

THE INTEGRATION OF DIVINE JUSTICE IN JUDICIAL REASONING WITHIN THE INDONESIAN CRIMINAL JUSTICE FRAMEWORK

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Abstract

How can the Indonesian criminal justice framework reconcile the tension between rigid formalistic certainty and substantive justice? When positivism in judicial reasoning marginalizes sociological and spiritual dimensions, does it not inevitably precipitate sentencing disparities? Addressing these inquiries, this article examines the intersubjective approach in judicial reasoning (*ratio decidendi*) to actualize substantive divine justice. Employing doctrinal and philosophical research, this study utilizes statutory, conceptual, and case approaches, focusing on Law Number 1 of 2023 (National Criminal Code) and court decisions. Findings reveal that intersubjectivity transforms judges into active interpreters synthesizing juridical, sociological, and philosophical pillars. This integration institutionalizes *Biomijuridika*, propelling a shift from retribution toward social equilibrium (*blissful laws*) via the adjudicative fiat (*irah-irah*) and judicial pardon (*Rechterlijk Pardon*). Consequently, judges must cultivate prophetic intelligence to withstand public pressure and prevent impunity. Conclusively, this integration reshapes the ontological and epistemological dimensions of Indonesian criminal law. To mitigate disparities, the Supreme Court should formulate technical guidelines (PERMA/SEMA) defining *Rechterlijk Pardon* parameters and institutionalize judicial training rooted in prophetic intelligence.

Keyword : Religious Justice; Judicial Reasoning; *Rechterlijk Pardon*; Criminal Justice System.

INTRODUCTION

Court decisions within the Indonesian criminal justice system represent the final culmination of law enforcement, aiming to maintain social order while ensuring the protection of citizens' human rights. The system fundamentally operates on written provisions codified by the state to guarantee order for justice seekers. However, the dynamics of courtroom practices have sparked public discourse regarding the persistent gap between statutory texts and the intrinsic essence of judicial verdicts.

Public perception of case resolutions has the potential to influence the level of trust in judicial authority, particularly when court outputs are perceived to overemphasize legalistic procedures at the expense of substantive justice. Minor criminal offenses involving marginalized individuals—such as the cases of Aal, Nenek Minah, as well as Basar and Kholil—frequently serve as prominent reference points regarding the application of procedural law that is strictly oriented toward statutory certainty. This condition, in turn, is deemed incongruent with the sense of restorative justice that grows and develops within societal life (Harmono & Rasji, 2025). Furthermore, the category of special crimes, notably the handling of white-collar crimes involving state officials, presents its own challenges regarding disparities in the imposition of criminal sanctions. This is reflected in the dynamics of evidentiary processes and judicial reasoning within the corruption courts (Harmono & Rasji, 2025).

The handling of these various case typologies underscores the necessity of reforming the methods of legal discovery (*rechtsvinding*) utilized by judges in formulating their legal reasoning. The dynamics of public trust in the judiciary correlate with the prevailing application of positivism, which is increasingly recognized as needing a deeper integration of religious and humanistic values. The concept of the supremacy of law in Indonesia must be interpreted beyond the mere confines of textual certainty, directing it toward the realization of spiritual justice for all strata of society (Maroni & Ariani, 2018). Penal policy reform necessitates the establishment of a national criminal framework

that harmonizes customary norms, religious tenets, and humanistic principles (Najih, 2018). Consequently, constructing judicial considerations demands a comprehensive reasoning approach, ensuring that the enforcement of sanctions does not rely solely on administrative procedures but also actualizes holistic restoration. The refinement of the rechtsvinding mechanism is deemed crucial to be continuously advanced. This perspective is rooted in a profound understanding that the application of sanctions based strictly on formal procedures can alienate the public's hope for justice. Current criminal justice practices are confronted with various dynamics, one of which concerns the formulation of penal sanctions. Existing statutory regulations are considered to still require reinforcement from both philosophical and spiritual dimensions to ensure that equitable restoration for victims can be optimally realized (Ishaq et al., 2025).

Academic discourse has also emerged regarding the implementation of specific penal policies, such as chemical castration. Such policies provoke continuous debate within both scholarly realms and the practical resolution of cases. The focal point of this debate highlights the imperative to harmonize the application of sanctions, the protection of human rights, and more humanistic efforts toward victim recovery. This is deemed necessary so that penal policies remain consistently aligned with the values of a just and civilized humanity within the framework of Pancasila (Pambudhi & Chaerunnisaa, 2021; Yuningsih et al., 2020). The modernization of penal instruments—encompassing substance, structure, and culture—must be animated by Divine values to ensure that court decisions are capable of delivering grounded and tangible justice (Widyawati et al., 2022).

Judges, as the executors of judicial power, bear the constitutional responsibility to adjudicate cases by unearthing the values of justice living within society, thereby transcending the mere interpretation of statutory texts. The 1945 Constitution of the Republic of Indonesia guarantees the independence of judicial power to uphold truth and justice. Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power mandates that the administration of justice is conducted “For the Sake of Justice Based on Almighty God” (Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa) (Judicial Commission of the Republic of Indonesia, 2018). This adjudicative fiat (irah-irah) must be inscribed at the head of decisions across all judicial jurisdictions (Suharsono, 2025), alongside the foundational provision of Article 197 paragraph (1) letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). This inscription is not a mere formal administrative requisite; rather, it is a reflection of the Pancasila value system, which positions the principle of Divinity as the supreme pillar (Djatkiko, 2022). This provision serves as a reminder that the accountability of a judge's decision possesses two inseparable dimensions: a horizontal, societal aspect toward the citizens, and a vertical aspect toward Almighty God.

Developments in philosophical epistemology offer the intersubjectivity approach as a pathway to discovering material truth in trials, simultaneously complementing the strictures of positivism. The intersubjectivity approach provides a novel perspective that does not view judicial instruments and trial facts as static or purely textual entities. Evidentiary mechanisms are accommodated through the fundamental principles within the Criminal Procedure Code (KUHP). The KUHP adopts the accusatorial principle, which positions the suspect or defendant as a legal subject with proportionally guaranteed rights. This mechanism synergizes with the authority of law enforcement officials and the active role of judges in equitably uncovering material truth during trial proceedings.

