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## Reconstruction of the thinking concept of judges in deciding criminal cases to realize religious justice

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### Abstract

The aspect of punishment is the culmination of the criminal justice system with the decision being made by the judge. Justice is the end of the expected process. Therefore the concept of thinking judge plays an important role in deciding a criminal case. This is the basis for the author to raise it into a study where the type of research is a normative-legal type of research that is used to examine the function of a norm that lays the law as an instrument that regulates and controls society. The approach used in this research is conceptual, a statute approach, a philosophical approach, and a comparative approach. The analysis used in this research is descriptive-qualitative. The results of the study show that punishment is not enough if only using two pieces of evidence, but also supported by the judge's conscience and considering the value of law and the sense of justice that lives in society. The purpose of sentencing should consider the principle of balance and judges must adhere to the principles of Divinity and Wisdom, Humanity and Justice, Community and Unity which are identities in religious justice that do not leave God's role. Independent thinking and spiritual intelligence of judges through the Smart Model Intelligence and the conscience of judges contained in Article 5 paragraph (1) of Law Number 48 of the year 2009.

**Keywords:** reconstruction, thinking concepts, judges, religious justice

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### Introduction

Law enforcement that has been running so far seems to be still oriented in the form of procedural justice. Judicial products in the form of judges' decisions are often considered controversial and tend to be unacceptable to the wider legal community and are not in line with legal values and a sense of justice in society. Because justice is the main goal to be achieved from the dispute resolution process in court as currently court decisions only create procedurally fair decisions and seem more likely to win over those who have money and power. Moreover, the judge's decision in court did not fulfilled the sense of justice and truth, so that *a priori* accusations emerged that the judge carried out corrupt practices. But is it true that law enforcement agencies in Indonesia are generally deaf, blind, insensitive, and have no conscience anymore to the roar of the people's souls who yearn for justice, truth, and have human values?

Whereas access to justice is interpreted as justice, as so administered, has to be available to all, on an equal footing. This is the ideal, but one which has never been attained, due largely to inequalities of wealth and power and an economic system that maintains and tends to increase the inequalities. Justice as it is exercised, must be available to all, on an equal footing. This is something ideal, but this has never been achieved because there are inequalities of wealth and power and an economic system that maintains and tends to increase inequality.

When viewed from the court's decision on cases that do not reflect the truth, sense of justice, and humanity, it is natural that the community considers the decision of the judge who resolved the case to be accused and suspected of not taking sides with truth, justice, and humanity, but in favor of interests. Many cases involve judges and clerks. The case for bribery of judges (PTUN Medan) Syaifuddin (Merdeka, 2019) <sup>[6]</sup>, for example, is a bad example of the judge's image. Not even a few of the judge's decisions were examined by legal experts and practitioners such as the case of Irman Gusman (Kompas, 2019) <sup>[7]</sup>. Although the examination does not change the judge's decision, at least the decision taken by the judge has received a test, whether the legal considerations have a sense of justice in society.

Likewise, the environmental criminal case Number 131/Pid.B/2013/PN.MBO dated April 15 of the year 2014 which was adjusted to the provisions of Article 96 of Law Number 32 of 2009 concerning Environmental Protection and Management, then Article 184 paragraph (1) b KUHP represented by Mr. Subianto Rusyid as Owner of PT. Kalista Alam who was sentenced to a legal entity fine of Rp. 3,000,000,000 (three billion rupiahs) and the Manager was sentenced to 3 years in prison, while the civil decision Number 651/K/PDT/2015 in conjunction with Number 1 PK/PDT/2015/PT. Kalista Alam was found guilty and compensated Rp. 114 billion and a fine for environmental restoration of Rp. The last 251.7 billion The Supreme Court's decision was annulled by the Meulaboh District Court Number 16/Pdt.G/2017/PN.MBO dated April 13 of the year 2018 where it was

stated that PT. Kalista Alam cannot be blamed because in the decision there is an executorial (non-executable) title because the object does not match the latitude described in the decision.

