



Addressing Legal Challenges: Implementing Nil Verdicts in Indonesia

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Article's Information	Abstract
<p>Keywords: Concursus, Nullity Verdict, Principle</p> <p>DOI: https://doi.org/10.25041/plr.v4i2.3118</p>	<p>A zero verdict, or Nil Verdict, is a criminal sentence imposed when an individual has already received the maximum allowable sentence but must be retried due to specific circumstances, resulting in a sentence of zero or the maximum limit. This concept remains relatively unknown among the Indonesian public, raising questions about why judges do not impose additional penalties on individuals who have been legally proven guilty of a criminal offense. The Nil Verdict is explicitly outlined in the concept of <i>concurso realis</i> under Article 67 of the Criminal Code, which stipulates that a defendant sentenced to death should not face additional punishment even if new offenses are discovered later. This research employs a normative juridical method, analyzing legal regulations such as the Criminal Code and Circular Letter Number 1 of 2022, which pertains to the enforcement of the Supreme Court's plenary meeting resolutions. The findings indicate that Nil Verdicts are appropriate for defendants already sentenced to death, as seen in the cases of Muhammad Natsir and Heru Hidayat, and should apply to any subsequent cases without increasing the sentence beyond 20 years for previous convictions. However, issues persist with inadequate inter-court administrative integration, leading to overlapping criminal sanctions and sentences exceeding 20 years. The research underscores the need to review and refine the absorption principle in <i>concurso realis</i> and assess the relationship between legally binding and newly revealed crimes to ensure that Nil Verdicts align with the principles of legal certainty, justice, and practicality. This study aims to enhance public understanding of Nil Verdicts and their application..</p>

A. Introduction

A "Zero Verdict" refers to a criminal sentence given to an individual who, although initially sentenced within the maximum legal limits, must be retried due to specific circumstances. This results in a criminal sentence that effectively becomes either zero or the maximum limit. The types of punishment are delineated in Article 10 of the Criminal Code and include the principal



penalties of death, imprisonment, confinement, fines, as well as additional punishments such as the revocation of certain rights, confiscation of property, and the public announcement of the Judge's decision.¹

The Criminal Code establishes the limits of imprisonment in Article 12, Paragraph (4), which specifies that imprisonment for a fixed term may not exceed twenty (20) years. Article 12, Paragraph (1) defines imprisonment as either life imprisonment or a fixed term, while Paragraph (2) stipulates that imprisonment for a fixed term must be at least one day and may extend up to fifteen (15) years. Paragraph (3) provides that imprisonment for a fixed term may be imposed consecutively for up to twenty (20) years if the Judge has the discretion to choose among the death penalty, life imprisonment, and a fixed term, or if the fifteen (15) year limit is exceeded due to additional penalties arising from concurrent or repeated offenses, or as outlined in Article 52 of the Criminal Code.²

A "Nil Verdict" is imposed in cases where criminal acts involve combinations of offenses, continuing acts, or repeated offenses prior to adjudication. Such a verdict is applied when an offender has already received the maximum limit of the principal punishment. According to Article 12, Paragraph (4) of the Criminal Code, the maximum term for imprisonment is twenty (20) years. Article 67 of the Criminal Code specifies that if a perpetrator is sentenced to life imprisonment, no additional penalties may be imposed. Similarly, if the death penalty is imposed, Article 67 asserts that no additional penalties may be applied.

The "Nil Verdict" is a judicial decision that remains relatively unfamiliar to many Indonesians. A common question arises in the community: why do judges sometimes refrain from imposing additional penalties on criminal offenders who have already been found legally guilty? The answer lies in the fact that judges consider various juridical and non-juridical factors when sentencing, including aspects of *concursum realis* and the maximum allowable sentence for the defendant. Additionally, judges must adhere to the principles of law, which include certainty, justice, and practicality.

The concept of a Zero Verdict is explicitly addressed within the framework of *concursum realis*, as stipulated by Article 67 of the Criminal Code. This article indicates that if the death penalty is imposed, no additional penalties may be applied, even if other criminal offenses are later discovered.³ A Zero Verdict is particularly appropriate for defendants sentenced to death, as it reflects the maximum punishment and thus precludes further increases. However, the application of this verdict presents new challenges in law enforcement in Indonesia.

