Permanent Legal Force

In theory and practice, a court verdict can be implemented if the verdict has permanent legal force. What is meant by a verdict that has permanent legal force is if the defendant or public prosecutor has accepted the decision or legal remedies have not been used by the entitled party so that the deadline for filing legal remedies has passed or the entitled party has proposed legal remedies but are then submitted. Then, the decision of the Supreme Court of Cassation is revoked or reviewed. The party that implements the court verdict according to several provisions of the law is the prosecutor against the court verdict, which has permanent/definite force (*Res Judicata*).

In connection with the decision which has permanent force, MR. S. M. Amin stated as follows: "Verdict that can and must be implemented because of ordinary legal efforts to make changes to the verdict, namely by appeal, cassation resistance is no longer possible, either

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<sup>6</sup> Mohammad Muslih, "Indonesian Legal State in the Perspective of Gustav Radbruch's Legal Theory," *Journal of Legality* 4, no. 1 (2013): 143.

because they have been carried out but were unsuccessful or because of the long term the time for doing so is past/past." The articles concern implementing the following court decisions, namely Articles 270 to Article 276 of the Criminal Procedure Code. For Article 270 of the Criminal Procedure Code, the person who implements the court verdict is the prosecutor's office.

First, the relevant court clerk signs a statement stating the decision has permanent legal force. The Criminal Procedure Code does not regulate how long it will take for the clerk to send a copy of the decision to the prosecutor. The Supreme Court provides a time limit for delivery, namely in Supreme Court Circular Number 21 of 1983 dated December 8 1983, the clerk is required to send a copy of the decision to the Prosecutor no later than 1 week for APB cases and no later than 14 days for APS cases. In the case of a Supreme Court verdict, the prosecutor can execute it simply by extracting the verdict without waiting for a copy because it has permanent legal force. Next, the prosecutor's office made an execution order, which was sent to the State Detention Center. The procedures for implementing verdict as regulated in the Criminal Procedure Code are as follows:

- a. For the death penalty, the execution of the decision is carried out not in public but by the provisions of statutory regulations.
- b. For imprisonment or confinement, which is then sentenced to a similar crime before serving a sentence imposed first, the sentence is carried out consecutively, starting from the sentence imposed first.
- c. For criminal fines, one month is given to pay the fine, and it can be extended for a maximum of one month, except in the case of a speedy trial decision, which must be paid immediately.
- d. Regarding the court decision which stipulates that evidence be confiscated for the State, apart from the exception to Article 46 of the Criminal Procedure Code, the prosecutor entrusts the proof to the State auction center. Within three months, it is sold at auction, and auction proceeds are deposited into the state treasury and for the prosecutor. This auction period can be extended by a maximum of one month.
- e. Regarding compensation decisions as intended in Article 99 of the Criminal Procedure Code, the implementation of the decision is carried out according to the procedures for civil decisions. If more than one person is convicted, then the court costs and anti-loss are borne by them jointly and severally.
- f. For conditional sentences, implementation is carried out with serious supervision and observation and by the provisions of statutory regulations.

Provisions regarding court verdicts with permanent legal force in criminal cases are contained in the Elucidation to Article 2 paragraph (1) of Law No. 5 of 2010, Amendments to Law No. 22 of 2002 on Clemency. Based on the explanation section, a court verdict that has permanent legal force has three meanings. First, a court decision with permanent legal force is a first-instance court verdict that cannot be appealed or cassette within the time determined by the Criminal Procedure Code. Second, court decisions with permanent legal force are appeal court verdicts that are not appealed within the period specified by the Criminal Procedure Code. Third, the court verdict that has permanent legal force is the classification verdict. Criminal verdicts that can be submitted for review by the convict or his heirs are court decisions with permanent legal force, except for the verdict of acquittal or release from all legal demands. This provision must be interpreted strictly and cannot be construed otherwise, such as submitting a request for review by the prosecutor. Meanwhile, requests for reconsideration are made based on:

- a. Suppose there is a new situation that gives rise to strong suspicion. In that case, if the problem is discovered while the trial is still in progress, there will be a verdict of acquittal or a decision to be acquitted of all legal charges or demands from the Prosecutor. The charges cannot be accepted, and lighter criminal provisions cannot be applied to the case.

