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Judicial Decision-Making and the Realization of Justice in the Indonesian Criminal Law

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Abstract: The phrase "*For the Sake of Justice Based on Belief in the One Almighty God*" serves as the foundational principle for the administration of justice in Indonesia and appears as the *irah-irah* (heading) in court decisions issued by the Supreme Court of the Republic of Indonesia. This study examines how this principle is reflected or not reflected in first-instance corruption case rulings. Through a normative legal research approach, this study employs the theory of justice as its analytical framework. Focusing on decisions from the Tanjungkarang and Banda Aceh District Courts, it finds that judicial reasoning in these cases often lacks legal arguments that embody the values of justice rooted in belief in the One Almighty God. The study argues that a judicial decision with integrity must go beyond a mere recital of the facts and legal elements of the indictment. It should also offer moral reasoning that acknowledges the accused as a human being with dignity and inherent rights to justice, truth, and fair treatment. The analysis also highlights instances where judges, in applying Indonesia's anti-corruption laws, appear to act not in accordance with religious moral values, but rather under the influence of external interests. Such actions including legal simplification, selective application, and even corrupt practices such as bribery, compromise the moral foundation of judicial decisions and result in unjust outcomes. Theoretically, this research affirms that to realize justice in its truest form, judges must draw upon divine moral principles as a source of inspiration and guidance. Only then can court decisions reflect both human dignity and substantive justice.

Keywords: Justice, Belief in One Almighty God, Legal Positivism, Judicial Decisions

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Abstrak: *Ungkapan “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa” merupakan asas penyelenggaraan peradilan di Indonesia, dan menjadi irah-irah atau judul kepala putusan pengadilan dalam lingkungan Mahkamah Agung Republik Indonesia. Studi kasus terhadap putusan perkara tindak pidana korupsi tingkat pertama. Tampak sekali putusan hakim kering dari argumentasi hukum yang mengejawantahkan nilai-nilai keadilan yang berdasarkan ketuhanan yang maha esa. Kajian ini merupakan penelitian hukum normative dengan menggunakan teori keadilan sebagai alat analisis. Kajian ini merupakan studi kasus sehingga data utama yang dianalisis adalah putusan pengadilan Tanjungkarang dan Banda Aceh. Kajian ini menyimpulkan bahwa putusan Pengadilan yang baik, dan berintegritas di dalamnya selain keterangan fakta-fakta dipersidangan, dan fakta hukum dari unsur-unsur pasal yang di dakwakan, tetapi juga argumentasi yang menjadi penilaian dan pertimbangan moral atas dirinya dalam melihat pelaku sebagai manusia yang memiliki martabat yang berhak atas rasa kemanusiaan, keadilan, dan kebenaran, ketidak berpihakan atas keikutsertaan terdakwa di dalam melakukan tindak pidana. Demikian pula apabila hakim menerapkan Undang-Undang Tindak Pidana Korupsi yang sudah memiliki validas hukum, tidak mempertimbangkan nilai-nilai moral religius, tetapi hanya tuntutan kepentingan tertentu yang justru bertentangan dengan moral hakim dan martabat kemanusiaan sendiri. Misalnya, menggampangkan hukum, tebang pilih, menjauhkan jangkauan hukum, karena alasan kepentingan pribadi, dan melakukan cara kotor seperti menerima suap, maka yang terjadi hakim telah menerapkan hukum yang buruk kepada terdakwa pelaku tindak pidana korupsi. Karena itu, secara teoritis untuk mewujudkan keadilan yang diperankan oleh hakim maka hukum ilahiyah harus dijadikan sebagai sumber inspirasi dan motivasi dalam pengambilan keputusan pengadilan yang manusiawi dan berkeadilan.*

Kata Kunci: *Keadilan, Ketuhanan Yang Maha Esa, Positivisme Hukum, Putusan Hakim*

Introduction

The judiciary serves as a vital check and balance between the executive and legislative branches of government, ensuring that arbitrary actions are prevented. The structure and operation of the criminal justice system cannot be guided solely by legal objectives; rather, considerations of justice and humanity must also be incorporated. A rational criminal justice system must be grounded not only in clear objectives but also in values that uphold justice and human dignity.¹ In this regard, the judiciary plays a central role in upholding the

¹ Irfan Nur Rachman, “Constitutional Court, Judicial Independence, and Efforts to Achieve Qualified Justice,” *Hasanuddin Law Review* 5, No. 1 (2019). Raimo Lahti, “Towards A More Efficient, Fair and Humane Criminal Justice System: Developments of Criminal Policy and Criminal Sanctions During the Last 50 Years in Finland,” *Cogent Social Science* 3, No. 1 (2017).

principles of checks and balances, promoting justice, equal rights, and the rule of law within the society.²

The foundational legal framework is guided by three core principles: justice, utility (or benefit), and legal certainty. These principles are widely recognized and continue to inform legal interpretation and the discourse surrounding legal positivism.³ In the judicial process, judges do not base their decisions solely on procedural elements such as the facts presented at trial, witness testimony, and evidentiary material. Equally, if not more important are moral considerations and ethical reasoning, which are essential for achieving a substantive sense of justice.

A distinctive feature of the Indonesian judicial system is the inclusion of the phrase *irah-irah*, which reads⁴: “for the Sake of Justice Based on Belief in the One Almighty God.” This phrase embodies the philosophical foundation of justice in Indonesia,⁵ signifying both the dignity and integrity of judicial authority and the moral responsibility of judges before God in their pursuit of truth and justice. The *irah-irah* is codified in Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHAP), which derives from Article 29 of the 1945 Constitution of the Republic of Indonesia.⁶ Notably, the absence of this phrase at the beginning of a judicial decision renders the decision legally invalid.⁷

These principles underscore that judges, in applying the law, should not rely solely on statutory provisions and formal legal criteria.⁸ Judicial reasoning must also be grounded in national law infused with the values of *Pancasila*, which reflects the spirit and soul (*volksgeist*) of the Indonesian nation.⁹ *Pancasila*

² Suwinto Johan, et.al., “Rethinking Indebtedness according to the Principles of Justice and Equality.” *Lex Scientia Law Review* 6, No. 2 (2022). William Edward Sibarani, “Modern Justice: Indonesia’s Supreme Court’s Challenges to Uphold Fair Trial Principles Through Digitalization,” *Brawijaya Law Journal* 10, No. 1 (2023).

