

## **The Fulfilment of the Right of Rehabilitation in an Acquittal**

Muhammad EffendyFoenna

*Student of the Master of Laws Program of Syiah Kuala University Banda Aceh,*

---

### **Abstract:**

**Discussion:** This study aims to find out how the implementation of the provision of rehabilitation for defendants who are acquitted by judges in Indonesia. In order to achieve the legal objectives of certainty, justice, and usefulness, efforts should be made to protect the rights of the defendants that have been taken away because of the process in the court which then damage their reputation, so that with the rehabilitation the defendant's rights that have been taken away can be restored. This study aims to find and develop the theory of the rule of law on the fulfillment of the right to rehabilitation in an acquittal in a criminal case, to find and develop a theory of legal protection in the implementation of rehabilitation efforts for defendants who are acquitted by the court.

**Research Method:** This study adopted a type of normative legal research. The normative legal approach is also known as doctrinal research. In this research, the law is defined as norms, principles and dogmas.

**Discussion:** Rehabilitation in criminal law is closely related to an acquittal because rehabilitation is a right. Therefore, the judges should always include rehabilitation in the ruling of the decision. This is stated in point four of Supreme Court Circular Letter Number 11 of 1985, which explains the request of a defendant who has been released or acquitted of all lawsuits for a rehabilitation. Then, regarding the acquittal, the Criminal Procedure Code, article 191 paragraph (1) also regulates that if the court believes that the act committed by a defendant is proven, but the act does not constitute a criminal act, then the defendant is cleared of the charges.

**Conclusion:** The results of the research show that efforts to fulfill the right to rehabilitation in an acquittal have not received the attention of the parties concerned, that is the state institutions that have been given a mandate by law. The right to rehabilitation of the defendant who was acquitted by the court only stated in the verdict and is not acted upon.

**Keywords:** Rehabilitation; Vindication; Acquittal

---

Date of Submission: 13-01-2020

Date of Acceptance: 29-01-2020

---

### **I. INTRODUCTION**

A country based on law and recognizing human rights is one of the characteristics of the state of law (rechtstaat). This protection is implied in equality for every person before the law. Upholding justice means not discriminating against anyone who are dealing with the law or seeking justice. It is expected that there will be no discrimination between ordinary people and the authorities.<sup>1</sup>

In criminal cases, based on the Criminal Procedure Code (KUHAP), there are only two possibilities in the verdicts made by the judges to end a case. The first possibility is a conviction and the second is an acquittal. The judges hand down an acquittal if a defendant is given the verdict of not guilty and exonerated of the charges. The acquittal means that the defendant is not convicted and set free by the judgment of the court. However, an acquittal can raise new problems if the defendant's position in society is not vindicated.

Restoration of the rights or rehabilitation of a person, whether in ability, position or dignity will be given to the defendant who, according to the law, has undergone a legal process, arrested, detained and prosecuted or tried without reason, will be vindicated or given rehabilitation. Based on Criminal Procedure Code Article 1 point 23 a defendant is entitled to rehabilitation at the investigation, prosecution or trial stage.

The purpose of the rehabilitation is as an effort and means to restore the original position, reputation and dignity of the defendant who faces legal action in court. The rehabilitation or vindication of the defendant's reputation after the acquittal is very urgent because it is a means to re-establish the defendant's reputation that was damaged/injured as a result of the legal process that has been undergone. As an effort to restore the good name, rehabilitation of the good name plays a vital role in returning the defendant to the original condition

---

<sup>1</sup>Salim HS, and ErliesSeptianaNurbani, *PenerapanTeoriHukumPadaPenelitianDisertasiDanTesis* [Application of Legal Theory to Dissertation and Thesis Research] (Third Book), Jakarta Rajawali Press, p. 255.

(before the legal process) in social life.<sup>2</sup> Based on the description above, the researcher wants to see how the implementation of the fulfillment of the right of rehabilitation in an acquittal.

## **II. RESEARCH METHOD**

This study adopted a type of normative legal research. The normative legal approach is also known as doctrinal research. In this research, the law is defined as norms, principles and dogmas. The initial stage of normative legal research is conducting library research, but as long as it is necessary interviews can be carried out as a complement to library research.<sup>3</sup>

## **III. DISCUSSION**

### **1. The Implementation of the Fulfillment of the Right of Rehabilitation in an Acquittal**

#### **A. Rehabilitation According to Criminal Law in Indonesia.**

The provisions regarding rehabilitation are stated in Law Number 14 of 1970 which regulates the basic provisions of judicial power in Article 9 paragraph (1). It explains that the person entitled to claim compensation and rehabilitation is that who, according to the Law, has gone through the legal process of being arrested, detained, prosecuted or tried without reason or due to a mistake about the person or the law that was applied.