The law's role is to protect human interests within society, fostering peace and prosperity. A judicial verdict is crucial for resolving criminal cases, providing legal certainty regarding the status of the defendant, and enabling them to prepare their legal responses and actions. Sentencing aims to uphold legal certainty and justice within the community, ensuring that every criminal act has consequences.⁴ This process maintains a societal atmosphere that upholds justice and legal authority, which is beneficial for progressive law enforcement in Indonesia.⁵

The imposition of a Nil Verdict aligns with the principle of "*nulla poena sine lege*," meaning that there is no punishment without legal provisions.⁶ The judge's decision represents

¹ Rizki, Muhammad Januar Memahami Istilah Vonis Nihil dalam Perkara Pidana. <https://www.hukumonline.com/berita/a/vonis-nihil-dalam-perkara-pidana-lt61e9f1de06f60/> diakses pada 17 Juli 2023

² Riadi Asra Rahmad, Hukum Acara Pidana (Pekanbaru: PT. RajaGrafindo Persada, 2019), hlm 25

³ Eddy O.S. Hiariej, Prinsip-Prinsip Hukum Pidana (Cahaya Atma Pustaka, 2017), hlm 412.

⁴ A. Ridwan Halim, Tindak Pidana Pendidikan Dalam Asas-Asas Hukum Pidana Indones (Jakarta: Ghalia Indonesia, 1985), hal 244-245.

⁵ Lilik Mulyadi, Hukum Acara Pidana Normatif, Teoritis, Praktik Dan Permasalahannya (Jakarta: P.T. Alumni Bandung, 2006), hal 201.

⁶ Lukman Hakim, Asas-Asas Hukum Pidana (Jakarta: Deepublish, 2019), hml 17.

the culmination of legal enforcement through the judicial process, which includes examining facts and sentencing in accordance with applicable regulations. This approach is consistent with Article 1, Paragraph (3) of the 1945 Constitution, which explicitly establishes Indonesia as a rule-of-law state, where all aspects of society, nationality, and governance must be grounded in law.⁷

The author addresses the issue of the Nil Verdict due to the limited existing literature on the topic, including journals, articles, and thesis research. The aim is to establish a new precedent and provide fresh insights and references concerning the Nil Verdict, which remains a relevant issue today. The research formulates the following key questions: (a) What are the challenges in applying the Nil Verdict in Indonesia? (b) How are legal considerations applied in imposing a Nil Verdict in relation to the principles of certainty, justice, and benefit?

The research employs a normative juridical method, focusing on the examination of legal regulations such as the Criminal Code and Circular Letter Number 1 of 2022, which pertains to the enforcement of the results of the Supreme Court's plenary meeting in 2022. Additionally, an empirical juridical approach is utilized, involving the study of real-world applications and factual data obtained from the Tanjung Karang District Court. This includes gathering opinions, attitudes, and behaviors of law enforcement officials through interviews. The objective is to gather theoretical, conceptual, and regulatory materials relevant to the research topic. The research employs a qualitative approach, analyzing legal norms and principles to provide a comprehensive understanding of the Nil Verdict.

B. Discussion

1. Problems in the Application of Zero Verdict in Indonesia

A "Zero Verdict" refers to a criminal sentence where no additional penalties are imposed because the maximum possible punishment has already been applied.⁸ According to Article 67 of the Criminal Code, the death penalty or life imprisonment can only be accompanied by the revocation of certain rights, the forfeiture of previously confiscated goods, or the announcement of the Judge's decision. Both the Criminal Code (*KUHPP*) and the Criminal Procedure Code (*KUHAP*) do not explicitly define the term "Nil Verdict." However, it is a concept frequently discussed among academics and legal practitioners, indicating that no additional penalties can be applied when a defendant has already received a sentence of death or life imprisonment.⁹

The application of a Nil Verdict often arises in the context of cumulative punishment. The Criminal Code, in Article 12, Paragraph (4), stipulates that imprisonment for a fixed term may not exceed twenty years. This provision limits the duration of imprisonment for cumulative offenses, where the term of imprisonment can range from a minimum of one day to a maximum of fifteen years, as detailed in Article 12, Paragraph (1). This ensures that individuals convicted of multiple offenses cannot receive a cumulative sentence exceeding twenty years.

