

## An Analysis of the Theory of Justice against the Standard of Proof Beyond Reasonable Doubt in the Judge's Decision in the Jessica Kumala Wongso Case



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**ABSTRACT:** This research aims to find out the theory of justice that can be used by judges in proving criminal cases in Indonesia and the use of the theory of justice in the standard of proof beyond reasonable doubt in the judge's decision in the Jessica Kumala Wongso case. This research uses normative legal research methods with legal philosophy, legislation and conceptual approaches. The data source used is secondary data consisting of primary legal materials and secondary legal materials analyzed qualitatively with deductive inference, starting with general principles and concepts about the theory of justice and the standard of proof beyond reasonable doubt, the analysis moves towards specific propositions to determine the value of justice and the relevance of this standard in the judge's decision in the Jessica Kumala Wongso case. The study found that Gustav Radbruch's theory of justice can be applied by judges in Indonesian criminal cases, using six evidentiary parameters: theory of evidence, minimum evidence, evidence, presentation of evidence, burden of proof, and strength of proof. These parameters reflect Radbruch's legal values of justice, purpose, and legal certainty. Judges using Radbruch's theory prioritize justice, followed by purpose and legal certainty. In Jessica's case, despite doubts about the evidence, the judges found her guilty beyond a reasonable doubt, aligning with Radbruch's principle that justice should take precedence in the standard of proof.

**KEYWORDS:** Judge's Decision, Jessica Kumala Wongso Case; Standard of Proof Beyond Reasonable Doubt; Theory of Justice.

### I. INTRODUCTION

The cyanide coffee case had become a case that received the attention of the Indonesian people in January 2016. Wayan Mirna Salihin became the victim, because the cause of death was by drinking *Vietnamese Ice Coffee*, hereinafter referred to as VIC, which turned out based on the results of the coffee investigation to contain the toxic substance *sodium cyanide (NaCn)*. This case introduced most Indonesians to cyanide poison and its dangers.

Based on the facts revealed at trial with evidence and expert testimony, the judge found the defendant guilty of violating Article 340 of the Criminal Code and convincingly committed premeditated murder and was sentenced to 20 years imprisonment. The basis of the judge's belief that Jessie was the one who put the cyanide poison into VIC, was outlined in the verdict, namely:

"Considering, if the defendant said in his defense that it was not the Defendant who put cyanide poison (NaCn) in Mirna's coffee while sobbing / crying from the beginning of the reading of the pledoi to the end. According to the instinct of the Panel of Judges, they are very sure that it was the Defendant who put the cyanide poison in Mirna's coffee, on the basis that for approximately 51 minutes the coffee was in the control of the Defendant, there was no one else but the Defendant at table 53, so the Defendant was very aware of what happened to the coffee as the Panel of Judges has explained earlier"<sup>1</sup>

The judge's conviction is *beyond reasonable doubt* or must be sure and without doubt of the decision he makes against the defendant. *Beyond reasonable doubt* is the standard of proof used in criminal justice. The judge, when making a decision that states the guilt of the defendant, must be convinced without reasonable doubt that the defendant is guilty of the crime he is accused of.<sup>2</sup> Relevant to the *beyond reasonable doubt* standard of proof regarding the judge must be convinced of the defendant

<sup>1</sup> Decision Number 777/ Pid.B/ 2016/ PN.Jkt.Pst p 366.

<sup>2</sup> Teguh Syuhada Lubis, 2021, *Law of Evidence in Indonesian Courts*, Pustaka Prima, Medan, p. 10. 10.

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and the crime he committed, in the evidentiary system there is Article 183 of the Criminal Procedure Code which states that "The judge shall not impose a penalty on a person unless he is convinced by at least two valid pieces of evidence that a criminal offense has actually occurred and that the defendant is the one guilty of committing it".

Seven years after the judge's verdict against Jessica, a movie platform, Netflix, released a documentary titled "*Ice Cold: Murder, Coffee, and Jessica Wongso*". The big picture of this movie is to show the other side of the verdict and the facts in the trial which lasts approximately 86 minutes. The impact of the movie was that many people began to doubt the judge's decision and questioned whether Jessica was guilty. In the CCTV (*Closed Circuit Television*) footage, it does not appear that Jessica put the cyanide poison into the VIC which was then drunk by the victim, Mirna, causing reactions from the Indonesian people on various social media expressed by chanting *#JusticeforJessica*.

Justice is at the core of the legal system. Justice must be reflected in judicial decisions. It is not easy to interpret whether a judge's decision contains procedural justice or substantial justice. Procedural justice ensures that the decision is in accordance with the law, but procedural justice does not always include substantial justice.<sup>3</sup>

Adherence to procedures ensures the achievement of procedural justice. Substantial justice will have no value if procedural justice is ignored. The achievement of substantial justice will also be difficult if procedural justice is not prioritized and as such, procedural justice has equal significance to substantial justice.<sup>4</sup> Substantial justice can be achieved if a judge is able to carry out the functions of the court by more than just following the duties and authorities granted by formal legal regulations.<sup>5</sup> Failure of the judge to decipher the meaning of substantial justice in the case, then what will be found is justice that is *absurd* or impossible.<sup>6</sup> A *reasonable doubt* of the judge's decision according to Dr. Djaja Surya Atmadja, a forensic pathologist at the University of Indonesia, stated that the small amount of cyanide found in Wayan Mirna Salihin's stomach sample (0.2 milligrams per liter) was insignificant and meaningless.<sup>7</sup> Dr. Djaja also said that the 7,400 mg of cyanide found in the glass sample, which is a large enough amount to potentially cause everyone within a 500 meter radius to faint if they were in the area where Mirna Salihin was drinking her coffee.<sup>8</sup> Based on the various explanations above, the problem formulation of this research is what theory of justice is closest to proving criminal cases in Indonesia and how is the use of the theory of justice in the standard of proof *beyond reasonable doubt* in the judge's decision in the Jessica Kumala Wongso case?

### **II. RESEARCH METHODS**

The type of research used is normative legal research. Using secondary data consisting of primary and secondary legal materials, the approaches used by researchers are philosophical juridical approaches, legislative approaches and conceptual approaches. Tools and methods of data collection are literature studies and interviews. In conducting literature studies to obtain primary legal materials, namely laws and regulations, as well as secondary legal materials in the form of legal opinions and non-legal opinions found in books, legal journals, and internet sources. Interviews were conducted online with resource persons from the Professor of Legal Philosophy at Binus University, Prof. Dr. Shidarta, S.H., M.Hum. The method of data analysis was carried out in a qualitative way, using grammatical interpretation, systematization and teleology, and deductive inference departing from general principles and concepts regarding the theory of justice, the standard of proof *beyond reasonable doubt* and the judge's decision in the Jessica Kumala Wongso case, into specific propositions to find the value of justice and the relevance of the standard of proof *beyond reasonable doubt* in the judge's decision in the Jessica Kumala Wongso case.