the case above is indeed heavy, not to mention the verdict that sentenced to Mr. Afrizal, Age 31, Employment Driver which basically stated that the defendant Afrizal was legally and convincingly proven to have committed a criminal act by intentionally assisting the misuse of commercial gas fuel which was subsidized by the government, and sentenced Afrizal to a sentence of 1 (one) year and a fine of Rp. 1 billion rupiah which if the fine is not paid or compensated with a criminal sentence for 1 month, the charge again shows the arrogance of the law against justice. Law and justice in this country no longer seem to go hand in hand, even justice tends to be abolished in law enforcement. These examples further convince the researcher that the court's decision is getting further and further away from justice. In an extreme way, it can be said that if corruptors steal people's money because they are greedy, they don't need it like Bashar and Kholil's case (Anatonius, 2007) <sup>[1]</sup> who stole watermelons. The two cases are normative, but the substance and orientation of the two cases are very different. The paradigm of court decisions can also be said to be the reality of other court decisions. Whereas theoretically, the existence of the court is an institution that functions to coordinate disputes that occur in society, and is a shelter for people seeking justice, who believe in litigation and are considered a justice company that is able to manage disputes and issue justice products that can be applied by all communities. The duties and functions of the courts are not only to resolve disputes but more than that, is to ensure a form of public order in society. Based on the description above, research was conducted with the formulation of the problem on how to reconstruct the concept of thinking judges in deciding cases (criminals) in order to realize religious justice?

### Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do (Faisal, 2010) <sup>[5]</sup>.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in this research uses a method (*Socio-legal approach*). The sociological juridical approach (*Socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) <sup>[12]</sup>.

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Legislation relating to the practice of medicine and health.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (Which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

### Research Result and Discussion

The freedom of judges is a derivation of the principle of judicial independence. Court independence in the narrow sense that court power as part of judicial power is classified as institutional/structural independence. In a broad sense, the independence of the judiciary (court) is individual independence. Individual/personal independence is distinguished; (1) Personal independence, namely the independence of judges towards their fellow judges, (2) Substantive independence is independence from the influence of all parties, whether in deciding criminal cases or their position as judges guaranteed by law.

Processual in court, judicial freedom is exercised by judges in adjudicating, containing the meaning of limitations as well. Judges in the process of adjudicating cases in court, their freedom is not absolute. Limitations on the freedom of judges in the 1945 Constitution, laws, unwritten laws, and the interests of legal parties in litigation. It should not be forgotten that Pancasila, as the source of all sources of law, except that it allows freedom for judges and interprets the law, also limits judges in carrying out their duties so that they do not conflict with Pancasila.

Limitations or signs that must be considered in the implementation of judges' freedom, especially regarding the rule of law in adjudicating both in terms of procedural and material-substantial, are limitations of the judiciary's power so that its independence does not violate the law, act arbitrarily.

Judges are subordinate to the law and cannot *act contra legem* (Against the Law) (Barda, 2006) <sup>[3]</sup>. Judge's freedom is tied to responsibility or accountability because responsibility and accountability are like the two sides of a coin that are attached to each other. Judges' independence (independence of the judiciary) must be balanced with their partner, namely judicial accountability. The form of judicial responsibility is social accountability because the judiciary carries out public services in the field of justice. The concept of judicial independence

carried out by judges is generally always associated with the concept of accountability, as a means of openness to receive criticism and control from outside as well as awareness of responsibility.

Legal signs as a juridical and moral basis for law enforcement and justice reflect the national legal framework, even in the context of national development and national law development, so this can only be said of law enforcement in Indonesia. Positive criminal law enforcement must always be in the Indonesian context. The freedom of judges in adjudicating criminal cases aims to produce fair decisions and is accepted by the community, and needs to be guaranteed protection so that there is no intervention of power and interests.

Decisions based on the rationality of objective legal arguments and strong ethical moral content can be accounted for by people seeking justice. Legal guarantees on the freedom of judges in carrying out judicial duties (Within the exercise of the judicial function) are regulated in the state constitution and laws. The regulation on the freedom of judges in adjudicating is also regulated in international conventions, guaranteeing the freedom of judges in adjudicating and immunity from all lawsuits. Legal guarantees for the freedom of judges in adjudicating are sourced from judicial principles, namely *ius curia novit* (the judge is considered to know the law), *res judicata pro veritate habetur* (The judge's decision is considered correct) (Muchsin, 2002). Meanwhile, in adjudicating, the Judge is acquitted of all lawsuits, if the Judge is deemed to have made a technical juridical error, not moral ethics.

