



## Legal Study Concerning Zero Verdicts Related to the Principles of Certainty, Justice and Benefits in Indonesia

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**Abstract.** A nil sentence is very appropriate to apply to defendants whose verdict is sentenced to death, such as in the case of Muhammad Natsir and Heru Hidayat. However, the Dimas Kanjeng case certainly raises a different problem, where the panel of judges imposed a maximum prison sentence of 20 years, so if there are other cases the verdict must be nil. This means that the defendant, who was previously sentenced to 20 years in prison, was not increased to life imprisonment. Another problem is the lack of integrated administration between courts which results in overlapping criminal sanctions that exceed 20 years. Tstelsel's absorption in a sharpened realist concursus states that it is necessary to review the level between crimes that have permanent legal force and crimes that have just been revealed based on higher criminal threats, so that the implementation of a nil sentence achieves the principles of legal certainty, justice and expediency. The implementation of the nil sentence must be socialized to the wider community, especially in the case of Dimas Kanjeng and Muhammad Natsir, who in their decision were sentenced to a nil sentence because they had previously been sentenced to death. The aim of the outreach is to ensure that there is no misunderstanding of the defendant's release from criminal sanctions, because a zero verdict arises because the verdict has been maximum and can no longer be handed down. Judges need to interpret in more depth the basic reasons for giving a nil verdict which is linked to SEMA No. 1 of 2022 to better ensure justice and benefits for society, which of course is adjusted to the legal facts obtained during the trial period.

**Keywords:** nil verdict, criminal, trial.

### 1. INTRODUCTION

A Nil Verdict is the imposition of a criminal sentence on a person who has received a criminal sentence with a maximum limit but must be tried again, due to a particular case, so that the criminal sentence given is nil or has reached the maximum limit.

The regulation of types of punishment is contained in Article 10 of the Criminal Code which consists of the main sentence, death penalty, prison sentence, imprisonment, fine, additional penalties, revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision. The limit of a person's criminal sentence is regulated in Article 12 Paragraph (4) of the Criminal Code which states that imprisonment for a certain period of time may not exceed twenty

(20 years. If you refer to paragraph (1) in the same article, it is said that imprisonment is a life sentence, or a sentence for a certain period of time, then it is explained in paragraph (2) that the sentence for a certain time is at least one day and a maximum of fifteen (15) years. Paragraph (3) explains that imprisonment for a certain period of time may be imposed for twenty (20)

consecutive years in the case of crimes for which the judge may choose between the death penalty, life imprisonment, and imprisonment for a certain period of time, or life imprisonment. and imprisonment for a certain period of time, as well as if the limit of fifteen (15) years is exceeded due to additional punishment due to concurrent, repetition, or as determined by Article 52 of the Criminal Code. A Nil Verdict is given to perpetrators of criminal acts who have received the maximum limit in the principal sentence. The sentence for a certain period of time must not exceed 20 years as stated in Article 12 Paragraph (4) of the Criminal Code. Life imprisonment is stated in Article 67 of the Criminal Code which states that if the perpetrator of a criminal act has been sentenced to life imprisonment then no additional punishment may be given. The death penalty is mentioned in Article 67 of the Criminal Code states that if the perpetrator of a crime has been sentenced to death then no additional punishment may be given.

The Nil Verdict is a verdict that is still rarely known by the Indonesian people. The question that is being asked by the public is why the judge did not add a sentence to the perpetrator of a criminal act who has been legally proven and guilty of having committed a criminal act. In answer to this question, the Panel of Judges in handing down a verdict has various considerations, both juridical and non-juridical, taking into account aspects of *concursum realis* and the maximum sentence imposed by the defendant. Apart from that, the Panel of Judges must also be guided by the objectives of the law, guided by the implementation of legal objectives which include certainty, justice and expediency. A nil sentence is explicitly contained in the concept of *concursum realis* based on Article 67 of the Criminal Code, that the imposition of the death penalty in such a way does not receive additional further punishment if at any time it is found in conjunction with other criminal acts. A nil sentence is very appropriate to be given to defendants who receive the death penalty so that no further punishment can be added return the criminal penalty because it has been maximum. However, in its implementation there are new problems in law enforcement in Indonesia.