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<sup>3</sup> Yunanto, 2019, "Translating Justice in Judges' Decisions", *Progressive Law Journal*, VolVII/No-02/October/2019, Diponegoro University, p. 204. 204.

<sup>4</sup> Cekli Setya Pratiwi, 2013, "Failure to Realize Procedural and Substantial Justice in the Decision of the High Judge of Psychotropic Crime Case Number: 25/Pid.B/2010/Pt Sby, *JOURNAL HUMANITY*, VolIX/No-01/March/2013, University of Muhammadiyah Malang, p. 172. 172.

<sup>5</sup> *Constitutional Court of the Republic of Indonesia*, 2010, *The Development of Legislative Testing in the Constitutional Court*, Constitutional Press, Jakarta, p. 45. 45.

<sup>6</sup> Ismail Ramadan, 2016, "The Meaning of Exploring and Following Legal Values and the Sense of Justice Living in the Community Related to the Authority of Judges to Examine and Decide Civil Cases", *Supreme Court of the Republic of Indonesia*, p. 183. 183.

<sup>7</sup> <https://megapolitan.kompas.com/read/2016/09/07/21032311/ahli.0.2.miligram.per.liter.di.lambung.mirna.tidak.ada.artinya> accessed on June 10, 2024, at 9:59 PM.

<sup>8</sup> <https://www.viva.co.id/gaya-hidup/kesehatan-intim/1644884-penjelasan-ahli-forensik-soal-7-400-mg-sianida-di-sampel-gelas-kopi-mirna?page=3> accessed on June 10, 2024, at 10:32 PM.

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## III. RESEARCH RESULTS AND DISCUSSION

### A. A Review of Philosophers' Theories of Justice on the "Beyond Reasonable Doubt" Standard of Proof

#### 1. PLATO

According to Plato<sup>9</sup> Justice means that each class of society acts in accordance with its position and responsibilities. Plato emphatically states that the implementation of justice needs to involve returning society to its original structure.<sup>10</sup> For example, when a person serves as governor or president, his or her duty is only to rule the country with justice and wisdom. This statement reflects the idea that leaders should have the philosophical inclination to understand the essence of justice and how best to achieve it within the structure of the state.

Plato argued that law is a means to create justice in the midst of an unjust situation. Law acts as a tool to achieve justice, law is the best order to overcome the situation of injustice in the world of phenomena, the rule of law must be compiled in one book so as not to cause legal chaos, every law must begin with a preamble that explains the motives and objectives behind its creation, the purpose of law is to guide citizens towards a moral and perfect life through the regulations contained in the law, violations of the law must be punished, but the punishment is not a form of revenge, but as an effort to cure human intellectual disease caused by ignorance. A person who commits a crime does not have an adequate understanding of the values that should be pursued in life. Such knowledge can be obtained through education, which then helps the individual to heal from his mistakes. One way to provide such education is through the legal system. Therefore, the purpose of punishment is to improve the morality of individuals who commit criminal acts. However, if such healing efforts are unsuccessful, then the individual is considered incurable and extreme measures such as the death penalty may need to be applied.<sup>11</sup>

The relevance of Plato's thesis in the judge's decision in the Jessica Kumala Wongso case, which states that the law can bring justice in the midst of injustice. Judges must ensure justice for the victim, Wayan Mirna Salihin, with the standard of proof "beyond reasonable doubt," which is based on wisdom and conscience. The judges found that Jessica legally and convincingly caused Mirna's death. Thus, Plato's thesis of law bringing justice in the midst of injustice proved relevant, providing justice for the victim, Mirna.

#### 2. Aristoteles

Aristotle<sup>12</sup> in his work Ethics Nikomachea Book V Chapter 1 concluded that everything that is in accordance with the law is basically considered just. This is because the provisions of the science of legislation are in accordance with the law, and each of us obeys the principle of justice. The law has power over everything, and its purpose is for the public good, be it the interests of all citizens, the best individual, the ruler, or any other group. In general, anything that is considered to promote or maintain the happiness and interests of society at large is considered a just action.<sup>13</sup>

The relevance of Aristotle's theory of justice is that justice in legal interpretation is the application of general laws to specific cases. Since the law cannot handle every unique situation, judges must use their judgment to apply the law as if they were present at the event. Judges must consider the concept of *epikeia* or wisdom. Legalism teaches that *epikeia* means following the principles of law, but it is also a wise view of the case law. *Epikēia* is not the law, but rather the judge's thoughtful interpretation of the law.<sup>14</sup> Aristotle's theory of justice is relevant to the "beyond reasonable doubt" standard of proof in the Jessica Kumala Wongso case. The judge used multidisciplinary legal interpretation, which requires verification from various disciplines, including toxicology. Evidence in the form of *Visum E Repertum* found the presence of cyanide in Mirna's stomach, supported by toxicology expert testimony. In conclusion, Aristotle's justice is reflected in the use of multidisciplinary interpretation, which helped the judge prove that Mirna's death was caused by cyanide.

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<sup>9</sup> Plato was one of the three greatest philosophers of the classical age, his teacher Socrates among them. Plato lived in 428-347 BC, born into an aristocratic Athenian family who had an important role in Athenian political life. Obtained from Bertrand Russel, 2022, *History of Western Philosophy and Its Relation to Socio-Political Conditions from Ancient Times to the Present*, Indonesian Translation Sigit Jatmiko, et. al., 5th Printing, Student Library, Yogyakarta, p. 142. 142.

<sup>10</sup> Plato, 2022, *The Republic*, (Indonesian translation: Sylvester G. Sukur), Narasi, Yogyakarta, pp. 179-180.

<sup>11</sup> Bernard L. Tanya, et. al., 2013, *Legal Theory Strategies for Human Order across Space and Generations*, Genta Publishing, Yogyakarta, pp. 39-40. 39-40.