Furthermore, regarding the way to request for rehabilitation, compensation and granting compensation, it is regulated further by Law in Article 9 paragraph (3). In the Criminal Procedure Code, it is explained in Article 1 point 23 that rehabilitation is a vindication, whether in ability, position or dignity, which must be granted at the level of investigation, prosecution or trial to a person who has been arrested, detained, prosecuted or tried without reason or mistakenly.

Regarding the rehabilitation, a person who has been acquitted by the court or acquitted of all charges has the right to obtain rehabilitation, as explained in Article 97 paragraph (1) of the Criminal Procedure Code. Furthermore, Article 97 paragraph (2) explains that when a person is given rehabilitation, it is given and stated in the court's decision. However, in the Criminal Procedure Code, it is not stated whether the defendant proposes the rehabilitation, or it applies automatically. Ideally, this must be clearly regulated in the Criminal Procedure Code .

Rehabilitation in criminal law is closely related to an acquittal because essentially rehabilitation is a right. Therefore, the judges should always include their rehabilitation in the ruling. This is explained in point four of the Supreme Court Circular Letter Number 11 of 1985, which explains the rehabilitation request of the defendant who has been released or acquitted of all lawsuits. Then, regarding the acquittal, the Criminal Procedure Code, article 191 paragraph (1) also regulates that if the court believes that the act committed by a defendant is proven, but the act does not constitute a criminal act, then the defendant is acquitted of all lawsuits.

#### **B. Rehabilitation Efforts for the Acquitted Defendants**

Basically, for a defendant who is adjudicated to be free from all legal claims, obtaining rehabilitation is a right. Therefore, the judges must include rehabilitation in their ruling. Rehabilitation and restoration of good name are given as an effort to restore the defendant's reputation as before when he had not yet gone through the legal process in the criminal justice system.<sup>4</sup>

Based on Supreme Court Circular Letter Number 11 of 1985 concerning rehabilitation requests of defendants who were released from all lawsuits, the circular letter regulates that if the acquittal does not mention the rehabilitation of the defendant, the person concerned (the defendant) may request the rehabilitation from the court. The request is submitted and determined by the Head of the District Court who decides the case on the first level in the form of a decision.<sup>5</sup>

In the development of cases concerning rehabilitation efforts in an acquittal in Aceh, the researcher is interested in examining three cases, which are described as follows:<sup>6</sup>

---

<sup>2</sup>*Ibid.*

<sup>3</sup>Syiah Kuala University, Faculty of Law, *Pedoman Penulisan Tesis Magister Ilmu Hukum* [Thesis Writing Guidelines for Master of Laws], Darussalam, Syiah Kuala University, p. 9.

<sup>4</sup>M. Yahya Harahap, 2006, *Pembahasan Permasalahan dan Penerapan KUHAP* [Discussion of Problems and Implementation of the Criminal Procedure Code], Jakarta, Sinar Grafika, p. 71.

<sup>5</sup>The Supreme Court of the Republic of Indonesia, Supreme Court Circular Letter Number 11 of 1985 concerning Request for Rehabilitation of Defendants Released from All Lawsuits.

<sup>6</sup>Directory of Decisions of the Supreme Court of the Republic of Indonesia

No.	NAME	DECISION NUMBER	REMARK
1	SetiaRamadhan bin Muzakkir	14/Jn/2018/Ms-Bna.	Committing sexual harassment
2	ElvinaBintiAlm Abdul Djalal	287/Pid.Sus/2018/PN Bna.	Committing violence against children
3	Darwin Bin Muhammad Ali	35/Pid.Sus- TPK/2016/PN.Bna.	Committing corruption.

In the first case, SetiaRahmadhanIbnMuzakkir was accused of having committed social harassment and violated the provisions of Article 47 Jo Article 1 point 27 Qanun Number 6 of 2014 concerning Islamic criminal law. In the second case, Elvina Binti (late) Abdul Djalal was accused of having committed violence against children. In the third case Darwin Ibn Muhammad Ali was accused of committing corruption. However, the verdict stated that they were not guilty and acquitted of all charges.

The legal process they have undergone caused suffering to SetiaRahmadhanIbnMuzakkir, ElvinaBinti(late) Abdul Djalal and Darwin Ibn Muhammad Ali both materially and immaterially. Damage to the reputation and honor of the defendants certainly has an impact on the activities of their daily life. Of course, this matter must be considered by the state. Otherwise, it will undoubtedly hurt the feeling of justice, which is the goal of the law itself.

According to the information above, SetiaRamadhanIbnMuzakkir, ElvinaBintiAlm Abdul Jalil, and Darwin Ibn Muhammad Ali are entitled to rehabilitation in the form of restoration of their good name and compensation for damages they suffer due to the legal process they have undergone. Restoration of their good name must be given to the defendants who were acquitted by the Court because basically all the actions that were imposed on SetiaRamadhanIbnMuzakkir, ElvinaBinti Abdul AlmilJalil, and Darwin Ibn Muhammad Ali were criminal offenses that could not be proven by the Public Prosecutor. Therefore, based on the explanation above, the rehabilitation efforts in the acquittal right now are only in the form of statement in the verdict of the judge, and there has been no further effort on restoring the good name of the defendant in the community. In fact, the negative evaluation of the community or social punishment is more painful than corporal punishment received by the defendants.