Truth is thereby understood as the outcome of interaction and evidentiary discourse among parties within the courtroom. The court functions as a forum for the balanced testing of arguments—whether presented by the public prosecutor through the indictment, the legal counsel through the statement of defense (pleidoi), or the testimonies of witnesses and defendants. This reciprocal process enables judges to interpret written regulations and facts concurrently, without being rigidly tethered to the grammatical application of statutory texts, in order to deliver substantive justice that upholds the human dignity of the litigating parties.

The formulation of judicial reasoning requires an equilibrium among the principles of legal certainty, utility, and substantive justice, akin to the concept of *Idee des Rechts* conceptualized by Gustav Radbruch (Hakim & Ramadhan, 2021). The application of these three principles invariably intersects with the religious and sociological guidelines of society. The modernization of national penal regulations through Law Number 1 of 2023 concerning the Penal Code (hereinafter referred to as the New KUHP or National KUHP) marks a paradigm shift in sentencing. The new regulation endeavors to transform the character of colonial-legacy laws (*Wetboek van Strafrecht*), which were perceived to marginalize the role of religion, prioritize retribution, and lean toward individualism.

The implementation of the restorative justice paradigm and social equilibrium is currently codified in Article 51 letters b, c, and d of the National KUHP. These provisions stipulate that the objectives of sentencing encompass efforts to rehabilitate the offender, resolve conflicts, and restore a sense of security. The protection of human dignity and worth is also regulated in Article 52 of the National KUHP, which mandates that sentencing shall not aim to degrade human dignity. The enforcement of penal instruments is directed toward unifying positivist dogmatics with the values of divinity, humanity, unity, democracy, and social justice (Ridwan, 2012).

The actualization of religious justice, conceptualized through the framework of Biomijuridika, is exceedingly difficult to achieve optimally if judicial reasoning relies excessively on positivistic methods of legal discovery. The formal-legalistic paradigm tends to narrow the judge's role into merely being the mouthpiece of the law, which potentially detaches them from the dynamics of sociological justice. A dialogical approach through the theory of communicative rationality (intersubjectivity) is required as an alternative intellectual foundation. The intersubjective method facilitates the balanced testing of facts in the courtroom to unearth material truth, without making statutory texts the sole parameter.

This discursive freedom fundamentally operates under the auspices of Pancasila as the fundamental state norm (staatsfundamentalnorn). The transcendental moral parameters derived from the First Precept (Divinity), alongside the essence of protecting dignity in the Second Precept (Humanity), guide the intersubjective space to prevent it from deteriorating into mere sociological relativism. The continuous intersection between fact-finding instruments and the moral foundation of Pancasila culminates in the institutionalization of the axiological framework of Biomijuridika. This comprehensive synthesis directs judicial reasoning so as not merely to produce statutory certainty, but to actualize a substantive religious justice that restores social equilibrium.

This article is structured to respond to the imperative of discovering such material truth, specifically by examining the application of the intersubjectivity approach in formulating the grounds of decisions (*ratio decidendi*). The scope of discussion in this article is further elaborated through a comprehensive exposition in the Results and Discussion subsections: First, concerning the Intersubjectivity Approach in the Evidentiary and Criminal Justice Processes. Second, regarding the Integration of Three Aspects in Judicial Reasoning. Third, on Biomijuridika and the Actualization of Religious Values as the Primary Foundation of Substantive Justice.

METHODS

The study in this article is constructed through doctrinal and philosophical legal research to examine the paradigm shift in judicial reasoning within the adjudication of criminal cases in Indonesia. The analytical framework is built by integrating a statute approach, a conceptual approach, and a case approach. The statute approach focuses on examining the *ratio legis* of fundamental regulations, particularly Law Number 1 of 2023 concerning the Penal Code alongside the laws governing judicial power. Concurrently, the conceptual approach is utilized to synthesize Habermas's idea of intersubjectivity, Radbruch's theory of *Idee des Rechts*, and the concept of Biomijuridika justice grounded in Pancasila. To bridge theoretical discourse with practical reality, the case approach is applied selectively to analyze the structure of legal reasoning (*ratio decidendi*) in several court decisions that represent the tension between procedural certainty and substantive justice.

The legal materials in this research are compiled through library research, comprehensively integrating primary and secondary sources. Primary legal materials consist of the constitution, material and formal criminal regulations, as well as documents of first-instance court decisions. Meanwhile, secondary legal materials are obtained from authoritative academic literature, reputable journal articles, and contemporary research related to the criminal justice system. All collected materials are subsequently analyzed using a prescriptive qualitative method combined with deductive reasoning. This analytical technique does not merely describe norms; rather, it is directed at evaluating legal coherence and formulating academic prescriptions regarding the urgency of institutionalizing transcendental values into the intersubjective reasoning of judges to actualize holistic justice.

RESULTS AND DISCUSSION

The Intersubjectivity Approach in the Evidentiary and Criminal Justice Processes

The dominance of legal positivism in criminal justice practice often reduces the role of judges to mere mouthpieces of the law (*la bouche de la loi*), grounded in mechanical deductive syllogisms, thereby positioning written texts (black-letter law) as the singular truth. This approach tends to objectify the defendant as a mere target of statutory application and marginalizes sociological realities, which in turn risks producing formalized verdicts detached from societal justice. The intersubjectivity approach emerges to shift this paradigm by transforming the courtroom into a forum for rational, egalitarian, and discursive evidentiary examination. Through this framework, material truth is not accepted as a static reality but is meticulously reconstructed through a balanced exchange of evidence (equality of arms), ensuring that the judge's inner conviction (*conviction intime*) is built upon a foundation of logical communication before being harmonized with religious parameters.

The Indonesian criminal justice system accommodates this intersubjective foundation within Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). The procedural law within this statute facilitates a balanced evidentiary space, one of which is through the mechanism of witness examination. This stage provides an equal opportunity for both the public prosecutor and the legal counsel to pose questions to witnesses, while the judge

possesses the authority to request information deemed necessary to uncover the truth (Article 165). Consequently, the indictment is not positioned as the final truth, but rather as an allegation that must undergo an objective testing process in a transparent trial.