<sup>12</sup> Aristotle is one of the three most famous philosophers of the classical era, who was also a student of Plato. Aristotle was born in Stagira, Macedonia (northern Greece today), in 384 BC. Aristotle moved to Athens in 367 BC and spent the next twenty years there as a member of Plato's Academy. Obtained from the book Aristotle, 2020, *Nicomachean Ethics*, 1st Printing, Indonesian Translation Ratih D. Astuti, BASABASI, Yogyakarta, pp. 7.

<sup>13</sup> Ibid. p. 185.

<sup>14</sup> Fithriatus Shalihah, 2019, *Ethics and Responsibilities of the Legal Profession*, Kreasi Total Media, Yogyakarta, p. 129. 129.

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### 3. Thomas Aquinas

For Thomas Aquinas<sup>15</sup> law essentially reflects the Divine order. Legislation serves to clarify and explain that Divine order. The task of judges is to uphold justice by applying the law in the context of enacting legislation. *Summa Theologiae* is Thomas Aquinas' most important work on law and justice. Justice, in *Summa Theologiae*, is explained as the habitus that is the principle of good action. Thomas defines justice as a *habitus* in which one person gives what is due to another with a constant will. A person is said to be just if he repeatedly gives rights to others, which in turn becomes a virtue. Justice is an act of the faculty of *will*, especially the natural will connected with reason, therefore justice is related to righteousness, often referred to as righteousness, because it involves giving rights to others, indicating right action. Thomas states that justice is a moral virtue that guides individuals in their relationships with others, not only as individuals but also in the context of social communities. In the context of community, justice relates to the *bonum commune* or common good, often referred to as general justice. In relation to law, it is also known as *legal justice* because it aligns the actions of all the virtues with the *bonum commune* governed by law.<sup>16</sup>

Aquinas' thinking can be understood in the context of Scholastic cosmology and ontology. Cosmology allows rational reasoning as long as it does not violate the boundaries set by Divine revelation. The application of positive law to real situations must be interpreted as the implementation of divine law. Based on this context, Thomas Aquinas first established a hierarchical system of legal authority in which *divine law*, which represents God's law, holds the highest position (*supreme*). The hierarchy of law according to Thomas can be described as follows:<sup>17</sup>

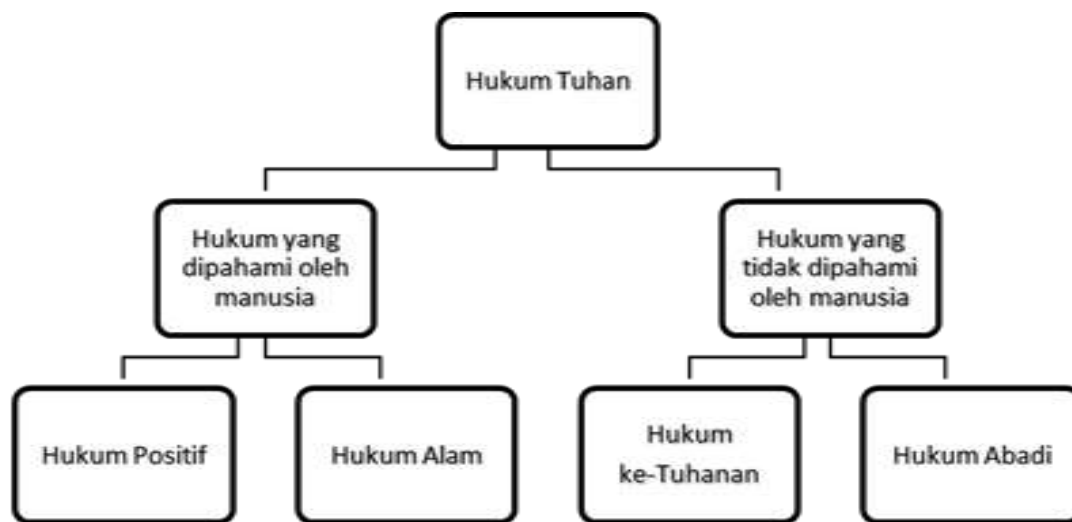


Image: Hierarchy of Law According to Thomas Aquinas

The four classes with the hierarchy of laws are: <sup>18</sup>

- The eternal law (*lex aeterna*), the law that encompasses God's will in relation to nature is complex and challenging for the human mind to fully comprehend. Only a small part of God's divine order can be understood through revelation.
- Divine law (*lex divina*), law revealed by God, is accessible to human reason and is based in part on the principles of eternal law (*lex aeterna*).
- Natural law (*lex naturale*), derived in part from the *lex divina*, is understood by humans through revelation. Within natural law, called *lex naturale*, there are two categories of law: primary natural law, which contains basic principles such as prohibitions against lawlessness, and secondary natural law, which elaborates on these basic principles.
- Human law (*lex humana*), the concept of human law called positive law encompasses law that derives from two sources: divine law revealed in the Holy Scriptures and law created by humans based on reason. Secondary natural law can further be categorized

<sup>15</sup> Thomas Aquinas was born into an Italian aristocratic family. The place and year of his birth are uncertain, but biographers agree to place him between 1224 or 1225 in the town of Roccasecca, located close to the city of Naples and not so far from Rome. Obtained from Robert Pasnau Christopher Shield, 2004, *The Philosophy of Aquinas*, Westview Press, Colorado, pp. 19-20.

<sup>16</sup> Thomas Aquinas, 1981, *Summa Theologiae*, (English translation: Fathers of the English Dominican Province), Christian Classics: Ave Maria Press-Notre Dame, pp. 58.

<sup>17</sup> Surya Prakash Sinha, 1993, *Jurisprudence: Legal Philosophy In A Nutshell*, Sint Paul Min, pp. 93.

<sup>18</sup> Dewa Gede Atmadja, et. al., *Legal Theories*, Setara Press, Malang, pp. 18-19.

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into norms deduced through logical reasoning, such as the prohibition of killing and stealing, and norms specific to a particular society, such as property rights. This classification is in line with Thomas Aquinas' Natural Law Theory which argues that natural law is superior to positive law. In cases where positive law conflicts with the principles of morality and justice, natural law will take precedence as the highest standard of judgment. Positive law is only valid if it is derived from natural law. There are also cases where positive law only provides details about place and time, with no relation to natural law, and is only valid because it is established by the government. The principle of *ius divinum positivum* or positive law, by Thomas put forward the theory of law, namely First Humans must make laws and regulations that are logical and reasonable because they become guidelines and standards for human action. Second Law must aim for the common good, because the law is a guide to behavior and because the ultimate goal of all behavior is happiness, then the law must lead to the common good. Thirdly laws aim for the common good and welfare, hence laws can only be made by the common sense of all people through legislative bodies. Fourthly, laws must be publicized because they contain rules governing human life; therefore, they must be known in order to give a sense of obligation. The relevance of Thomas Aquinas' theory of legal justice in the "beyond reasonable doubt" standard of proof in the Jessica Kumala Wongso case. According to Aquinas, legal justice must be in line with moral values. Jessica was proven to have committed premeditated murder against Mirna, violating the moral and legal values stipulated in Article 340 of the Criminal Code. The judge upheld justice by sentencing Jessica to 20 years in prison, thus achieving justice for the victim, Mirna. In conclusion, Aquinas' theory of legal justice is relevant to the judge's decision in this case, with law enforcement containing moral values.

