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Urgency of *Falsum* in Indonesian Criminal Justice System as Basis for Revision; An Islamic Perspective

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Abstract

In Indonesian Islamic law, "*falsum*" has no direct equivalent. However, this idea matters in legal debates of beliefs, utterances, and behaviors. *Falsum* corrects final decisions in Germany and the Dutch during Revision. Indonesian prosecutors might request Revision, but the Constitutional Court limited this power to convicts and their descendants, extending unfairness. Revision should remedy bribery, document forgery, conflict of interest, and perjury by using the idea of *falsum*. However, *falsum* implementation in Indonesia raises problems about its compatibility with Islamic values. The study investigates how addressing *falsum*, in accordance with the principles of justice and utility, can lead to fairer legal reforms and bolster public confidence in the judiciary, especially within Indonesia's predominantly Muslim community. It examines the possibilities and drawbacks of legalizing *falsum* in Indonesia using normative, theoretical, and comparative approaches. It contends that the notion of *falsum* can provide a

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persuasive rationale for legal reforms in Indonesia's criminal court system. It also enables law enforcement officials and future drafters of the Criminal Procedure Code (KUHAP) to understand the evolution of Revision because granting prosecutors the authority to initiate Revision based on *falsum* is crucial for ensuring greater justice.

Keywords:

Revision; *Falsum*; Legal Reform; Islamic law; Indonesia

Introduction

A judge presiding over a criminal case may likely exhibit arbitrary behavior by succumbing to the influence of bribes or gratuities, thereby leading to an unjust verdict. Once finalized, a decision carries legal obligations that must be adhered to. The significance of judicial integrity is underscored by recent court rulings in Indonesia, including Constitutional Court Decision Number 90/PUU-XXI/2023 and others. Anwar Usman, a Constitutional Judge, was convicted of violating ethical standards. Nevertheless, he failed to disqualify himself from a case and instead showed bias towards his nephew's political goal, perhaps exerting influence over the final decision. This accords much to what *falsum* means. According to Binziad Kadafi, the term "*falsum*" refers to a malevolent action that corrupts the verdict of acquittal.¹ However, we believe that *falsum* is not only morally bad conduct that corrupts the choice to acquit, but it can also result in an incorrect conviction.

In criminal cases, if such issues arise and a final and binding judgment has been made, it cannot be utilized as a basis for a Revision known as *Peninjauan Kembali* (hereafter called Revision) since "conflict of interest" is not one of the grounds for initiating a Revision under Article 263 (2) of the Criminal Procedure Law. Therefore, the lack of consistency and the presence of conflicting personal interests possibly result in incorrect decisions masked by previously established legally

¹ Binziad Kadafi, "Peninjauan Kembali oleh Jaksa," *Kepaniteraan Mahkamah Agung*, 2022, <https://kepaniteraan.mahkamahagung.go.id/artikel-hukum/2045-peninjauan-kembali-oleh-jaksa-binziad-kadafi>; Sugeng Dwiono, A. Kumedi Ja'far, and Slamet Haryadi, "An Analysis on the Omnibus Law and Its Challenges in Indonesia: The Perspectives of the Constitutional and the Islamic Law," *Samarah* 8, no. 2 (2024): 706–25, <https://doi.org/10.22373/sjhk.v8i2.22720>.

binding decisions. An accused, who is represented by a lawyer, and the public prosecutor, acting on behalf of the public interest,² attempt to ascertain the truth by presenting evidence to persuade the judges throughout the trial. At all stages of examination, appeal, or even cassation, there is the possibility of the judicial mafia³ or some parties engaging in manipulation, scheming, and deceit in order to secure a favorable verdict for one of the parties. The scenario involves the concealment, manipulation, or destruction of tangible evidence through the use of deception, technical expertise, or cunning. It is comical when the parties manipulate the judicial system in order to distort justice using the excuse that they can arrange everything as long as they cleverly manipulate the conditions.⁴

An illustrative instance of a criminal case that offers significant insights into various situations, falsehoods, and duplicity is the homicide of Yosua Hutabarat. Thirty-five police officers displayed unprofessional conduct during their investigations, engaging in activities such as tampering with evidence, fabricating cases, and obstructing the law enforcement process.⁵ Not disclosing the scenario,

² Erlinda Yulia P and Sulistyanta, "Advocate Rights of Immunity as a Criminal Law Effort in the Criminal Justice System," *International Journal of Multicultural and Multireligious Understanding (IJMMU)* 10, no. 4 (2023): 641-48, <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v10i4.4507>; Wikan Sinatrio, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia," *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 73-88, <https://doi.org/10.15294/jils.v4i01.23339>; Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, "Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 243-88, <https://doi.org/10.15294/jils.v8i1.67632>.