The guarantee of the freedom of judges in adjudicating which is very adequate in the constitution and statutory regulations, should be used proportionally, do not highlight the attitude of the arrogance of power, use the freedom to justify the method, then it is used in consideration with:

1. Applying laws that originate from appropriate and correct laws and regulations in resolving cases that are being examined, in accordance with the principle and status of law must prevail (statutory provisions must prevail);
2. Interpreting the right Article of law with justified approaches (Systematic interpretation, sociological, analogical discussion, and not in contrary with the law) or prioritizing justice over statutory regulations, if the provisions of the law do not have the potential to protect the public interest. Such application is in accordance with the doctrine of equity must prevail (justice must prevail).
3. Freedom to seek and find law (*Rechtsvinding*), legal foundations and principles through the doctrine of legal science, unwritten legal norms (Customary law), jurisprudence as well as through a realism approach, namely to seek and find laws contained in economic, moral values, the religion of obedience and custom.

The wrong perception in understanding the meaning of law enforcement which is more oriented to the principle of formal legality as not in line with the characteristics of the Indonesian judiciary which is based on three aspects of legal sources, namely legal knowledge (Doctrine), customary values or noble culture of local communities and religious values. Based on the conclusions of the IV/1994 National Law Seminar, it was stated that it was necessary to develop the idea of the dispersion of justice that was more compatible with Pancasila law. This statement implies the need to develop justice characterized by Indonesia, namely Pancasila justice, which implies divine justice, humanistic justice, democratic justice, nationalistic justice, and social justice. This means that justice is enforced not only as a formal justice, but also a substantial justice.

If the justice departs from Pancasila in creating a legal system that is characterized by Indonesia (distinctly Indonesian), then Indonesian thoughts and approaches can be proposed as an alternative. One possibility that can be proposed as an alternative doctrine or principle is that Indonesia favors the principle of supremacy of morals/justice over the principle of supremacy of law. Therefore, the application of the principle of legality in the Criminal Code in the context of Indonesia (The national legal system) should not be interpreted merely as a formal certainty/truth/justice of the law but rather on the certainty/truth/fairness of substantive values.

In enforcing the law, judges must also be guided by Pancasila and the 1945 Constitution of the Republic of Indonesia, which is the spirit/director. Thus, in law enforcement, judges must comply with the grand design of the national legal system and politics which should still be based on the Pancasila paradigm, namely:

1. Divinity Paradigm (Moral-religious);
2. Humanistic Paradigm (Humanistic);
3. Nationality Paradigm (Unity/nationalistic);
4. Populist/democratic Paradigm;
5. The social justice paradigm.

This grand design requires a balance of the three basic values:

1. Divine values (Moral-religious);
2. Humanistic values (Humanistic);
3. Community values, namely: nationalistic, democratic, and social justice.

In addition to the principle of balancing the three basic values, the grand design of the national legal system and politics must also be based on the idea of a mono-dualistic balance, which includes the following (Andre, 2009) [2].

1. Between the public interest/society and individual interests;
2. Between the protection/interests of the perpetrator (the idea of criminal individualization) and the victim;

3. Between objective factors (Outward actions) and subjective (people/inner/inner attitudes);→ the idea of *daad-dader strafrecht*;
4. Between formal and material criteria;
5. Between legal certainty, flexibility/elasticity/flexibility, and justice;
6. Between national values and global/international/universal values;

In law enforcement, judges should adhere to the principle that the law is for humans, not humans for the law. Therefore, judges must always prioritize the value of justice in society, so they must always follow the dynamics of changes that exist in society.

Efforts to enforce law and justice as well as fair legal certainty according to Pancasila contain the principle of balance and mean substantive and material certainty (substantive/material certainty), not just formal certainty (Formal/legal certainty) so that it is hoped that it can lead to fair criminal law enforcement. Legal certainty in the 1945 Constitution of the Republic of Indonesia contains the principle of balance and contains an integrative concept. The point is that it contains the meaning of substantive justice, not just formal certainty.

