

Novum in Judicial Review: Instrument of Justice or Mere Procedural Formality?

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Abstrak : Penelitian ini bertujuan untuk menganalisis efektivitas novum sebagai bukti baru dalam pengajuan Peninjauan Kembali pada perkara perdata serta mengidentifikasi faktor-faktor yang menjadi hambatan dalam penerapannya. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, yang dianalisis secara kualitatif terhadap bahan hukum primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa secara normatif novum memiliki peran penting dalam membuka kembali perkara yang telah berkekuatan hukum tetap apabila ditemukan bukti baru yang bersifat menentukan. Namun demikian, efektivitas novum dalam praktik peradilan perdata belum berjalan optimal. Hal ini disebabkan oleh beberapa faktor, antara lain ketidakseragaman standar penilaian hakim dalam menentukan apakah suatu bukti dapat dikualifikasikan sebagai novum yang menentukan, kecenderungan lembaga peradilan untuk mempertahankan asas finalitas putusan sehingga ruang koreksi melalui Peninjauan Kembali menjadi terbatas, serta minimnya transparansi dalam pertimbangan hukum putusan Peninjauan Kembali yang menyebabkan tidak adanya parameter yang jelas mengenai relevansi dan bobot novum. Selain itu, hambatan dalam penerapan novum juga bersumber dari aspek normatif dan praktis, seperti definisi novum yang masih bersifat umum dalam peraturan perundang-undangan, persyaratan formal Peninjauan Kembali yang relatif ketat, perbedaan standar penilaian antar hakim, serta keterbatasan akses terhadap dokumen atau data yang dapat dijadikan sebagai bukti baru. Oleh karena itu, diperlukan penguatan regulasi, standardisasi parameter penilaian novum, serta peningkatan transparansi dalam pertimbangan putusan Peninjauan Kembali agar fungsi novum sebagai instrumen pencapaian keadilan dapat diwujudkan secara lebih optimal dalam sistem peradilan perdata.

Kata kunci: *novum, peninjauan kembali, bukti baru, perkara perdata, keadilan substantif.*

Abstract : *This study aims to analyze the effectiveness of novum as newly discovered evidence in filing a Petition for Judicial Review (Peninjauan Kembali) in civil cases, as well as to identify the factors that hinder its implementation. The research employs a normative legal method with statutory and conceptual approaches, analyzed qualitatively based on primary, secondary, and tertiary legal materials. The findings indicate that, normatively, novum plays a significant role in reopening cases that have obtained final and binding legal force when decisive new evidence is discovered. However, the effectiveness of novum in civil judicial practice has not yet been*

optimal. This is due to several factors, including the lack of uniform standards among judges in determining whether certain evidence qualifies as decisive novum, the tendency of judicial institutions to uphold the principle of finality of judgments—thereby limiting corrective space through Judicial Review and the lack of transparency in the legal reasoning of Judicial Review decisions, which results in the absence of clear parameters regarding the relevance and weight of novum. Furthermore, obstacles in the application of novum also stem from both normative and practical aspects, such as the broadly defined concept of novum in legislation, relatively strict formal requirements for Judicial Review, disparities in judicial assessment standards, and limited access to documents or data that may serve as new evidence. Therefore, it is necessary to strengthen regulatory frameworks, standardize parameters for assessing novum, and enhance transparency in Judicial Review reasoning to ensure that novum functions effectively as an instrument for achieving substantive justice within the civil justice system.

Keywords: *novum, judicial review, newly discovered evidence, civil cases, substantive justice.*

INTRODUCTION

The judicial system in Indonesia is fundamentally designed to provide the public with broad access to justice, one of which is through the legal remedies regulated under procedural law.[1] Legal remedies serve as a corrective instrument for seekers of justice (justitiabelen) to re-examine court decisions that are considered not to reflect a true sense of justice.[2] The existence of this mechanism is particularly crucial, considering that judicial decisions, even after undergoing formal court procedures, do not always succeed in reflecting substantive justice. The inherent human limitations of judges in assessing facts and applying legal norms create the possibility of judicial errors. Consequently, mechanisms for reviewing and correcting court decisions become an essential component of a fair and accountable judicial system. Such mechanisms ensure that justice is not solely procedural but also substantive, allowing for the correction of mistakes, the protection of legal rights, and the reinforcement of public confidence in the judiciary. By providing an avenue for oversight and reassessment, these legal remedies uphold the principle that the pursuit of justice must remain dynamic, responsive, and accessible to all who seek it.

