

Legal Vacuum In The Supervision of Court Judgment Enforcement By Public Prosecutors And The Formulation of Ius Constituendum In Indonesia

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ABSTRACT

This study examines the legal vacuum in the judicial supervision of criminal court judgment enforcement by public prosecutors and the formulation of ius constituendum in Indonesia. The problem arises because Indonesian criminal procedural law grants public prosecutors authority to execute final and binding criminal judgments but does not provide a clear mechanism for judicial supervision when execution is delayed or not carried out. This study aims to identify the factors causing the legal vacuum and formulate an ideal model of judicial supervision as ius constituendum. This study employs normative legal research using statutory, case, conceptual, and comparative approaches. Legal materials are analyzed qualitatively through systematic and teleological interpretation. The analysis applies Gustav Radbruch's Theory of Legal Certainty, Aristotle's Theory of Justice, and the Theory of Judicial Power and checks and balances. The findings indicate that the legal vacuum results from the absence of judicial control mechanisms, limited authority of the Supervising and Observing Judge, the absence of an objection mechanism, and unclear time limits and legal accountability for public prosecutors. Comparative analysis of German criminal procedural law demonstrates the importance of judicial control during execution. Accordingly, this study proposes reformulating Article 270 of the Criminal Procedure Code and expanding the authority of the Supervising and Observing Judge to supervise execution from the time a judgment becomes final until completion. This model aims to strengthen legal certainty, accountability, and judicial authority while maintaining the public prosecutor's authority to execute criminal judgments.

Keywords: Legal Vacuum, Judicial Supervision, Execution of Criminal Court Judgments, Public Prosecutor, Ius constituendum.

1. INTRODUCTION

A court judgment represents the culmination of the criminal justice process and a concrete manifestation of judicial power in upholding law, justice, and legal certainty. In a state governed by the rule of law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter the "1945 Constitution"), every court judgment that has acquired permanent legal force (*inkracht van gewijsde*) must be enforced as a consequence of respect for judicial authority. (Mukantardjo, 2022) A judgment is not merely binding upon the parties but also constitutes a legal command that must be realized through its enforcement. Accordingly, judgment enforcement forms an integral part of criminal law enforcement. Without effective enforcement, the objectives of law, particularly legal certainty, justice, and utility, cannot be fully achieved. (Makara, 2021)

The Indonesian criminal justice system consists of interconnected stages, beginning with inquiry and investigation, prosecution, adjudication, and ultimately the enforcement of court judgments. The effectiveness of law enforcement is therefore determined not only by the quality of judicial decisions but also by whether those decisions are effectively implemented. Judgment enforcement represents the final stage through which the objectives of criminal punishment are translated into practice. Where a final and binding judgment is not enforced, it risks becoming merely a juridical document, thereby weakening legal certainty and the authority of the judiciary. (Arianto, 2012)

Normatively, the authority to enforce criminal judgments is vested in public prosecutors. Article 13 paragraph (1) of Law Number 11 of 2021 on the Amendment to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia (hereinafter the "Prosecutor's Office Law") provides that a public prosecutor is a prosecutor authorized by law to conduct prosecutions and execute judicial determinations. This authority is reinforced by Article 30 paragraph (1) letter b, which provides that the Prosecutor's Office has the duty and authority to execute judicial determinations and court judgments that have acquired permanent legal force. These provisions establish that judgment enforcement is not merely an administrative function but a legal obligation attributed to public prosecutors as part of the criminal justice system. (Arimurti, 2023)

The Prosecutor's Office also possesses broad powers in the field of law-enforcement intelligence under Article 30B of the Prosecutor's Office Law, including investigation, security, intelligence operations, intelligence cooperation, prevention of corruption, collusion, and nepotism, and multimedia supervision. The breadth of these powers demonstrates the strategic position of the Prosecutor's Office within the Indonesian criminal justice system. However, extensive state authority requires an effective oversight mechanism as a manifestation of the principle of checks and balances. Such oversight is necessary to ensure that prosecutorial authority is exercised accountably and consistently with the objectives of the law. (Andi, 2021)

