**Int. j. adv. multidisc. res. stud.** 2025; 5(4):199-202

**Received:** 21-05-2025
**Accepted:** 01-07-2025

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

# The Authority of the Supreme Court to Change Criminal Sanctions in *Judex Factie* Judge's Decisions

**[1] Furqan, [2] Rizanizarli, [3] Eddy Purnama**
[1] Student, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia
[2, 3] Lecturers, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

Corresponding Author: **Furqan**

**Abstract**
The Supreme Court, functioning as a court of cassation, possesses authority constitutionally delineated in the 1945 Constitution and operationally governed by legislation, particularly Law Number 8 of 1981 pertaining to the Criminal Procedure Code (KUHAP). As Judex Juris, the Supreme Court is solely empowered to analyse the application of law by the Judex Factie court, not to reassess the factual circumstances of the case. Article 253 of the Criminal Procedure Code (KUHAP) delineates the specific reasons for a cassation claim, which include misapplication of the law, procedural flaws during the trial, or judicial overreach. In actuality, certain Supreme Court rulings, including cases Number 813 K/Pid/2023 and 816 K/Pid/2023, demonstrate that legal reasoning is not grounded in the stipulations of the Criminal Procedure Code (KUHAP), but instead relies on subjective moral judgements. This presents a legal dilemma as it may obscure the limits of the Supreme Court's jurisdiction, jeopardise legal clarity, and alter the interpretation of justice that ought to be founded on relevant legal standards. The study employs the normative juridical research technique. This research aims to examine and elucidate the Supreme Court's authority to modify the severity of a sentence without regard to the rationale behind the cassation application. The research findings suggest that certain provisions can alter the Supreme Court's role from a judex juris to a judex factie, specifically when the Supreme Court overturns a lower court's decision and adjudicates the case directly, employing the evidentiary rules pertinent to the first-instance court. The cassation examination is confined to the legally permissible grounds as stipulated in Article 253 paragraph (1) of the Criminal Procedure Code (KUHAP). Aside from these considerations, cassation appeals are denied as they are not legally permissible.

**Keywords:** Authority, Supreme Court, Consideration, Grounds for Cassation

## 1. Introduction

The Supreme Court, in administering justice to uphold the law and realize justice, is granted independent authority, free from intervention by any party, including state officials. However, the authority of the Supreme Court is not absolute, as judges in adjudicating cases must adhere to the prevailing laws and regulations, whether governed by formal law or material law [1].

The judicial system in Indonesia recognizes three levels of courts, namely, the first-instance court, the appellate court, and the cassation court. For the designation of these three levels of judicial processes, two terms are known: Judex Factie and Judex Juris. According to legal norms, the first-instance court and the appellate court are referred to as Judex Factie courts, which decide cases based on legal facts, whereas the Supreme Court acts as the cassation court or Judex Juris, which is authorized to examine the application of law decided by the Judex Factie courts.

Article 30 of Law Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court grants the Supreme Court the authority to examine and decide on cassation requests. Therefore, based on the authority granted by law to the Supreme Court to conduct trials in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the position of the Supreme Court is as a Judex Juris court, which means a court that examines the application of law carried out by a Judex Factie court, not acting as a court that examines facts.

For the reasons for filing a cassation to the Supreme Court in criminal cases, it has been regulated limitatively in Article 253 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law. The reasons that have been established should

serve as considerations that must be proven by the Supreme Court when examining a case submitted to it. So that the decision produced by the Supreme Court is truly based on the grounds for the cassation application, thus avoiding reasons or considerations outside the grounds for the cassation application that are highly subjective, and can realize the goals and ideals of the law, namely creating justice, providing legal certainty, and delivering benefits to the wider community.

Further explained in the Supreme Court Circular Letter Number 7 of 2012 regarding the Legal Formulation of the Supreme Court Chamber Plenary Meeting Results as a Guideline for Court Task Implementation, it is stated that the *Judex Juris* can lighten or aggravate the sentence imposed by the Judex Factie on the grounds of insufficient legal consideration (onvoldoende gemotiveerd), with the cassation decision being to reject the correction. It is not permitted to issue a decision granting the public prosecutor's cassation request but substantively lightening or acquitting the defendant, or conversely, it is not permitted to grant the defendant's cassation request but instead to increase the sentence, which is known as "kabul bodong."