### 4. Gustav Radbruch

Radbruch<sup>19</sup> states that culture is what marks the nature of law. According to him, law is a cultural phenomenon, which means, a fact related to value, thus, understanding of the law conceptually appears in a value-relating *attitude*. The nature of law conceptually is to realize the idea of law, so that a very famous statement from Radbruch emerged, namely "The law may be unjust (*summum ius - summa injuria*); but it is law only because of its intention to be just".<sup>20</sup>

According to Radbruch, the tri-purpose of law is "justice", "purposiveness", and "legal certainty", he stated this when formulating the idea of law. The antinomy refers to Radbruch's conception of law. Law is a concept associated with value, and its application in reality also serves that value. The idea of law is what directs the service of law to value. Radbruch believed that the first and foremost element of the idea of law is "justice". However, he also realized that justice does not determine what is considered or qualified as fair. Therefore, the element of "purposefulness" needs to be added to the idea of law. Furthermore, according to Radbruch, the value of justice is reflected in substantial justice which emphasizes the equality of everyone before the law and the value of purpose and legal certainty is reflected in procedural justice which emphasizes the realization of justice through a certainty or adherence to procedures or rules.

According to Eddy O.S Hiarej, criminal evidence law includes arrangements regarding evidence, including collection, presentation in court, strength, and burden of proof in criminal cases.<sup>21</sup> Furthermore, it is stated that there are six parameters of proof in criminal cases, namely the theory of proof (*bewijstheoire*), evidence (*bewijsmiddelen*), delivery of evidence (*bewijsvoering*), burden of proof (*bewijslast*), strength of proof (*bewijskracht*), and minimum evidence (*bewijs minimum*).

Gustav Radbruch's theory of justice regarding substantial justice and procedural justice is most suitable for the standard of proof beyond reasonable doubt of the judge's decision in the Jessica Kumala Wongso case. Below will be presented by the researcher's conclusion regarding the suitability of Gustav Radbruch's theory of justice.

Radbruch began by arguing that "The purpose of law is the realization of ethical goodness because law serves ethical values. The purpose of law is embodied in three elements of the legal idea referred to as the tri-purpose of law. The idea of law is what directs, orients legal services to value. The three values are the value of justice as an absolute value served by law, then the value of purpose and the value of legal certainty".

Based on the explanation of reasonable doubt in the judge's decision in the Jessica Kumala Wongso case. The judges used their conscience to gain confidence from the facts at trial along with the evidence carried out by the prosecutor against these doubts. The judge obtained his belief because the evidence presented an expert who then, the expert was able to answer the scientific

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<sup>19</sup> Gustav Radbruch (1878-1949), from a merchant family in Lubeck, Germany, began his legal studies in Munich in 1898. Obtained from Wolfgang Friedman, 1967, "Gustav Radbruch" in *Encyclopedia of Philosophy*, 2nd Edition, Volume 8 Price-Sextus Empiricus, ed. Donald M. Borcher (Farmington Hills: Thomson Gale, 2006), pp. 229-230.

<sup>20</sup> Gustav Radbruch, 1950, *Legal Philosophy In The Legal Philosophies of Lask Radbruch and Dabin*, Ed. Edwin W. Patterson. Trans. Kurt Wilk. Cambridge. Massachusetts: Harvard University Press, pp. 52.

<sup>21</sup> Tristam P. Moeliono, et. al., 2015, "Reductionist and Utilitarianist Tendencies in Indonesian Legal Science: Rereading Gustav Radbruch's Philosophy of Law, 5th Conference of the Indonesian Legal Philosophy Association, Parahyangan Catholic University, pp. 5.

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methodology of each doubt from the case. The implication of the judges' fulfillment of the standard of proof beyond reasonable doubt is that it is legally and convincingly Jessie who put the cyanide poison into the VIC drunk by Mirna to cause Mirna's death. Substantial Justice as an absolute value according to Radbruch is a guarantee of treatment before the law, associated with the standard of proof beyond reasonable doubt the judge's decision in the Jessica Kumala Wongso case, the implication is that the standard of proof beyond reasonable doubt must be met, the consequence of not being met is that Jessica must be acquitted. Reasonable doubt or reasonable doubt contained in Jessica's case is the validity of indirect evidence or circumstantial evidence used by the judge in sentencing, the cause of Mirna's death due to cyanide poison (NaCN), the number of doses of cyanide poison (NaCN) that caused Mirna's death, the smell of cyanide poison that is not smelled, the originality of CCTV evidence, the perpetrator who put cyanide poison into the VIC from Mirna and the time span of putting it. All of these reasonable doubts have resulted in beyond or "beyond" by the Panel of Judges, so that the Panel of Judges handed down a guilty verdict against Jessica.

Procedural justice according to Radbruch is to realize substantial justice and maintain legal certainty. Attributed to the standard of proof beyond reasonable doubt the judge's decision in the Jessica Kumala Wongso case, the judge must be able to "go beyond" or *beyond* the *reasonable doubt* that arises in this case, which is used to answer this is an accountable method, namely through science to answer the reasonable doubts that arise. *Reasonable* doubt arising from Jessica's case is answered methodologically that can be accounted for by each expert based on their discipline, which is of course relevant to the doubt, so it can be concluded that the value of purpose shapes the judge's belief. Legal certainty is obtained by the Panel of Judges in Jessica's case by assessing each piece of evidence and facts that arise, obtained from the prosecutor and the defendant, then the judge assesses the evidence and facts, that the method of acquisition, presentation and use in the trial, is in accordance with the procedure so that it can be used by the judge to answer any *reasonable doubt* or reasonable doubt, to "go beyond" or *beyond*.