Cumulative sentencing is governed by Article 272 of the Criminal Procedure Code, which allows for consecutive execution of sentences if a convicted person receives an additional sentence for a new crime committed before completing the initial sentence. This provision applies to cases where the offenses are committed at different times and locations and are unrelated, often referred to as pure offenses.¹⁰

⁷ Kusumadi Pudjosewojo, *Pedoman Pelajaran Tata Hukum Indonesia* (Jakarta: Aksara Baru, 1984), hlm 64.

⁸ Rini Fathonah dan Daffa Ladro Kusworo. (2023). The Paradigm of Applying Zero Verdict Based on Principles Legal Certainty, Justice and Benefit. *Hang Tuah Law Journal*. Vol. 7. Issue. 1. Hlm. 32.

⁹ Harruma Issha, Apa Itu Vonis Nihil ?, <https://nasional.kompas.com/read/2022/03/01/00450091/apa-itu-vonis-nihil-> diakses pada 17 Juli 2023

¹⁰ Sari, N., No, J. M. H., & Timur, C. J. (2017). Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika. 17. *Jurnal Penelitian Hukum e-ISSN*, 2579, 8561.

A "pure criminal offense" refers to distinct criminal acts that are not related by elements of continuing or concurrent acts as defined by the Criminal Code. According to Article 84 of the Criminal Procedure Code, such offenses, whether tried within the same or different District Courts, lack a special relationship or elements of *concursum idealis* (Article 63, Paragraph (1)), continuing acts (Article 64), or *concursum realis* (Articles 65, 66, and 70). If an individual commits multiple pure criminal offenses within a single jurisdiction or across different jurisdictions, all offenses are to be tried. The sentencing is guided by Article 272 of the Criminal Procedure Code, which utilizes a cumulative system. This system aggregates the total length of imprisonment with a maximum limit of twenty years, as stipulated in Article 12, Paragraph (4) of the Criminal Code.

The discrepancy between the Criminal Code and the Criminal Procedure Code regarding the Nil Verdict creates legal uncertainty in the judicial process. This misalignment is inconsistent with Gustav Radbruch's theory of legal certainty, which posits that laws should be clearly and logically formulated to avoid ambiguities and multiple interpretations. According to Radbruch, normative legal certainty requires that statutory regulations be precise and coherent to prevent norm conflicts and ensure that laws function as reliable guidelines for behavior.¹¹

Norm conflicts resulting from legal uncertainty can manifest as norm contestation, norm reduction, or norm distortion. Such conflicts undermine the effectiveness of laws as they fail to provide clear guidance for societal behavior. To achieve legal certainty, laws must be implemented consistently and comprehensively, serving as effective constraints on actions and interactions within society.

Article 272 of the Criminal Procedure Code applies when an individual commits multiple criminal offenses at different times and locations, with these offenses being unrelated. Such offenses are referred to as "pure criminal offenses" because they do not share a special relationship or contain elements of continuing or concurrent acts. These elements are outlined in the Criminal Code: *concursum idealis* (Article 63, Paragraph (1)), continuing acts (Article 64), and *concursum realis* (Articles 65, 66, and 70).

When an individual is involved in multiple pure criminal offenses within a single region or across different jurisdictions, all offenses are subject to trial. Sentencing for these cases follows the cumulative system described in Article 272 of the Criminal Procedure Code. This system aggregates the total length of imprisonment, with the maximum cumulative limit set at twenty years, as specified in Article 12, Paragraph (4) of the Criminal Code. However, in practice, the cumulative punishment for defendants convicted of several offenses can exceed this maximum limit. This raises concerns about the application of the Nil Verdict within the criminal law system.