³ Widodo Dwi Putro and Adriaan W. Bedner. “Ecological Sustainability from a Legal Philosophy Perspective,” *Journal of Indonesian Legal Studies* 8, No. 2 (2023). 595-632. Agung Pratama Putra, et.al., “Constitutional Theory and Practice: Connecting Legal Philosophy with Legal Reality,” *Jurnal Hukum Sehasen* 10, No. 2 (2024).

⁴ Kemendiknas, *Kamus Besar Bahasa Indonesia Pusat Bahasa*, Ed.IV, Jakarta: Gramedia, 2008, p. 547.

⁵ Pasal 2 ayat (1) Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.

⁶ Pasal 29 a. Negara berdasarkan atas ke-Tuhanan Yang Maha Esa. Riziq Rabbani Iwanka Sirait and Aripin Marpaung, “The Act of Killing a Mugger in Self-Defense: A Perspective from Islamic Criminal Law and The Indonesian Penal Code,” *Jurnal Sosiologi Dialektika Sosial* 11, No. 1 (2025).

⁷ Pasal 197 ayat (1) huruf a, dan ayat (2) tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP).

⁸ HLA. Hart, *The Concept of Law*, Third edition, Oxford: Clarendon Press, 2012, p.116.

⁹ Arief Hidayat, *Negara Hukum Berwatak Pancasila*, Makalah, Peningkatan Pemahaman Hak Konstitusional Warga Negara Bagi Guru Pendidikan Pancasila dan Kewarganegaraan Berprestasi Tingkat Nasional, Jakarta 14 November 2019.

represents a comprehensive philosophical foundation for national, state, and social life, and should serve as a guiding framework in addressing the diverse challenges and legal issues faced by the Indonesian people.¹⁰

The philosophical underpinnings of *Pancasila* have significant implications for the development of Indonesian legal science. As a reflection of the nation's worldview and a foundational paradigm, *Pancasila* informs the ideals and direction of Indonesia's legal system.¹¹ It distinguishes the Indonesian concept of the rule of law (*rechtsstaat*) from Western legal traditions rooted in Anglo-Saxon or continental European jurisprudence. Unlike these systems, Pancasila-based law places a unique emphasis on moral and spiritual values, prioritizing divine law and ethical considerations as integral components of legal interpretation and implementation.¹²

The legal philosophy of *Pancasila*, as the *volkgeist* or soul of the Indonesian nation, is deeply rooted in the country's religious beliefs, traditional customs, and socio-cultural values.¹³ It is not only consistent with the principles of the Qur'an and Hadith but also integrates human reason, rationality, creativity, and lived experience.¹⁴ This philosophical framework emerges through contemplation, critical reasoning, and intellectual discourse. It promotes the formulation of legal knowledge not solely for academic inquiry, but also for guiding public policy and advancing the collective welfare of society with the ultimate aim of securing the blessing and approval of God.¹⁵

The founders of the Indonesian nation, many of whom were Muslim scholars and intellectuals, established a constitutional foundation that integrates divine law into the structure of national law.¹⁶ This does not imply a direct adherence to classical natural law theory; rather, Indonesian law represents a

¹⁰Elly Erawati, et.al., (Ed.), *Beberapa Pemikiran Tentang Pembangunan Sistem Hukum Nasional Indonesia*. Liber Amicorum, Prof.Dr.CFG.Sunaryati Hartono, SH, Bandung: Citra Adityabakti, 2011, p. 201.

¹¹Slamet Haryadi, *Integrasi Hukum Pidana: Telaah Kultur Hukum Pencegahan Suap Dikalangan Aparat Penegak Hukum*, Yogyakarta: Geneta Publishing, 2018.

¹²Stephen Hal, *The Persistence Spectre, Natural Law, International Order and Limits of Legal Positivism*, Journal, EJIL, Vol.12, 269–307. Absori, *Pemikiran Hukum Transendental dalam Konteks Pengembangan Ilmu Hukum Indonesia*, Proseding Seminar Nasional Transedensi Hukum, Prospek dan Implementasi, Yogyakarta: Genta Publishing, 2017, p. 22.

¹³Aria Zurnetti & Nani Muliati, "Customary Criminal Law Policy on Domestic Violence Settlement Through Restorative Justice." *Cogent Social Science* 8, No. 1 (2022). Firman Muntaqo, et.al., *Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare*," *Sriwijaya Law Review* 8, No. 2 (2024).

¹⁴J. Drane, "Natural Law, History and Politics," *Journal Acta Bioética* 2002; año VIII, no. 1. (2002), p. 89.

¹⁵Absori, *Pemikiran Hukum Transendental dalam Konteks Pengembangan Ilmu Hukum Indonesia*, Proseding Seminar Nasional Transedensi Hukum, Prospek dan Implementasi, Yogyakarta: Genta Publishing, 2017, p. 22.

¹⁶Alinea 3 dan 4 Pembukaan Undang-Undang Dasar Republik Indonesia tahun 1945

reformulation of Western legal positivism, reshaped to align with the values and objectives of *Pancasila* law.¹⁷ The primary aim of this legal philosophy is to safeguard human dignity by preventing arbitrary state action and fostering humane social conditions. These conditions must enable organic social processes and ensure that every individual has equal and fair opportunities to fully realize their human potential. Furthermore, this vision includes the preservation and cultivation of human character and the moral ideals of the nation, grounded in belief in God Almighty. In this context, legal practitioners must not, either knowingly or unconsciously, continue to apply unmodified Western legal theories and practices inherited from the Dutch East Indies era.