The legal problem arises when a court judgment that has acquired permanent legal force is not promptly enforced by the public prosecutor. Although Indonesian positive law clearly determines the authority responsible for enforcement, it does not provide a comprehensive mechanism for supervising the exercise of that authority. In particular, the law does not clearly establish an institution with judicial authority to supervise prosecutorial enforcement, a specific time limit for execution, a procedure for challenging delays or failures to enforce a judgment, or legal consequences for a public prosecutor who fails to perform the obligation. Consequently, the effectiveness of judgment enforcement depends substantially on the conduct of the public

prosecutor without an adequate judicial mechanism capable of ensuring timely and lawful execution. (Budahu, 2024)

This regulatory gap becomes more apparent when considered in relation to Article 282 of Law Number 1 of 2023 on the Criminal Code (hereinafter the “National Criminal Code”). The provision criminalizes persons who conceal offenders or assist them in escaping from investigation, prosecution, or the enforcement of criminal judgments by competent authorities. It demonstrates that the legislature recognizes the importance of protecting the criminal justice process, including the enforcement stage. Conduct that obstructs the enforcement of criminal judgments may interfere with the achievement of the objectives of law enforcement and is therefore subject to criminal sanctions. In practice, conduct that interferes with the administration of justice is commonly associated with the concept of obstruction of justice. (Hiariej, 2022)

Nevertheless, Article 282 of the National Criminal Code primarily addresses interference originating from external parties. It does not regulate the legal consequences where a criminal judgment is not enforced by the public prosecutor, namely the official legally entrusted with executing the judgment. Thus, Indonesian law provides protection against external interference but does not establish an equivalent mechanism for addressing failure by the official responsible for enforcement. This distinction reveals a significant regulatory gap: the law regulates the protection of judgment enforcement but does not sufficiently regulate accountability for the exercise or non-exercise of prosecutorial enforcement authority. (Rifai, 2021)

The issue is also closely connected to the authority of the judiciary. A court judgment constitutes the final product of judicial proceedings and must be respected and enforced by all relevant state institutions. Failure to enforce a final judgment may therefore undermine the authority of the judiciary and raise concerns conceptually related to contempt of court. Although contempt of court has not been comprehensively regulated under Indonesian positive law, the absence of an effective mechanism to guarantee judgment enforcement raises a fundamental question concerning how judicial authority can be maintained when a judgment is not implemented by the state institution entrusted with its execution.

Indonesian criminal procedural law has, in fact, recognized the importance of supervision through the institution of the Supervisory and Observational Judge (Hakim Pengawas dan Pengamat), as regulated in Articles 277 to 283 of the Indonesian Criminal Procedure Code (KUHAP). Its existence demonstrates legislative recognition that the implementation of criminal judgments requires supervision. However, the supervisory function remains largely focused on observing the implementation of sentences in correctional institutions and does not extend comprehensively to the conduct of public prosecutors as executors of court judgments. The

Supervisory and Observational Judge is not expressly authorized to order a public prosecutor to enforce a judgment immediately, assess the justification for delays, or impose legal consequences where a judgment is not enforced.

This legal construction indicates that the Indonesian criminal procedural system contains a *rechtsvacuum* concerning supervision of criminal judgment enforcement by public prosecutors. The vacuum does not concern the absence of authority to enforce judgments, because such authority has been expressly granted under the Prosecutor's Office Law. Rather, the gap concerns the absence of norms governing judicial oversight of enforcement, clear execution deadlines, legal remedies against non-enforcement, and specific consequences for public prosecutors who fail to fulfill their statutory obligations. Such a condition may create legal uncertainty, undermine the effectiveness of judicial decisions, and weaken the authority of judicial power as a fundamental pillar of the rule of law. (Butarbutar, 2011)

The problem is not merely theoretical but can also be observed in judicial practice. Supreme Court Decision Number 287 K/Pid/2019, for example, had acquired permanent legal force, yet its enforcement generated controversy because it was not immediately executed by the public prosecutor. The issue subsequently raised legal debates, including questions concerning the possible expiration of the authority to enforce the criminal sentence. Regardless of those debates, the more fundamental problem is that Indonesian positive law does not provide an effective mechanism through which the court can supervise or take corrective measures when a public prosecutor fails to enforce a final judgment. Consequently, enforcement remains substantially dependent upon prosecutorial authority without adequate judicial control.