Law functions to protect human interests in social life, with the aim of creating a peaceful and prosperous social life. The existence of a verdict by a judge is very necessary to resolve criminal cases. By giving a criminal sentence by the judge, it is hoped that the parties in the criminal case or defendant can obtain legal certainty regarding their status and at the same time prepare legal steps and remedies for themselves. The aim of passing sentences is to ensure legal certainty and justice in society. This is in accordance with the provisions that every criminal act

has consequences. Apart from that, an atmosphere of life will be maintained which proves that justice and legal authority are guaranteed, and of course there are benefits in a punishment, be it the death penalty or even a Nil Verdict. This benefit is none other than for better and more progressive law enforcement in Indonesia.

Criminal acts that are independent and have no connection are also called pure criminal acts. Between one criminal act and another criminal act, whether tried in the same or different district courts in accordance with the provisions of Article 84 of the Criminal Procedure Code, has no special connection or does not contain elements of continuous or concurrent acts, as regulated in Article 63 paragraph (1) The Criminal Code or known as *concurus idealis*. Article 64 of the Criminal Code or continued action, as well as Article 65, Article 66 and Article 70 of the Criminal Code are known as *concurus realis*. Thus, if someone commits a criminal act, either in one area or several jurisdictions of a district court, then all of these criminal acts will be tried. The implementation of the sentence will refer to the provisions of Article 272 of the Criminal Procedure Code through a cumulation system or adding up the entire length of the sentence with the maximum limit of the total not exceeding 20 (twenty) years in prison as regulated in Article 12 paragraph (4) of the Criminal Code.

In practice, the punishment of defendants who commit several criminal acts can be cumulative, so that the total number of convicts serving their prison sentences can exceed the maximum limit of 20 (twenty) years in prison. The sentence imposed on the verdict is in the form of a nil sentence, with the consideration that the criminal acts that have been previously decided are part of a series of criminal acts which are still related to the criminal case in the second or third trial.

## **2. METHOD**

This type of research is normative legal research because this research uses a type of legal research with normative legal methods, namely doctrinal legal research which refers to legal norms. This research is descriptive in nature. Descriptive means that the research aims to get a complete and clear picture of the problem being discussed.

### **3. RESULTS AND DISCUSSION**

Law enforcement is essentially the enforcement of abstract ideas or concepts. Law enforcement is an effort to make these ideas a reality. Soerjono Soekanto said that law enforcement is an activity to harmonize the relationship between values which are described in solid and embodied values/views and attitudes and actions as a series of value translations in the final stage to create social engineering, maintain and maintain peaceful social control. social life. Concrete law enforcement is the application of the law in practice as it should be obeyed. Therefore, providing justice in a case means deciding the case by applying the law and finding the law in concreto in maintaining and guaranteeing compliance with material law by using procedural methods implemented by formal law.

Satjipto Rahardjo said that law enforcement is not a definite action, namely implementing a definite action, namely applying the law to an incident, which can be compared to drawing a straight line between 2 (two) points.

According to Soerjono Soekanto, law enforcement is an activity to harmonize the relationship between values described in solid rules and attitudes as a series of final stages of value translation. To create, maintain and maintain peaceful social life.

Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by legal rules, but have an element of personal judgment. Conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship between values described in solid rules and attitudes of action. as a series of value explanations at the final stage, to create, maintain and maintain peaceful social life. This conception, which has a philosophical basis, requires further explanation so that it appears more concrete.

In law enforcement, these values need to be harmonized. The harmonized pair of values requires a concrete explanation because values are usually abstract. Concrete elaboration occurs in the form of legal rules, which may contain prohibitions or permissibility orders. These rules become guidelines or benchmarks for behavior or attitudes that are considered appropriate or appropriate.