- b. If there is a statement in various verdicts that something has been proven, but the underlying things or conditions and the reasons for the verdict are proven, it turns out to be contradictory.
- c. If the verdict clearly shows the judge's error or obvious error.

In principle, all defendants suspected and charged as perpetrators of criminal acts must be tried first before being tried. However, apart from that, generally and specifically, the law has stipulated that there are exceptions, namely the elimination or elimination of prosecution of defendants in some instances. The dismissal of charges against the defendant is generally carried out because:

- a. There has been a judge's verdict which has permanent legal force (the power of a court decision) regarding the same act (fact) (Article 76 of the Criminal Code);
- b. The defendant died (Article 77 of the Criminal Code);
- c. Matters have expired (Article 78 of the Criminal Code);
- d. There is a settlement outside the trial (Article 82 of the Criminal Code).<sup>7</sup>

In the Criminal Code, every criminal case can only be heard, tried, and decided once, in other words, a criminal case that a judge has decided cannot be examined and tried again a second time. This provision is expressly stated in Article 76, paragraph (1) of the Criminal Code CHAPTER VIII on Exceptions to the Right to Prosecute Criminal Justice and Criminal Exceptions. This article states that (1) Unless the judge's decision can still be changed, a person cannot be sued again for an act that has been decided by an Indonesian judge, whose decision cannot be changed anymore (*res judicata*). Paragraph (2) states: if the decision comes from another judge, then prosecution cannot be carried out against that person because of that action also in the case of:

- a. Release or relief from legal claims;
- b. The verdict and sentence have been carried out, or have been pardoned or the sentence has ended (because the prosecution period has ended).

These legal provisions in criminal law are called principles *nebis in idem*, which means that people cannot be sued again because of actions (events) that the judge has decided.<sup>8</sup> With the provisions of this principle, the possibility of a retrial in the criminal process is proven to violate the principles of legal certainty and legal justice.

## **2. Essential Application of *Res Judicata Pro Veritate Habetur* Principle on criminal verdict by judges who violate the KE and PPH**

Judges in criminal justice decide a case based on the Criminal Code and the Criminal Procedure Code. However, implementing these norms alone is not enough. When determining a case, a judge must have the integrity, competence, and behavior that have been determined, as stated in the KE and PPH. This is because judges have a significant role as central figures in the administration of justice and must have integrity, morals, and professionalism in upholding law and justice.

In its preparation, KE and PPH are guided by Bangalore Principles of Judicial Conduct, principles compiled by judges from around the world as a standard code of ethics for judges. The Bangalore Principle has 6 (six) guiding principles for judicial behavior: independence, impartiality, integrity, courtesy, equality, competence, and diligence.<sup>9</sup> KE and PPH adhere to this, so there are ten basic principles of the KE and PPH as follows, namely behaving reasonably,

<sup>7</sup> M.Yahya Harahap, *Discussion of Problems and Application of KUHAP, Investigation and Prosecution*, Second Edition (Jakarta: Sinar Grafika, 2003).

<sup>8</sup> R Soesilo, *Criminal Law Book and Complete Explanation Article by Article* (Politeia, Bogor, 1980).

<sup>9</sup> Hafizatul Ulum and Sukarno, "Analysis of the Effect of Violations of the Constitutional Court Judges' Code of Ethics on Decisions Taken (Case Study of Constitutional Court Decisions Number: 90/PUU-XXI/2023)," *Unizar Law Review* 2, no. 2 (2023): Page 250, <https://doi.org/10.36679/ulr.v6i2.60>.

behaving honestly, behaving wisely and carefully, being independent, having high integrity, being responsible, and upholding self-respect, have high discipline, behave humbly, and act professionally.<sup>10</sup> Judges must apply these principles in carrying out their profession to create a judicial environment that is neutral, independent, transparent, accountable, competent, and authoritative. Some acts that cannot be done by the Judge, among others, are as follows:<sup>11</sup>