However, in practice, particularly within Indonesia's anti-corruption judicial system, judges tend to rely predominantly on Western legal positivism. Divine law, which forms the epistemological and moral foundation of *Pancasila* law, is rarely used as a source of inspiration in judicial decision-making. This stands in stark contrast to the spirit of *Pancasila* law, which prioritizes divine values and holds that the search for legal truth must not depart from the ethical and spiritual foundations rooted in religious belief.¹⁸ Within this framework, divine law contributes uniquely to the resolution of legal issues in the Indonesian society, reflecting the country's cultural and spiritual identity. This orientation is reflected in the preambular phrase: "For the Sake of Justice Based on Belief in the One Almighty God," which serves as a guiding principle of the Indonesian law."

Judicial reasoning that rigidly adheres to uncritical legal positivism, assuming that only codified law holds validity requires reevaluation. A shift toward human-centered legal reasoning is needed, one that emphasizes foundational moral values, cultural principles, and divine law as a legitimate source of judicial inspiration and ethical motivation.¹⁹ A judge's spiritual consciousness and obedience to divine principles foster an internal restraint against wrongdoing and help produce fair and just decisions that can be accepted by all parties. Such an approach is essential not only for upholding justice but also for restoring public trust in the judiciary, which has been eroded by widespread skepticism and controversy, particularly in relation to the inconsistency and perceived injustice of criminal sentencing.

Corruption verdicts are particularly compelling objects of legal analysis, both in terms of their textual content and socio-legal context. They involve not only the assessment of facts and legal norms but also reflect the underlying

¹⁷ Aida Dewi, "Injustice Positivisme Perspektif Moral Dan Etika Dalam Sistem Penegakan Hukum Pidana Di Indonesia," *Legal Standing Jurnal Ilmu Hukum* 3, No. 1 (2019), p. 1.

¹⁸ Ridwan Arifin, et.al., "Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?" *Journal of Law and Legal Reform* 4, No. 4 (2023), p. 597-618.

¹⁹ David Barnhizer, *Natural Law as Practical Methodology: A Finnisian Analysis of City of Richmond v. J. A. Croson, Co.*, *Cleveland State Law Review* 38, (1990), p. 15

concept of justice advanced by the judiciary. The ultimate aim of any legal process should be to achieve substantive justice, which reflects moral and social integrity rather than mere formal justice, which is confined to procedural correctness.²⁰ This broader understanding of justice cannot be separated from the role of the judge as a central figure who is expected to embody the principles of *Pancasila* law and to interpret legal norms through the philosophical lens.

A judge's dignity is inherently tied to the decisions they render and the reasoning that supports those decisions. This judicial process must go beyond mechanical application of statutory provisions and instead be grounded in moral conviction and devotion to God Almighty. It is through such a spiritually and ethically informed approach that the judiciary can provide a sense of justice and wisdom to the public. The principle of "Justice Based on Belief in the One Almighty God," as articulated in the *irah-irah* and rooted in *Pancasila*, should be manifested concretely in judicial practice. This principle is deeply intertwined with public trust in the judiciary and the dignity of the judicial institution, both of which judges are duty-bound to uphold in carrying out their constitutional responsibilities.

In this regard, a case study of two first-instance corruption verdicts from the Tanjungkarang and Banda Aceh Corruption Courts in 2021 is particularly illuminating. Both courts operate within communities that are considered to have strong religious and moral foundations. Accordingly, it might be expected that the judges' decisions would reflect religious values and ethical considerations. However, in practice, the verdicts reveal a disconnect between the presumed religiosity of the judges and the substantive content of their decisions. The judgments do not contain any language or formulations that embody or reflect the principle of "Justice Based on Belief in the One Almighty God." There is a noticeable absence of religious or moral reasoning within the legal considerations, which rely almost exclusively on formalistic interpretations of the statutory law.²¹ As such, the verdicts fail to incorporate or express values of humanity and justice in a way that aligns with *Pancasila's* philosophical and spiritual foundations.

Both theoretically and in practice, the religious dimension of divine law is not substantively reflected in judicial decisions. The phrase "*for justice based on the One Almighty God*", commonly found as a formal heading in court rulings, serves more as a ceremonial accessory than a guiding principle that informs judicial reasoning. The content of judicial considerations rarely embodies or engages with the theological or moral implications of this invocation. Law, fundamentally, is designed to fulfill the human pursuit of justice. Consequently, suspects and defendants must be treated equally and afforded the same

²⁰ Azwir Agus, "Embodiment Principles of Clearing Justice in Consumer Arbitration," *Hasanuddin Law Review* 4, No. 3 (2018), p. 383–388.

²¹ <https://putusan3.mahkamahagung.go.id/direktori/index/tahunjenis/regis/tahun/2021.html>. Accessed October 23, 2024.

opportunity to attain justice through judicial decisions.²² The phrase “*Irah-irah Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*” (The Desire for Justice Based on the One and Only God) constitutes a formal recognition and pledge on the part of judges, yet this commitment is frequently neglected in judicial practice, which tends to prioritize the technical application of positive law over deeper moral or spiritual considerations.

This research adopts a normative legal approach, employing the theory of justice as the principal analytical framework.²³ The theory of justice, in this context, concerns itself with the impartiality, truthfulness, and non-arbitrariness of legal institutions and actors in their treatment of individuals and society.²⁴ Conducted as a case study, this research draws its primary data from court decisions. It focuses on two central issues: first, the reasoning employed by judges within the conceptual framework of divine law as a source of inspiration; and second, the extent to which such reasoning reflects a motivation to deliver humane and equitable judgments.