A similar issue can be identified in Calang District Court Decision Number 12/Pid.Sus/2025/PN Cag in conjunction with Banda Aceh High Court Decision Number 369/PID.SUS/2025/PT BNA. Once the judgment acquired permanent legal force, it created a legal obligation for the public prosecutor to enforce it. However, Indonesian criminal procedural law does not establish a specific time limit for enforcement or a judicial mechanism for addressing delayed or non-enforcement. These cases illustrate that the central legal problem is not the absence of prosecutorial authority but the absence of a legal mechanism capable of ensuring, supervising, and correcting the exercise of that authority.

The problem can be further examined through a comparison with the German legal system. Indonesia and Germany share the civil law tradition, in which codified legislation constitutes a principal foundation of the legal system. German criminal procedure is governed by the *Strafprozessordnung* (StPO), which is functionally comparable to the Indonesian KUHAP. With respect to judgment enforcement, §451 StPO establishes the public prosecution office



(Staatsanwaltschaft) as the authority responsible for enforcing criminal judgments. Thus, Germany, like Indonesia, places enforcement authority within the prosecution service.

The significant distinction lies in the existence of judicial control. Under §458 StPO, courts have authority to determine objections, disputes, and doubts arising during the enforcement of criminal judgments. Accordingly, although the prosecution service performs the executive function, its exercise of that authority remains subject to judicial oversight. This arrangement creates a checks and balances relationship between the prosecution service as the executor of judgments and the judiciary as the holder of judicial power. The German model demonstrates that judicial oversight does not necessarily eliminate prosecutorial authority over execution; rather, it provides a legal mechanism to ensure that such authority is exercised in accordance with the judgment and applicable law.

The German framework is therefore relevant as a comparative reference for developing an *ius constituendum* in Indonesia. The essential aspect that may be considered is not the transplantation of the German system in its entirety, but the incorporation of the principle that prosecutorial authority to enforce judgments should be accompanied by judicial oversight. Such oversight may include mechanisms for reviewing objections, assessing delays, and providing corrective measures when enforcement is not properly carried out. This model would preserve the prosecutorial function while simultaneously strengthening judicial control and accountability.

Based on the foregoing, the research gap addressed by this study lies in the absence of a comprehensive legal framework governing judicial oversight of criminal judgment enforcement by public prosecutors in Indonesia. Existing regulations establish the authority of public prosecutors to execute court judgments but do not adequately regulate how such authority should be supervised when execution is delayed or not performed. Existing provisions concerning the Supervisory and Observational Judge also do not provide a sufficient judicial control mechanism over prosecutorial execution. Meanwhile, Article 282 of the National Criminal Code addresses external obstruction of judgment enforcement rather than the accountability of officials responsible for executing judgments.

The novelty of this research lies in formulating a judicial oversight model as an *ius constituendum* for the enforcement of criminal court judgments by public prosecutors, based on the Indonesian legal framework and a comparative analysis of §§451 and 458 StPO. The proposed approach seeks to establish a balance between prosecutorial authority and judicial supervision by providing clear mechanisms concerning execution deadlines, judicial review of delays or non-enforcement, legal remedies for affected parties, and corrective measures available to the court. Such a model is intended not to transfer prosecutorial authority to the judiciary, but to ensure that

the execution of judicial decisions remains accountable and consistent with the principle of the rule of law. (Bernd Heinrich, 2022)

The urgency of this research lies in ensuring that a final and binding court judgment does not remain merely a judicial declaration but is effectively realized through accountable and enforceable legal action. A clear judicial oversight mechanism is necessary to strengthen legal certainty, ensure the effectiveness of criminal judgments, protect the authority of judicial power, and reinforce the principle of checks and balances within the criminal justice system. Accordingly, this research is directed toward formulating an *ius constituendum* for judicial oversight of criminal judgment enforcement by public prosecutors in Indonesia, with the expectation that the proposed model can contribute to the reform of Indonesian criminal procedural law and strengthen the accountability of judgment enforcement within a state governed by the rule of law.