In order to do this, there are various conditions that must be met for fair and just law enforcement, namely (Scarpari, 2007)<sup>[11]</sup>:

*First*, the rule of law is to be enforced. Fair or just law enforcement will be achieved if the law to be enforced as well as the law governing the way of law enforcement is true and fair. A rule of law will be true and fair if it is made in the right way and the content is in accordance with legal awareness and provides the greatest benefit to the interests of individuals and society in general. A rule of law will be incorrect if it is only made for the sake of power and contains arbitrariness. But it is also necessary to pay attention, a law can be untrue and unfair if it is so far away from the prevailing social awareness and reality that people feel alienated or alienated from the rule of law. This can happen because the law is far behind, or because it is too far ahead so that it can be reached by existing social realities. Furthermore, the law can also be untrue and unfair if its manufacturing process does not comply with good manufacturing procedures (*Algemene beginselen van behoorlijk wetgeving*), because it will cause conditions such as poisoning in the law application or legal uncertainty.

*Second*, law enforcement actors. Law enforcement actors can be referred to as the main key to fair and just law enforcement. In the hands of law enforcers, abstract legal rules become concrete.

Sociologically, this is the real law, especially for those seeking justice. There are various conditions that must be met in order to enforce the law fairly, Namely (Meidiawan, 2019)<sup>[8]</sup>:

1. The treatment of the law to be enforced. There are three choices of roles performed by law enforcement actors in enforcing the law:
  - a. Law enforcement actors are simply the mouth of the law. In the event that the rule of law is clear, law enforcement only acts as a mouthpiece of the regulation, except if the application will cause injustice, conflict with decency, or conflict with any interest or public order.
  - b. Actors of law enforcement act as interpreters (interpreters) of a rule of law so that a rule of law becomes an instrument of justice. This is done because the existing legal rules are not perfect, either the language or the object it regulates is incomplete.
  - c. Law enforcement actors become law creators (*Rechtschepping*) in the event that the existing law is not sufficiently regulated or a legal vacuum is found or is so inadequate that it can no longer be "patched" through the discovery of legal meaning.
2. Pay attention to the interests or needs of the community, both real needs and projected needs in the future. Law is a social instrument to maintain and build society. The law does not contain gaps with reality and trends that live in society. Law enforcement does not heed various realities, it will be perceived as something foreign and may even suppress society. This is a form of unfair or just law enforcement.
3. The social environment is a place where the law applies. The *gebundenheit* situation determines the law both in its formation and enforcement, it is strongly influenced by social, economic, political, and cultural realities. Although in certain situations it is recognized that the law can act as a means of reform, in many cases the law is a mirror of society. It has been stated that public pressure on law enforcement can influence law enforcement decisions. Likewise, certain interests, such as dominant economic and political interests, can determine the form of law enforcement. Therefore, it is necessary to create various conducive social requirements so that law enforcement can be carried out correctly and fairly. These requirements include; the growth of egalitarian principles (openness) to create various balances in people's lives. In such sharp differences, whether social, economic, political, etc., it will be difficult for a true and fair law enforcement system to be experienced, because the law will side with dominant forces who may not side with truth and justice. True and just law can only play a role in a sustainable order and not in a particular order of extremities.

Thus, it can be said that among the various conditions to achieve or create fair or just law enforcement, there are two important aspects of achieving fair and just law enforcement, namely the procedures for law enforcement (procedural justice) and the content or results of law enforcement (substantive justice).

Justice is not something new. The issue of justice has existed since humans have known good and bad. The question of why it is evil, why is there disease and poverty, even why God has given person A all the pleasures

but instead drowned person B in a sea of poverty and suffering?. All these questions are natural. However, it is not easy to understand, let alone explain this issue, if it is related again to divine justice. This is one of the most abstruse things, especially when all of this is to be measured by the satisfaction of reason. Therefore, people who are wise and can understand God's wisdom and justice often say: There is wisdom behind every event, whether it is judged as injustice or even though it is judged as justice.