The application of a Nil Verdict introduces several issues. First, there is legal uncertainty due to the discrepancies between the Criminal Code and the Criminal Procedure Code regarding cumulative sentencing and the Nil Verdict. This inconsistency creates confusion in the judicial process. Second, the cumulative system may result in sentences that exceed the legal maximum of twenty years, leading to questions about the fairness and practicality of such limits. Finally, there is a need for clearer guidelines and consistent application of the Nil Verdict to ensure that sentencing practices align with legal principles and objectives. Addressing these challenges is essential to ensure that the Nil Verdict is applied in a manner that upholds justice and adheres to legal standards within the criminal law system.

¹¹ Muslih, M. (2017). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). *Legalitas: Jurnal Hukum*, 4(1), 130-152.

1. The disparity in Sanctioning by Judges

Criminal disparity, or disparity of sentencing, as defined by Barda Nawawi, refers to the unequal application of punishment for similar offenses or offenses of comparable seriousness without clear justification.¹² The application of a Nil Sentence, which often prompts debate, raises significant concerns. For instance, if a defendant has been sentenced to the maximum imprisonment term of twenty years, the issue arises as to whether additional sentences should be imposed for other offenses committed during this period.

Circular Letter No. 1 of 2022, which provides guidelines for the implementation of the Supreme Court's plenary meeting results, aims to address this issue by avoiding disparity in judges' decisions regarding Nil Verdicts. This Circular Letter seeks to ensure the uniform application of the law and consistency in judicial decisions.

The Criminal Chamber's formulation stipulates that if a defendant is serving a twenty-year maximum imprisonment for one case, they can still be sentenced to additional imprisonment for other offenses committed during their incarceration. The Supreme Court supports this approach, asserting that the re-imposition of punishment is permissible even if the defendant is already serving a twenty-year sentence, provided that the new offenses warrant additional penalties. However, prior to the issuance of this Circular Letter, there was controversy over whether maximum sentences could be imposed again, especially if the new criminal offenses did not exceed the previous maximum sentence or were already covered by the accumulation of prior criminal threats.¹³

Judges have the discretion to impose sentences within the bounds of existing legislation. Prosecutors seeking higher legal remedies do not impede this process, as their actions reflect the state's interests in achieving justice. The doctrine of *stare decisis* suggests that judges should base their decisions on established legal principles found in previous similar cases (precedent).¹⁴

This principle not only aids in resolving specific cases but also allows judges to contribute to the development of law and societal norms through their rulings. Judges, by interpreting and applying legal regulations, play a critical role in shaping the legal landscape and can influence societal norms through their jurisprudence. Their broad interpretive powers enable them to craft new legal principles and norms, reflecting the evolving pulse of justice within society.¹⁵

2. Lack of Integration of Inter-Court Administration

According to R. Subekti and R. Tjitrosoedibio, justice encompasses the state's obligation to uphold both law and equity. The judiciary (*rechtspraak*) pertains to the administration of justice to enforce legal norms (*het rechtspreken*).¹⁶ When an individual commits a criminal offense within a specific jurisdiction or across multiple jurisdictions, the entirety of the offense is subject to judicial review.¹⁷ Punishment is determined according to the provisions of the Indonesian Criminal Procedure Code (*KUHAP*) Article 272, employing a cumulation system

¹² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenada Media, 2016), hlm 65.

¹³ Yaris Adhial Fajrin and Ach Faisol Triwijaya, —Arah Pembaharuan Hukum Pidana Indonesia Di Tengah Pluralisme Hukum Indonesia, *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (2019).

¹⁴ Fioren Alesandro Keintjem, —Konsep Perbarengan Tindak Pidana (Concurcus) Menurut Kitab Undang-Undang Hukum Pidana, *Lex Crimen* 10, no. 5 (2021)

¹⁵ Andi Suherman, —Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman, *SIGn Jurnal Hukum* 1, no. 1 (2019).

¹⁶ Fauziah Yumna and Rahayu Subekti, —Otoritas Dan Implikasi Mahkamah Konstitusi Dalam Sistem Hukum Indonesia, *Sovereignty* 1, no. 3 (2022)

¹⁷ Angga Putra, —Pembaharuan Sistem Peradilan Pidana Melalui Penataan Administrasi Peradilan, *Lex Crimen* 4, no. 3 (2015).

where the total length of imprisonment must not exceed 20 years, as stipulated in Article 12, Paragraph (4) of the Criminal Code.