### 5. John Rawls

At the heart of Rawls' theory of justice<sup>22</sup> are two principles of justice. The first of the two principles of justice states that everyone has an equal right to the broadest basic freedoms, with equal liberty for all individuals. The second principle emphasizes the need to organize social and economic inequalities in such a way that they can be expected to benefit everyone, and that all positions and offices are available to everyone<sup>23</sup>.

The principles mainly implement the basic structure of society by regulating the application of rights and obligations and regulating the distribution of social and economic benefits. These principles divide the social structure into two main parts, where the first principle is applied to one part and the second to the other. These principles emphasize that citizens' basic freedoms, such as political freedom, freedom of speech, and freedom of belief, should be equal, as citizens of a just society have equal rights. The second principle focuses on the distribution of income and wealth and the design of organizations to take advantage of differences in authority and responsibility. A society that applies the second principle makes its positions open to everyone, thereby regulating socio-economic inequalities for everyone's benefit.<sup>24</sup>

Theo Huijbers concludes that John Rawls' two principles of justice are that political rights should be recognized for everyone, that inner freedom should be respected and that there should be tolerance. The system of control applied through the rule of law, by imposing sanctions, aims to safeguard with the aim of ensuring individual freedom is maintained.<sup>25</sup>

The relevance of John Rawls' theory of substantive justice in the "*beyond reasonable doubt*" standard of proof in the Jessica Kumala Wongso case. Rawls emphasizes political rights, inner freedom, and tolerance, which are safeguarded through legal regulations and sanctions. Jessica's premeditated murder of Mirna violated inner freedom and tolerance. The legal system, in accordance with Rawls' theory, applies sanctions to safeguard individual freedom. The judge sentenced Jessica to 20 years' imprisonment, reflecting Rawls' substantive justice by enforcing laws that control violations of liberty.

In the Jessica Kumala Wongso case, the relevance of this procedural justice can be seen from how the panel of judges saw and analyzed the evidence and facts of the trial based on compliance with procedural law procedures. Thus, all evidence and facts used by judges in making decisions are based on legal procedures that have been fulfilled.

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<sup>22</sup> John Rawls is a professor at Harvard University, he showed great ethical stance in his 1973 book *A Theory of Justice*, which is a theory of justice. Obtained from Theo Huijbers, 1982, *Philosophy of Law in Historical Trajectory*, Kanisius, Yogyakarta, p. 193. 193.

<sup>23</sup> John Rawls, 1995, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts, pp. 72.

<sup>24</sup> *Ibid.* p. 73.

<sup>25</sup> Theo Huijbers, *Op. Cit.* p. 200.

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### B. Beyond Reasonable Doubt Standard of Proof

Whitman, an American lawyer and Yale University lecturer, believes that the standard of proof undoubtedly originated in England and was influenced by Christianity. In the Middle Ages, English common law jurors were predominantly Christian and did not face significant risks in their duties. However, in the early modern era, the moral risks for jurors became more serious. Being a juror was considered dangerous in the Christian tradition, as jurors feared the possibility of blaming an innocent person. To address this fear and anxiety, the reasonable doubt standard was introduced in the 1770s and 1780s.<sup>26</sup> The British Empire's colonization of the Americas in 1607-1783<sup>27</sup>, led to the adoption of the common law legal system in the Americas which implied the application of the *beyond reasonable doubt* standard of proof. For more than two centuries, the Anglo-American criminal justice system has applied the *beyond reasonable doubt* standard of proof. This standard heavily emphasizes the role of the jury, so the examination of *reasonable doubt* is closely tied to the jury trial process.<sup>28</sup>

According to Eddy O.S Hiariej, as quoted in his book entitled "theory and law of evidence" that the standard of proof *beyond reasonable doubt* applied in the United States criminal court, uses the theory of proof of *conviction intime*. Judges in America are *unus Judex* or single judges who do not determine the rightness or wrongness of a defendant, but the jury is the one who determines.<sup>29</sup> In the context of criminal justice in Indonesia, which does not have a jury, this implies that it is the judge who will apply the standard of proof *beyond reasonable doubt* with the *conviction intime* theory of proof.

*Conviction intime* or conviction alone means that the judge determines whether a defendant is guilty or not, the authority of proof depends entirely on the judge's personal belief.<sup>30</sup> In this theory, it is the judge's belief that determines whether a defendant is guilty or not. Judges are not bound by evidence, but rather based on beliefs arising from the conscience and wisdom of the judge. Based on the explanation of the *conviction intime evidentiary* theory, the parameter of proof is not the evidence but the conviction arising from the conscience and wisdom of a judge. The evidence presented at trial is only a way to form the judge's belief. What is fundamental to this theory of proof is whether the judge's decision "goes beyond", to "reasonable doubt".

### C. Reasonable Doubt in the Jessica Kumala Wongso Case

a. The validity of *circumstantial evidence* used by judges in deciding cases.

Parahyangan Catholic University criminal law expert Agustinus Pohan said that regarding Jessica's verdict, there are still two different opinions in society today. Some people agree with the court's decision, while others believe that the decision is based on circumstantial evidence and is therefore speculative.<sup>31</sup> According to William R. Bell *circumstantial evidence* is evidence that does not directly point to a fact, but the evidence can link to the actual event.<sup>32</sup>

The judge in his decision tends to use clue evidence, which is connected from witness testimony, expert testimony, letters and testimony of the defendant. Eddy O.S Hiariej explained that clue evidence in the context of evidentiary theory is indirect evidence or *circumstantial evidence* that supports other evidence in a case.<sup>33</sup> Associated with the judge's decision, clue evidence was used by the judge against witness testimony, namely the testimony of employees of Cafe Olivier, the testimony of Mirna's friend, namely the witness Hanie who also tasted VIC, and the testimony of Mirna's husband. "Expert testimony, namely the testimony of toxicologists Dr. Nursamran Subandi, Msc and Dr. rer. Nat I Made Agus Gelgel Wirasuta, expert Dr. rer. Nat Budiawan. Letter, the existence of Visum E Repertum No.Pol: R/007/I/2016/Rumkit. Bhay.Tk.I., dated January 10, 2016 from Labfor Bareskrim Polri which basically found that there was NaCN Sodium Cyanide or cyanide poison in Mirna's stomach with the amount of (0.2 mg/l)". The validity of *circumstantial evidence* or indirect evidence can be accepted as evidence, this is reinforced by the decision of the Constitutional Court Number 65/PUU-VIII/2010 dated August 08, 2011 which expands the boundaries of witnesses, namely witnesses are not only witnesses who see directly, but witnesses who do not hear, see, experience themselves can be accepted as witnesses". This is relevant to the principle of *ius curia novit* which is regulated in Article 10 paragraph (1) of Law Number 48 of

<sup>26</sup> James Q. Whitman, 2008, *The Origins of Reasonable Doubt: The Theological Roots of the Criminal Trial*, New Haven, Yale University Press, pp. 11-13.