- a. Judges are prohibited from giving the impression that one of the parties involved in the case or their proxies, including the prosecutor and witnesses, is in a particular position to influence the judge concerned;
- b. Judges, in their judicial duties, are prohibited from showing likes or dislikes, partiality, prejudice, or harassment towards race, gender, religion, nationality, differences in physical or mental abilities, age, or socio-economic status or based on close relationship with justice seekers. Know the parties involved in the judicial process both through words and deeds;
- c. Judges are prohibited from behaving, uttering words, or carrying out other actions that could give the impression of taking sides, prejudice, threatening or cornering the parties, their proxies, or witnesses, and must apply the same standards of behavior to each party who is subject to direction and supervision the judge concerned;
- d. Judges are prohibited from ordering or allowing court employees or other parties to influence, direct, or control the proceedings of the trial, resulting in differences in treatment of the parties involved;
- e. Judges may not communicate with litigants outside of court unless this is done within the court building in the interests of a smooth trial that is conducted openly, known to the litigants, and does not violate the principles of equal treatment and impartiality;
- f. Judges are prohibited from adjudicating cases where members of the judge's family are acting on behalf of a party in the case or as a party who has an interest in the case;
- g. Judges may not give evidence or opinions on the substance of a matter outside of the court hearing process, both in issues examined or decided by him or other matters;
- h. Judges may not provide information, opinions, comments, criticism, or justification openly regarding a case or court decision whether not yet or already having permanent legal force under any circumstances;
- i. Judges may not publicly provide information, opinions, comments, criticism, or justification for a court decision that has permanent legal force except in a scientific forum where the results are not intended to be published and may influence the judge's decision in another case;
- j. Judges may not be administrators or members of political parties;
- k. Judges may not publicly express support for a political party;
- l. Judges may not adjudicate a case if there is a conflict of interest, whether due to personal or familial relationships or other reasonable relationships (*reasonable*) is reasonably suspected to contain a conflict of interest;
- m. Judges are prohibited from adjudicating a case if they have a close family relationship and/or friendship with the litigant, prosecutor, advocate, and clerk handling the case;
- n. And so on.

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<sup>10</sup> KOMISI YUDISIAL, "Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Indonesian Judicial Commission Number: 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009 Concerning the Code of Ethics and Code of Ethics for Judges," *Binus Higher Education* 5, no. 1 (2009): Page 5, <https://www.forbes.com/advisor/legal/child-custody/joint-custody/> %0Ahttps://kantorpengacara.co/hak-asuh-anak-dalam-perkawinan-campuran-pasca-perceraian/%0Ahttps://www.gurubk.com/2022/02/pola-asuh-anak-menurut-para-ahli.html%0Ahttps://parent.binus.ac.id/20.

<sup>11</sup> Mochamad Nabil, "Violations of Judges' Code of Ethics Due to Judges' Communication with Litigating Parties Outside Court," *Journal of Education, Arts, Sciences and Social Humanities* 1, no. 1 (2023): 8-9, <https://doi.org/10.11111/nusantara.xxxxxxx>.

Suppose a judge is proven to have violated the code of ethics at the Honorary Council of Judges session. In that case, three categories of sanctions are based on Article 19 of the Joint Regulations of the Indonesian Supreme Court and the Judicial Commission. Republic of Indonesia Number 02/PB/MA/IX/2012-02/PB/P.KY/09/2012 concerning Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges, namely light, medium, and heavy sanctions.<sup>12</sup> The light sanctions can be in the form of a verbal warning, a written warning, and a written statement of dissatisfaction. Meanwhile, moderate sanctions consist of postponing periodic salary increases for a maximum of one year, reducing salaries in the amount of one periodic salary increase for a maximum of one year, postponing salary increases for a maximum period of one year, non-hammer judges for a maximum period of 6 months, transfer to another court of a lower court class, and cancellation or suspension of profession. Then, heavy sanctions consist of release from office, non-hammer judges whose term is more than 6 months and a maximum of 2 years, sanctions in the form of demotion to a lower level rank with a maximum term of 3 years, can be in the form of permanent dismissal with the right to retire, and can also be subject to sanctions in the form of dishonorable discharge.