³ T Rachman, "Can the Indonesian Criminal Justice System Be Enhanced by Replacing the Mandatory Prosecution System with a Discretionary One, like That Used in Australia?" (Sydney: Victoria University, 2016), 1-377, <https://vuir.vu.edu.au/id/eprint/31832>; Wanodyo Sulistyani, "The Admissibility of Scientific Expert Evidence Under Indonesian Criminal Justice System," *Sriwijaya Law Review* 3, no. 2 (2019): 152-61, <https://doi.org/10.28946/slrev.vol3.iss2.215.pp152-161>.

⁴ Bismar Siregar, *Keadilan Hukum dalam Berbagai Aspek Hukum Nasional* (Jakarta: Rajawali, 1986), 14.

⁵ Junaedi Junaedi, Anas Yusuf, and Rumanul Hidayat, "Scenario Ferdy Sambo Orders to Kill Brigadir Joshua Maintaining Family Dignity, Executions, or Motives," *International Journal of Business, Law, and Education* 4, no. 1 (2023): 233-48, <https://doi.org/10.56442/ijble.v4i1.158>; M. Ruhly Kesuma Dinata et al., "Good

engineering, and deceit, resulting in a permanent court ruling, is indeed problematic. Thus, any incorrect decision of guilt, innocence, or exoneration that is legally enforceable must be rectified through the process of Revision.

This is coherent with the teaching of Islam as the religion of the majority of Indonesia's population, namely equity and righteousness for all human beings. Among others, there found a Qur'anic passage reads; "So establish weight with justice and fall not short in the balance" (QS. Ar-Rahmaan 55: 9).⁶ This heavenly command emphasizes the necessity of equity and safeguarding the rights of each person. Every person has the right to seek justice by using the legal system. In this context, Revision is a legal remedy that aims to correct any incorrect or misleading court decisions, ensuring that justice is served for all parties involved. Islam establishes the basis for a fair and impartial society by implementing these principles and methods, ensuring that the rights of every person are protected and respected.

Technically, Revision is a vital legal procedure used to correct court rulings that had been considered final and binding. The availability of this exceptional legal remedy is based on certain and restricted conditions as specified in Article 263 paragraph (2) of the Criminal Procedure Code. These conditions may encompass the discovery of new evidence (*novum*), inconsistencies within court rulings, or the recognition of significant mistakes or judicial omissions. These legal remedies follow a set of principles that aim to support the introduction of new evidence, correct mistakes made by the court, provide fairness and clarity in the legal process and protect parties from unfair decisions by judges. Revision is crucial in maintaining the integrity and fairness of the judicial system by offering a mechanism to rectify mistakes and safeguard the values of justice.⁷

Governance and Local Wisdom in Law Enforcement," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 5, no. 2 (2022): 227–42, <https://doi.org/10.24090/volksgeist.v5i2.6740>.

⁶ Tim Penyempurnaan Terjemahan al-Qur'an, *Al-Qur'an dan Terjemahannya Edisi Penyempurnaan 2019* (Jakarta: Lajnah Pentashihan Mushaf al-Qur'an, 2019), 728.

⁷ Lilik Mulyadi, *Hukum Acara Pidana: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi dan Putusan Peradilan* (Bandung: Citra Aditya Bakti, 2002), 223–24.

Ideally, the judges should base their enforcement of the law not only on their academic knowledge, but also on their spiritual intelligence, empathy, dedication, commitment, and courage.⁸ Nevertheless, a significant number of judges lack spiritual intelligence and integrity, as well as fail to uphold their oath of office by engaging in unethical practices such as bribery. The judicial commission has received 267 reports and 197 copies related to alleged violations of the code of ethics and code of conduct of judges from January to April 2024. From these reports, the judicial commission proposed sanctions to 33 judges after being proven to have violated the code of ethical behavior of judges.⁹ The Indonesian Corruption Eradication Commission is prosecuting those judges, since they have found evidence of corruption involving 31 judges up till 2023.¹⁰ The fact is worrying because when a legal decision that has permanent legal authority has been compromised by corruption, it actually must be reopened as a lesson to be learned. Therefore, the *falsum* concept is deemed to be necessary in Indonesia as it is implemented in other countries, such as Dutch and Germany, that used *falsum* as a basis for Revision.