The specific period of imprisonment referred to in Article 12, Paragraph (4) of the Criminal Code is defined in Article 12, Paragraph (1) of the same Code, which outlines imprisonment as the primary penalty with a range from a minimum of one day to a maximum of fifteen years. This provision underscores the limitation on cumulative sentences for multiple offenses, ensuring that the total imprisonment period does not exceed twenty years.

Article 272 of the Criminal Procedure Code allows for cumulative sentencing, where if an individual is sentenced to imprisonment or confinement and then receives a subsequent similar sentence, the punishments are served consecutively, starting with the earliest sentence. This provision is applicable when the criminal acts are committed at different times and places and are not related. Such independent offenses, known as pure criminal offenses, are subject to this cumulative sentencing approach.

However, this system may lead to complications. When offenses are tried either in the same or different District Courts and do not involve elements of continuing or concurrent acts—such as those defined under the Criminal Code Articles 63 Paragraph (1) (*concursum idealis*), 64 (continuing acts), or 65, 66, and 70 (*concursum realis*)—the possibility of cumulative sentences exceeding twenty years is constrained.¹⁸

In cases where an individual commits a series of criminal offenses within one jurisdiction or across multiple jurisdictions of a district court, the entirety of the criminal conduct will be adjudicated. The imposition of the sentence is governed by Article 272 of the Criminal Procedure Code (*KUHAP*), which mandates the use of a cumulative sentencing system. This system stipulates that the total duration of imprisonment, when accumulated, must not exceed 20 years, as delineated in Article 12, Paragraph (4) of the Criminal Code.

For instance, consider a scenario where an individual commits theft, maltreatment, and murder over a five-year period. Theft, as prescribed by Article 362 of the Criminal Code, carries a maximum penalty of 5 years imprisonment. Maltreatment, detailed in Article 351 of the Criminal Code, is punishable by up to 2 years and 8 months. Murder, under Article 338 of the Criminal Code, is punishable by a maximum of 15 years imprisonment. Aggregating these sentences results in a cumulative total of 22 years and 2 months. However, this cumulative duration does not automatically translate into the total sentence imposed.

In practice, the most severe penalty is applied to the crime of murder, with a maximum sentence of 15 years. According to legal principles, the cumulative punishment cannot exceed the maximum allowable sentence for the most serious offense. Consequently, the maximum sentence that can be applied to the perpetrator, even when considering the cumulative nature of the offenses, is 20 years, despite the aggregate of 22 years and 2 months.

C. Consideration of Judges in Imposing Nihil Sentences Concerning the Principles of Legal Certainty, Justice, and Benefit

Judicial practice in adjudicating cases must adhere to the established legal framework, which often presents courts and judges with diverse interpretations of the law. Legal regulations stipulate that actions have corresponding legal consequences. According to Gustav Radbruch, the purpose of law encompasses three core principles: justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and expediency (*Zweckmäßigkeit*). Both the ontological and epistemological dimensions of legal reasoning must be meticulously considered in this context.

¹⁸ Tina Asmarawati, *Pidana Dan Pemidanaan Dalam Sistem Hukum Di Indonesia (Hukum Penitensier)* (Sleman: Deepublish, 2015), hlm 21

Furthermore, there is an intrinsic relationship between the purpose of the law and the axiological aspects of legal reasoning models.¹⁹

In the context of a Nil Verdict, judicial considerations revolve around the application of criminal sanctions within the maximum limits prescribed by law. Specifically, the imposition of imprisonment cannot exceed the maximum penalty set forth in Article 12, Paragraph 4 of the Criminal Code, which stipulates a limit of twenty years. The judge's deliberations are crucial in ensuring that the sentencing aligns with the principles of justice (*ex aequo et bono*) and legal certainty. Additionally, these deliberations should reflect the benefits to the parties involved, underscoring the necessity for thorough, well-considered, and precise judicial reasoning. Inadequate or flawed judicial reasoning may result in the decision being overturned by a higher court, such as the High Court or the Supreme Court.²⁰