<sup>27</sup> [https://p2k.stekom.ac.id/ensiklopedia/Amerika\\_Britania](https://p2k.stekom.ac.id/ensiklopedia/Amerika_Britania) accessed on August 1, 2024, at 2:38 PM.

<sup>28</sup> Barbara J. Shapiro, 1991, "*Beyond reasonable doubt*" and "*probable cause*": historical perspectives on the Anglo-American law of evidence, University of California Press, Ltd, London, (Translation: Deepl application), p. 1.

<sup>29</sup> Eddy. O.S Hiariej, 2012, *Theory and Law of Evidence*, Erlangga, Jakarta, pp. 16.

<sup>30</sup> Ibid.

<sup>31</sup> <https://www.hukumonline.com/berita/a/menyoal-kembali-pembuktian-tak-langsung-dalam-vonis-jessica-lt64dfb46e03418/> accessed on June 8, 2023, at 10:52 PM.

<sup>32</sup> Eddy O.S Hiariej, Op. Cit. p. 53.

<sup>33</sup> Ibid. pp. 110-111.

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2009 concerning Judicial Power, namely "The court is prohibited from refusing to examine, hear and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it". Based on this explanation, it can be concluded that the judge has the validity to accept circumstantial *evidence*, especially in the Jessica Kumala Wongso case to decide the case.

b. Was it really cyanide poison (NaCN) that caused the death of Wayan Mirna Salihin?

The next doubt from the judge's decision in the Jessica Kumala Wongso case is whether it is true, NaCN or cyanide poison that resulted in the death of Wayan Mirna Salihin? The answer to this is contained in the letter evidence, namely "Visum E Repertum Letter No.Pol: R/007/I/2016/Rumkit. Bhay.Tk.I., dated January 10, 2016 from Labfor Bareskrim Polri" with the following details:<sup>34</sup>

- 1) "explanation of Kombes. Dr. Pol. Dr. Nursamran Subandi's explanation regarding the amount of sodium cyanide (NaCN) contained in the coffee liquid drunk by the victim (Vietnamese Ice Coffee) is around  $0.0149 \text{ g/ml} \times 20 \text{ ml} = 0.298 \text{ g NaCN}$  or equal to 298 mg NaCN and according to him this amount is far greater than the lethal dose (LD<sub>50</sub>) of NaCN for humans weighing 60 kg which is only 171,42 mg ( $60 \text{ kg} \times 2,857 \text{ mg/kg} = 171,42 \text{ mg}$ ), it is certain that the abnormalities present in the victim's body and the cause of death were caused by the corrosive and toxic effects of cyanide";
- 2) "That the expert opinion from the results of the examination of the corpse and the results of the Toxicology examination can be concluded that the cause of death of WAYAN MIRNA SALIHIN is the presence of SIANIDA at a dose far greater than the lethal dose (LD<sub>50</sub>)".

Dr. Slamet Purnomo said that the characteristics of someone who is poisoned by cyanide are as follows:<sup>35</sup>

- 1) "The person will feel hot in the mouth area and the inner lips are bluish in color;
- 2) then he will feel short of breath;
- 3) then he will feel shortness of breath; and
- 4) unconscious".

The expert was shown CCTV of the process before Wayan Mirna Salihin's death after drinking Vietnamese coffee. The expert explained that the symptoms shown by Wayan Mirna Salihin were symptoms of cyanide poisoning, such as a hot and numb mouth. When the victim waved her hand in front of her mouth after drinking the coffee, this indicated that the cyanide had started to work, causing the mouth to burn and hurt.<sup>36</sup> The expert believed that Mirna's death was caused by cyanide poisoning because he found the properties of cyanide in her body. Based on the post mortem letter and expert testimony, the panel of judges concluded that the cause of death of Wayan Mirna Salihin was caused by the toxic effects of cyanide poison (NaCN) in the amount of 298 mg.

c. Explanation and Analysis of Relevant Experts The amount of cyanide NaCN found in the stomach sample was small (0.2 mg/l). The expert and the panel of judges in the verdict acknowledged that the amount of cyanide found in the stomach sample of Wayan Mirna Salihin was small, to be precise (0.2mg/l). To explain this, Dr. Nursamran Subandi, who is an expert witness in forensic toxicology, gave an answer that can be accounted for methodologically, namely:<sup>37</sup>

- 1) "That based on the data from the analysis of the evidence, especially the evidence of the remaining coffee drinks drunk by the victim (BB I and BB II), where in BB I 7,400 mg/l of cyanide anion (CN<sup>-</sup>) was found and **BB II was found at 7,900 mg/l. If we base the calculation on the cyanide ion content of the victim's remaining coffee drink evidence (BB II), considering that the evidence is closest to the actual condition of the coffee liquid drunk by the victim (stored in a bottle with a lid), then the cyanide ion content is equivalent to:  $(BM \text{ NaCN} : BA \text{ CN}^-) \times \text{Cyanide ion content} = 49.01/26.02 \times 7,900 \text{ mg/l} = 14.88 \text{ g/l}$  sodium cyanide. So the coffee solution that the victim drank contained about 14.88 g/l of cyanide. So if the victim (according to the witnesses) drank one straw of the coffee liquid through a plastic straw (estimated to be around 20 ml), the amount of sodium cyanide (NaCN) contained in the coffee liquid drunk by the victim would be around  $0.0149 \text{ g/ml} \times 20 \text{ ml} = 0.298 \text{ g NaCN} = 298 \text{ mg NaCN}$ . This amount is much greater than the lethal dose (LD<sub>50</sub>) of NaCN for humans weighing 60 kg, which is only 171.42 mg ( $60 \text{ kg} \times 2.857 \text{ mg/kg} = 171.42 \text{ mg}$ )";**
- 2) The lowest lethal dose of Cyanide (CN<sup>-</sup>) of 2,857 micrograms/kg if made into milligrams will be 285.7 mg/kg. Thus with the estimated weight of the victim MIRNA about approximately 60 kg (based on the comparison of the body weight of his twin an. Shandy Salihin) then the lethal dose of Cyanide (CN<sup>-</sup>) to the victim is 171.42 mg";

<sup>34</sup> Criminal Decision No.777/Pid.B/2016/PN.JKT.PST, pp. 68-69.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid. pp. 69-70.