In enforcing the law, there are 3 (three) elements that must be considered, namely first, legal certainty (*rechtssicherheit*). laws must be implemented and enforced. Everyone hopes that laws can be established in the event of concrete events. It is how the law must apply, basically it

must not deviate from the adage of *fiat justitia et pereat mundus* (even though the world will collapse, the law must be upheld). That is what legal certainty wants. Legal certainty is a judicial protection against arbitrary actions, which means that someone will get something they hope for in certain circumstances. Second, benefits (*zweckmassigkeit*). The community expects benefits in implementing or enforcing the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or usefulness for society. Don't let it happen that just because the law is implemented or enforced, there will be unrest in society. Third, justice (*gerechtigkeits*). The community is very interested in the implementation or enforcement of the law that justice is taken into account. The implementation and enforcement of the law must be fair. Law is not synonymous with justice. The law is general, binding on everyone, generalizing in nature. Whoever steals must be punished, whoever steals must be punished, without discriminating between who steals. On the other hand, justice is subjective, individualistic and does not generalize. Lawrence M. Friedman argued that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the structure of the law, the substance of the law and the legal culture ( legal culture). The legal structure concerns law enforcement officials, legal substance includes statutory instruments and legal culture is the living law adopted in a society. Legal culture is the attitude of humans (including the legal culture of law enforcement officers) towards the law and the legal system. No matter how good the legal structure is arranged to implement the established legal rules and no matter how good the quality of the legal substance that is created without the support of a legal culture by the people involved in the system and society, law enforcement will not run effectively. Law as a tool for changing society or social engineering is nothing more than the ideas that the law wants to realize. To guarantee the achievement of the function of law as engineering society towards a better direction, not only is the availability of law in the sense of rules or regulations needed, but also there is a guarantee for the embodiment of these legal rules into legal practice, or in other words, a guarantee of law enforcement ( good law enforcement).

The process of law enforcement involves many things. In general, according to Soerjono Soekanto, there are 5 (five) factors that influence law enforcement, including:

- a. The legal factors themselves;
- b. Law enforcement factors, namely the parties who form and implement the law;
- c. Facilities or facilities factors that support law enforcement;

- d. Community factors, namely the environment in which the law applies or is applied;
- e. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.

A nil verdict is often found if the court states that there is not enough evidence or sufficient reasons to prove someone is guilty. This decision reflects the principle that a person is presumed innocent until proven otherwise. Essentially, a nil sentence is a legal acquittal where the accused party is not subject to any punishment or sanctions. Implicitly, a nil sentence can be seen in Article 67 of the Criminal Code which states that if a person is sentenced to death or life imprisonment, no additional punishment other than revocation of certain rights, as well as judge's decisions. Furthermore, Article 65 of the Criminal Code states that if there are several acts that are considered independent crimes and are threatened with similar principal penalties, then only one crime is imposed.

In practice, giving a nil verdict for a criminal act is caused by an act criminal offenses which are classified as concursus or simultaneous criminal acts, repetition of concurrent criminal acts before there is a criminal decision or continued action. Jamin Ginting explained that the explanation of concurrent concursus or concurrent non-criminal consequences is as a result of giving a nil sentence, namely as below (Lumintang, 2011):

- a) Combination or concurrent criminal acts which are called *samenloop* are divided into 2, namely:
  - 1) *Concursus realis*: means a combination in which a person carries out various criminal acts, so that each crime committed is believed to be an independent act. *Concursus realis* is divided into 2, namely:
    - *Concursus realis homogenus*, where for one act, only one type of punishment carries the heaviest threat, for example in the case of one person committing the same criminal act repeatedly.
    - *Concursus realis heterogenuous*, the most severe punishment is increased by a third, an example of the problem is that a person commits murder, then commits fraud where the criminal acts have a correlation so that the criminal act can be accumulated towards the limit of the heaviest prison sentence which is added by a third, but not exceeding the limit. which the Criminal Code regulates. The basic

rules regarding *concurus realis* are contained in Articles 65 and 66 of the Criminal Code.