Evidence serves the critical function of establishing certainty regarding whether a specific event or fact has occurred, thereby facilitating a correct and equitable judicial decision. A judge is required to render a decision only when there is conclusive proof of the event or fact in question, thereby clarifying the legal relationship between the parties involved.²¹ According to Article 4, Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, the court is mandated to adjudicate according to the law without discrimination. It is imperative for judges to consider both juridical and sociological aspects to ensure that justice—encompassing legal justice, social justice, and moral justice—is effectively achieved, realized, and justifiable in their rulings. In adjudicating cases, judges must uphold the principles of justice and enforce the law impartially. Judges are expected to perform their duties independently, free from external influence or partiality. This guarantee of judicial independence is enshrined in various legal provisions, including Article 24 of the 1945 Constitution of the Republic of Indonesia, which underscores the judiciary's role in administering justice to uphold the rule of law. When delivering decisions, judges are required to consider the following factors:²²

1. Juridical factors, namely laws and theories related to the case or case.
2. Non-juridical factors, namely looking at the environment and based on the conscience of the Judge himself.

The primary function of a judge is to render a decision on the case presented, a task that in criminal matters is closely linked to the principle of the negative evidentiary system (*negative wettelijke*). This principle posits that a right, event, or error is considered proven not solely based on the presence of legal evidence, but also according to the judge's conviction, grounded in moral integrity. The application of the Nil Verdict inevitably encounters the challenge of ensuring legal certainty. Legal certainty can be achieved through the consistent application of law to specific cases. The principle of "*fiat justitia et pereat mundus*"—meaning that the law must be upheld even if the world were to collapse—reflects the aspiration for unwavering legal certainty.²³

¹⁹ Santoso, H. A. (2021). Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan Pkpu â€œPTBâ€. *Jatiswara*, 36(3), 325-334.

²⁰ Sutrisno Sutrisno, Fenty Puluhulawa, and Lusiana Margareth Tijow, —Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *I Gorontalo Law Review* 3, no. 2 (2020)

²¹ Loway, S. (2022). KEDUDUKAN HAKIM DALAM PROSES PEMBUKTIAN PERADILAN PIDANA INDONESIA. *LEX CRIMEN*, 11(5).

²² Efendi, J. (2018). *Rekonstruksi dasar pertimbangan hukum hakim: Berbasis nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat* (p. 336). Prenada Media.

²³ Budiman, M. (2020). Penerapan Pasal 5 Ayat (1) Huruf b Undang-Undang Pemberantasan Tindak Pidana Korupsi. *Jurnal Yudisial*, 13(1), 73-87.

1. Principle of Legal Certainty

Legal certainty serves as a safeguard against arbitrary actions, ensuring that individuals can anticipate outcomes based on established circumstances. The efficacy of the Nil Verdict is intricately linked to the effectiveness of law enforcement in Indonesia. From a utilitarian perspective, law enforcement should aim not merely at punitive measures but should seek to achieve beneficial outcomes, with the ultimate goal being the promotion of collective happiness. A well-crafted law is one that fosters widespread well-being. Justice, therefore, is an essential component that must be realized in the enforcement of law.²⁴

Law enforcement must balance the values of justice, benefit, and legal certainty. If justice is prioritized at the expense of benefit and legal certainty, the law fails to function effectively. Conversely, if benefit is emphasized while neglecting legal certainty and justice, the law does not achieve its ideal enforcement.

In the case of Heru Hidayat, tried at the Jakarta Corruption Court, the judge imposed a Nil Verdict. This decision has elicited concern, as it undermines public perceptions of justice, especially given the severe nature of the crime involved. Despite the zero sentence, the court found Heru Hidayat guilty of offenses under Article 2 Paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning the Eradication of Corruption, and Article 3 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering.²⁵ The Attorney General's Office of the Republic of Indonesia has expressed concerns about the verdict, acknowledging its respect for the court's decision while highlighting the public's discontent with the zero sentence despite the Defendant's guilt.

Heru Hidayat was implicated in the PT Jiwasraya Insurance corruption case, which resulted in a financial loss to the state of IDR 16 trillion. In this case, the Defendant was sentenced to life imprisonment. Conversely, in the PT ASABRI corruption case, which involved a staggering IDR 22.78 trillion loss, Heru Hidayat was found guilty, but the judge imposed a zero sentence.