<sup>37</sup> Ibid. pp. 82-



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- 3) "Thus it can be concluded that the amount of cyanide (CN-) poison that entered the victim's body, namely 298 mg, could accelerate the process of death of the victim";**

Based on the analysis above, it can be concluded that the 0.2 mg/l found in Jessica's stomach is the rest at the time of collection. According to forensic toxicologist Dr. Nursamran Subandi, what actually entered Jessica's body was 298 mg, where the dose according to the expert far exceeded the limit of the lethal dose of Mirna's victim of 171.42 mg.

**d. What is the odor of cyanide poison?**

Dr. Djaja, a forensic toxicologist and expert witness in the trial, said that there are two levels of cyanide exposure that can be detected by Indonesians. If there is 1 mg/liter of cyanide, 84% of Indonesians can smell it. However, if the concentration is 10 mg/liter, they will definitely experience poisoning. The cyanide evidence found was at a level of 7400 mg which could cause people at Olivier Cafe to faint if they smelled it.<sup>38</sup>

Related to the above, Dr. I Made Agus Gelgel Wirasuta, an expert witness in forensic toxicology, gave his testimony before the court, namely:<sup>39</sup>

**1) "According to the Expert at pH > 12, 100% of NaCN is in its ionic form. This ionic form will inhibit the formation of cyanide acid and prevent the evaporation of HCN from the coffee. This aims to prevent the evaporation of HCN during the preparation of the victim's coffee until it is drunk by the victim. The prevention of HCN evaporation will also have the effect of suppressing the appearance of HCN odor, which is almond-like and bitter when drunk (source of literature no 1). This is in accordance with the testimony of the witness DEVI (Study Material 5, Answer to question 14) and (Study Material 6, Answer to question 10) who explained that the victim's remaining coffee after tasting it on the tongue felt burning and smelled a very pungent odor, when smelled directly in a relatively close distance to the coffee sample. According to the testimony of the witness BOON JUWITA als Hanie (Study Material 7, answer to question 10) and (Study Material 8, answer to question 25) both answers explained that the victim's remaining coffee tasted bitter sticky, felt stinging and hot, with an odor not like the aroma of coffee. The level of pungent odor from NaCN-added coffee is determined by the distance of the nose from the coffee. At pH = 13 100% of NaCN is in ionic form. The low temperature of the ice coffee also has an effect on suppressing the vaporization of HCN gas. Based on witness testimony, the victim did not smell the pungent odor of HCN at a relatively long distance. Even when the Ice Coffee was drunk using a straw, the victim did not smell the pungent odor of the coffee that had been added with NaCN. Increasing the pH to 13 has successfully prevented the cyanide odor from appearing so strong that the victim did not feel any other aroma and unknowingly drank the coffee. The pungent odor will be noticeable if smelled carefully"**

**2) "The prosecutor's conclusion is that the victim did not smell the typical odor of cyanide poison, when drinking the cyanide coffee that was served to him. At pH=13 the pungent odor of cyanide is not so noticeable because almost all of the cyanide acid is in the form of non-volatile CN ions".**

Based on the explanation above, what causes the odor of cyanide poison not to be smelled is that coffee that has been brewed with hot water and cyanide poison added to it, will make the cyanide poison reach pH = 13 which, prevents evaporation and gives the effect of not smelling the cyanide poison.

**e. Inconsistency in Jessica's statement**

The facts of the trial, the BAP from the investigator and the electronic evidence from CCTV Cafe Olivier have a common thread, to conclude that Jessica's statement has inconsistencies. Below will be presented the inconsistencies of Jessica's statement:<sup>40</sup>

**1) "In the BAP, the defendant said that he did not look at Mirna when Mirna drank the vietnamese ice coffee, while the CCTV footage shows that the defendant was talking to Hanie and Mirna when Mirna drank the vietnamese ice coffee";**

**2) "The defendant in the psychiatric interview said that he had helped Hanie wake Mirna up by shaking Mirna's body, but the CCTV footage shows that the defendant looked calm and just sat quietly watching Hanie who was trying to help Mirna".**

Based on the explanation of the inconsistency of Jessica's statement, this had an impact on the judge which became one of the reasons that incriminated Jessica, so the judge doubted the credibility of her testimony.

**f. Originality of data from CCTV**

<sup>38</sup> <https://yoursay.suara.com/news/2023/10/08/140112/5-pernyataan-dr-djaja-surya-atmadja-soal-kasus-jessica-mirna-meninggal-bukan-karena-sianida> accessed on June 9, 2023, at 3:27 PM.

<sup>39</sup> Judgment 777, Op. Cit. pp. 163-165.

<sup>40</sup> Ibid. p. 155.

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One of the evidence opposed by Jessica's legal counsel is the CCTV footage of Cafe Oliveira, which according to him is not guaranteed for its originality or authenticity. To prove this, the prosecutor presented a digital forensic expert witness, namely Witness Muhammad Nuh Al Azhar. The statement is as follows:<sup>41</sup>

- 1) "That the results of the examination of evidence 1 (one) Toshiba 32 GB flash disk unit in gray color S/N: 1430A7A412CAT which contains CCTV footage dated January 6, 2016 at Cafe Olivier West Mall Lt. Ground Grand Indonesia, Central Jakarta, in accordance with the Minutes of Criminalistic Laboratory Examination of Evidence No. LAB: 245/FKF/2016 dated January 27, 2016 issued by Puslabfor Bareskrim Polri";
- 2) "That in electronic evidence 1 (one) unit of Toshiba 32 GB flash disk in gray color S/N: 1430A7A412CAT there is information related to the purpose of the examination in the form of 7 (seven) video files in MP4 and AVI formats, where the moments in the video are normal moments, in the sense that throughout the frames there is no insertion or cutting of frames";
- 3) "In *frame* 1590 at 15:30:49 - *frame* 3999 at 17:20 which shows that Mirna has laid down on her back which is thought to have experienced symptoms of the toxic effects of cyanide poison" that from these *frames*, the Expert states that the video is guaranteed authenticity.

Based on the above, the Defendant's legal counsel cannot argue methodologically, regarding the originality of the CCTV evidence. Evidence related to CCTV is the guiding evidence of the Judge to form his belief regarding the guilt of the accused.