Justice based on nationalism is an effort to uphold justice like the fathers of the nation's predecessors; Soekarno, Hatta, Natsir, Wachid Hasyim, Radjiman Widyodiningrat, and others, who risked their lives for the independence of Indonesia. The threat to nationalism today is the mafia of law and injustice. If the law is not enforced properly, then destruction will strike. If justice is no longer a soul in government activities, then there must be a threat to the existence of this country. The state can be destroyed if law and justice are not enforced because injustice will dissolve nationalism and become a driving force for disobedience to state authority. Nationalism must be based on justice. Nationalism will collapse if justice is not upheld, defiance (against state authority). Although there may be a small number of good people in this country, generally they do not appear or cannot appear. They can't play according to the thug culture so they are excluded from being a marginal group.

The term good here is used to refer to a commendable mentality and quality. They include Baharudin Lopa, Father YB Mangunwijoyo (late), and others who are still alive. According to Satjipto Rahardjo in Barda (2010)<sup>[4]</sup>, progressive judges, where progressive courts follow the maxim of law is for the people, not the other way around. If the people are the law, whatever the people think and feel will be dismissed because what is read is the words of the law. In this connection, the Judge's work becomes more complex. A Judge is not only a law technician, he is also a social being. they must not only rack their mind but also their conscience. Being a social being will put Judges in the midst of the hustle and bustle of society, out of the courthouse. In fact, some say that a judge is no different from a representative of the people. If he is in the midst of society, it means he shares the joys, worries, sufferings, hopes, as in society. Through their decisions, judges like to be called representing their voices (The people) who are unrepresented and under-represented.

Judges, who think progressively, make themselves part of society, will always ask, what role can I give in this reform era? What does my nation want with these reforms? Thus, he will refuse if it is said that his job is only spelling out the law. Progressive judges put their ear to the beating hearts of their subjects. In academic discourse and legal politics, the function of judges as law reformers is known, in such a function it is not just to apply rules but rather to find and create laws. A Judge's belief is a space that must be built, developed, and implemented as an ornament of science and religion in an effort to seek substantive justice. Enforcement of ethics and the profession of Judges, as a noble or noble profession (*Officium nobile*) must have technical/professional abilities (technical aspect). The enforcement of professional ethics for judges must be based on the joy of Pancasila law (Ground norm) where the value of God Almighty is a basic philosophical conception of every judge's identity, wherein the concept of social justice in Pancasila must be accelerated in the form of fair decisions (substantive justice). A good judge is born from himself who has values and norms of national identity from all aspects of divinity, not formed by systems and recruitment and doctrines outside the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia.

Indeed, judges are not the only ones who interpret the law, but it must be admitted that the role of judges is very important. Why? First, the judge who embodies the law (In the sense of) concrete. Through the judge's decision, the abstract provisions of the law (Law) become a reality. Second, the judge not only states (stipulates) the law for litigants (creates law for the parties) but can also create generally accepted laws. Third, the judge guarantees the actualization of the law, including directing the development of the law. For such a role, the position of judges is very strategic in a state of law.

In a state of law (*Rechtstaat*) nation like Indonesia, judges in enforcing law and justice are one of the main and basic foundations. Through such representation of judges, the meaning of the rule of law is not interpreted as the rule of law, but what the constitution wants is the rule of law. In this context, Article 24 of the 1945 Constitution of the Republic of Indonesia states that the Judicial Power is an independent power to administer justice to uphold law and justice. Included in the category of independence that is meant is independence in terms of interpreting legal values and a sense of justice so that Indonesian judges are not absolutely bound by the law (Not mouthpieces of law) as the European-continental legal system.

This theory states that there is a bargaining of the relative power of an interest group with a group of legislators who have a large number of votes in parliament. In this context, the dynamics of internal legislative politics cannot be avoided. Functionally, the political dynamics of this legislation are also not immune from various extra-legislative interventions. As criticized by the critical Jurisprudence theory, the interpretation and process of law formation is through state institutions and legitimates it as the only legislative political process.

Although normatively, the formation of law by judges is positioned as a filler or explanation of the law (Law) in a concrete sense. However, its existence is not fully in an established position to be used as raw material for legal reform (Laws). Because in Indonesia, legal reform is still being discussed in a limited concept as legal reform (Reforming laws or reforming the legal system only).