The legal basis for the Nil Verdict is found in Article 67 of the Criminal Code, which stipulates that if a defendant has been sentenced to life imprisonment, no additional criminal penalties may be imposed, except for the revocation of certain rights and the announcement of the court's decision. Article 67 of the Criminal Code thus served as the foundation for the judge's decision to impose a Nil Verdict in the ASABRI case.

In contrast, the case of Dimas Kanjeng, who was legally proven guilty of fraud under Article 378 of the Criminal Code, did not involve a Nil Verdict. The Public Prosecutor has expressed appreciation and respect for the judge's decision, yet there is concern that the zero sentence undermines public justice. This concern is compounded by the significant financial losses involved in the cases. Additionally, the provisions related to the Nil Verdict in the Criminal Code may impact the implementation of other severe penalties, such as the death penalty, as evidenced in the case of Muhammad Nasir.²⁶

The analysis of the three cases involving Heru Hidayat, Dimas Kanjeng, and Muhammad Nasir reveals varying applications of criminal penalties and highlights important considerations regarding the Nil Verdict. Heru Hidayat, initially sentenced to life imprisonment for the PT

²⁴ Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1).

²⁵ Alfons, Heru Hidayat di Vonis Nihil di Skandal ASABRI, apa artinya ? <https://news.detik.com/berita/d-5904339/heru-hidayat-divonis-nihil-di-skandal-asabri-apa-artinya#:~:text=Presiden%20Komisaris%20PT%20Trada%20Alam,sebesar%20Rp%2022%2C8%20triliun>. Diakses pada 18 Juli 2023

²⁶ <https://www.cnbcindonesia.com/news/20220119172013-4-308801/jaksa-agung-naikkan-kasus-korupsi-garuda-ke-tahap-penyidikan> diakses pada 18 Juli 2023

Jiwasraya Insurance case, might have faced a higher penalty, such as the death sentence, had it not been for the application of the Nil Verdict. Conversely, Dimas Kanjeng, who received a 20-year sentence, could not have faced a more severe penalty due to evidentiary and other legal constraints. Muhammad Nasir, sentenced to death, represents the maximum criminal sanction, leaving no room for additional penalties despite new evidence.

This analysis underscores the complexity of applying the Nil Verdict within the frameworks of Legal Certainty, Justice, and Benefit. Achieving a balance between these parameters in judicial decisions is challenging, as concepts of justice can vary greatly among individuals. Article 65 of the Criminal Code addresses the combination of crimes with differing punishments, stipulating that while all penalties for individual crimes must be imposed, the total may not exceed the maximum punishment plus one-third.

Legal certainty is further supported by Circular Letter No. 1 of 2022, which provides guidelines for maintaining consistency in judicial decisions, particularly concerning the Nil Verdict. This circular clarifies that a defendant serving a 20-year sentence can face additional imprisonment for crimes committed during that period, and the maximum imprisonment for certain serious crimes, such as corruption and money laundering, is capped at 20 years.

The principle of *concursum*, as outlined in Article 52 and Article 103 of the Criminal Code, permits the imposition of cumulative penalties, subject to the maximum limits specified. Additionally, in corruption cases, a defendant sentenced to death or life imprisonment may face additional restitution, provided it aligns with Article 67 of the Criminal Code. This reflects the broader application of criminal law principles, including recidivism and the potential for additional sentences as clarified by Circular Letter No. 1 of 2022.

2. Principle of Benefit

The principle of expediency underscores that the effectiveness of law enforcement in Indonesia must be evaluated through the lens of its benefits and outcomes. From a utilitarian perspective, law enforcement should aim for more than mere retaliation or compensation for criminal actions; it should pursue meaningful and beneficial goals. According to Prof. Satjipto Raharjo, while justice is a fundamental value, it must be balanced with other considerations, such as practicality. Thus, law enforcement should strive for a proportional balance between benefits and sacrifices.²⁷

Beneficence, in this context, is equated with the promotion of happiness. An effective law is one that fosters the well-being of the greatest number of people. The application of the Nil Verdict, while controversial, aims to provide the defendant with opportunities for guidance and resocialization during imprisonment. Article 2 of Law Number 22 of 2022 elucidates that the correctional system is designed to reform inmates, enabling them to acknowledge their mistakes, improve their behavior, and reintegrate into society as responsible individuals.