The Holy Quran, have a verse about Justice, in Surah An-Nisa verse 136,

“O you who believe, be steadfast in upholding justice, bearing witness for Allah, even if it is against yourselves, your parents, or your relatives. Whether one is rich or poor, Allah is more worthy of concern for both. So do not follow your desires lest you deviate from the truth. If you distort your testimony or refuse to give it, then indeed Allah is All-Aware of whatever you do.”

This verse articulates a foundational ethical imperative within Islamic thought, commanding believers to uphold justice with unwavering integrity and to bear witness solely for the sake of God. It emphasizes that such testimony must remain impartial, even when it conflicts with one's own interests or those of close relations, including parents and relatives. By addressing both the wealthy and the poor, the verse underscores that justice must be applied equitably, without bias or consideration of social status, as divine knowledge encompasses the true welfare of all individuals. Furthermore, it warns against the influence of personal desires, which may lead to deviation from truth, and cautions against the distortion or concealment of testimony. The concluding assertion of divine omniscience reinforces the principle of accountability, affirming that all actions—whether public or concealed—are fully known to God and subject to ultimate judgment.

From a legal theory perspective, Gustav Radbruch emphasizes that the purpose of law encompasses three fundamental values: justice, utility, and legal certainty, with justice being the foremost value.[3] Therefore, every mechanism within the judicial system, including legal remedies, should be directed toward ensuring the attainment of substantive justice, rather than merely procedural certainty. In this sense, legal remedies function not only as formal tools but also as normative instruments designed to correct injustices that may arise in court decisions, bridging the gap between procedural compliance and the realization of true justice for all parties involved.

In civil procedural law, mechanisms for correcting court decisions are implemented through ordinary and extraordinary legal remedies. Among these instruments, Judicial Review (Peninjauan Kembali or PK) stands out as an extraordinary remedy with a strategic role, serving as the final avenue to correct decisions that have attained permanent legal force (*inkracht van gewijsde*). This mechanism ensures that even after a ruling becomes final and binding, there remains a structured means to address errors, uphold substantive justice, and maintain the integrity and accountability of the judicial system. [4] Judicial Review (PK) grants the Supreme Court the authority to reassess the application of law and examine certain facts, particularly when new decisive evidence (*novum*) is discovered. The existence of *novum* as a basis for filing a PK is regulated under Article 67(b) of the Supreme Court Law, which stipulates that the discovery of new decisive evidence can serve as a legitimate reason to reopen a case that has already been adjudicated. This provision ensures that even after a decision has become final, the justice system retains the flexibility to correct potential errors when previously unknown but significant facts come to light.

Nevertheless, to date, the regulation concerning *novum* still leaves significant normative issues unresolved. Existing legislation does not provide a clear definition of what constitutes “new

evidence,” nor does it explicitly establish parameters for determining the “decisive” nature of such evidence. This normative gap impacts judicial practice, as judges often apply differing interpretations when assessing whether a piece of evidence qualifies as novum. Consequently, inconsistencies arise in Judicial Review (PK) decisions, leading to legal uncertainty and undermining the predictability and uniformity that are essential for a fair and credible judicial system.

Several Supreme Court decisions illustrate this tendency. In numerous cases, the use of the term novum is not accompanied by adequate explanations of the evaluative criteria applied, making it difficult to establish consistent standards for assessment. This lack of clarity contributes to varying interpretations among judges and undermines the predictability and uniformity of outcomes in Judicial Review (PK) proceedings.[5] This situation has resulted in many PK (Judicial Review) petitions being rejected on the grounds that they do not meet the “decisive” element, even though, on a substantive level, the evidence presented is highly relevant and has the potential to affect the outcome of the decision. This scenario reflects a tension between the principle of finality of judgments and the need to achieve substantive justice, highlighting the delicate balance the judicial system must maintain between legal certainty and fairness.

The conceptual issues surrounding novum are also reflected in previous studies. Several studies indicate that the absence of a clear normative definition of novum has led to inconsistent interpretations in judicial practice. Other research has focused on the effectiveness of Judicial Review (PK) in ensuring legal certainty but has not thoroughly examined the conceptual dimension of novum. Additionally, some studies reveal that many PK petitions are rejected due to an overly narrow interpretation of the “decisive” nature of evidence, without comprehensively considering the relevance of the evidence in the context of substantive justice. These findings suggest that scholarly analysis of novum remains partial and fragmented, lacking an integrated examination that combines normative, philosophical, and jurisprudential perspectives.