This communicative approach is also embedded in the mechanisms for examining the defendant's testimony during trial proceedings, as stipulated in Article 153 paragraph (2) letter b juncto Article 189, alongside the guarantees of freedom in providing testimony under Articles 52 and 117. The Criminal Procedure Code does not adopt a plea bargain mechanism; thus, a defendant's confession does not automatically construct an absolute legal truth nor does it halt the evidentiary process. The defendant's statement is positioned as one of several pieces of evidence, the correlation of which must be evaluated against other evidentiary instruments.

The concept of intersubjectivity originates from Jürgen Habermas's idea of communicative action, which functions as the determinant of legitimacy within a rational society. The application of this concept in the criminal courtroom must be delineated with boundaries—it is not to be positioned as free, unhierarchical communication, considering that the criminal justice system inherently involves power relations. The essence of judicial intersubjectivity must be interpreted as legal communication with procedural boundaries (proceduralized communicative action), where equality is represented through the principle of equality of arms. Trial facts are understood not as events appearing spontaneously without context, but as reconstructed outcomes where parties interact in a balanced manner through tested argumentation.

This thought aligns with the perspectives of John Locke and G.W.F. Hegel, who posit that fundamental individual rights are not unilaterally established by the state but emerge through a process of mutual recognition among parties (Wikantoso, B. 2016; Łazarski, C. K. 2013). In line with this relational essence, Arthur Kaufmann rejects the positivist view that regards state-made written legal norms (Gesetz) as the sole foundation for establishing just law. Drawing upon the historical experiences of totalitarian states in the 20th century, Kaufmann highlights that the phenomenon of “statutory lawlessness” (gesetzliches Unrecht or legal lawlessness) has convincingly proven that legal reality demands more than mere mechanical compliance with the formal norms of the sovereign. Therefore, true law must reflect justice in concrete situations (ipsa res iusta) and involve the essence of the “person” as a relational and dynamic entity within the process of discovering justice (Piechowiak, 1999).

Ronald Dworkin's thought in his work *Law's Empire* also provides a critique of excessive objectivity, contrasting “Judge Hercules,” who seeks a singular textual principle, with “Judge Hermes,” who emphasizes interpretation, the communication of meaning, and moral deliberation (Bakir, 2022). Judges bear the mandate not merely to act as executors of statutory provisions, but as interpreters who unearth the profound meaning of justice.

Table 1. Comparison of Truth Discovery Paradigms in Trial Proceedings

Legal Paradigm	Thought	Characteristics of Courtroom Evidentiary Processes	Position of the Judge in the Trial	Implications for Criminal Verdicts
Formal (Legal Positivism)	Objectivity	Interpretation focuses on statutory texts and insufficiently considers societal social dynamics.	The judge acts passively, applying written texts (la bouche de la loi) with limited room for interpretation.	Produces formalized justice that risks diverging from the essence of societal justice.
Autonomous Subjectivity (Extreme Realism)		Truth is constructed based on the personal convictions and assessments of law enforcement officials.	The judge adjudicates cases relying on personal judgment without being grounded in measurable parameters of legal discovery.	Potentially causes verdict disparities, ignores legal certainty, and triggers a decline in public trust.
Intersubjective Rationality (Communicative Approach)		Truth is unearthed through logical argumentation and balanced evidentiary dialectics among parties in the courtroom.	The judge plays an active role as a facilitator who tests and evaluates the congruence of arguments from various perspectives.	Actualizes substantive justice that is balanced, rational, and congruent with societal justice.

Source: Processed by the Author (2025).

Evaluating the aforementioned comparison reveals the position of intersubjectivity as an equilibrium point that prevents legal certainty from degrading into mere textual subservience, while concurrently restricting the judge's

conviction from becoming a unilateral assessment. The application of communicative rationality within the justice system and sociology of Indonesian society finds its relevance in the integration of local wisdom and the recognition of guiding norms living within the community (living law). The current national criminal justice system no longer exclusively prioritizes a retributive-based sentencing model, but rather accommodates restorative justice mechanisms that are aligned with the principles of intersubjectivity.

Law Number 8 of 1981 concerning the Criminal Procedure Code formulates the trial examination stage upon the pursuit of material truth via the provisions of Article 165 paragraph (1). The panel of judges plays an active role in requesting any information deemed necessary to obtain material truth, rather than merely facilitating case resolution through peace agreements between the defendant and the victim. Judicial assessment is focused on whether the indicted act is proven or unproven based on at least two valid pieces of evidence in accordance with the stipulations of Article 183.

Customary dispute resolution practices within the Jambi community demonstrate that conflicts can be facilitated through restorative deliberations among perpetrators, victims, and customary leaders (pemangku adat) (Habi et al., 2024). This process manifests a substantive deliberation that integrates customary wisdom and Sharia principles to achieve common good (kemaslahatan), providing an alternative avenue outside the formal judicial mechanism (Subhan et al., 2024). Similar practices are found within the indigenous Baduy community through the instrument of Silih Hampura, serving as a pathway for reconciliation that emphasizes the holistic recovery of the victim and the restoration of environmental equilibrium (Yulia, Prakarsa, & Ali, 2023). Noble values such as mutual cooperation (gotong royong), tolerance and empathy (tepo seliro), alongside the philosophy of avoiding mutual harm (tego lorone gak tego patine), signify that communicative dispute resolution has thrived and evolved long before the implementation of the modern justice system (Syah & Purwoleksono, 2023).

State administration positions restorative justice and this intersubjective approach as the embodiment of the Second, Fourth, and Fifth Precepts (Sila) of Pancasila (Garcia, Disemadi, & Arief, 2020; Sukardi & Purnama, 2022). Implementing this concept obligates judges to formulate the grounds of decision (ratio decidendi) that transcend the mere parsing of the elements of an offense. Judges must examine the malicious intent (mens rea) and the material act (actus reus) while taking into account sociological motives, victim restoration, and the impact of the sanctions on public order. Recognition of customary criminal law must be interpreted judiciously to prevent sentencing disparities, ensuring that state adjudication aligns with local justice (Rusdi Antara, Nyoman Budiana, & Sadnyini, 2021). The judge manages the trial as a balanced deliberative space where the public prosecutor's arguments, the defendant's defense, and the victim's hopes for justice are synthesized into a restorative verdict.