On this basis, this study is entitled “Legal Vacuum in the Supervision of Court Judgment Enforcement by Public Prosecutors and the Formulation of an *Ius Constituendum* in Indonesia.”

2. RESEARCH METHOD

This study employs a normative legal research method (juridical-normative research), which focuses on the analysis of legal norms, legal principles, legal doctrines, and judicial decisions concerning the enforcement of criminal court judgments by public prosecutors and the judicial supervision of such enforcement. (Utsman, 2014) This method was selected because the issues examined are normative in nature, particularly the existence of a legal vacuum concerning the supervision of final and binding criminal judgments and the formulation of an *ius constituendum* to address the regulatory gap. The research is prescriptive and does not rely on empirical data. (Mamudji, 2004)

This research employs four approaches: the statutory approach, case approach, comparative approach, and conceptual approach. The statutory approach is used to examine the legal framework governing criminal judgment enforcement, prosecutorial authority, and judicial power, particularly the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code, Law Number 1 of 2023 on the Criminal Code, Law Number 11 of 2021 on the Prosecutor’s Office, and Law Number 48 of 2009 on Judicial Power. The case approach is applied to analyze Supreme Court Decision Number 287 K/Pid/2019 and Calang District Court Decision Number 12/Pid.Sus/2025/PN Cag in conjunction with Banda Aceh High Court Decision Number 369/PID.SUS/2025/PT BNA, particularly the legal implications of delayed or non-enforcement of final judgments. The comparative approach examines the German Strafprozessordnung (StPO), particularly Sections 451 and 458, to identify the role of judicial supervision in criminal judgment

enforcement. The conceptual approach is used to examine the concepts of judicial supervision, prosecutorial authority, legal vacuum (*rechtsvacuum*), checks and balances, legal certainty, and *ius constituendum*. (Ibrahim, 2020)

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include relevant legislation, judicial decisions, and the German StPO, particularly Sections 451 and 458. Secondary materials comprise legal books, scholarly journals, theses, dissertations, research reports, and legal scholars' opinions. Tertiary materials include legal dictionaries, legal encyclopedias, and Black's Law Dictionary. The materials were collected through systematic library research by identifying, inventorying, classifying, and examining sources relevant to the research issues. (Marzuki, 2021)

The legal materials were analyzed qualitatively using grammatical, systematic, and teleological interpretation, supplemented by legal construction. Grammatical interpretation examines the textual meaning of relevant provisions, systematic interpretation assesses the coherence of legal norms, and teleological interpretation considers the objectives of legal certainty, justice, accountability, and effective judgment enforcement. (Wantu, 2021) Legal construction is subsequently employed to formulate an *ius constituendum* concerning an ideal model of judicial supervision. The comparative findings from German law are used as a reference rather than directly transplanted, ensuring that the proposed model remains compatible with Indonesia's constitutional and criminal justice system. (Djatmiati, 2021)

3. RESULTS AND DISCUSSION

Sociological and Institutional Factors Causing the Legal Vacuum in the Judicial Supervision of the Execution of Criminal Court Decisions by Public Prosecutors

The enforcement of criminal court judgments constitutes the final stage of the criminal justice system and determines the effectiveness of law enforcement. A court decision that has obtained permanent legal force (*inkracht van gewijsde*) must be executed as a consequence of legal certainty and respect for judicial power. Under the Indonesian legal system, the authority to execute criminal court judgments is vested in public prosecutors, as provided under Article 270 of the Criminal Procedure Code (KUHP), Article 30 paragraph (1) letter b of the Prosecutor's Law, and Article 54 paragraph (2) of the Judicial Power Law. These provisions establish certainty regarding the institution responsible for executing court judgments. However, the existing legislation does not adequately regulate the supervision mechanism when a court decision is not promptly or properly executed by the public prosecutor. (Angrayni, 2019)