The object of this research is the judicial decision itself, analyzed both as a textual artifact and within its broader contexts. Data are drawn from two specific corruption courts' decisions that reflect differing socio-religious backgrounds: (1) a ruling from the Tanjungkarang Corruption Court in Lampung, and (2) a decision from the Aceh Corruption Court. The analysis considers four dimensions: (a) textual data, including language and sentence structure; (b) judicial intent, encompassing the ideas and values expressed in the legal reasoning; (c) historical context, referring to the factual background informing the decision; and (d) contemporary relevance, examining how the decision aligns with current socio-legal conditions. The analysis is carried out through two main techniques: (1) positioning the text as a structured discourse, evaluating sentence construction, diction, and narrative form; and (2) employing a dialectical method, exploring the interaction between judicial reasoning and the *irah-irah* statement, both in relation to historical contexts and to the researcher's interpretative understanding. Research validity is ensured through triangulation, including: coherence validity through comparison with prior studies; correspondence validity through alignment with empirical facts; and conventional validity through experts' opinions.

²² Juhaya S. Praja, 1995, *Filsafat Hukum Islam*, Bandung: Pusat Penebitan Universitas LPPM UNISBA, p. 73.

²³ Suteki and Galang Taufani, *Metodologi Penelitian Hukum: Filsafat, Teori Dan Praktek*, Depok: Rajawali Pers, 2022.

²⁴ Salim and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis*, Depok: Rajawali Press, 2017, p. 26.

Divine Law: Justice Based on Belief in the One Almighty God

“For the Sake of Justice Based on Belief in the One Almighty God” is a phrase that serves as the formal title for judicial decisions in Indonesia. Its legal foundation is established by Article 2, paragraph 1 of Law No. 48 of 2009 concerning Judicial Power, Article 197 (a) of Law No. 8 of 1981 regarding the Criminal Procedure Code, and Article 29 of the 1945 Constitution of the Republic of Indonesia. Historically, Indonesian judicial rulings began with the phrase *“In the Name of the Queen/King,”* which was subsequently replaced by *“In the Name of the State”* and later *“In the Name of Justice.”* The current phrase, *“For the Sake of Justice Based on Belief in the One Almighty God,”* reflects a fundamental legal-philosophical principle: that the Indonesian judiciary operates on the foundational value of justice grounded in divine belief.

The phrase *“Irah-irah”* has evolved throughout the history of Indonesian jurisprudence. As noted by Bismar Siregar,²⁵ Indonesian courts have successively adopted the headings: *“In the Name of the Queen/King,”* *“In the Name of the State,”* *“In the Name of Justice,”* and finally, *“For the Sake of Justice Based on Belief in the One Almighty God.”* In Javanese literature, *“Irah-irah”* functions as the introductory title or preface to texts, sentences, or other literary compositions.²⁶ When translated into Indonesian, *“Irah-irah”* is equivalent to the title of a literary work, such as a poem, novel, fairy tale, article, or news report. According to the *Great Dictionary of the Indonesian Language*, *“Irah-irah”* also refers to ornamental accessories used in dance, such as hats or hairpieces. Importantly, the content of a written work must correspond to its *“Irah-irah,”* meaning that the title and the substance must be coherent and harmonious.

The *“Irah-irah”* phrase *“For the Sake of Justice Based on Belief in the One Almighty God”* is derived explicitly from Article 29 of the 1945 Constitution of the Republic of Indonesia, which states: *“The state is based on Belief in the One Almighty God.”* This constitutional mandate applies uniformly across all courts and judicial levels in Indonesia, rendering this phrase a compulsory heading for all court decisions.

As the formal heading of a court decision, the phrase *“For the Sake of Justice Based on Belief in the One Almighty God”* carries profound symbolic and normative significance. It sets an expectation that the substance of the judgment will reflect the ethical and spiritual principles encapsulated in the heading. The language and reasoning employed within the decision should demonstrate the judge’s commitment to justice, grounded in their faith and devotion to God Almighty. This phrase thus reinforces the judge’s moral orientation and worldview, underscoring the dignity and virtue inherent in the judicial role, namely, the administration of law in accordance with religious values and divine

²⁵ Bismar Siregar, *Hukum Acara Pidana*, Bandung: Bina Cipta, 1983.

²⁶ Harimurti Kridalaksana, *Wiwara: Pengantar Bahasa dan Kebudayaan Jawa*, Jakarta: Gramedia Pustaka Utama, 2001, p. 180

guidance. Accordingly, a court decision issued under this heading represents the judge's dual obligation: to uphold the rule of law, truth, and justice in both the horizontal dimension (among individuals) and the vertical dimension (in relation to divine accountability), thereby affirming responsibility not only to society but ultimately to God.²⁷

Implementation of Justice Based on Belief in God in Court's Decisions

Scientifically, the relationship between the heading of a court decision and its content should be harmonious, consistent, and congruent. Judges' assessments and legal considerations within the framework of justice based on belief in the One Almighty God must emanate from their genuine conviction and faith in the pursuit of truth. This truth-seeking extends beyond mere legal correctness to encompass broader aims such as crime prevention policies (criminal politics) and the welfare of the community, all undertaken with the hope of divine blessing.

Judges are expected to internalize and embody the principles of justice rooted in divine belief as an integral part of their professional duties and daily conducts. The divine values associated with the judicial profession are closely linked to the perception of their role as a form of worship a fundamental philosophy aligned with their religious convictions.²⁸ This alignment allows judges to reorient subjective perspectives toward objectivity, transcend normative legal doctrines, convert ahistorical interpretations into historically informed understandings, and translate abstract divine values into specific, empirical applications in human life.²⁹ In the study and interpretation of law, judges must prioritize substantive and transcendental dimensions, grounding their decisions in social realities that are inextricably connected to religious, ethical, and moral principles.³⁰

An examination of judicial decisions in corruption cases illustrates the judge's duty to adjudicate with sincerity, motivated by the aspiration to serve and obtain divine approval. In this context, divine law functions as a source of inspiration and motivation to deliver just, good, and beneficial legal outcomes. However, in practice, decisions in corruption courts, including those in the Tanjungkarang and Banda Aceh Corruption Courts, predominantly rely on the

²⁷ Dio Ashar Wicaksana, et.al., *Penelitian Format Putusan Pengadilan Indonesia: Studi Empat Lingkungan Peradilan di Bawah Mahkamah Agung*, Jakarta: BP. Fakultas Hukum Universitas Indonesia, 2020, p. 17.