Even though efforts have been made to outline the code of ethics for judges, violations of the code of ethics still occur frequently. Some data on violations of the code of ethics committed by judges are as follows, such as bribery (42.2%), infidelity (28.9%), indiscipline (11.1%), drugs (6.7%), playing around with verdicts (4.4%), as well as violations of the code of ethics. Other violations (6.7%).<sup>13</sup> Cases of ethical breaches such as bribery are likely to be carried out to "speed up" the trial or reduce the threat of criminal punishment against the defendant.

One example is the case involving former judge Ramlan Comel, who was proven to have accepted bribes and promises in a social assistance fund corruption trial in Bandung in 2009-2010.<sup>14</sup> Former judge Ramlan Comel was handling the social assistance funds case with Decision Number 22/Pid at that time. Sus/TPK/2012/PN. Bdg, 23/Pid.Sus/TPK/2012/PN. Bdg, 23/Pid.Sus/TPK/2012/PN. Bdg, 24/Pid.Sus/TPK/2012/PN. Bdg, and 25/Pid.Sus/TPK/2012/PN. BdgBdg. On December 17, 2012, former judge Ramlan Comel handed down a verdict in the case of irregularities in Bandung government social assistance funds in 2009-2010, whose ruling sentenced each defendant to 1 (one) year in prison and a fine to defendants Rochman et al. additional imprisonment of IDR 50,000,000.00 (fifty million rupiah) for 1 (one) month. However, in 2014, in the Bandung Corruption Court trial, former judge Ramlan Comel was proven to have violated the judge's code of ethics and statutory regulations and was sentenced to 7 years in prison and a fine of IDR 200,000,000.00 (two hundred million rupiah) subsidiary 1 (one) month prison for bribes received in bribery cases and social assistance fund cases.

If something like the example above occurs, the verdict cannot be canceled or deemed invalid because no rules or regulations state this. The verdict issued by the judge is null and void if it does not meet the requirements as intended in Article 197 paragraph (1) KUHP jo. Constitutional Court Decision Number 103/PUU-XIV/2016, where criminal verdict at the court of the first instance must contain:<sup>15</sup>

- a. The head of the written verdict reads: "FOR JUSTICE BASED ON THE ALMIGHTY GOD";
- b. full name, place of birth, age or date, gender, nationality, place of residence, religion and occupation of the defendant;

<sup>12</sup> Anugerah Merdekawaty Maesy Putri, "Accountability of Judges Who Violate the Code of Ethics with the Potential of Crime," *Atma Jaya Yogyakarta University Law Journal*, 2016, 5.

<sup>13</sup> Putri.

<sup>14</sup> "Former Judge Ramlan Comel Sentenced to 7 Years in Prison," *Detik News*, 2014, <https://news.detik.com/berita-jawa-barat/d-2772043/mantan-hakim-ramlan-comel-divonis-7--penjara>.

<sup>15</sup> Aurelia Bernadetha Oktavira, "The Meaning of a Court Decision Is Null and Void," *Hukum Online*, 2023, <https://www.hukumonline.com/klinik/a/arti-angkatan-pengadilan-batal-demi->.

- c. the indictment, by the format and provisions that have been regulated regarding indictment;
- d. a brief consideration of the facts, circumstances, and evidence obtained from the examination at trial;
- e. criminal charges, as per the format and provisions related to the demand letter;
- f. articles of statutory regulations that form the basis of the crime or action and articles of statutory rules that form the legal basis of the decision, as well as circumstances that aggravate and mitigate the defendant;
- g. the day and date of the panel of judges deliberations, unless a single judge examines the case;
- h. a statement of the defendant's guilt, a statement that all elements of the crime have been fulfilled, qualification, as well as the punishment or act imposed;
- i. provisions regarding whom the court costs shall be charged, stating the exact amount and provisions regarding evidence;
- j. a statement that the entire letter is fake or information about where the fake lies. If there is an authentic letter, it is considered fake;
- k. order that the defendant be detained or remain detained in custody or released;
- l. the day and date of the decision, the name of the public prosecutor, the name of the judge who decided, and the name of the clerk.