Article 270 of the KUHAP stipulates that the execution of a court decision that has obtained permanent legal force is carried out by the prosecutor. Similarly, Article 30 paragraph (1) letter b of the Prosecutor's Law grants the Prosecutor's Office the authority to execute judicial determinations and court judgments that have obtained permanent legal force. Furthermore, Article 54 paragraph (2) of the Judicial Power Law provides that the enforcement of criminal court judgments is carried out by the prosecutor. Although these provisions clearly establish the authority to execute court judgments, they do not determine which institution is authorized to supervise the exercise of such authority, the time limit for execution, the mechanism for objections, or the legal consequences when a public prosecutor delays or fails to execute a decision without legitimate grounds. (Lailiyah, 2022)

A related provision can be found in Article 282 of the National Criminal Code, which provides protection for the execution of criminal judgments by criminalizing acts committed by persons who assist an offender in escaping the execution of a criminal sentence. However, this provision addresses interference originating from external parties and does not regulate situations in which the execution of a court decision is not carried out by the official legally entrusted with its execution. Therefore, the existing legal framework contains a specific legal vacuum concerning the supervision of public prosecutors in executing criminal court judgments. (Maggalatung, 2014)

This legal vacuum is further demonstrated through an analysis of judicial practice, particularly Supreme Court Decision Number 287 K/Pid/2019 and Calang District Court Decision Number 12/Pid.Sus/2025/PN Cag in conjunction with Banda Aceh High Court Decision Number 369/PID.SUS/2025/PT BNA. These cases demonstrate problems concerning the enforcement of court judgments that had obtained permanent legal force. In such circumstances, Indonesian positive law does not provide a mechanism enabling the court to exercise judicial control over the public prosecutor or issue corrective orders when execution is delayed. Likewise, interested parties do not have a clear procedural mechanism to challenge the delay or request judicial intervention to ensure the execution of a final court decision. (Wiyanto, 2012)

From a sociological perspective, the legal vacuum becomes increasingly significant because society expects not only fair judicial decisions but also their actual implementation. Uncertainty concerning the enforcement of court judgments may undermine public confidence in the justice system and create the perception that law enforcement ends at the adjudication stage. In addition, the development of good governance principles requires every exercise of public authority to be accompanied by mechanisms of supervision and accountability. As an official entrusted with executing court judgments, a public prosecutor should not only be granted executive



authority but should also operate within a control mechanism that ensures accountability in the exercise of such authority. (Sudarto, 2009)

From an institutional perspective, the legal vacuum is caused by the absence of judicial authority to exercise judicial control over the execution of a decision after it has obtained permanent legal force. Although the KUHAP recognizes the institution of the Supervisory and Observational Judge (Hakim Pengawas dan Pengamat), its authority remains primarily focused on monitoring the implementation of criminal sentences within correctional institutions and does not extend to supervising the actions or omissions of public prosecutors during the enforcement stage. In addition, Indonesian criminal procedural law does not establish a clear execution deadline or a specific accountability mechanism when a public prosecutor fails to perform the obligation to execute a court decision. (Zulkarnain, 2013)

These conditions produce several consequences, including weakened legal certainty, reduced effectiveness of court judgments, diminished authority of the judiciary, and the suboptimal implementation of the principle of checks and balances within the criminal justice system. A court decision that has obtained permanent legal force should not only be legally final but should also be guaranteed to have practical and enforceable consequences. When analyzed through Gustav Radbruch's Theory of Legal Certainty, legal certainty is not merely determined by the existence of a legal provision designating the public prosecutor as the executor of a court decision. It also requires a complete legal framework that guarantees the proper implementation of that authority. In this context, Indonesian positive law provides certainty concerning who is responsible for executing a criminal court decision, but does not provide sufficient certainty concerning how such execution should be supervised when delays or failures occur. Therefore, the existing legal system has not fully realized legal certainty in the sense formulated by Radbruch. (Muladi, 1995)