Correctional institutions play a crucial role in shaping the character of prisoners, addressing various types of criminal behavior. From a utilitarian perspective, the death penalty, even when met with a Nil Verdict, serves a deterrent function. It aims to dissuade potential offenders, uphold the authority of the government, and reinforce law enforcement's role in maintaining societal order.

3. Principle of Justice

Judges face significant challenges in rendering decisions that balance legal certainty, justice, and practicality, particularly because the concept of justice lacks clear, universally accepted benchmarks. What one party considers fair may not be perceived the same way by

²⁷ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010), hlm 204

another. Satjipto Rahardjo has suggested that justice can be achieved through a balance of equal rights and obligations. However, the effectiveness of legal mechanisms also depends on how laws are crafted, implemented, and enforced, ensuring that sanctions align with established regulations and substantive legal standards.²⁸

Law enforcement encompasses both the formal rules and the lived values of justice within society. While narrow interpretations focus on enforcing written regulations, the broader context involves integrating societal values and expectations of fairness. In Indonesia's culturally diverse society, there is a strong emphasis on prioritizing justice and practicality alongside legal certainty.²⁹

The Nil Verdict aims to reflect the value of justice by ensuring that criminal sanctions are applied strictly according to the nature of the offense and the penalties prescribed by law. In this context, the imposition of a Nil Sentence represents the maximum penalty as dictated by legal facts revealed during the trial. Although the Nil Verdict achieves the parameters of legal certainty, it leans more towards this principle due to its reliance on explicit legal provisions, such as Article 67 and Article 12 Paragraph (4) of the Criminal Code. Furthermore, Circular Letter Number 1 of 2022, which provides guidelines for maintaining legal consistency and unity in judicial decisions, reinforces this emphasis on legal certainty within the criminal justice system.

D. Conclusion

In Indonesia, the application of Nil Verdicts presents several challenges, including three primary factors: disparities in the imposition of criminal sanctions by judges, a lack of administrative integration between courts leading to overlapping sanctions exceeding 20 years, and an increasingly strict absorption system necessitating a review of the relationship between legally binding crimes and newly revealed offenses.

Judges' considerations in applying Nil Verdicts, when analyzed through the lenses of legal certainty, expediency, and justice, address these three parameters effectively. Regarding legal certainty, judges rely on Article 67 and Article 12 Paragraph (4) of the Criminal Code, as well as Circular Letter Number 1 of 2022, to guide their decisions. These provisions ensure adherence to established legal norms and consistency in the application of penalties. From the perspective of expediency, the goal of imprisonment sanctions is not merely punitive but also rehabilitative, aiming to encourage reform and repentance rather than serving as mere retribution. The principle of benefit or usefulness is also considered, with the death penalty, even when resulting in a Nil Verdict, serving as a deterrent to potential offenders and upholding the authority of the government and law enforcement. In terms of justice, the imposition of criminal sanctions strictly adheres to the nature of the offense and the penalties prescribed by law, ensuring that decisions are not arbitrary or fabricated but are based on the applicable regulations.

E. Suggestion

The application of Nihil Sentences needs to be effectively socialized to enhance public understanding and prevent misunderstandings about its application, as these sentences arise when criminal sanctions have reached their maximum limit, thereby precluding additional penalties. It is crucial that judges interpret the foundational reasons for imposing Nihil Sentences based on SEMA No. 1 of 2022, ensuring that decisions align with the principles of justice and benefit to the community while reflecting the legal facts obtained during the trial.

²⁸ Sutrisno Sutrisno, Fenty Puluhalawa, and Lusiana Margareth Tijow, —Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *Il Gorontalo Law Review* 3, no. 2 (2020)

This approach will help maintain clarity and integrity in the judicial process, fostering a more informed and equitable legal environment.

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