The intersubjectivity approach, therefore, plays an essential role in the evidentiary and criminal justice processes, surpassing its position as a mere theoretical instrument. The court, situated as a space for the balanced exchange of arguments, enables facts to be tested through logical reasoning, allowing the judge to maintain harmony between statutory certainty and interpretative latitude. The integration of communicative rationality with the Divine values of Pancasila and local wisdom ensures that the judicial reasoning (ratio decidendi) possesses holistic moral force. Ultimately, the actualization of a state governed by law (negara hukum) is measured not solely by the degree of compliance with statutory provisions, but by the extent to which the judiciary is capable of reconstructing material truth that balances legal certainty, victim restoration, and the equitable protection of human dignity.

The Integration of the Three Pillars of Judicial Reasoning in Criminal Court Decisions

The quality and accountability of criminal court decisions are not evaluated merely by the conformity of the verdict (amar) with the public prosecutor's demands, but are determined by the depth, coherence, and proportionality of the judicial reasoning (ratio decidendi) (Rizki, 2023). The panel of judges is not expected to act as mechanical appliers of legislation who disregard societal reality. Judges bear the responsibility of realizing holistic verdicts by integrating juridical, sociological, and philosophical aspects (Hakim & Ramadhan, 2021). The integration of these three aspects serves as a *conditio sine qua non* to establish the judiciary as a forum for legal discovery (rechtsvinding) oriented toward restoration, equilibrium, and the actualization of substantive societal justice (Faisal, 2009).

The structure of reasoning positions the integration of these three aspects as a bridge connecting trial reality with the ideals of the state (rechtsidee). The fulfillment of juridical and sociological aspects is intrinsically the outcome of applying the intersubjective method. Balanced dialogical evidentiary processes in the courtroom facilitate the judge in objectively reconstructing the fulfillment of the offense's elements (the juridical aspect) while simultaneously identifying the defendant's background, motives, and the societal impact of the act (the sociological aspect). Juridical and sociological conclusions require a normative compass to prevent them from shifting into aimless perspectives. The philosophical aspect is internalized, drawing upon the moral values of Divinity and Humanity within Pancasila to guide and filter the facts, thereby ensuring the final formulation of the decision remains connected to transcendental

accountability.

The obligation to formulate comprehensive judicial reasoning is a fundamental principle in the criminal justice system, necessitating the panel to construct clear expositions regarding the facts, circumstances, evidentiary instruments, as well as mitigating and aggravating factors of the defendant (Nurhafifah & Rahmiati, 2015). This principle is accommodated within Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), particularly through Article 197 paragraph (1) letters d and f. The provision of Article 197 paragraph (2) underscores that the absence of these elements renders the trial output null and void by operation of law (*batal demi hukum*) (Dilla & Yuherman, 2020). To guarantee sentencing proportionality, Article 197 paragraph (1) letter f obligates the panel to explicitly include considerations regarding the defendant's aggravating and mitigating circumstances. This orientation aligns with the sentencing guidelines within Law Number 1 of 2023 concerning the National Penal Code (National KUHP).

The new statutory regulations signify a shift from the colonial-legacy framework (*Wetboek van Strafrecht*) toward an approach that accommodates social equilibrium, situational restoration, and the preservation of human dignity (Hibrawan et al., 2025; Akbar, 2021). This transformation propels the actualization of Pancasila as the fundamental norm (*Grundnorm*), positioning criminal adjudication as an open justice system, wherein the restoration of society is balanced with the protection of the defendant's rights (Adawiyah & Rozah, 2020; Wulandari, Masyhar, & Sayuti Hassan, 2024). The National KUHP regulates the parameters for sentence aggravation, such as the abuse of authority (Article 52), recidivism (*recidive*), and the concurrence of offenses (*samenloop/concursus*) (Waluyo, 2014).

These three pillars of judicial reasoning possess specific evaluation focuses which, when integrated, actualize the equilibrium (*Idee des Rechts*) conceptualized by Gustav Radbruch. Radbruch's thought regarding the tension between legal certainty and justice currently finds its statutory reference in Article 53 paragraph (2) of Law Number 1 of 2023, which mandates: "If in upholding law and justice there is a contradiction between legal certainty and justice, the judge must prioritize justice." The Elucidation of Article 53 anticipates legislative imperfections, demanding judges to interpret concrete events in alignment with the theory of communicative action, which places substantive justice above textual certainty.

The elaboration of these three pillars can be detailed further. The juridical pillar functions to guarantee regulatory guidelines (*rechtszekerheid*) and prevent arbitrary actions by state apparatuses, by examining the congruence of the factual acts in the trial with the elements of the criminal offense. Evidentiary standards beyond reasonable doubt, the principle of legality, equality before the law, and due process of law are upheld proportionally. The sociological pillar positions regulations as instruments to realize societal order, aligning with the guidelines in Article 54 paragraph (1) of the Penal Code and the obligation to construct considerations of trial facts in Article 197 paragraph (1) letter d of the Criminal Procedure Code (Harmono & Rasji, 2025). This aspect analyzes the offender's economic background, cultural conditions, psychiatric history, up to the impact of sanctions on the victim and public order (*Zweckmassigkeit/utility*), providing a foundation for non-penal instruments (rehabilitation, diversion) as well as groundbreaking verdicts (*rule-breaking*).

The philosophical pillar functions as a moral foundation connecting positive law with the essence of universal justice (*Gerechtigkeit*) (Hakim & Ramadhan, 2021). Philosophical consideration ensures that the imposition of sanctions culminates in the protection of dignity, national ethical standards, and transcendental accountability. This underlines the exploration of concepts such as environmental justice (*eco-religion*), the protection of digital spaces (*biomijuridika*) (Suseno, Paksi, & Yusriando, 2024; Fernando et al., 2025; Thani et al., 2025), up to the concept of impaired free will due to psychiatric impediments (Nur et al., 2025).