²⁸ Sulistyowati Irianto, et.al., *Probelamatika Hakim dalam Ranah Hukum, Pengadilan dan Masyarakat Indonesia: Studi Sosio-Legal*. Jakarta: Komisi Yudisial, 2017.

²⁹ Absori, 2018, *Epistemologi Dan Legalisasi Hukum Transendental*, dalam Absori, Suteki, Syaiful Bakhri, Sinung Mufthi, Editor, *Hukum Transedental Pengembangan dan Penegakan Hukum di Indonesia*, Yogyakarta: Genta Publishing, p. 23.

³⁰ Absori, "Hukum dan Dimensi Spiritual: Perspektif Positivis Positivis dan Spiritualisme" *Profetika Jurnal Studi Islam* 7, (2205), p. 2.

application of the criminal law and related instruments, such as Supreme Court Regulations and Circulars.

The adjudication process undertaken by judges involves the application of established law, both in interpreting the case and in applying relevant legal provisions.³¹ This approach suggests that judges often do not engage in extensive, reflective reasoning or draw deeply on legal theories. Instead, the straightforward application of positive criminal law, specifically the Corruption Eradication Law (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) is deemed sufficient to determine the appropriateness and correctness of legal rulings. Consequently, judges may have little inclination to elaborate on or complicate their reasoning with considerations of broader justice.

The reflections of judges' considerations in corruption cases are evident in the analysis of two judicial decisions, focusing on three fundamental issues in criminal law that pertain directly to criminal acts: (1) the act (*actus reus*), (2) the error or intent (*mens rea*), and (3) criminal responsibility.³² These considerations are further shaped and constrained by the Supreme Court Regulation of the Republic of Indonesia Number 01 of 2001 concerning Guidelines for Sentencing, as well as Articles 2 and 3 of the Corruption Eradication Law. Together, these legal frameworks add complexity to the judges' discretionary space, limiting their ability to improvise in the pursuit of justice.

The following table illustrates the judge's considerations in corruption decisions:
of Criminal

Tabel 1: Considerations of the Tanjungkarang Corruption Court Judge

No	Decision	Perpetrator	Legal Concept	Action	Mistaken	Sentence
1	Number 13/Pid.Sus - TPK/2021/PN.Tjk.	Technical Implementing Officer for Activities. Corruption violates Article 3 of Law 31/1999 in conjunction with Law 20/2001 in conjunction	Positive law	Intentional Abuse of Authority	Self-advantage	Cumulative sentence (2 years and 4 months imprisonment + Rp. 50 million fine); Compensation of Rp. 170,615,541.

³¹ Erlын Indarti, *Diskresi dan Paradigma Sebuah Telaah Filsafat Hukum*, Pidato Pengukuhan Jabatan Guru Besar Universitas Diponegoro Semarang, 4 November 2010, p. 43

³² L. Packer, Herbert. *The Limits of the Criminal Sanction*, Stanford, California: Stanford University Press, 1968.

		with Article 55 paragraph (1) of the Criminal Code;				12, subsidiary to 9 months.
Corruption in the procurement of drilled wells in North Lampung Regency, Lampung.						

Source: *Directory of the Supreme Court of the Republic of Indonesia. Decisions at mahkamahagung.go.id*

This table presents the judicial considerations of the Tanjungkarang Corruption Court in a case involving the procurement of a drilled well in North Lampung Regency, Lampung. The defendant was found to have intentionally abused his authority, resulting in a cumulative sentence of two years and four months-imprisonment, a fine of Rp. 50 million, and an order for restitution.

Table 2: Considerations of the Banda Aceh Corruption Court Judge

No	Decision	Perpetrator	Legal Concept	Action	Mistaken	Sentence
1	Number 51/Pid.Sus-TPK/2021/PN Bna	Commitment-Making Official Corruption violates Article 3 of Law 31/1999 in conjunction with Law 20/2001 in conjunction with Article 55 paragraph (1) of the Criminal Code;	Positive Law	Intentional Abuse of Authority	Self-advantage	Cumulative sentence (1year imprisonment + Rp. 50 million fine) Compensation of Rp. 165,000,000, subsidiary to 1 month.
Corruption in the procurement of Social Rehabilitation for Uninhabitable Houses (RS-RTLH) for poor families in Subulusslam City, Aceh.						

Source: *Directory of the Supreme Court of the Republic of Indonesia. Decisions at mahkamahagung.go.id*

An analysis of the two referenced decisions reveals an absence of language or reasoning that reflects core humanistic values within the practical elements of criminal law, specifically concerning (a) the act, (b) fault, and (c) criminal responsibility. Instead, the decisions reflect a notable disregard for substantive justice. For example, in case number 13 at the Tanjungkarang District Court, the

defendant, who held the relatively minor position of a PPTK officer, was sentenced to two years and four months-imprisonment alongside restitution amounting to Rp. 170,615,541.12, with a subsidiary sentence of nine months. By contrast, in case number 51 at the Banda Aceh District Court, the defendant, a Commitment Making Officer, received only a one-year prison sentence, a fine of Rp. 50 million, and an additional subsidiary sentence of one month for replacement money of Rp. 160 million.

Despite differences in the nature of the corruption cases, there is a clear similarity in the judges' assessments and considerations, which appear to be grounded solely in positive law.³³ This reliance reflects the continued struggle within the judiciary to move beyond an exclusively positivist legal perspective. By contrast, some strands of legal positivism have begun to reconcile and integrate with divine or natural law, arguing for the inclusion of moral values as critical reference points in judicial decision-making. Such integration would enable judges to provide more nuanced and contextually sensitive assessments, thereby fostering a more authentic interpretation of both the text and context of legal norms.³⁴ In practice, when contextual legal reasoning is absent, it is unsurprising that many corruption verdicts become the subject of controversy where those who ought to receive severe sentences are instead given leniency, while others who might warrant lighter sentences face disproportionately harsh punishments. The adjudication of corruption cases is thus fraught with inconsistencies and perceived injustices.