There are two previous studies on revision in criminal cases in Indonesia whose legal issues are relevant to this study. Rian Saputra¹¹ analyzed Revision related to *novum*, which refers to fresh evidence, by comparing the Criminal Procedure Codes of the United States and France. The recommendation is for Indonesia to follow a comparable strategy, permitting Revisions solely if the new evidence provided during the initial trial has the ability to reduce or reject the charges

⁸ Supriyadi and Siti Suriyati, "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022): 136-61, <https://doi.org/10.19105/AL-LHKAM.V17I1.6060>.

⁹ Komisi Yudisial Republik Indonesia, "Siaran Pers: KY Usulkan 33 Hakim Dijatuhi Sanksi" (Jakarta, 2024), https://www.komisiyudisial.go.id/frontend/pers_release_detail/330/ky-usulkan-hakim-dijatuhi-sanksi.

¹⁰ Komisi Pemberantasan Korupsi, "Statistik TPK Berdasarkan Profesi/Jabatan" (Jakarta, 2024), <https://www.kpk.go.id/id/publikasi-data/statistik/penindakan-2>.

¹¹ Rian Saputra et al., "Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty," *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 437-82, <https://doi.org/10.15294/jils.v6i2.51371>.

brought by the prosecution. On the other hand, Yayang Susila Sakti's¹² paper primarily examined the prosecutor's power to request Revisions, emphasizing the clash between the public's interest and the need for legal certainty.

This paper deviates from those previous studies by specifically addressing the necessity of regulating *falsum* in Indonesia's criminal procedural law for future improvements, this study suggests implementing improvements to Indonesia's Revision system. These reforms would involve regulating harmful modifications made by the prosecutor and setting clear criteria for accepting *falsum* as a valid reason for Revision. This study examines the consistency of the idea of *falsum*—which is not present in Indonesian Criminal Procedure legislation—using an Islamic perspective.

Based on the above problems, this research aims to analyse: (1) The concept *falsum* as a foundation for Revision in the Dutch and German legal system; (2) *Falsum* from an Islamic standpoint in the Indonesian context; (3) Urgency for regulating *falsum* in the future Revision of the Indonesian Criminal Procedure Code. The first and second question will shed light on how the *falsum* concept applies in general scope before being focused on the Indonesian context with Islamic teachings as the living principles of its majority. Finally, the third one will propose urgency in adapting *falsum* to the future Indonesian legal system.

Methods

This study employs primary, secondary, and non-legal sources, integrating surveys and interviews with prosecutors, judges, and specialists in criminal law. Using legal sources of legislation and jurisprudence of court decisions, more than 10 prominent executives from public prosecutor offices in East Java were also questioned over Revisions and *falsum*. The collected materials are processed prescriptively. The study firstly examines the utilization of *falsum* in the Revision procedures of the Dutch and German legal systems and juxtaposes it with Indonesia. The selection of the Dutch and Germany was based on their civil law systems which have a resemblance to

¹² Yayang Susila Sakti, "Pengajuan Peninjauan Kembali oleh Jaksa Penuntut Umum: Antara Kepastian dan Keadilan," *Arena Hukum* 7, no. 1 (2014): 1-27, <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2014.00701.5>.

Indonesia's legal system. The text furthermore examines the integration of *falsum* into the process of legal reform in Indonesia, taking into account the principles of truth and honesty emphasized in Islamic teachings. Based on these two countries combined with local context, this research aims to present a philosophical concept as a basis for future Revision.

Result and Discussion

***Falsum* as a Foundation for Revision in the Dutch and German Legal System**

According to Article 457 of the *Wetboek van Strafvordering* of the Dutch legal system, the provision pertaining to favorable Revision is limited to three specific reasons. These reasons include instances where a court decision is found to be contradictory, instances where the legal process is deemed to be in violation of a convention or convention protocol by the European Court of Human Rights, and instances where a *novum* is present. In the Dutch, *falsum* is considered a valid ground for Revision, as stated in Article 482a of the *Wetboek van Strafvordering*. This article specifically governs the process of detriment Revision which can be initiated by the Prosecutor. The Article furthermore identifies four categories of falsehoods that can be used as grounds for detriment Revision. As explained in the *Wetboek van Strafvordering*, this includes: (1) Article 482a Paragraph 1 letter b, the act of forging documents; (2) Article 482a Paragraph 1 letter c, the act of providing false testimony; (3) Article 482a Paragraph 1 letter d, the act of committing certain offenses against a public authority or personal freedom in relation to a criminal proceeding; and (4) Article 482a Paragraph 2, the act of bribing judges. The fundamental concept underpinning these rules is the potential for the re-evaluation of unjust criminal cases.¹³