The integration of these three aspects in the *ratio decidendi* is evident when the judge considers aggravating and mitigating circumstances. Humanistic and spiritual values provide grounds for mitigating sanctions when weighing admission of guilt, cooperative behavior, and good faith in restoring damages (Dilla & Yuherman, 2020; Lembaga Bantuan Hukum Pengayoman UNPAR, 2022). Acts that injure the right to life and destroy the future of generations (such as murder or illicit trafficking of addictive substances) are considered highly aggravating factors from both philosophical and societal standpoints (Nurhafifah & Rahmiati, 2015). The application of these three aspects can be observed in various Indonesian court outputs. The handling of narcotics cases, such as District Court Decisions Number 706/PID.SUS/2022/PN.SRG and Number 60/PID.SUS/2022/PN CBI, exhibits an approach prioritizing the textual elements of evidentiary possession. This approach leaves room for discourse on optimizing the medical recovery of addicts. Reviews of budget misappropriation cases in Tanjungkarang and Banda Aceh indicate a minimal presence of reasoning grounded in religious values (divine law) and ethics (Haryadi et al., 2025).

A balanced application was implemented in the Rantauprapat District Court Decision Number 23/Pid.Sus-Anak/2024/PN Rap. Confronted with a 6-year prison demand for a child in conflict with the law (*anak berhadapan dengan hukum*), the panel of judges harmonized statutory certainty, the sociology of the offender's age, and restorative justice. Psychiatric examination of a child with limited cognitive comprehension served as the basis for a 3-year fostering sentence at the Special Child Development Institution (LPKA) (Risidawati et al., 2022), signifying a developmental orientation that prioritizes restoration over punitive measures. District Court Decision Number 380/Pid.B/2018/PN.Prp positioned the psychological tracing of the defendant as the determinant of the threshold of criminal liability. The general election case in Kotabumi District Court Decision Number 43/Pid.Sus/2024/PN Kbu demonstrated the panel analyzing the dynamics of social stability.

A severe criminal offense in Gunungsitoli District Court Decision Number 08/Pid.B/2013/PN GS culminated in maximum sanctions after the defendant mutilated the victim, under the consideration that it severely violated the right to life bestowed by the Creator (Lembaga Bantuan Hukum Pengayoman UNPAR, 2022). Pancasila functions as a compass to essentially assess the degree of culpability, with institutional issue resolutions within the police and prosecution outside the courtroom oriented toward a humanistic approach (Deni, 2023).

The comprehensive integration of juridical, sociological, and philosophical aspects is the primary determinant in actualizing an authoritative and responsive criminal justice system. Restricting judicial reasoning merely to a formalistic level risks alienating the adjudicative institution from the social realities of the community. The harmonization of these three aspects affords judges the latitude to align statutory compliance with considerations of the defendant's socio-psychological condition, while concurrently maintaining public order. The optimization of the panel's ability to realize this substantive protection is heavily influenced by personal capacity, track record, and moral integrity. A structured and rational formulation method grounded in Pancasila is anticipated to guide every decision to effectively prevent the emergence of protracted disputes, restore conditions, and deliver a certainty deeply rooted in the sense of justice.

Biomijuridika and the Actualization of Religious Values as the Primary Foundation of Substantive Justice

The conceptualization of Biomijuridika within the criminal justice system constitutes both the culmination and the conclusive framework of efforts to integrate religious justice into judicial reasoning. This framework serves as the institutionalization of communicative rationality—previously unearthed through the intersubjective method—subsequently refined by the moral parameters of Divinity. The intersubjective approach functions to provide equal evidentiary instruments at both the legal and sociological levels in the courtroom, whereupon Biomijuridika internalizes the axiological dimension into this process. It is this intersection that connects positive law with transcendental values, ensuring that the final formulation of the *ratio decidendi* is no longer singularly oriented toward retributive retaliation, but transforms into a substantive justice that restores and upholds human dignity. The actualization of the religious values inherent in the Pancasila philosophy, crystallized through the concept of Biomijuridika, forms the ontological and epistemological foundation for achieving substantive justice in Indonesia.

The presence of the adjudicative fiat (*irah-irah*) “For the Sake of Justice Based on Almighty God” (*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*) cannot be viewed merely as an administrative complement to the judiciary or as mere legal rhetoric (Harmono & Rasji, 2024). This phrase is a philosophical marker asserting that the state's authority to adjudicate is intrinsically bound to its accountability to a transcendental authority (Harmono & Rasji, 2024). This *irah-irah* manifests the essence of the First Precept of Pancasila, providing a moral foundation for judicial institutions to render decisions that entail the restriction of human rights, such as imprisonment or even the execution of capital punishment (Rahmatyar & Rosikhu, 2024).

The inclusion of this *irah-irah* places the Indonesian justice system in a distinctive position, differentiating it from jurisdictions that separate religious and state affairs, which typically employ headings such as “In the Name of the Law,” “In the Name of the Crown/Queen,” or “In the Name of the People” (Legowo & Taufiq, 2023). This adjudicative heading compels judges not to be entrapped solely in the pursuit of formal legal truth (merely matching trial facts with the elements of penal articles), but rather to transcend the boundaries of formalism to unearth sociological and philosophical truths (Suharsono, 2025).

The Indonesian criminal procedure system stipulates the inclusion of the *irah-irah* as a formal requirement for court decisions. Article 197 paragraph (1) letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code mandates that every sentencing decision must contain a heading reading “FOR THE SAKE OF JUSTICE BASED ON ALMIGHTY GOD.” The decision is null and void by operation of law (*batal demi hukum*) if the panel of judges examining the facts (*judex facti*) or examining the application of law (*judex juris*) fails to include this formulation, in accordance with the provisions of Article 197 paragraph (2) of the same law. The applicability of this principle binds all judicial environments under the Supreme Court, affirming that the value of divinity is the moral foundation

unifying the justice system in Indonesia (Sujatmiko et al., 2024).

Table 2. Comparison of the Positive Law Paradigm and the Pancasila Criminal Law System

Parameter Comparison	of Positive Law Paradigm	Pancasila Criminal Law System
Primary Source of Justice	Written formulations of statutory texts	Values of Divinity, morality, and the societal sense of justice
Adjudicative Fiat (Irah-Irah)	In the name of the Law, State, or Monarchy	For the Sake of Justice Based on Almighty God
Ultimate Objective of Sentencing	Retributive (retaliation) and formal legal certainty	Educative, rehabilitative, restorative, social equilibrium
Boundary of Judicial Accountability	To the Constitution, state institutions, and positive law	To the State, Society, Conscience, and Almighty God
Focus of Truth Discovery	Formal legal truth	Legal, sociological, and philosophical truth (Substantive Justice)

Source: Harmono & Rasji (2024); Legowo & Taufiq (2023); Suharsono (2025).