#### IV. CONCLUSION

##### A. Conclusion

In practice, efforts to rehabilitate defendants who have been acquitted have not been effective, as evidenced by the non-participation of the printed and online mass media in providing information to the public that the defendants are innocent and free from all legal claims so that their good names are restored.

##### B. Suggestion

As the executor of the decision of the judges, prosecutors should carry out their role. The government must also make provisions or regulations on advertising costs to announce that the defendants have been acquitted and get rehabilitation from the court.

#### REFERENCES

- [1]. Marcus PriyoGunarto, 2018, WahyuSudrajat, DekonstruksiPutusanBebas&PutusanLepasdariSegala TuntutanHukum [Deconstruction of Acquittal and Acquittal Decision from All Law Claim], Yogyakarta, PustakaPelajar, 2018, p. 1.
- [2]. Salim HS, and ErliesSeptianaNurbani, PenerapanTeoriHukumPadaPenelitianDisertasiDanTesis [Application of Legal Theory to Dissertation and Thesis Research] (Third Book), Jakarta Rajawali Press, p. 255.
- [3]. Henry Campbell Black, 1968, Black Law Dictionary, Michigan, West Group, p. 1451.
- [4]. Hukum Online.com, <https://www.hukumonline.com/berita/baca/lt56cc29ed68e40/efektivitas-pp-ganti-rugi-.masih-dipertanyakan/> Accessed on July 21. 2019, at 16:40 Western Indonesia Time.
- [5]. Revision Drafting Team, 2017, BukuPedoman PenulisanTesis Program Studi Magister IlmuHukumFakultasHukumUniversitasSyiah Kuala [Thesis Writing Guideline for Study Program of Master of Laws, Faculty of Law of Syiah Kuala University], Darussalam, Syiah Kuala University, p. 9.
- [6]. PhilipusM.Hadjon, 1987, PerlindunganHukumBagi Rakyat-SebuahStudiTentangPrinsip-prinsipnya, PenanganannyaOlehPengadilanDalamLingkunganPeradilanUmumdanPembentukanPeradilanAdministrasi Negara [Legal Protection for the People: A Study of Its Principles and Handling by the Courts in the

- Environment of the General Courts and the Establishment of State Administrative Courts], Surabaya, Binallmu, p. 30.
- [7]. O. Notohamidjojo, Makna Negara Hukum [The Meaning of State of Law], 1970, Jakarta, Badan Penerbit Kristen, 1970, p. 27.
- [8]. Padmo Wahyono, Guru Pinandita, 1984, Badan Penerbit Fakultas Ekonomi Universitas Indonesia, Jakarta, p. 67.
- [9]. Scribid.com, Teori Perlindungan Hukum [Legal Protection Theory] Dissertation, <https://www.scribd.com/upload-document/teori-perlindungan-hukum-disertasi>, Accessed on August 31, 2017.
- [10]. Departemen Pendidikan dan Kebudayaan, 1989, Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta, 1989, p. 526.
- [11]. I Gusti Agung Oka Diatmika, 2017, Perlindungan Hukum Terhadap Jabatan Notaris Berkaitan Dengan Adanya Dugaan Malpraktek dalam Proses Pembuatan Akta Otentik [Legal Protection of Notary Position Related to the Presumption of Malpractice in the Process of Draw Up Authentic Deed], Jurnal Ilmiah Magister Kenotariatan, ISSN: 25028960 e-ISSN: 2502-7573, p. 152.
- [12]. Salim HS, and Erlies Septiana Nurbani, Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis [Application of Legal Theory to Dissertation and Thesis Research] (Third Book), Jakarta Rajawali Press, p. 141.
- [13]. The Republic of Indonesia, Law Number 8 of 1981 concerning Criminal Procedure Law, Article 1 point 23
- [14]. Supreme Court Circular Letter Number 11 of 1985. (SEMA)
- [15]. Marcus Priyo Gunarto, 2018, Wahyu Sudrajat, Dekonstruksi Putusan Bebas & Putusan Lepas dari Segala Tuntutan Hukum [Deconstruction of Acquittal and Acquittal Decision from All Law Claim], Yogyakarta, Pustaka Pelajar, 2018, p. 91.
- [16]. M. Yahya Harahap, 2006, Pembahasan Permasalahan dan Penerapan KUHAP [Discussion of Problems and Implementation of the Criminal Procedure Code], Jakarta, Sinar Grafika, p. 71.

Muhammad Effendy Foenna. "The Fulfilment of the Right of Rehabilitation in an Acquittal."  
*IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(1), 2020, pp. 21-24.