- 2) *Concurus idealis*: means concurrence in which one criminal act violates several provisions so that the harshest punishment will be sought. The idealist *concurus* is divided into 2, namely:
- *Concurus Idealis homogenus*, where one act has one or more criminal provisions and then only one type of provision is given.
  - Heterogeneous idealist *concurus*, based on various criminal provisions, the most severe criminal provisions are adopted. The basic rules regarding idealistic *concurus* are contained in Article 63 of the Criminal Code.
- b) Repetition at the same time as mentioning forgotten or past criminal acts. If a defendant commits various crimes where there are crimes that have not yet been decided. The basic rules are contained in Article 71 of the Criminal Code.
- c) Continuous actions, meaning several actions that are related so that they are considered to be continuous actions. Continuous acts are carried out over a short period of time between one criminal act and another. The basic rule regarding continued actions is Article 64 of the Criminal Code. The implication of a nil sentence is that a cumulative sentence is imposed for a certain period of time

The implication of a nil sentence is that a cumulative sentence applies for a certain time limit to ensure that a person is not sentenced beyond a certain time limit. As the quote on the Ngabang District Court website, West Kalimantan entitled "Cumulation in Sentences" states, Article 12 Paragraph 4 of the Criminal Code states that "The penalty for imprisonment for a certain period may never exceed twenty years" (Rizki, 2022).

The punishment for a certain time referred to in this paragraph, when referring to paragraph (1) in the same article, refers to the main type of punishment in the form of imprisonment, where the prison sentence for a certain time itself has a period of between a maximum of 15 (fifteen ) consecutive years along with a minimum of 1 (one) day. This provision limits the possibility of people who commit various criminal acts who are subsequently tried either at the same time or tried separately, being sentenced to more than 20 years in prison.

So a nil verdict can be given to a defendant who has committed several criminal acts without being punished with a crime that exceeds the sentence period, whether tried jointly or

separately. The imposition of a nil sentence is carried out by reviewing the types of punishment. The types of punishment are 20 years in prison, life imprisonment and the death penalty. If the defendant has been sentenced to life imprisonment or the death penalty in a previous case, he can be sentenced to nil. This refers to the Principle of Legality and Human Rights Regulations which state that there is no punishment that is more severe than life imprisonment or the death penalty.

In addition, if a defendant is tried for a crime, but during the course of the trial, the evidence presented by the prosecutor does not have sufficient strength to prove the defendant's guilt. After a careful examination of the evidence, the judge concluded that there were no valid reasons or facts to declare the defendant guilty. In this type of situation, the judge may give a null verdict due to a lack of convincing evidence. However, it is important to remember that each legal case has its own uniqueness and complexity, and a nil verdict is generally only given if there is no basis. sufficient to declare someone guilty.

Although nil verdicts or acquittals are rare in the justice system, there are examples of situations where nil verdicts may be applied. One example of a nil verdict is in the criminal case of Benny Tjokrosaputro, who was legally and convincingly proven guilty of committing the crime of corruption. However, Benny Tjokrosaputro, who was given a nil verdict, caused debate and controversy, so that the Public Prosecutor immediately declared an appeal.

Several aspects that need to be considered in the context of implementing nil sentences in Indonesia include:

a) Court Process

Usually a nil verdict can be achieved if it has gone through a trial process that is linked to factual examination of the presentation of evidence, and arguments from the public prosecutor and the defendant's attorney.

b) Principle of Presumption of Innocence

Indonesia applies the principle of presumption of innocence which implies that all individuals are presumed innocent until legally proven guilty until there is convincing evidence through the court process. With this principle, a zero verdict is a direct realization of the principle of presumption of innocence, where the defendant is acquitted if there is no convincing evidence to prove his guilt.



c) Application of Criminal Procedure Law

In this case, the application of a nil sentence in certain cases will be guided by the implementation of criminal procedural law, which covers court procedures, the evidentiary process and the rights of the defendant.

d) Rehabilitation and Compensation

If after obtaining a zero verdict and the defendant is acquitted, the Indonesian criminal justice system may pay attention to rehabilitation efforts and provide compensation to the defendant who may feel uncomfortable or suffer losses during the legal process.

e) Case Revision

A defendant who was previously found guilty can submit a revision of the case to obtain a nil verdict after new facts are discovered, if there is new evidence or there are errors in the court process.