Based on the foregoing analysis, the legal vacuum in the supervision of criminal court judgment enforcement by public prosecutors is influenced by sociological factors, particularly increasing public demands for accountability in law enforcement, and institutional factors, including the absence of judicial control, the limited authority of Supervisory and Observational Judges, the absence of an objection mechanism, the lack of a clear execution deadline, and the absence of a specific legal accountability mechanism for public prosecutors. These circumstances demonstrate the need to formulate an *ius constituendum* establishing judicial supervision over the enforcement of criminal court judgments, thereby maintaining the executive authority of public prosecutors while placing its exercise within an effective supervisory framework capable of ensuring legal certainty, accountability, and the authority of the judiciary. (Bastianon, 2019)



The Ideal Model of Judicial Supervision over the Execution of Criminal Judgments by Public Prosecutors as *Ius Constituendum* in Indonesia

The analysis of the first research question demonstrates that Indonesian law has established the Public Prosecutor as the authority responsible for executing criminal judgments that have obtained permanent legal force (*inkracht van gewijsde*). This authority is primarily regulated under Article 270 of the Criminal Procedure Code (KUHP) and Article 30 paragraph (1) letter b of Law Number 11 of 2021 concerning the Prosecutor's Office. However, these provisions only regulate the authority to enforce judgments and do not provide a judicial supervision mechanism when the Public Prosecutor delays or fails to execute a final judgment. Consequently, a legal vacuum exists concerning judicial control over the execution of criminal judgments. (Lintogareng, 2013)

The absence of such supervision has significant implications for legal certainty, the effectiveness of judicial decisions, and the authority of the judiciary. Although the institution of the Supervisory and Observational Judge (*Hakim Pengawas dan Pengamat*) is recognized under Articles 277–283 KUHP, its authority primarily concerns the supervision and observation of convicted persons after they have entered correctional institutions. It does not extend to supervising the actions or omissions of the Public Prosecutor between the moment a judgment becomes final and the actual execution of the sentence. Therefore, judicial supervision does not comprehensively cover the entire execution process. (Umam, 2010)

Based on these circumstances, the establishment of a judicial supervision model is necessary as a form of *ius constituendum*. Such a model should not transfer enforcement authority from the Public Prosecutor to the court. Rather, it should establish a judicial control mechanism to ensure that prosecutorial authority is exercised according to law, accountability, and the principles of a state based on the rule of law. (Trenggono, 1990)

For this purpose, this study employs a comparative legal approach by examining the German criminal procedural system. Indonesia and Germany share a civil law tradition, and both systems place the prosecution authority as the institution responsible for executing criminal judgments. However, the German system provides a more developed mechanism for judicial control during the enforcement stage. Under Section 451 of the German Code of Criminal Procedure (*Strafprozessordnung* or *StPO*), the Public Prosecutor's Office (*Staatsanwaltschaft*) functions as the enforcement authority (*Vollstreckungsbehörde*). Nevertheless, Section 458 *StPO* provides judicial involvement in resolving objections, disputes, or doubts arising during the execution of criminal sentences. Thus, the distinction between Indonesia and Germany does not concern the institution responsible for execution, but rather the existence of judicial supervision over the exercise of that authority. (Arief, 2011)

The comparative analysis indicates that Indonesia can adopt the principle of judicial control without adopting the German system in its entirety. Accordingly, this study proposes the reformulation of Article 270 KUHAP by maintaining the Public Prosecutor as the executor while granting the court, through the Supervisory and Observational Judge, authority to supervise the execution of final criminal judgments. The proposed provision should authorize the Supervisory and Observational Judge to request information and documents from the Public Prosecutor concerning the execution of a judgment, particularly where there are indications of delay or failure to enforce the judgment without legitimate justification. Further procedural arrangements may be regulated through a Supreme Court Regulation (Peraturan Mahkamah Agung). The authority of the Supervisory and Observational Judge should also be expanded from supervision after imprisonment has commenced to supervision from the moment a judgment obtains permanent legal force until the sentence has been fully executed. This expansion would close the existing legal gap between adjudication and execution while preserving the institutional division of authority between the judiciary and the prosecution service. (Asmaeny, 2013)