The modernization of the national criminal law system, pioneered by the thoughts of Prof. Dr. Barda Nawawi Arief, unequivocally stipulates that the integration of positive law and divine values is a *conditio sine qua non* in law enforcement. Barda Nawawi Arief criticized the colonial-legacy *Wetboek van Strafrecht* (WvS), which adhered to formalistic and individualistic currents, subsequently laying the foundation for a Pancasila Legal System with a religious dimension (religious law system) (Fatoni, 2015). The manifestation of this modernization is codified in Law Number 1 of 2023 concerning the National Penal Code (National KUHP), which supersedes the old WvS paradigm (Deni, 2023). A fundamental reform therein is the application of the principle of *Rechterlijk Pardon* or Judicial Pardon, as regulated in Article 54 paragraph (2) (Kai et al., 2024).

The criminal justice system under Law Number 8 of 1981 on the Criminal Procedure Code previously did not recognize the instrument of a Judicial Pardon Verdict. The material legal principle regarding the non-punishment of an offender was initially accommodated through Article 191 paragraph (2). This provision regulated the authority of the panel of judges to hand down a decision dismissing all legal charges (*ontslag van alle rechtsvervolging*). This decision was rendered if the panel of judges concluded that the acts indicted against the defendant were proven, but such acts did not constitute a criminal offense. The legal basis for this decision rested upon proving the existence of penal abolishment grounds in material law, either in the form of justification or excuse, which nullified the unlawful nature of the act or the defendant's culpability.

Barda Nawawi Arief classified sentencing justice into five primary foundations as an operational framework, currently reflected in the formulations of the National KUHP articles (Arief, B. N. 2011). First, Divine Justice, which necessitates universal moral standards and the neutrality of law enforcement from all forms of conflicts of interest. Second, Human Justice, which prohibits torture and guarantees dignified treatment. This foundation is reflected in Article 52 of the National KUHP, which stipulates that sentencing does not aim to degrade human dignity but to correct the criminal offense. Third, Unity Justice, and Fourth, Democratic Justice, which accommodate deliberation, local wisdom, and restorative justice. These two foundations serve as the philosophical basis for Article 51 letters b, c, and d of the National KUHP, which formulate that sentencing aims to resolve conflicts, restore societal equilibrium, and actualize a sense of security and peace. Fifth, Social Justice, which demands equitable access to justice, prevents economic class discrimination, and mitigates legal disparities.

The National KUHP accommodates the principle of judicial pardon (*rechterlijk pardon*) through Article 54 paragraph (2), grounded in these five foundations of Pancasila justice. This provision grants proportional discretion to the judge not to impose a penal sentence even if the defendant's culpability is materially proven. Considerations regarding the leniency of the act, the offender's personal circumstances, post-act restoration, and human justice form the basis of its regulation (Kai et al., 2024). The regulation of *rechterlijk pardon* aligns with the divine values adhered to by the Indonesian nation. The justice system integrates the value of forgiveness to balance written legal certainty with substantive justice by authorizing judges to pardon offenders (Fatoni, 2015). Judicial pardon cannot be misinterpreted as a justification for impunity or be based on subjective pity. The application of this principle is constrained by the judge's obligation to consider the sentencing guidelines stipulated in Article 54 paragraph (1). The objective is to ensure this principle is applied precisely to minor criminal offenses, thereby maintaining legal certainty and avoiding sentencing disparities (Aji, 2025; Octafiana & Simangunsong, 2024).

The weakness inherent in the separation of law and religion is comprehensively addressed through the concept of Biomijuridika (Divine Criminal Jurisprudence). Criminal law must not be confined solely to the order of horizontal interactions or as a mere instrument for restricting power relations (Ridwan, 2012). Disregarding the transcendental aspect yields law enforcement that is devoid of moral rationality and spiritual utility (Fatoni, 2015). Law enforcement officials must equip themselves with Prophetic Intelligence—an amalgamation of cognitive, emotional, and spiritual intelligence—which provides moral authorization for judges to break the chains of positivism through groundbreaking legal discovery (rule-breaking) (Rustamaji, 2019; Sulaiman, 2013).

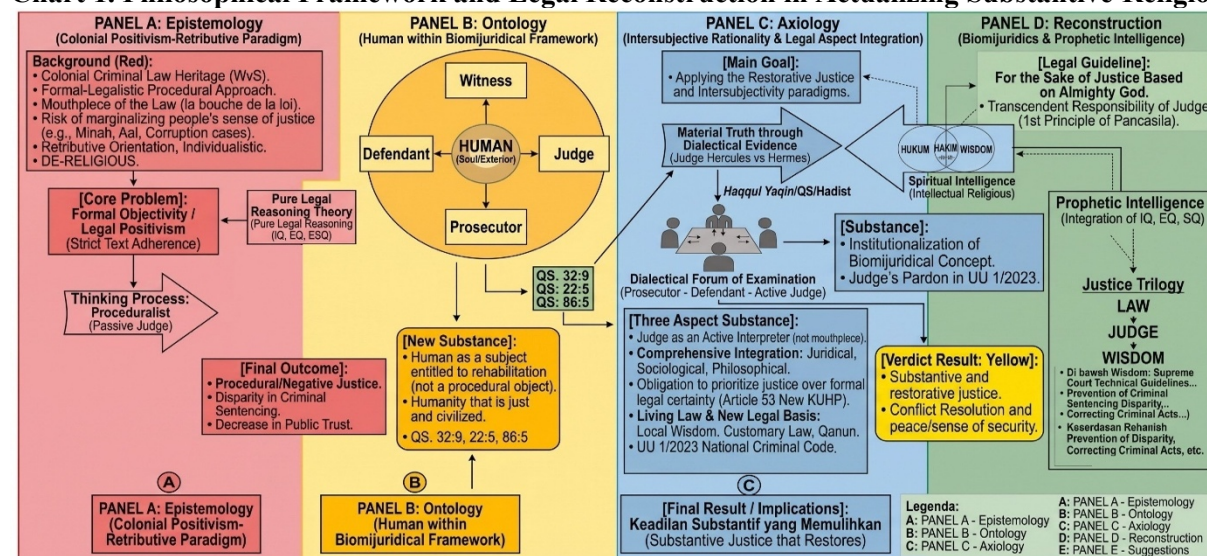
Reconstructing the judicial mindset to actualize religious justice necessitates fundamental changes across the ontological, epistemological, and axiological dimensions of the judiciary. The criminal justice system must detach itself from the formalistic positivist character of the colonial legacy, which negated religious elements by relying solely on logical rationality (legal reasoning) or cognitive boundaries at the epistemological level. This outdated, retributive-oriented approach has generated various law enforcement issues, including high justice disparities, increased recidivism rates, and the delivery of punishments that fail to instill inner reform (Tanjung, 2022).