Few Indonesians know about the issue of nil verdicts. Questions arise among the public regarding the reasons why judges do not impose additional sentences on criminals who have been legally proven guilty according to law. Regarding this issue, the panel of judges has various considerations in making decisions, both juridical and non-juridical. Apart from that, the panel of judges must focus on achieving legal objectives, including achieving certainty, impartiality and expediency. Until now, the application of nil sentences is still a problem in law enforcement in Indonesia. This is caused by the fact that a nil sentence is a sentence that is not included in the type of punishment regulated in Article 10 of the Criminal Code. As a result, there are times when the public prosecutor does not recognize the nil verdict issued by the panel of judges. The basic rules regarding a nil verdict by a panel of judges are contained in Article 12 paragraph 4 of the Criminal Code and Article 67 of the Criminal Code. Basically, a nil sentence is imposed when the maximum limit of the basic punishment as regulated in Article 10 of the Criminal Code has been imposed on the perpetrator of a criminal act.

The incompatibility between the Criminal Code and the Criminal Procedure Code regarding the regulation of nil sentences creates legal uncertainty in the course of the judicial process. This situation is not in line with the theory of legal certainty stated by Gustav Radbruch, which emphasizes that normative legal certainty is obtained when a legal regulation is created and promulgated clearly and logically. In this way, these regulations will not raise doubts due to

multiple interpretations, so they will not give rise to conflicting norms. Norm conflicts that arise from uncertainty in legislative regulations can take the form of norm contestation, norm reduction, or norm distortion. The law which contains these regulations becomes a guide for individuals in interacting in society, both in relationships with fellow individuals and with society as a whole. These rules form limits on society's actions towards individuals and vice versa. The presence of this rule, along with its implementation, provides legal certainty (Kejari, 2021).

The function of law is to provide protection to achieve human interests in social life and aims to create a peaceful and prosperous social life. The existence of a judge's decision is very important in resolving a criminal case. By issuing a criminal decision, the judge hopes that the parties or defendants in a criminal case will obtain legal certainty regarding their identity and prepare themselves to take legal steps and legal remedies. The aim of punishment is to guarantee legal certainty and social justice. This is in accordance with the rule that every crime has consequences. Apart from that, the atmosphere will still be maintained na life that proves the guarantee of justice and the authority of the law, and of course there are benefits from punishment, whether the death penalty or zero punishment (zero sentence). The benefit is none other than making law enforcement in Indonesia better and more progressive.

Thus, the provision of a nil verdict refers to the principle of "nulla poena sine lege" where there is no crime without statutory provisions (Lukman Hakim, 2019). The judge's decision is the result of law enforcement through the judiciary. What is called justice is a process where the judge starts by checking the truth and imposing a sentence according to the applicable provisions. This is in line with Article 1 paragraph (3) of the 1945 Constitution which clearly states that "the State of Indonesia is a state based on law". Society is a legal society, as a legal state, all aspects of social, national and state life must be based on law.

#### **4. CONCLUSION**

In practice, giving a nil verdict for a criminal act is due to the presence of criminal acts which are classified as concursus or concurrent criminal acts, repetition of concurrent criminal acts before there is a criminal verdict or continuing acts. The implementation of a nil sentence occurs in cumulative sentences with a certain time limit, intended to prevent a person from being sentenced to exceed the maximum duration of a sentence or sentence for a certain period, as

explained in Article 12 paragraph (4) of the Criminal Code which stipulates that imprisonment for a certain period of time is not permitted. more than twenty years.

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