The first point, pertaining to the act of falsifying a document, necessitates a compelling belief that the judge would have reached a conviction had they been aware of the forging of the letter evidence. The second pertains to the provision of false testimony, encompassing both the testimonies of witnesses and experts involved in criminal

¹³ Nina Holvast, Joost Nan, and Sjarai Lestrade, "Between Legal Certainty and Doubt: The Developments in the Procedure to Overturn Wrongful Convictions in the Netherlands," *Erasmus Law Review* 13, no. 1 (2020): 1-12, <https://doi.org/10.5553/elr.000188>.

cases where the defendant has been convicted of perjury, as defined in Article 207 of the *Wetboek van Strafrecht*.¹⁴ In this particular category, a *falsum* must possess a substantial level of suspicion that the case would have resulted in a conviction had the judge possessed prior knowledge of the presence of false testimony.¹⁵

Thirdly, offenses against public authority or personal liberty are associated with criminal activities as referred to in Articles 177 to 178, 179, 284, 284a, 285, and 285a of the *Wetboek van Strafrecht*. These articles expressly prohibit corrupt acts such as bribery, threats, or the use of personal interest to influence the decisions of officials in the performance of their duties. They encompass provisions that render significant offenses against public officers, namely pertaining to the act of offering presents, making promises, or delivering services, as well as engaging in acts of violence or making threats of violence. Such acts are deemed serious offenses that can have legal consequences. Additionally, it encompasses the impact on an individual's autonomy to provide accurate testimony in the presence of a judge or public authority. Falsehood under this particular category necessitates the presence of a compelling suspicion that the case would have been dismissed had the defendant not engaged in certain criminal acts.¹⁶

According to Article 364 paragraphs (3) and (4) of the *Wetboek van Strafrecht*, the fourth fallacy pertains to a judge who is subjected to bribery in connection with a criminal matter. In contrast to other forms of *falsum*, the occurrence of *falsum* involving a judge being bribed necessitates the presence of a legally binding court decision that explicitly states the judge's involvement in a criminal act of bribery. Consequently, the occurrence of *falsum* in this particular category may arise subsequent to the defendant's sentencing.¹⁷

¹⁴ Binziad Kadafi, *Peninjauan Kembali: Koreksi Kesalahan Dalam Putusan* (Jakarta: Kepustakaan Populer Gramedia, 2023), 320.

¹⁵ Dita Wardhani Muntalib, "Testimonium De Auditu Perspektif Hukum Pidana Islam (Studi Putusan MK No. 65/PUU-VIII/2010)" (Yogyakarta: Universitas Islam Indonesia, 2018), <https://dspace.uui.ac.id/handle/123456789/10746>; Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7, no. 1 (1989): 23-88, <https://doi.org/10.2307/743777>.

¹⁶ Kadafi, *Peninjauan Kembali: Koreksi Kesalahan Dalam Putusan*, 321.

¹⁷ Kadafi.

The German *falsum*, meanwhile, encompasses both favorable and detriment Revision, in contrast to the Dutch *falsum* which exclusively pertains to detriment Revision. *Wiederaufnahmeverfahren* (Revision)¹⁸ is a specific legal procedure in German law initiated against criminal proceedings that have been settled by a judgment that carries the legal weight of *res judicata*. Both articles, specifically Articles 359 and 362 of the *Strafprozeßordnung*, govern the regulation of both subjects. It is worth noting that the grounds for Revision between these two Articles are based on distinct causes.¹⁹

The idea of *falsum* is documented in Article 359, namely in numbers 1, 2, and 3, as well as in Article 362, specifically in numbers 1, 2, and 3 of the *Strafprozeßordnung*. There are three reasons for filing a Revision under the provisions of Article 359 and Article 362 of the *Strafprozeßordnung*. These reasons include: (1) document forgery; (2) false testimony; and (3) the judge or lay judge being guilty of violating official duties in relation to the case they are handling. Regarding the initial falsehood, which pertains to a counterfeit letter, the prevailing consensus among legal experts is that the letter constitutes a criminal offense of forging, as defined in Article 267 of the *Strafgesetzbuch*. Specifically, it is a letter that can be presented as evidence in a legal proceeding.