Therefore, as long as the Supreme Court has conducted a review of the cassation request related to the application of the law and because the Judex Factie decision lacks legal consideration (*onvoldoende gemotiveerd*), the Supreme Court is permitted to alter the severity of the sentence decided by the Judex Factie court [2]. The cassation decision with case register numbers: 813 K/Pid/2023 and 816 K/Pid/2023 in its considerations affirmed that the Judex Factie court did not misapply the law, and that the Judex Factie court adjudicated the defendant per the applicable criminal procedure law and did not exceed its authority. However, the Supreme Court in its decision amended the sentence previously imposed by the Judex Factie court from the death penalty to life imprisonment.

Because the Supreme Court in its decision and considerations did not base them on the grounds for cassation as regulated in Article 253 of the Criminal Procedure Code, the Supreme Court provided considerations by including moral reasons, which can be very subjective. As a result, the legal objectives of creating justice, providing legal certainty, and delivering benefits to the wider community are difficult to achieve. These highly subjective considerations cause existing legal norms to be unenforceable and will lead to future legal uncertainty, as well as very subjective justice.

## 2. Research Method

The type of research used in this study is a juridical-normative legal research approach, where law is conceptualized as norms, rules, principles, or dogmas. The juridical-normative approach is also known as the doctrinal approach/legal normative research. The stage of juridical-normative research is conducted through a library study (review of literature). However, as needed, interviews can be conducted to complement the literature study. Included in the study/normative-juridical approach are, among others, legal history and comparative law, as well as legal philosophy [3]. In normative or library legal research, data collection techniques are carried out through library studies of legal materials, including primary legal materials, secondary legal materials, as well as tertiary legal materials and/or non-legal materials [4]. The approach taken by the researcher is an analytical approach. The researcher employs this analytical approach to examine a case phenomenon that the court has decided by looking at the analysis conducted by legal experts, which can be used by judges in their decision-making considerations.

## 3. Results and Discussions

The reason the Supreme Court at the cassation level annulled the decisions or rulings of courts from all judicial environments due to a lack of authority or exceeding authority is that the decisions or rulings of the court being cassated were not authorized (onbevoegdheid) or exceeded the authority to decide. It is difficult to distinguish between a lack of authority and exceeding authority, because in the sense of lack of authority, it already encompasses exceeding authority. In exercising an authority that exceeds the granted limits, it can also mean performing a task without authority (onbevoegd beroep uitoefenen). Thus, it can be concluded that exercising authority beyond the limits of the given authority falls under the definition of unauthorized.[5]

Another reason for the Supreme Court to annul a court's decision or ruling in a cassation review is the incorrect application or violation of the applicable law. R. Subekti stated that during the era of legalism, the basis for annulment of decisions by the cassation court was a violation of the law or schending van de wet. However, after this doctrine was abandoned, the basis for annulment became broader, namely a violation of the law or schending van het recht, which had been committed by the lower courts. It is further stated that the task of the cassation court is to examine (investigate) the decisions of lower courts regarding the correctness of the application of the law, the subject matter of which has been determined by the lower courts.

The last reason for cassation, according to Law Number 14 of 1985, is negligence in fulfilling the requirements mandated by legislation. Thus, the provisions regarding procedural justice become important to fulfill in the judicial process. Therefore, Sjachran Basah argues that procedural (formal law) is also an important element of the judiciary. P. van Dijk, in defining schending van het recht as stated in Article 118 paragraph 20 of the 1983 Constitution, expressed that the definition of schending van het recht includes verzuim van vomen, which results in the invalidity (annulment) of a court decision.

All grounds for cassation listed in Article 30 of Law Number 30 of 1985 concerning the Supreme Court can be encompassed or concluded in the understanding that the cassation application presents the existence of a "violation of law" (schending van het recht) that has been committed by the lower court. Thus, matters related to a fact or reality cannot be contested in cassation, for example, if the lower court's decision states that an event has been proven. On the other hand, if in the proof the court (judge) has violated the rules of evidence, the Supreme Court can annul its decision.

The rules that regulate the grounds for cassation in a restrictive manner essentially limit the Supreme Court's authority to enter into the examination of cases at the cassation level, restricted only to the grounds stipulated by law; outside of these grounds, the Supreme Court is not permitted to assess and examine them. From that reasoning, it can also be classified that the Supreme Court acts as a judex juris court, which is a court that examines the application of law from a *judex factie* court. But if the

acceptance of the cassation request has the intensity and quality to annul the decision, meaning that the errors in the appealed court's decision cannot be corrected, but must be annulled because the errors in it are so severe, and the only way to rectify the error is by annulling it.