In such a conception, legal reform will take place as a legislative activity that generally only involves the thoughts of politicians or the thoughts of professional elites who have access to lobbying. Not only that, the construction of people's representation can fundamentally be synergistic with what the state wants (The policy-makers of state administrators). Like the critical Jurisprudence theory which places the position of the state and

society in political dynamics that do not conflict with each other, are compromising, and can share roles in the process of law formation.

Such a position of judges is reflected normatively in Article 5 paragraph (1) of Law Number 48 of 2009 which emphasizes that judges and Constitutional Justices are obliged to explore, follow, and understand the legal values and sense of justice that live in society. This provision must be interpreted as an obligation for judges to be formulators and explorers of legal values that live among the people. As is well known there is no complete law or legislation. Unclear legal regulations must be explained, incomplete must be completed with a way to find the law so that the legal rules can be applied to the event.

In addition, Article 10 paragraph (1) of Law Number 48 of 2009 states: Courts are prohibited from refusing to examine, hear, and decide on a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and try it. The provisions are based on the principle of *ius curia novit* that is if the judge does not find a written law or a statutory regulation does not clearly regulate it, the judge must act on his initiative to resolve the case.

Judges have a role in determining what is law, even though the legislation is not yet clear. Judges must play an active role in finding laws and forming new laws and developing laws. If the judge is not active in finding and forming law and thus refuses to settle a case on the grounds that the relevant legislation does not state, is unclear or incomplete, then he can be prosecuted for refusing to try, as stipulated in Article 22 AB (*Algemeen Bepalingen van wetgeving*). Indonesian Voor). By him, judges are given the right and authority to create law (judge-made law), especially in cases where there is no law at all, but are entered in court. Even judges have the authority to deviate from written legal provisions and are obsolete, outdated so they are no longer able to fulfill the community's sense of justice (*Contra legem*).

If a Judge's decision containing his own legal considerations based on authority is given Article 22 AB, then it becomes the basis for another Judge's decision in the future to try cases that have the same elements, then the judge's decision becomes a source of law in court. Such a judge's decision is called jurisprudence, which will become an objective law based on habits that are always followed, which become general legal beliefs and apply as positive law. Thus, there is a reciprocal influence between judges and legislators, namely a law formation through court decisions, which have become permanent jurisprudence, can be used or become feedback on the process of law formation by legislators.

So it is quite relevant for Bagir Manan's opinion in Khaelan (2013)<sup>[6]</sup> which states that for the Judge, there are three things to be faced. First, the judge must decide according to the law. Every decision must be based on the rule of law that existed at the time the legal event occurred (Not when it was about to make a decision). Second, judges are prohibited from refusing to make decisions on the grounds that there are no legal rules or regulations that are not clear. Third, the judge must decide quickly, remembering the phrase that says justice delayed, is justice denied. To overcome this problem, it is impossible to rely solely on the sluggish legal rule maker (It takes time). Especially in Indonesia. The People's Representative Council (DPR), which should work full-time (Daily) to make laws, works more for other matters. An anomaly from so many anomalies in the administration of the state and government.

By reconstructing the judge's conception of thinking in realizing legal justice, it is to restore or rearrange the ways of thinking of judges which so far where the decision-making process by judges is only focused on something written (Formalistic and legalistic) that does not take into account the legal value and sense of justice that lives in Public. By relying on the sharpness of thinking through the judge's legal reasoning. Do not see humans as legal objects or legal subjects, do not see legal events in a conference but depend on the demands and indictments of the prosecutor alone (minimal routines of effort/de reform justice) especially in relation to justice that is accountable to God (Religious justice) where Judge's decision has damaged the sense of justice in society. Moreover, the large number of decision disparities caused in addition to statutory factors also comes from the judges themselves. Prison does not make people repent but increases in recidivist.

By reconstructing the judge's concept of thinking through the grand format as explained earlier, in line with Article 2 paragraph (1) of Law Number 48 of 2009, regarding the principle of administering judicial power, the decision-making process by judges cannot leave God's role, especially in the process of constituencies. as well as constitutional. If the judge's thinking intelligence only relies on the sharpness of thinking through reasoning (IQ, EQ, ESQ)) it is no longer reliable unless all of that is returned first with the judge's thinking intelligence through spiritual intelligence as the source of human resources with the spirit that is exhaled/inhaled by God to all humans (Judges), not only judges in Indonesia but all judges in the world have the same spirit or taste or favor or inner capacity or voice of the heart that is human resource. He is the one who emits light that moves the whole body. From him, thought, illusion, understanding, and knowledge are born. It is he who can consider and feel. The Legislation only regulates what the Judges should carry out/decide through the religion which he believes is through a spirit that is taken care of by God so as not to repeat criminal acts that can solve them.