For the proper application of the law, judges must incorporate their moral compass in evaluating defendants, recognizing their inherent dignity and rights to humanity, justice, and truth, while maintaining impartiality regarding their involvement in the crime.³⁵ Conversely, when judges apply the Corruption Eradication Law without regard for religious and moral values, instead pursuing narrow interests that conflict with principles of morality and human dignity, the integrity of justice is compromised. Such conduct may manifest as oversimplification of the law, selective enforcement,³⁶ or corrupt practices like accepting bribes. In these instances, judges effectively administer unjust or "bad" law, undermining the legitimacy of judicial decisions in corruption cases.

It is evident that the judge, when rendering the decision, did not incorporate moral considerations beyond those encompassed within the framework of divine legal thought. This aligns with the guidance found in the

³³ Torben Spaak, *The Scope of Legal Positivism: Validity or Interpretation*, In book: *The Cambridge Companion to Legal Positivism*, 2021.

³⁴ James Drane, "Natural Law, History and Politic," *Journal Acta Bioetica* 2002; año VIII, No.1 (2002).

³⁵ James Drane, *Natural Law, History and Politic*.

³⁶ Slamet Haryadi, *Integrasi Hukum PIDana, Suatu Telaah Pencegahan Tindak Pidana Suap Di kalangan Aparat Penegak Hukum*, Yogyakarta: Genta Publishing, 2018, p.17.

Qur'an, specifically Surah Al-Maidah, verses 8 and 9, which state: “*O you who believe, be steadfast in upholding justice for the sake of Allah, and be witnesses with fairness. Let not hatred of a people incite you to act unjustly. Be just, for justice is nearer to piety. And fear Allah; indeed, Allah is aware of what you do. Allah has promised forgiveness and a great reward to those who believe and do righteous deeds.*” Judges who administer the law correctly embody the qualities of faith and righteousness. Justice, therefore, positions the Corruption Eradication Law not only as a legal instrument but also as a safeguard protecting judges from the implementation of unjust laws.

Allah has endowed judges with reason, perception, and conscience, essential faculties enabling them to deliver fair decisions that discern the truth of legal matters while serving human interests and the cause of justice. Thus, a judicial decision is not only founded on the principles of justice based on belief in the One Almighty God but also consistently situated within the divine framework. It serves as a perpetual reminder and exhortation for all to follow the righteous path, blessed by Allah SWT.

Justice and Divine Legal Considerations in Judges' Decisions

The development and evolution of law in Indonesia post-independence encompass three principal legal systems: customary law, positive law, and Islamic law. The Islamic law is grounded in the values derived from the Qur'an and the Hadith.³⁷ According to Article 1, paragraph (1) of Law Number 46 of 2009, the principle guiding the administration of justice is articulated as follows: “Judicial proceedings are conducted for the sake of Justice Based on the One Almighty God.” This principle reflects the intrinsic spirit and values embedded within Indonesian Islamic law. Consequently, Barda Nawawi Arief conceptualizes law not merely as a set of rules but as a science of values.³⁸

Proponents of the positive law, or modern law, have contributed to the emergence of the legal profession within legal practice. This profession inherently demands a positivist-analytical framework to process legal materials and render judicial decisions.³⁹ In modern legal theory, divine values are often regarded as irrational, non-cognitive, and empirically unverifiable. Thus, certain inclusive positivists approach law scientifically by separating legal norms from divinity.⁴⁰ whereas exclusive positivists integrate law and divinity with their associated moral values.

³⁷ Mursyid Djawas, et.al., “Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism,” *Hasanuddin Law Review* 10, No. 1 (2024), p. 64–82.

³⁸ Barda Nawawi Arief, *Beberapa Aspek Pengembangan*, p. 27-28.

³⁹ Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum* (Yogyakarta: Genta, 2011), p. 26.

⁴⁰ Neil Mac Cormic, *H.L.A. HART*, (California: Stanford University Press, 1981), p. 197.

Barda Nawawi Arief expresses concern regarding contemporary modern legal practice, highlighting a “dual” phenomenon. On one hand, law enforcement is pursued through an increasingly refined scientific approach. On the other hand, this scientific methodology has been undermined, neglected, or displaced by alternative orientations, such as “envelope culture,” unethical or corrupt behaviors, and pragmatic shortcuts or breaches of procedure”.⁴¹

Barda Nawawi Arief, dissatisfied with and critical of the limitations inherent in modern legal practices, particularly the legal positivist paradigm that has been predominantly embraced by criminal law scholars, advocates for a fundamental revision of this approach. His proposed revision resonates with the postmodernist re-evaluative framework conceptualized by David Ray Griffin as a “return forward”, a methodology that synthesizes elements of classical natural law, as seen in John Austin’s divinely grounded legal philosophy, with the empirical insights of legal positivism. This revised framework is articulated through what Barda refers to as a *religious scientific juridical approach* to the study and application of the criminal law.⁴²

The religious scientific juridical approach is designed to critically evaluate the current state of judicial decision-making, which, according to Barda, has suffered a decline in quality. This approach aims to improve legal reasoning by fostering the development of fact classification systems, legal structures, conceptual frameworks, and precise definitions.⁴³ By integrating the criminal law with the divine law, this framework seeks to bridge the epistemological and normative gap between positivist criminal law and the moral imperatives of divine legal principles.