The proposed model should further be supported by harmonization among the National Criminal Code, KUHAP, the Prosecutor's Office Law, and implementing regulations. The National Criminal Code should provide substantive protection against obstruction of judgment execution, while KUHAP should regulate the procedural mechanism of execution and judicial supervision. The Prosecutor's Office Law should affirm the Public Prosecutor's enforcement authority together with appropriate accountability mechanisms. Meanwhile, a Supreme Court Regulation should establish technical procedures concerning reporting, supervision, examination, time limits, interinstitutional coordination, and corrective measures. (Waluyo, 1989)

From the perspective of Aristotle's Theory of Justice, the proposed model reflects corrective justice because it provides a mechanism for restoring legal balance when a final judgment is not properly executed. It also reflects distributive justice by allocating authority proportionally: the Public Prosecutor remains responsible for execution, while the court exercises judicial supervision. Justice therefore does not end with the pronouncement of a judgment but must be realized through its effective implementation. Furthermore, from the perspective of judicial power and the principle of checks and balances, the proposed model strengthens judicial authority without interfering with prosecutorial independence. The court does not assume the executive function of the Public Prosecutor but ensures that such function is exercised lawfully and accountably. This creates an appropriate institutional balance between execution and supervision. (Pangaribuan, 2002)

Accordingly, the proposed *ius constituendum* provides a comprehensive model of judicial supervision that fills the existing legal vacuum while maintaining the Public Prosecutor's authority as executor. The model is expected to strengthen legal certainty, justice, accountability, and the authority of judicial decisions, thereby supporting the reform of Indonesia's criminal procedural law and ensuring that every final criminal judgment is effectively implemented. (Adji, 2007)

4. CONCLUSION

Based on the findings and analysis of this research, it can be concluded that the legal vacuum in the judicial supervision of the enforcement of criminal court judgments by public prosecutors is primarily caused by the absence of clear legal provisions governing judicial supervision mechanisms over final and binding court judgments. The existing legal framework only establishes public prosecutors as executors of court judgments, without clearly regulating supervision, accountability, or legal remedies when decisions are not properly implemented. From the perspective of Gustav Radbruch's Theory of Legal Certainty, this condition does not fully ensure legal certainty because it fails to clearly determine the institution authorized to supervise the execution of criminal judgments and the procedures for such supervision.

This research further concludes that the ideal model of judicial supervision as an *ius constituendum* in Indonesia requires the reformulation of Article 270 of the Criminal Procedure Code (KUHP), expansion of the authority of Supervisory and Observational Judges, strengthening of public prosecutor accountability under the Law on the Prosecution Service, harmonization with the National Criminal Code, and the establishment of a Supreme Court Regulation as a technical guideline for supervision. Based on Aristotle's Theory of Justice, the Theory of Judicial Power, and the principle of checks and balances, this model can strengthen judicial oversight, ensure effective execution of criminal judgments, and create a balanced distribution of authority between courts and public prosecutors.

Therefore, legislative reform is necessary to establish a clear judicial supervision mechanism through the reformulation of Article 270 of the Criminal Procedure Code and its harmonization with the Law on the Prosecution Service. The Supreme Court should formulate technical regulations concerning the supervision of criminal judgment enforcement, including the authority of Supervisory and Observational Judges. Meanwhile, the Prosecution Service should strengthen internal supervision and accountability to ensure that every final and binding court decision is executed timely, effectively, and consistently with the principles of the rule of law.