On the other hand, the evolution of modern judicial practice further underscores the urgency of updating the novum concept. The increasing complexity of civil disputes, including cases involving digital technology and electronic transactions, has given rise to new forms of evidence that possess characteristics distinct from conventional evidence. In this context, the absence of clear parameters for evaluating novum not only generates inconsistencies in jurisprudence but also risks hindering the judiciary’s ability to adapt to contemporary developments. This highlights the necessity for a more precise and context-sensitive framework that can accommodate emerging types of evidence while maintaining fairness, consistency, and legal certainty in Judicial Review (PK) proceedings. Furthermore, this situation can undermine the principles of justice and legal certainty, which constitute the fundamental pillars of the judicial

system. As such, the issue of novum in Judicial Review (PK) extends beyond mere technical or procedural concerns and touches on deeper conceptual and philosophical dimensions of law enforcement. The lack of clear guidance not only risks inconsistency in court decisions but also challenges the judiciary's capacity to uphold substantive justice while maintaining the predictability and reliability of legal outcomes. Therefore, a comprehensive study is needed to reconstruct the concept of novum, establish clear evaluative parameters, and position it proportionally as a crucial instrument for realizing substantive justice within Indonesia's civil judicial system. Such an analysis would integrate normative, philosophical, and jurisprudential perspectives to create a coherent framework that allows the legal system to respond effectively to both traditional and emerging forms of evidence, ensuring fairness, accountability, and adaptability in judicial practice.

RESEARCH METHOD

This study employs a normative legal research design, utilizing both a statutory approach (statute approach) and a conceptual approach (conceptual approach). The legal materials examined in this research include primary, secondary, and tertiary sources that are relevant to the issue of novum in Judicial Review (PK). Primary sources consist of statutes, regulations, and official legal instruments; secondary sources include scholarly books, academic journals, and expert commentaries; while tertiary sources encompass encyclopedias, legal dictionaries, and other reference materials that provide contextual understanding.

All legal materials are analyzed qualitatively using a descriptive-analytical method, allowing for an in-depth exploration and interpretation of the legal problems under study. This approach aims not only to describe existing norms and judicial practices but also to critically evaluate their conceptual and practical implications. Through this method, the research seeks to develop a comprehensive understanding of the challenges associated with novum in PK, including inconsistencies in its application, gaps in legal definitions, and its role in ensuring substantive justice within Indonesia's civil judicial system. By combining statutory interpretation with conceptual analysis, the study provides a rigorous framework for examining both the letter and spirit of the law, offering insights for normative reform, jurisprudential clarity, and the advancement of legal scholarship.

RESULT AND DISCUSSION

1. Novum as New Evidence to Achieve Justice in Judicial Review Proceedings in Civil Cases

In civil cases, Judicial Review (Peninjauan Kembali or PK) is an extraordinary legal remedy that may only be filed against decisions that have obtained permanent legal force

(inkracht).[6] This legal remedy is not intended to reopen the entire examination process of a case as conducted at the *judex facti* level; rather, it serves as a corrective mechanism to address potential errors in the application of law or incomplete assessment of facts.[7] In this context, *novum* (*bewijs nieuw*) serves as a crucial instrument that can form the basis for re-examining the truth and justice of a decision that has already become final. The existence of *novum* underscores that the legal system continues to provide space for the pursuit of material truth, even after a judgment has attained final and binding force.

According to Article 67(b) of Law No. 14 of 1985 on the Supreme Court, as amended, *novum* is defined as “a new circumstance or new evidence that is decisive,” which could not previously be submitted during the examination of the case.[8] This provision indicates that the primary requirement for filing a Judicial Review (PK) is not merely the existence of new evidence, but that such evidence must possess a decisive character—meaning it has the capacity to alter the outcome of the decision had it been considered from the outset. Therefore, *novum* is not merely supplementary evidence, but rather evidence that carries substantial impact on the factual construction and the application of law in a case.

From a theoretical perspective, the effectiveness of *novum* is determined by two fundamental aspects. First, the formal requirement, namely that the evidence must truly be new (*nova producta* or *nova reperta*). *Nova reperta* refers to evidence that actually existed at the time the case was examined but was unknown to the relevant party. Meanwhile, *nova producta* refers to evidence that emerges after the judgment has been rendered.[9] Both categories require that such evidence could not have been presented earlier, either due to objective reasons (such as limited access, the confidential nature of the document, or the fact that it had not yet been issued) or due to subjective reasons that can be legally justified. Second, there is the material requirement, namely that the evidence must be directly relevant to the subject matter of the dispute and possess sufficient probative value to potentially alter the decision had it been presented from the outset. This material requirement constitutes the core of the concept of “decisive,” whereby the new evidence must not merely be supplementary or complementary, but must have the capacity to overturn the established legal facts of the case.