The integration of divine law into criminal law is viewed as essential for reinforcing the principle of *irah-irah*, the ideal of justice founded on belief in the One Almighty God. In this context, criminal judges play a pivotal role in interpreting and advancing divine legal values, thereby transforming them into a structured body of legal knowledge capable of delivering justice, legal certainty, and societal benefits. This integral approach repositions religion as a foundational element supporting scientific legal inquiry and as a guiding force in judicial processes aimed at truth-seeking and fairness. Furthermore, Barda highlights the pervasive injustice in the current legal system, exemplified by the common critique that the law is “sharp downward but blunt upward”, punishing the weak while shielding the powerful. This reality underscores the failure of a purely positivist system to uphold universal justice and reinforces the urgency of

⁴¹ Barda Nawawi Arief, *Pendekatan Keilmuan dan Pendekatan Relegius Dalam Rangka Optimalisasi dan Reformasi Penegakan Hukum Pidana di Indonesia* (Semarang: BP. Universitas Diponegoro, 2011), p. 4-7.

⁴² Aries Harianto, et.al., *Pengembangan Ilmu Hukum berbasis Relegiositas Sains dengan Pendekatan Profetik* (Malang: Universitas Brawijaya Press, 2012), p. 1-19.

⁴³ Suryono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), p. 121-131.

incorporating divine and moral dimensions into legal reasoning to combat systemic discrimination and promote equitable outcomes for all members of society

Judges who adopt a religious-scientific juridical approach do not reject legal positivism outright. Rather, they recognize that the legal system must be enriched by a framework that combines legal rationality with moral and religious values. This approach requires not only the application of legal reasoning to facts and legal norms but also interpretive competence and a deep faith in Islamic teachings. Consequently, a judge’s decision-making process is inherently shaped by their legal experience, both in courtroom practice and through mastery of legal doctrine.⁴⁴ Practical experience and theoretical knowledge are crucial in anticipating how and why judges reach particular verdicts.

A deeper reflection on judicial reasoning reveals that the pursuit of justice based on belief in the One Almighty God is central to this process. According to Antonius Sudirman, the most influential factor in a judge's decision is not the political system, legal infrastructure, or bureaucratic procedures, but rather the judge’s morality and personal integrity,⁴⁵ In Islamic jurisprudence, high moral character, *akhlakul karimah* is the defining trait of a just judge. Morality in Islam is rooted in faith, obedience to God, and a constant awareness of divine omniscience.⁴⁶ A judge with such moral grounding embodies the highest form of human sovereignty and is marked by an unwavering commitment to ethical decision-making, even when facing threats to career, safety, or personal wellbeing.⁴⁷ This moral clarity allows such judges to instinctively discern what is good, right, and just, without being swayed by external pressures.

Table 3: Legal Considerations Sourced from the Integration of Positive Law and Divine Law

No	Decision	Perpetrator	Legal Concept	Action	Mistaken	Sentence
1	Nomor 13/Pid.Sus-TPK/2021/P N.Tjk.	Technical Implementing Officer for Activities.	Positive law	Abuse of authority	Self-advantage	Cumulative sentence (2 years and 4 months)

⁴⁴Muchamad Ali Safa'at, et.al., "The Relationship Between the Constitutional Judges' Selection by the House of Representatives and The Position of Judges in Judicial Review Decisions," *Constitutional Review* 10, No. 2 (2024). p. 367-412

⁴⁵ Antonius Sudirman, *Hati Nurani Hakim dan Putusannya; Suatu Pendekatan Perspektif Hukum Perilaku (Behavioral Jurisprudence) Kasus Bismar Siregar* (Bandung: Citra Aditya Bakti, 2007), p. 96-97.

⁴⁶ Al Gazali, *Ihya 'Ulum al Din*, Juz 1, Terjemahan Ismail Ya'kub, (Singapura: Pustaka Nasional, 2003), p. 3.

⁴⁷ Antonius Sudirman, *Hati Nurani Hakim dan Putusannya*, p. 96-97.

		Corruption violates Article 3 of Law 31/1999 in conjunction with Law 20/2001 in conjunction with Article 55 paragraph (1) of the Criminal Code;				imprisonment + Rp. 50 million fine); Compensation of Rp. 170,615,541.12.subsidiary 9 bulan.
			Divine Law	ignoring authority	Signing the file, which has been signed by the supervisor	Alternative sentence: 1 year in prison No compensation

Source: *Directory of the Supreme Court of the Republic of Indonesia. Decisions at mahkamahagung.go.id*

This ethical framework becomes particularly relevant when evaluating how legal decisions should integrate both positive law and divine law. For instance, as illustrated in the referenced legal case table (not shown here), under positive law, abuse of authority for personal gain is classified as a criminal offense, carrying specific penalties, such as a cumulative sentence of 2 years and 4 months-imprisonment, a fine of Rp. 50 million, and compensation of Rp. 170,615,541.12, or a 9-month substitute sentence in lieu of compensation. In contrast, the divine law may judge the same act differently, with a focus on intent, ethical responsibility, and broader moral accountability. Under this framework, an alternative sentence of 1 year without compensation may be deemed more appropriate, especially if the act was committed under coercion or lack of clear authority.

Table 4: Considerations of the Banda Aceh Corruption Court Judge

No	Decision	Perpetrator	Legal Concept	Action	Mistaken	Sentence
1	Number 51/Pid.Sus-TPK/2021/PN Bna	Commitment Making Official. Corruption violates Article 3 of Law 31/1999 in conjunction with Law 20/2001 in	Positive Law	Intentional Abuse of Authority	Self-advantage	Cumulative sentence (1 year imprisonment + Rp. 50 million fine) Compensation of Rp. 165,000,000, subsidiary of 1 month.

		conjunction with Article 55 paragraph (1) of the Criminal Code;	Divine law	Intentional Abuse of Authority	Self-advantage	Cumulative sentence of 2 years + fine Compensation of Rp. 165,000,000. Subsidiary sentence of 1 year.
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Source: *Directory of the Supreme Court of the Republic of Indonesia. Decisions at mahkamahagung.go.id*

If the panel of judges in Decision No. 13/PN.TjK had fully embraced the principle of justice based on the One Almighty God, then the defendant’s moral intentions and actual conduct should have been given greater weight. A lesser sentence, excluding the imposition of cumulative fines and compensation could have been more consistent with the divine legal perspective, especially considering that financial responsibility should have rested with the *Pejabat Pembuat Komitmen* (PPK), not the *Pejabat Pelaksana Teknis Kegiatan* (PPTK), who merely executed the activity. Conversely, in Case No. 51/PN.Bn.A, where the defendant acted as the PPK and was the intellectual actor behind actions that led to state financial losses, a harsher sentence would have been more just. The defendant’s intentions, decisions, and degree of culpability positioned him as the primary party responsible.