REFERENCES

- Adji, O. S. (2007). *Peradilan Bebas dan Contempt of Court*. Jakarta: Diadit Media.
- Andi, H. (2021). *Hukum Acara Pidana Indonesia*. Jakarta: Edisi Ketiga, Sinar Grafika, .
- Angrayni, F. H. (2019). Implementasi Perlindungan Hak Konstitusional Warga Negara oleh Mahkamah Konstitusi Menurut Sistem Ketatanegaraan di Indonesia. *Riau Law Journal*, 44–69.
- Arianto, H. (2012). Peranan Hakim Dalam Upaya Penegakan Hukum Di Indonesia. *Lex Jurnalica*, 131–163.
- Arief, B. N. (2011). *Perbandingan Hukum Pidana*. Jakarta: Raja Grafindo Persada.
- Arimurti. (2023). Prosedur Pengajuan Judicial Review dan Jenis Putusan Mahkamah Konstitusi terhadap Judicial Review. *Jurnal Demokrasi dan Ketahanan Nasional*, 98.
- Asmaeny, I. d. (2013). *Constitutional Complaint & Constitutional Question dalam Negara Hukum*. Jakarta: Prenamedia Group.
- Bastianon, S. d. (2019). Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan. 900–920, Fungsi Investigatif Dalam Kebebasan Hakim Memutus Perkara Yang Didasarkan Pada Penerapan Hukum Pembuktian.
- Bernd Heinrich, G. E. (2022). *Neue Zeitschrift für Strafrecht (NStZ)*. Heft 8, 445-452.
- Budahu. (2024). *Legal Standing Pemohon Terkait Pengajuan Judicial Review di Mahkamah Konstitusi*. Jakarta: Media Hukum.
- Butarbutar, E. N. (2011). Kebebasan Hakim Perdata Dalam Penemuan Hukum Dan Antinomi Dalam Penerapannya. *Mimbar Hukum*, 1–236.
- Djatmiati, P. M. (2021). *Argumentasi Hukum*. Yogyakarta: Edisi Ketiga Gadjah Mada University Press.
- Hiariej, E. O. (2022). *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Edisi Revisi Cahaya Atma Pustaka.



- Ibrahim, J. (2020). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Edisi Ketiga Bayumedia Publishing.
- Lailiyah, K. (2022). Constitutional Complaint Sebagai Upaya Perlindungan Hak Konstitusional Warga Negara. *Journal Legal Dialectics*, 1–18.
- Lintogareng, J. V. (2013). Analisa Keyakinan Hakim Dalam Pengambilan Keputusan Perkara Pidana Di Pengadilan. *Lex Crimen*, 24–35.
- Maggalatung, A. S. (2014). Hubungan Antara Fakta Norma, Moral, Dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim. *Jurnal Cita Hukum*, 185–192.
- Makaraao, A. S. (2021). Eksekusi Putusan Pidana dalam Sistem Peradilan Indonesia: Perspektif Kepastian Hukum. *Jurnal Yudisial*, Vol. 14, No. 1., 89-108.
- Mamudji, S. S. (2004). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Marzuki, P. M. (2021). *Penelitian Hukum*. Jakarta: Edisi Revisi, Kencana.
- Mukantardjo, R. S. (2022). Problematika Pelaksanaan Putusan Pidana dan Urgensi Pengawasan Yudisial terhadap Jaksa Penuntut Umum. *Jurnal Hukum dan Peradilan*, Vol. 11, No. 2, 245-262.
- Muladi. (1995). Kapita Selekta Sistem Peradilan Pidana. *Jurnal Universitas Diponegoro*, Semarang.
- Pangaribuan, L. M. (2002). *Advokat dan Contempt of Court*. Jakarta: Djambatan.
- Rifai, A. (2021). Kepastian Hukum dalam Pelaksanaan Putusan Pengadilan: Analisis terhadap Kewenangan Jaksa Penuntut Umum . *Jurnal Hukum dan Peradilan*, Vol. 10, No. 3, 412-430.
- Sudarto. (2009). *Hukum Pidana I*. Semarang: Yayasan Sudarto.
- Trenggono, H. (1990). *Kebijaksanaan Hakim*. Jakarta: Erlangga.
- Umam, A. (2010). Penerapan Pidana Minimum Khusus. *Varia Peradilan*, 94.
- Utsman, S. (2014). *Metodologi Penelitian Hukum Progressif*. Yogyakarta: Pustaka Pelajar.



Waluyo, A. H. (1989). *Delik-Delik terhadap Penyelenggaraan Peradilan (Contempt of Court)*. Jakarta: Sinar Grafika.

Wantu, F. M. (2021). Perbandingan Hukum sebagai Metode dalam Penelitian Hukum Normatif. *Jurnal Hukum dan Pembangunan*, Vol. 51, No. 2, 345-367.

Wiyanto, R. (2012). *Asas-Asas Hukum Pidana Indonesia*. Bandung: Mandar Maju.

Zulkarnain. (2013). *Praktik Peradilan Pidana*. Malang: Setara Press.