The concept of sentencing in the ontological dimension must view the legal subject (the human being) holistically. A human is not merely an exterior physical body, but a creation infused with a spiritual soul (interior spirit), as acknowledged in the theological foundations of creation (referencing the principles in Surah 32:9, Surah 22:5, and Surah 86:5). A holistic judicial decision is designed not merely to rectify physical crimes, but must be capable of penetrating the defendant's inner dimension to awaken moral consciousness and sincere repentance (Tanjung, 2022).

This law enforcement model introduces the prophetic justice trilogy as its axiological novelty, comprising Law, the Judge, and Divine Wisdom (Hikmah). An ideal judge no longer diminishes their role to a mere mouthpiece of the law but operates with Religious-Intellectual Spiritual Intelligence. This judicial construction is bound by religious doctrines concerning the obligation to enforce fair justice that leads to piety (grounded in the essence of Surah 4:135 and Surah 5:8). Judges are obligated to unearth the principle of equilibrium derived from Pancasila justice and the religious justice living in society (as mandated by Article 5 of the Judicial Power Law) in formulating the ratio decidendi. The integration of divine values into the courtroom is assuredly upheld through an adjudicative methodology that incorporates this spiritual intelligence, ensuring that human-made law remains continually connected to the wisdom of creation (Tanjung, 2022).

The value of Divinity within the framework of Biomijuridika and the Pancasila Legal System does not serve as a justification for implementing formalistic Sharia law, much less provide room for theocracy or the domination of a specific religious group. Divinity within the Indonesian legal system must be interpreted as a Cultured Divinity (Ketuhanan yang berkebudayaan—as formulated by Soekarno) (Hassan, A., Erdalina, T., & Hanafi, I. 2021), which represents national morality, tolerance, and respect for humanity. The application of Biomijuridika by judges in unearthing religious values and local wisdom is constrained by the Second Precept of Pancasila, namely Just and Civilized Humanity, as well as human rights principles. Religious values are integrated into the ratio decidendi insofar as they are directed toward restoring justice, protecting human dignity, and actualizing public benefit (kemaslahatan).

Chart 1. Philosophical Framework and Legal Reconstruction in Actualizing Substantive-Religious Justice



Source: Processed from Tanjung, 2022.

The transformation of the judicial mindset—integrating the intersubjectivity approach and biomijuridika from the old paradigm toward substantive-religious justice—can be elaborated through the aforementioned scheme. The philosophical framework scheme illustrates the trajectory of the criminal justice paradigm shift through four continuous stages of thought (Tanjung, 2022).

Panel A (Epistemology) captures the problems of the colonial-inherited legal system, which is positivistic and distances religious values, wherein judges act passively, resulting in justice that prioritizes corporal sanctions and sentencing disparities.

Panel B (Ontology) restructures the position of the human (the defendant) within the biomijuridika framework to resolve this issue—no longer merely as an object of case settlement, but as an integral subject possessing both exterior and interior dimensions, entitled to rehabilitation as mandated by humanistic values (Tanjung, 2022).

This shift is operationalized in Panel C (Axiology), where the courtroom transforms into a forum for equitable argumentative exchange. Intersubjective rationality is applied by judges who actively integrate positive law aspects, the social conditions of the community, and philosophical values (including living law and the principle of judicial pardon) to unearth material truth at this stage (Tanjung, 2022).

This process culminates in Panel D (Reconstruction), which demands judges internalize Prophetic Intelligence (the integration of IQ, EQ, and SQ) in bearing their moral responsibility (“For the Sake of Justice Based on Almighty God”). The synthesis of this process presents the Justice Trilogy, consisting of the Law and the Judge, which merge to produce Wisdom (Hikmah) through decisions that restore and reconcile society (Tanjung, 2022).

This paradigm triggers a massive reorientation from corporal punishment instruments toward restorative measures oriented toward rehabilitation. Offenders are reinstated as subjects entitled to an opportunity for self-improvement, rather than merely parties whose dignity is degraded by the modern penal system (Harwanto, 2023; Kamalludin, 2022; Siswanto et al., 2024). This shift in perspective is reflected in the penal policy for morality offenses (such as adultery), which now broadens the principle of material legality to encompass living law and religious views beyond the confines of state marriage registration. This policy requires the execution of criminal verdicts to remain under the supervision of the Supreme Court to ensure adherence to societal views grounded in Pancasila (Widyawati, 2020; Widyawati et al., 2022).

Applying these foundations of justice encounters the reality of a pluralistic society at the implementation level. The implementation of Unity Justice and Divine Justice demands a high degree of prudence to prevent them from being utilized as tools by dominant groups to suppress smaller demographics. Discourses surrounding Constitutional Court decisions¹ indicate the existence of protection gaps, where public pressure frequently shadows judicial independence, thereby marginalizing the rights of minority groups (Perdana, Al Faruq, & Ruhpinesthi, 2024). The interpretative parameters of constitutional judges—navigating their position between annulling laws and establishing new norms—necessitate a measured ethical sensitivity in this context. This is essential to ensure that decisions remain grounded in the protection of collective justice and are free from external intervention (Fathorrahman, Rambe, & Fahmi, 2024). Biomijuridika is required to guarantee equal protection, as evidenced by the legal recognition of Native Faith adherents (Penghayat Kepercayaan) and the rights of the Sikh community to wear religious attributes (Black, 2024; Sihotang et al., 2021; Sinaga et al., 2024).