However, based on the Constitutional Court Verdict No. 69/PUU-X/2012 and No. 68/PUU-XI/2023, Article 197 paragraph (1) letters k and l of the Criminal Procedure Code are unconstitutional, so letters k and l do not result in the decision being null and void. If the parties are not satisfied with the verdict delivered by the judge, legal action can be filed. Legal remedies consist of ordinary legal remedies, namely appeals and cassation, as well as extraordinary legal remedies for legal purposes and judicial review.<sup>16</sup>

Article 240, paragraph (1) of the Criminal Procedure Code reads: "If the high court thinks that at the first level examination, it turns out that there was negligence in the application of procedural law or an error or the like. incomplete, then the high court, with its decision, can order the district court to correct it, or the high court can do it." Then, based on Article 244 of the Criminal Procedure Code, it is stated: "Regarding a criminal verdict given at the final level by a court other than the Supreme Court, the defendant or public prosecutor may submit a request for a cassation hearing to the Supreme Court unless the verdict is acquittal."

Article 260, paragraph (1) reads: "A request for cassation for legal purposes is submitted in writing by the Attorney General to the Supreme Court via the court clerk who decided the case at the first instance, accompanied by an official report containing the reasons requested." Based on Article 263 paragraph (1): "Regarding court verdicts that have obtained permanent legal force, except for the verdict of acquittal or release from all legal charges, the convict or his heirs can submit a request for review to the Supreme Court." We can observe that the Criminal Procedure Code does not discuss judges' behavior regarding the decisions handed down, but rather the issue of formal and material defects in law enforcement.

This is in line with the principle *res judicata pro veritate habetur*. The principle generally states that a cause of action cannot be denied after the action has been assessed on its merits. "Finality" is a term that refers to when a court renders a final decision regarding a case.<sup>17</sup> According to Black's Law Dictionary Seventh Edition, this principle means a problem that has been definitively resolved through a court verdict. According to Sudikno Mertokusumo, this

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<sup>16</sup> Dwi Dian Jayanti, "2 Types of Legal Remedies Against Court Decisions in Criminal Cases," Hukum Online, 2023, <https://hukumonline.com/klinik/a/usaha-batas-pengadilan-lt63f361852a255>.

<sup>17</sup> Cornell Law School, "No Title," Legal Infomation Intitute, accessed April 28, 2024, [https://www.law.cornell.edu/wex/res\\_judicata](https://www.law.cornell.edu/wex/res_judicata).



principle means that the judge's verdict must be considered correct.<sup>18</sup> In fact, there was dishonesty during the trial, such as the evidence presented being false, and the judge decided the case based on this evidence. The verdict must be considered correct until it obtains permanent legal force or until there is another verdict from a higher court that can cancel the decision below it. This principle is a form of the principle of law enforcement, namely legal certainty, which was put forward by Gustav Radbruch. The verdict must be accepted formally, and handing down a judge's verdict on a particular dispute means that the dispute in question has been temporarily resolved.<sup>19</sup> Principle *res judicata pro veritate habetur* own two functions, namely:

- a. as a basis for formulation by lawmakers and judges and has a normative influence and binds the parties and
- b. Regulatory and explanatory properties aim to provide an overview. Legal principles recognize deviations, thereby making the legal system flexible.

How are Principles *res judicata pro veritate habetur* applied in other countries? We can see the application of the regulations regarding revising judge's verdicts in rabbinical Israel. Under the Jewish code, the rules for modifying a verdict are not time-limited. In Part One Rule 129, a litigant has the right to ask the court hearing his case to reconsider it. Regulations that do not provide a time limit can have a negative impact and cause problems because the existence of this provision cannot offer a sense of security for the parties or create stability in the legal system. This is because the possibility of endless trials always exists. However, this problem can be resolved by adopting the minority opinion contained in the Jerusalem Talmud. It is said that the right to request that the court reconsider a case has a time limit: the actual implementation of the judgment by the parties.