If both of these requirements are fulfilled, *novum* can serve as a strong basis for the Supreme Court to correct errors in the application of law or mistakes made by the *judex facti* in evaluating evidence. In this context, *novum* functions as a bridge between the finality of judgments and the pursuit of substantive justice.

The Indonesian legal system upholds the principle that decisions which have attained *inkracht* status must be respected in the interest of legal certainty. However, the mechanism

of Judicial Review (PK) based on the existence of novum constitutes an exception designed to ensure that substantive justice is not sacrificed due to procedural rigidity. In other words, the existence of novum represents a form of compromise between the principle of *res judicata pro veritate habetur* and the necessity to correct erroneous judicial decisions.

Furthermore, the position of novum in Judicial Review (PK) is also closely related to the limitation of authority between the *judex facti* and the *judex juris*.^[10] The *judex facti* refers to the judges in the District Court (PN) and High Court (PT) who examine and evaluate the facts of a case. In contrast, during Judicial Review (PK), the Supreme Court acts as the *judex juris*, which in principle does not re-assess the facts but evaluates whether the application of law and the considerations made by the *judex facti* were carried out correctly. Novum, by its nature as decisive new evidence, provides a basis for the Supreme Court to reassess the factual construction established by the *judex facti*.^[11] Thus, even though the Supreme Court (MA) is not a fact-finding body, the existence of novum provides a critical opportunity for the Court to correct factual errors without exceeding the authority of the *judex juris*. Functionally, novum also plays a vital role in maintaining the integrity of the judicial system. Numerous cases demonstrate that errors in judgments are not solely due to judicial negligence but often result from limitations in the evidence available at the time, or the emergence of newly discovered evidence—such as newly obtained ownership documents, recently issued audit reports, or authentic evidence previously concealed by the opposing party. In such circumstances, novum allows the Court to revise decisions so that they better reflect substantive justice and objective evaluation of the evidence. Therefore, the role of novum in the Judicial Review (PK) system is not merely as supplementary evidence but as a fundamental mechanism enabling the correction of both factual and legal errors that can significantly affect the realization of justice. Novum serves as a pillar bridging the finality of judgments with the principle of substantive justice, ensuring that the judicial system retains the capacity for correction even after a decision has obtained permanent legal force.

2. Factors Hindering the Application of Novum in the Judicial Review Process (Peninjauan Kembali) in Civil Cases

The application of novum as a basis for filing a Judicial Review (Peninjauan Kembali, PK) in civil cases, in practice, faces various multidimensional obstacles, stemming from normative, juridical, jurisprudential, and practical aspects.^[12] These obstacles not only affect the effectiveness of novum as a corrective instrument for final and binding court decisions but also directly impede the achievement of substantive justice within the judicial system. In this context, novum is supposed to function as a mechanism to correct potential judicial errors, yet in practice, it is often constrained and diminished by various structural and conceptual limitations.

First, normative obstacles relate to the absence of a clear and comprehensive conceptual framework regarding novum in legislation. Existing laws only provide a general formulation stating that novum is “new evidence that is decisive,” without elaborating objective indicators of what constitutes “new” or “decisive.” This lack of parameters creates a normative gap, opening a wide scope for interpretation. From a legal theory perspective, this condition reflects the weakened function of law as a guiding norm, as it fails to provide definite guidance for law enforcement officials in decision-making. Consequently, the assessment of novum heavily depends on the subjectivity of judges, which may lead to disparities in rulings.

This normative ambiguity also results in the absence of a standardized standard of proof to evaluate the strength and relevance of novum. In practice, judges often do not clearly differentiate between evidence that merely complements existing facts and evidence that genuinely has the potential to alter the outcome of a decision. This situation diminishes the strategic function of novum as a tool to reopen cases in a proportional and rational manner, undermining its role as a corrective mechanism within the judicial process.

Second, juridical obstacles cannot be separated from the dominance of the principle of finality of judgments (*res judicata pro veritate habetur*), which serves as a foundation in the judicial system. This principle positions decisions that have obtained permanent legal force as legal truths that must be respected in order to ensure legal certainty and maintain the stability of the judicial system. However, the rigid application of this principle can actually hinder the correction of judgments that contain substantive errors. In the context of Peninjauan Kembali (PK), judges often find themselves in a dilemma between upholding legal certainty and creating space for substantive justice.[13] The emerging tendency is an overly cautious, even restrictive approach in accepting novum, resulting in the corrective function of Peninjauan Kembali (PK) being less than optimal.