Following the provisions of Article 50 and Article 51 of Law Number 14 of 1985, which state that if the Supreme Court annuls a court decision and adjudicates the case itself, the evidentiary law applicable to the First Instance Court shall be used, and if the Supreme Court grants a cassation request based on Article 30 letter a, the Supreme Court shall hand over the case to another court authorized to examine and decide it, and if the Supreme Court grants a cassation request based on Article 30 letter b and letter c, the Supreme Court shall decide the requested case itself.

Several provisions can change the position of the Supreme Court from being a judex juris to a judex factie, namely when the Supreme Court cancels a court decision in response to a cassation application and adjudicates the case itself, using the rules of evidence applicable to first-instance courts. Additionally, if the Supreme Court grants a cassation application related to the incorrect application or violation of applicable law, and fails to meet the requirements mandated by legislation, which negligence threatens to annul the relevant decision, then the Supreme Court will decide the requested case itself.

If we delve deeper into the Supreme Court Cassation Decision Number 813 K/Pid/2023 in the name of Defendant Ferdy Sambo, S.H., S.I.K., M.H., it changes the sentence previously decided by the South Jakarta District Court and also the DKI Jakarta High Court from the Death Penalty to Life Imprisonment. Previously, the South Jakarta District Court Decision Number 796/Pid.b/2022/PN Jkt.Sel., dated February 13, 2023, stated that:

1. The defendant Ferdy Sambo, S.H., S.I.K., M.H., has been proven legally and convincingly guilty of committing the crime of "Participating in premeditated murder" AND "Unauthorized actions resulting in the electronic system not functioning as it should, carried out jointly" as stated in the First Primary indictment and the Second First Primary indictment of the Public Prosecutor;
2. Imposing a sentence on the Defendant, therefore, with the death penalty; …

Then the decision of the South Jakarta District Court 796/Pid.b/2022/PN Jkt.Sel., was upheld by the DKI Jakarta High Court Decision Number 53/PID/2023/PT DKI, dated April 12, 2023, with the full verdict as follows:

1. Accept the appeal request from the Defendant Ferdy Sambo, S.H., S.I.K., M.H., and the Public Prosecutor at the South Jakarta District Attorney's Office;
2. Upholding the South Jakarta District Court Decision Number 796/Pid.b/2022/PN Jkt.Sel., dated February 13, 2023, which is being appealed.

It can be concluded that the South Jakarta District Court and the DKI Jakarta High Court, as courts that examine criminal cases in their capacity as fact-finding courts, which review trial facts based on evidence and the judge's conviction, have decided that the Defendant is proven to have committed the criminal act charged by the Public Prosecutor and have sentenced the Defendant to death.

Then, in the Supreme Court's consideration of the cassation reasons submitted by the Cassation Applicant/Public Prosecutor and the Second Cassation Applicant/Defendant, the Supreme Court's consideration stated that the cassation reasons submitted by the Public Prosecutor could not be justified because the court of first instance had correctly applied the law and the court of first instance had not exceeded its authority. Additionally, the Public Prosecutor's cassation reasons to strengthen the court of first instance's decision could not be justified because they did not conform to the cassation submission reasons regulated in Article 253 paragraph (1) of the Criminal Procedure Code.

The acceptance of a cassation request with "intensity" and "quality" annuls the court's decision. This means that the errors contained in the court's decision being appealed cannot be corrected. However, it must be annulled because the errors contained within it are of such a serious nature, and the only way to correct those errors is by annulling it. Regarding the grounds for annulment that the Supreme Court uses as a starting point, it is the provision of Article 253, paragraph (1). If the contested decision contains a violation of one of the grounds specified in Article 253 paragraph (1), it is sufficient reason for the Supreme Court to annul it [6].