In other words, the court can reconsider a case before the verdict is implemented but not after. As an illustration, after one party pays the other party according to the verdict, this is the final stage of fulfilling the decision. At this stage, the party receiving the money is already relying on it; if the other party is allowed to reopen the case, it could be detrimental to the party receiving the money. Although this opinion contains principles *res judicata pro veritate habetur*, mainstream Jewish legal coders did not accept the concept. In principle, Jewish law could recognize new laws (which do not exist in contemporary practice) that set time limits (e.g., two or three years) on the right to request that a court reconsider a case if such laws were enacted by rabbinical authority.<sup>20</sup>

Moreover, under Indian law, the doctrine of just cause does not apply to criminal cases where the entire process is carried out illegally and without jurisdiction. An illegal trial can be interpreted as a court verdict not decided fairly because of a violation of norms by the judge who decided the case. The limitations of this doctrine provide an alternative path for justice seekers to expose unethical practices in the legal process.<sup>21</sup>

In the end, if errors often occur when lower court verdicts are overturned or corrected by higher courts with the view that there are errors in the application of the law, then the problem is not only limited to the availability of legal remedies to file objections but also concerns the judge's accuracy in examining and adjudicating a thing. A judge's accuracy is related to the

<sup>18</sup> Ayu Jaya Tri Pramesti, "Art Is Judged for Its Truth," Hukum Online, 2014, <https://www.hukumonline.com/klinik/a/arti-res-judicata-pro-veritate-habetur-lt5301326f2ef06/>.

<sup>19</sup> Joko Widodo, "The Application of the Principles of Judges' Decisions Must Be Considered Correct (Study of Constitutional Court Decision Number 97/PUU-XI/2023)," *Lex Jurnalica* 13, no. 1 (2016): 78.

<sup>20</sup> Y Sinai, "Reconsidering Res Judicata: A Comparative Perspective," *Duke J. Comp. & Int'l L.* 21, no. 1925 (2010): 390-91, [http://heinonlinebackup.com/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/djcil21&section=22](http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/djcil21&section=22).

<sup>21</sup> Aayushi Mittra, "Doctrine of Res Judicata - Article 11 of the Criminal Procedure Code," Law Corner, 2021, <https://lawcorner.in/doctrine-of-res-judicata-section-11-of-civil-procedure-code/#:~:text=The doctrine of Res Judicata has been embodied,at the ex suit between the same party.>

judge's legal mastery in considering the law based on all the evidence and facts presented in the trial. Apart from that, this can give rise to a judicial "mafia" that abuses the freedom and power of judges in examining, adjudicating, and deciding cases. On the other hand, judges are also required to uphold their commitment to justice, determination, and enthusiasm in realizing a clean, free, and independent judiciary. Judges must maintain their honor and dignity which has earned the public's trust as law enforcers. One of the crucial things that is most highlighted by the public is the violation by judges of the judge's code of ethics after issuing a decision that has permanent force.

#### D. CONCLUSION

Violations of judges' code of ethics still occur frequently. To obtain the quality of judges who have integrity and peak performance through their various performances and decisions, they must be given their essential rights, namely the freedom of judges to examine and decide cases. These rights must be inherent in judges once they are accepted as judges. These basic rights are necessary to produce professional judges while serving the interests of creating justice. The state, judicial institutions, and society must support these rights. Currently, no regulations state the annulment of decisions made by judges who violate ethics. To this legal vacuum, principles guided the panel of judges *res judicata pro veritate habetur*, where the judge's verdict is considered correct and implemented. Therefore, if the decision at the first level is deemed incorrect, it must be proven at the appeal or cassation to prove that the decision at the first level is incorrect. The problem is that the judge's verdict has often been implemented and executed. Furthermore, regarding the legal vacuum, which is a weakness of law enforcement in Indonesia, for example, after a criminal trial discovered that the judge conducting the trial was proven to have violated ethics, the author is of the view that the regulatory concept is needed in the codification of criminal law to determine the conditions for the judge's verdict to have permanent legal force, namely If in the future the judge who decides on the case is proven to have violated his authority, then the previous verdict can be canceled automatically.

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