By taking the meaning and understanding from the Qur'an sura As-Sajaddah (32) verse 9 that Favors is not given by science. It is Allah (The Most Holy) who gives hearing, not ears. Allah (the creator) who gives sight not the eyes, Allah (the creator) who gives the smell, not the nose, and Allah (the creator) who gives the heart not the liver, which is mentioned repeatedly in the letter Ar-Rahman (55) is a favor that is the most valuable.

In relation to Article 183 of the Criminal Procedure Code and Article 5 paragraph (1) of the Law on Judicial Power, it requires religious intelligence or spiritual intelligence for each Judge. Not infrequently the judge will change his view, hearing, heart/fill/feel when he finds out who the defendant is being examined. With that, the

judge's five senses and heart will raise doubts in the decision-making process. Moreover, there are parties who promise something material, financial, or a better position. Therefore, by understanding the movements of each Judge's heart, God knows and believes that he will return to Allah (the Most Holy) and that every human being will be held accountable by Allah (The Creator) so that the Judge acquires spiritual/religious intellectual intelligence, religious justice, where before making a decision, the judge must be led by its wisdom because the relationship between law-judges and wisdom is an inseparable unit. With the conception of progressive thinking based on the wisdom of the Qur'an, Judges is the pioneer of legal values and taste (fill favors-voice of truth).

The highest justice is religious justice led by wisdom with the voice of truth from God bestowed through the spirit that is breathed in every human being. Since justice is God's ideal, religious justice is what God wishes. Religious justice is Pancasila justice because Pancasila regulates relationships that cannot leave the role of God. Therefore, judges who have taken oaths and promises should be able to realize this, because religious justice is justice based on (guidance) of God Almighty through the form of religious intellectuals who enforce the law (Judges).

Because accountability is related to God's property, namely the spirit as God's gift to all humans. Therefore if; Article 183 of the Criminal Procedure Code: A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it. And Article 5 paragraph (1) of Law Number 48 of the Year 2009: Judges and Constitutional Justices are obliged to explore, follow, and understand the legal values and sense of justice that live in society. So interpreting the intent and purpose of the importance of the Criminal Law in the context of where the criminal law should be maintained as a means of social defense in the sense of protecting the community against crime by repairing or restoring (rehabilitating) the maker without compromising the balance of the interests of the individual maker and the community. in accordance with the intent of reforming the national criminal law, the two articles of the two laws in question are reconstructed where the Article 183 of the Criminal Procedure Code changed in to:

*"A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains a religious belief that a criminal act has actually occurred and that the defendant is guilty of committing it".*

Then, Article 5 paragraph (1) of Law Number 48 of 2009 is changed in to:

*"Judges and Constitutional Justices are obliged to explore, follow, and understand legal values and a sense of religious justice that lives in society".*

## Conclusion

Reconstruction of the concept of thinking of judges in deciding cases (criminal) in order to realize religious justice, namely the conception of thinking of judges in realizing religious justice is to restore or rearrange the ways of thinking of judges which so far where the decision-making process by judges is only focused on something written (formalistic and formalistic). legalistic only) does not consider the value of law and the sense of justice that lives in society. By relying on the sharpness of thinking through the judge's legal reasoning, not seeing humans as legal objects or legal subjects, not seeing legal events in conferences but depending on the demands and indictments of prosecutors only (routines-minimum efforts/de-reform justice) moreover its relation to justice responsibility to God (the Creator) (religious justice), which is realized through the reconstruction of Article 183 of the Criminal Procedure Code and Article 5 paragraph (1) of Law Number 48 of 2009. Considering the role and function of judges as commanders in upholding justice between the principles of legality and Legal values and a sense of justice that lives in society, it is recommended that the Judge use spiritual-based intelligence which can only be realized by exploring and understanding religious values.

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