According to John Finnis, as cited by David Barnhizer,⁴⁸ the practical theory of divine law emphasizes the necessity of employing authentic practical reasoning in judicial decision-making. Practical reasoning, in this context, involves an individual's conscious effort to attain a comprehensive understanding of external circumstances. This is achieved through the continual expansion, clarification, and enrichment of one’s personal awareness and moral insight.

Applying practical reasoning in the legal context implies that a judge must fulfill several essential criteria:⁴⁹ (1) possess an experiential understanding of human social systems and their broader environment; (2) critically assess the quality of personal knowledge, assumptions, and values; (3) communicate in a manner that is appropriate, accurate, honest, and responsible; (4) authentically embody and apply abstract moral and legal values to the concrete facts of individual cases; (5) connect internal legal reasoning with external social realities by refining definitions, interpretations, and aligning them with the objectives of practical criminal policy and the principles of fair trial procedures to reach just outcomes; and (6) recognize that judicial decision-making is not a purely formal

⁴⁸David Barnhizer, *Natural Law as Practical Methodology: A Finnisian Analysis of City of Richmond v. J. A. Croson, Co.* *Cleveland State Law Review* 38 No.15. (1990), p. 20.

⁴⁹David Barnhizer, *Natural Law as Practical Methodology*.

or deductive process, but rather a complex exercise in judgment involving a series of choices and cumulative reasoning that shape the substance of the verdict.

This model of judicial reasoning serves to address the inherent limitations of the purely legalistic, procedural, and normative aspects of the judicial process. It highlights the need for a dynamic mode of legal interpretation that goes beyond rigid legal formalism. Judicial reasoning, in this sense, is enriched by the judge's moral character, understanding of criminal law policy, professional experience, and intellectual capacity. These elements combine to form decisions that are not only legally sound but also morally just and contextually relevant.

Therefore, the judge's function in upholding justice and humanity must be regarded as the foundation of the legal system. Judges bear a profound responsibility to ensure that justice is done, to provide equitable legal protection to all individuals, and to safeguard human rights throughout the adjudicative process. To fulfill this role, judges must exhibit a high degree of integrity, intellectual competence, and sensitivity to ethical and moral values. These qualities are indispensable to the realization of a justice system that is both fair and humane.⁵⁰

In a high-quality judicial process, the delineation of legal reasoning must begin with the judge's personal judgment, formed through an engagement with legal principles, empirical facts, structured arguments, interpretive language, desired outcomes, and the foreseeable consequences of a ruling. All of these elements must operate within a framework grounded in divine values, which may be understood as the authentic application of justice informed by practical reason, moral discernment, and reflective judgment. These values compel a deep awareness of the complexity inherent in human decision-making, especially in the face of multifaceted legal questions.

However, the integrity of this process can be compromised by several negative influences. These include ideological rigidity, unwillingness to consider the legitimate perspectives of others, intellectual closed-mindedness, the pursuit of personal or partisan interests that benefit only a narrow group, and a failure to engage sincerely with the principles of fundamental justice and fairness. Such deficiencies often stem from a lack of understanding of the factual realities and lived experiences that are central to the dispute at hand, as well as from underdeveloped judgmental capabilities.

Assessing whether a judge's choices and decisions are truly authentic is inherently challenging. It requires more than a surface-level analysis of legal

⁵⁰Gisella Tiara Cahyani, et.al., Analisis Peran Hakim Dalam Menegakkan Keadilan Dan Kemanusiaan," *Jurnal Res Justitia Jurnal Ilmu Hukum* 5, No. 1 (2025), p. 200-207. Mediana Harini and Diding Rahmat, "Peran Hakim Pada Proses Penemuan Hukum Sebagai Upaya Penegakan Keadilan Berdasarkan Kode Etik Hakim," *Journal Evidence of Law* 4, No. 1 (2025), p. 207-230.

language or procedural adherence. Instead, it demands an appreciation of the judge as a specific human subject, shaped by personal, moral, intellectual, and experiential dimensions. The subjective nature of judicial awareness, therefore, plays a critical role in the pursuit of justice, but also complicates external evaluation of a judge's moral and ethical authenticity in rendering decisions.

Conclusion

Based on the discussion above, it can be concluded that, in theory, adherents of legal positivism have partially reconciled, synergized, and integrated their views with elements of divine (natural) law. The application of exclusive factual criteria for legal validity, supplemented by moral values as a reference point for judicial decision-making, aligns with the principles of justice rooted in the belief in the One Almighty God. However, judges presiding over corruption cases in Indonesia continue to adopt a predominantly formalistic and legalistic approach, which often fails to deliver a genuine sense of justice for those seeking it. It is therefore imperative that the principles of justice grounded in divine values become a source of inspiration and motivation for judges. This involves the development of: a deeper, humanity-oriented understanding of individuals and their environment; critical self-reflection on personal knowledge and moral values; communication that is appropriate, truthful, honest, and accountable; a genuine embodiment of moral values, humanity, and justice in the handling of real cases; an awareness of the socio-contextual realities surrounding the cases; and an understanding that judicial decisions are the product of reasoned deliberation, not merely formal logic or deductive reasoning. Accordingly, to achieve justice in judicial practice, divine law should serve as both an inspiration and a moral compass in guiding judges toward more humane and equitable rulings.

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