The primary challenge to the protection of this principle occurs in the application of the blasphemy law based on Presidential Stipulation Number 1 of 1965 (Article 156a of the WvS/Old KUHP) (Masyarakat Pemantau Peradilan Indonesia, 2018). This legal instrument is frequently the subject of profound academic discourse, as it harbors loopholes for abuse by mob pressure to restrict freedom of expression and criminalize the beliefs of minority groups (ELSAM, 2018).

Challenges in applying this principle are depicted in several court decisions related to blasphemy offenses (Decision Number 1612/Pid.B/2018/PN.Mdn; Prabowo, 2020). One such decision illustrates a citizen subjected to criminal sanctions originating from a neighborhood dispute over activities at a place of worship. The Amicus Curiae brief submitted during the trial demonstrated that the element of malicious intent (*mens rea*) to desecrate a religion was unfulfilled (Masyarakat Pemantau Peradilan Indonesia, 2018). Law enforcement in such cases is highly susceptible to mob pressure (trial by the mob), which has the potential to influence the judge's independence and

¹ The absorption of religion-clad public pressure into the *ratio decidendi* of the Constitutional Court through several judicial reviews. This tendency is captured in Decision Number 12/PUU-V/2007 concerning polygamy, which based its reasoning on specific religious views; Decision Number 140/PUU-VII/2009 regarding the prevention of blasphemy, which restricted religious interpretation to maintain the public order of the majority group; and Decisions Number 68/PUU-XII/2014 and Number 24/PUU-XX/2022 concerning the legal status of interfaith marriage. Across this series of decisions, the delegation of interpretative authority to religious assemblies was deemed to better accommodate the dominant views, thereby narrowing the protection of constitutional rights and civil liberties of minority groups within the human rights framework. See further in Perdana, et al. (2024).

override the principle that doubt should benefit the defendant (*in dubio pro reo*). Such conditions ultimately possess the potential to contradict the noble essence of the *irah-irah* “For the Sake of Justice Based on Almighty God” (Saleha, 2020). Judicial institutions should ideally stand as a fortress of truth, protecting all citizens across ethnic, religious, racial, and inter-group lines, and must remain impervious to mob intervention (Constitutional Court of the Republic of Indonesia, 2017).

Conversely, efforts to harmonize diversity and living law demonstrate intriguing developments within the framework of the *Qanun Jinayat* (Islamic Criminal Bylaw) in Aceh. The recognition of Sharia law within this constitutional subsystem prioritizes restorative methods through voluntary submission, although it frequently sparks discourse concerning the intersection of human rights and regional religious views. This can serve as a reference model for absorbing local wisdom to resolve criminal cases within the community by emphasizing the reparation of social relations (Hakim et al., 2025; Jamaludin, Ramdani, & Saputra, 2025; Nurdin & Nur, 2020).

The actualization of social justice conceptualized by *Biomijuridika* serves as an affirmation of Indonesia's identity as a Legal Welfare State, characterized by its prophetic-transcendental ultimate objective. The founding fathers constructed the conception of a welfare state upon a moral-spiritual foundation, distinguishing it from Western welfare state formulations that are potentially vulnerable to the currents of market mechanisms and individualism (Dimiyati et al., 2021). This shift compels the panel of judges not to act merely as mouthpieces of statutory articles, but as legal scholars who integrate textual legislative understanding (*bayani*), analytical sharpness of trial facts (*burhani*), and conscientious sensitivity (*irfani*) (Dimiyati et al., 2021).

Through the holistic unification of the five foundations of Pancasila justice, the judicial reasoning (*ratio decidendi*) is anticipated to transition from a mere sanctioning instrument into a tool for social engineering to create laws that bring both physical and spiritual peace (*blissful laws*). Judicial institutions in Indonesia must fortify their role as the pillars guarding the nation's morality (Ridwan, 2012), capable of bridging the pursuit of material truth in the courtroom with the dimension of divine values to achieve true and ultimate justice.

CONCLUSION

Judicial reasoning within the Indonesian criminal justice system is currently undergoing a paradigm shift from formalistic positivism toward substantive justice. The intersubjectivity approach affords judges the latitude not to act merely as mouthpieces of the law (*la bouche de la loi*), but as active interpreters who harmonize juridical, sociological, and philosophical pillars. The integration of these three pillars culminates in the institutionalization of *Biomijuridika*, wherein the religious values of Pancasila are holistically internalized into the judicial reasoning (*ratio decidendi*). The inscription of the adjudicative fiat (*irah-irah*) “For the Sake of Justice Based on Almighty God” and the accommodation of the *Rechterlijk Pardon* (judicial pardon) principle within Law Number 1 of 2023 concerning the Penal Code serve as normative manifestations that truth within the courtroom fundamentally rests upon the restoration of human dignity and transcendental accountability.

This conceptual shift carries fundamental implications for the ontological and epistemological dimensions of criminal law enforcement. Criminal law sheds its purely retributive character, transforming into an instrument for restoring societal social equilibrium (*blissful laws*). At the practical level, judges are compelled to cultivate prophetic intelligence, synthesizing cognitive, emotional, and spiritual capacities. This intelligence functions as a control parameter to ensure that judicial discretion in applying living law does not descend into autonomous subjectivity or impunity. Furthermore, fortifying this philosophical foundation limits external interventions, thereby enabling the judiciary to withstand mass pressure (*trial by the mob*) and prevent the tyranny of the majority, particularly in cases intersecting with religious offenses or the rights of minority groups.

In response to the transformation of national penal regulations, it is recommended that the Supreme Court promptly formulate operational technical guidelines—via Supreme Court Regulations (PERMA) or Supreme Court Circular Letters (SEMA)—concerning the measurable boundaries and parameters for applying the *Rechterlijk Pardon* principle and intersubjective interpretation. These technical instruments are essential to mitigate the potential for sentencing disparities across decisions. Concurrently, judicial education and training institutions must continuously adopt developmental curricula grounded in prophetic intelligence. This measure is crucial for cultivating a judicial apparatus that embodies integrity and independence, and possesses the capability to seamlessly synthesize formal legal certainty with substantive religious justice.

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