Third, jurisprudential obstacles are reflected in the lack of a consistent pattern of decisions in evaluating novum. This inconsistency indicates that the Supreme Court has not yet fully succeeded in establishing a strong doctrine of precedent in the context of Peninjauan Kembali (PK). [14] Differences in approaches between decisions not only create legal uncertainty but also undermine public confidence in the judicial system. In several cases, evidence that is substantively highly relevant is not recognized as novum because it fails to meet a narrow interpretation of the “decisive” element. This indicates that a formalistic approach still dominates over a substantive approach oriented toward justice. Moreover, the lack of argumentative exploration in the legal reasoning of PK decisions exacerbates this situation. Decisions often do not provide sufficient explanations for the acceptance or rejection of

novum, making them ineffective as normative references for similar cases. As a result, the role of jurisprudence as an unwritten source of law is not fully realized. Keempat, hambatan praktis berkaitan dengan realitas empiris yang dihadapi oleh para pencari keadilan dalam memperoleh novum. Dalam banyak perkara, khususnya yang melibatkan dokumen lama, hubungan keperdataan yang kompleks, atau pihak-pihak dengan posisi tidak seimbang, akses terhadap bukti baru menjadi sangat terbatas. Kondisi ini diperparah oleh rendahnya tingkat keterbukaan informasi dan belum optimalnya sistem administrasi hukum yang terintegrasi. Akibatnya, potensi ditemukannya novum yang relevan seringkali tidak dapat dimanfaatkan secara maksimal.

The development of digital technology also adds complexity to the issue. Electronic evidence, such as digital documents, communication recordings, or electronic transaction data, possesses characteristics that differ from conventional forms of evidence.[15] Issues related to authentication, data integrity, and evidentiary validity present distinct challenges in judicial practice. Without clear technical guidelines, judges tend to exercise caution in accepting digital evidence as novum, which ultimately can hinder the judiciary's ability to adapt to technological developments.

Fifth, procedural obstacles relate to the relatively strict and rigid formal requirements for filing a judicial review (PK). Administrative requirements, filing deadlines, and high standards of proof often become significant barriers for parties, particularly those with limited resources. From the perspective of access to justice, this situation highlights an imbalance between the goal of maintaining procedural order and the need to provide a mechanism to correct unjust decisions. When formal aspects are prioritized over substantive considerations, the potential of novum as an instrument of justice becomes significantly diminished.

Sixth, structural and cultural obstacles also influence the application of novum. Structurally, the absence of standardized technical guidelines from the judiciary leaves judges without a uniform reference for assessing novum. Culturally, there is a prevailing legal mindset that prioritizes legal certainty over substantive justice. This paradigm shapes how judges approach PK requests, often favoring the stability of existing decisions rather than correcting potential injustices. Additionally, the heavy caseload at the Supreme Court cannot be overlooked. The large volume of cases may affect the quality of judicial review, including the evaluation of complex novum evidence. Under such conditions, the approach taken tends to prioritize procedural efficiency over substantive analysis.

CONCLUSION

Novum, as new evidence in the submission of a Judicial Review (Peninjauan Kembali, PK), holds a strategic position as a corrective instrument to address court decisions that have obtained permanent legal force. Normatively, the existence of novum reflects the judiciary's commitment to provide space for the realization of substantive justice, especially when new facts emerge that have the potential to alter the foundational considerations of a decision. However, in practice within Indonesia's civil justice system, the effectiveness of novum has yet to reach its full potential.

This limitation stems from a range of multidimensional obstacles. From a normative perspective, the absence of a clear definition and objective parameters for novum creates uncertainty in judicial interpretation. Legally, the dominance of the principle of finality of decisions (*res judicata pro veritate habetur*) tends to restrict the scope for corrective action through PK. Jurisprudentially, the lack of consistency in Supreme Court decisions prevents the establishment of a solid evaluative standard for assessing novum. Practical and procedural barriers further complicate matters, including limited access to new evidence, the complexity of proving digital-era evidence, and the stringent formal requirements for filing PK. Additionally, structural and cultural factors reinforce a formalistic approach that prioritizes legal certainty over substantive justice. Consequently, the challenges in applying novum not only highlight a normative gap but also reveal an imbalance between the values of legal certainty and justice in judicial practice. Addressing these issues requires a comprehensive conceptual reconstruction and regulatory strengthening, including the standardization of assessment parameters for novum, increased transparency in judicial reasoning, and the development of consistent jurisprudence. These measures are crucial to ensure that novum functions effectively as an instrument for achieving substantive justice within Indonesia's civil justice system.

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