**g.** The most likely party to put the cyanide poison (NaCN) into Wayan Mirna Salihin's VIC and the time frame.

The judge concluded that there were three groups most likely to put cyanide poison into the VIC of Wayan Mirna Salihin, namely **Group I, namely the Serving Party from Cafe Olivier, Group II, namely the Police investigators who handled the evidence** and Group III, namely the ordering party, namely the defendant Jessica Kumala Wongso. The logic of the judge who produced his belief, below will be presented systematically as follows:<sup>42</sup>

- 1) "Between groups I, II and III are equally likely to put NaCN Cyanide into the VIC glass, but because there is a barrier between group I, group II and group III, it is limited when pouring hot water using a teapot into the glass. Logically, if NaCN was inserted by the first group earlier, then in addition to the shape of milk and ice cubes, it has changed from the standard coffee, while according to CCTV footage, it appears that the milk and ice cubes are very clear without any visible stains, and if NaCN Cyanide has been put in the glass first, surely when pouring hot water from the teapot by Ranner Agus Triyono on table 54 in front of Jessica, it will evaporate and smell like bitter almonds (bitter almonds) which are so pungent and surely visitors to Olifier cafe including Jessica and Agus Triyono will collapse, while when Agus Triyono poured the coffee in front of Jessica, Jessica actually said the coffee smelled good and very strong. In addition, if the Olivier cafe added cyanide poison to the VIC, then logically the rest of the evidence would be immediately disposed of and would not be stored waiting for Police investigators to come to take the rest of the coffee."
- 2) "Considering, that then the role of **group II (Police Investigators)** will be considered, whether it is possible to participate in the engineering of adding the poisonous substance sodium cyanide (NaCN) into the VIC glass when they handle the evidence?". The existing facts include the testimony of witnesses Hanie, Devi and other employees of Cafe Oliver who had tasted and smelled the VIC drink drunk by the victim and saw a change in odor and color (abnormal odor and color), as well as the condition of the victim who felt discomfort and stinging in her mouth immediately after the victim drank the VIC, the victim Mirna immediately waved her hand to her mouth, this was witnessed by several witnesses including the defendant Jessica and recorded in CCTV evidence. This fact shows that the cyanide poison was already in the coffee drink at the time of the victim's poisoning, long before the Police investigators handled the evidence of the remaining VIC drinks that the victim drank";
- 3) "Considering, that next it will be considered whether **group III (the ordering party), namely the Defendant Jessica**, may put sodium cyanide into the VIC glass. Based on the facts of the trial, Jessica was the only party who controlled the VIC drink for a longer time since it was placed on table 54 until the guests Mirna and Hanie arrived (about 51 minutes). The defendant was very aware of everything that happened in the glass, because she was the one who ordered the drink, so Jessica was very aware of who shifted the coffee cup from the end of the table (where Jessica first sat) to the center of the table where the victim Mirna would later sit, and who shifted one by one the paper bag from the table to the sofa.
- 4) **Thus, the Panel of Judges believes that the most dominant person to put cyanide poison (NaCN) into Mirna's coffee is the Defendant Jessica";**

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<sup>41</sup> Ibid. p.

<sup>42</sup> Ibid. pp. 351-353.

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The above explanation by the judge resulted in a conclusion, that the person who put the cyanide poison (NaCN) into the VIC of Wayan Mirna Salihin was **group III, namely the Defendant**. Furthermore, the judge gave his consideration below regarding when the cyanide poison (NaCN) was placed into the VIC as follows:

1) " Considering that the matter of when the Cyanide (NaCN) was put into VIC could be known after the VIC drink was ready to be served at table 54 by witness Agus Triyono. The defendant is also very aware of where the poison was taken from, whether from a brown bag or from his pants pocket or elsewhere. Because at least the defendant knows that cyanide is easily decomposed at high temperatures (hot water), so the defendant dissolved the cyanide in Mirna's coffee after the temperature of the coffee decreased (became cold) due to mixing with ice cubes; then Jessica must also have calculated the time span of Mirna's journey to the location of the crime scene, which can be seen from the transcript of the last WA conversation between Jessica and Mirna and the conversation between Mirna and witness Hanie who was waiting at starbucks ";<sup>43</sup>

2) **According to the instincts of the Panel of Judges, it is very certain that it was the Defendant who put the cyanide poison in Mirna's coffee, on the basis that for ± 51 minutes the coffee was in the control of the Defendant, there was no one else but the Defendant at table 54, so the defendant was very aware of what happened to the coffee** as the Panel of Judges has explained earlier ";<sup>44</sup>

The judge's conclusion about when the defendant put it in was based on a span of approximately 51 minutes when the defendant controlled the VIC. Although the judge did not mention the exact time, the judge's instinct believed that it was during this time span that the defendant structurally and systematically put cyanide poison (NaCN) into the VIC of Wayan Mirna Salihin. Based on the series of events described above, the judge was convinced that it was Jessie who put the cyanide poison into Mirna's VIC.

### **IV. CONCLUSIONS AND SUGGESTIONS**

The theory of justice that is closest to the proof of criminal cases in Indonesia is the theory of justice from Gustav Radbruch, that with the value of law according to Radbruch, namely "the value of justice" which is reflected in substantial justice and "the value of purpose and "the value of legal certainty" which is reflected in procedural justice, This is relevant and reflected in six parameters of evidence in criminal cases in Indonesia, namely the theory of evidence (*bewijstheorie*) and minimum evidence (*bewijs minimum*), evidence (*bewijsmiddelen*), delivery of evidence (*bewijsvoering*), burden of proof (*bewijslast*), strength of proof (*bewijskracht*). Plato's theory of justice was used to bring justice to Mirna against the situation of injustice she experienced. Aristotle's legal interpretation theory of justice is a multidisciplinary interpretation carried out by the judge to prove the cause of Mirna's death. Thomas Aquinas' theory of justice in which the law contains moral values, so that law enforcement and morals are carried out by the panel of judges against Jessica. John Rawls' substantive and procedural justice is law enforcement against Jessica, to respect Mirna's right to life. Radbruch's substantial justice and procedural justice ensured the judges' legitimate conviction in Jessica's case, beyond "reasonable doubt" with science and adherence to legal procedures.

Researchers suggest that the use of Gustav Radbruch's theory of justice is used as an analytical tool for Judge Decisions with different cases, where the decision is based on indirect evidence or circumstantial evidence. Researchers suggest that in accordance with what is contained in this study, the use of "conscience" must be used by every law enforcer, especially judges, based on the victim's sense of justice and the community's sense of justice, by considering the axiological aspects of the law itself, namely the value of justice, purpose and legal certainty.

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