Similarly, the cassation reasons submitted by the Defendant, which relate to the repetition of facts and are subjective judgments from the perspective of the cassation applicant, cannot be justified as they do not align with the cassation reasons stipulated in Article 253 paragraph (1) of the Criminal Procedure Code (KUHAP). Furthermore, in its decision, the judge provided several considerations regarding the sentence imposed on the Defendant, where the panel of judges included considerations by taking into account the goals and guidelines of sentencing according to criminal law, as well as the national criminal law policy post-enactment of Law Number 1 of 2023 concerning the Criminal Code, that the death penalty is viewed as a special punishment, no longer as a primary punishment. The next point of analysis is regarding the considerations put forth by the panel of judges on matters that can eliminate the unlawful nature and matters that can nullify criminal liability. It is true that in criminal law, there are circumstances that prevent a judge from adjudicating a criminal offender, so the judge cannot impose a sentence on the offender, which is also referred to as the grounds for nullifying punishment [7].

In the "principles that negate punishment," there are two types of reasons that fall into this category, namely, justifying reasons and excusing reasons. Justifying reasons and excusing reasons are reasons that eliminate criminal liability, meaning reasons that prevent someone from being punished or sentenced.

The next point that becomes an issue is when the panel of judges, in their decision, considers the good and bad nature of the defendant, namely that the defendant is a member of the Indonesian National Police who held the last position as the Head of the Propam Division and has served the country in law enforcement and maintaining order for 30 years. As previously explained, the reason for a reduced sentence refers to circumstances or conditions that lessen the criminal threat of an offense in a criminal law article. The reasons for a reduced sentence differ from the mitigating factors found in a criminal case verdict. In that verdict, the judge mentioned mitigating factors, such as: "the defendant was very polite and straightforward during the trial," "the defendant regrets his actions," "the defendant has contributed significantly to the community," and so on. The

factors mentioned as considerations by the judge in imposing a sentence on the defendant are not grounds for a reduced sentence. In the sense that it does not reduce the maximum criminal threat in a provision.

From the considerations outlined in the Supreme Court's cassation ruling and linked to the legal basis that has been explained, it is felt that the reduction of the sentence from the Death Penalty to Life Imprisonment is deemed less appropriate because the consideration is felt to lack a strong legal basis to change the defendant's criminal sentence. In this case, the Supreme Court acts as a court of judex juris, which is a court that only examines the application of law as decided by the court of judex facti. The Supreme Court only reviews the documents submitted by the cassation applicant. In this instance, the court that directly examines the case is the court of judex facti, namely the South Jakarta District Court and the DKI Jakarta High Court, so the facts proven directly in the trial can create the judge's conviction that the death penalty is the appropriate and fitting punishment for the Defendant. Meanwhile, the Supreme Court only examines the errors in the application of law based on the review of the documents submitted by the applicant, making it difficult to create the judge's conviction, and the authority to determine the guilt or innocence of the defendant lies with the court of judex facti. Therefore, it cannot be justified as it constitutes an appreciation of a fact.

## 4. Conclusion

To sum up, several provisions can change the position of the Supreme Court from being a judex juris to a judex factie when it comes to a cassation application, where the Supreme Court annuls the decision of the lower court and adjudicates the case itself, using the rules of evidence applicable to the first-instance court. In cassation proceedings, the examination is limited to reasons that are permitted by law, namely Article 253 paragraph (1) of the Criminal Procedure Code (KUHAP). Outside of these reasons, cassation grounds are rejected because they are not permitted by law.

## 5. References

1. Laporan Penelitian Pustlitbang Hukum dan Peradilan, Badan Litbang Diklat, Mahkamah Agung Republik Indonesia Tahun 2013, “Mahkamah Agung Sebagai Judex Juris Ataukah Judex Factie” (Kajian Terhadap Azas, Teori, dan Praktek), p14.
2. Ahmad Ali. Meguak Tabir Hukum, Bogor, Ghalia Indonesia, 2008, p34.
3. Guidelines for Thesis Writing in the Master's Program in Law at Syiah Kuala University, Banda Aceh, 2017, p9.
4. Mukti Fajar ND. Dualisme Penelitian Hukum Normatif&Empiris, Pustaka Pelajar, Yogyakarta, 2023, p160.
5. Faisal Rani A. Fungsi Dan Kedudukan Mahkamah Agung Sebagai Penyelenggara Kekuasaan Kehakiman Yang Merdeka Sesuai Dengan Paham Negara Hukum, Banda Aceh, Syiah Kuala University Press, 2009, p298.
6. Yahya Harahap M. Pembahasan Permasalahan Dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali),Jakarta, Sinar Grafika, 2005, p592.
7. Lamintang PAF. Dasar-Dasar Hukum Pidana, Jakarta, Sinar Grafika, 2014, p391.