The second category of falsehood pertains to instances where a witness or expert, who offers testimony, has engaged in the criminal act of false testimony or perjury, as outlined in Articles 153-155 and 161 of the *Strafgesetzbuch*. These provisions stipulate that the criminal case must have undergone a trial and reached a *res judicata* verdict. This type of *falsum* necessitates both guilt and criminal culpability, meaning that all elements of the offense must be satisfied. Hence, the aforementioned second fallacy is rendered unattainable in instances where the witness has not attained the requisite age threshold for criminal liability.²⁰

¹⁸ Anne Schneider, "Res Judicata in Criminal Matters and the European Courts - a Comparison Between Germany and Italy," *European Criminal Law Review: EuCLR* 6, no. 2 (2016): 211-27, <https://doi.org/https://doi.org/10.5771/2193-5505-2016-2-211>.

¹⁹ Schneider, 220.

²⁰ Schneider, "Res Judicata in Criminal Matters and the European Courts - a Comparison Between Germany and Italy."

The third fallacy occurs when the judge or lay judge,²¹ while rendering a decision, violates their professional obligations pertaining to the matter they are presiding over. There is no requirement to establish a causal link between the occurrence of a criminal offense committed by either the judge or a lay judge and its impact on the decision. The occurrence of a breach of official duty by a judge or lay judge must be specifically linked to the case at hand, rather than being an isolated incident. These offenses encompass acts such as distorting the legal process (Article 339 of the *Strafgesetzbuch*), obtaining advantages, or engaging in corrupt practices (Articles 331-332 of the *Strafgesetzbuch*) and unlawful detention or coercion (Articles 239-240 of the *Strafgesetzbuch*).²²

Article 359 number 3 of the *Strafprozeßordnung* does not apply if the convicted individual induces the judge or lay judge to breach their official obligations,²³ such as by bribing the trial judge in relation to their case. According to Article 359, number 3 of the *Strafprozeßordnung*, there exists an exception in cases when the offense is directly caused by the individual who has been convicted.

Both the Dutch and Germany have the same goal in implementing the Revision mechanism, which is to ensure justice and correct errors in the judicial process. If there is new evidence or a violation of the law is found during the trial process, then the existing decision can be Revision. It implies how both countries have a strong enough mechanism to ensure that court decisions are based on truth and justice. Although there are differences in the details of implementation, the ultimate goal is the same, which is to maintain the integrity of the judicial system. The grounds for Revision are falsification of evidence, false testimony, and misconduct by legal officials.

²¹ Valerie P. Hans, "Introduction: Lay Participation in Legal Decision Making," *Law and Policy* 25, no. 2 (2003): 83-92, <https://doi.org/10.1046/j.1467-9930.2003.00141.x>.

²² Michael Lindemann and Fabienne Lienau, "Mechanisms for Correcting Judicial Errors in Germany," *Erasmus Law Review* 13, no. 4 (2020): 87-101, <https://doi.org/10.5553/elr.000177>.

²³ Schneider, "Res Judicata in Criminal Matters and the European Courts - a Comparison Between Germany and Italy."

From the comparison of the use of *falsum* as a basis for Revision in the Dutch and German legal systems above, there are several similarities and differences as in Table 1.

Table 1. Comparison of the use of *falsum* as a basis for Revision in the Dutch and Germany Legal System

Dutch		German	
Similarities			
Forging documents, providing false testimony or expertise and judges bribed can be used as grounds for detrimental revision.			
Differences			
<i>Falsum</i> on favorable Revision	<i>Falsum</i> on detriment Revision	<i>Falsum</i> on favorable Revision	<i>Falsum</i> on detriment Revision
X	<ol style="list-style-type: none"> 1. Forging Documents; 2. Providing False Testimony or Expertise; 3. Offenses Against Public Authority or Personal Freedom; 4. Judges Bribed. 	<ol style="list-style-type: none"> 1. Forging Documents; 2. Providing False Testimony or Expertise; 3. Judge or Lay Judge Being Guilty of Violating Official Duties: <ol style="list-style-type: none"> 3.1. Distorting The Legal Process; 3.2. Corruption or Taking Bribes; 3.3. Unlawful Detention or Coercion. 	<ol style="list-style-type: none"> 1. Forging Documents; 2. Providing False Testimony or Expertise; 3. Judge or Lay Judge Being Guilty of Violating Official Duties: <ol style="list-style-type: none"> 3.1. Distorting The Legal Process; 3.2. Corruption or Taking Bribes; 3.3. Unlawful Detention or Coercion.

Source: Primary Legal Materials Processed

Table 1 shows how the use concept of *falsum* as in the dutch and german legal systems is essentially a fraudulent act that can be used as a reason for revision. Such a concept is certainly appropriate and suitable if a legal transplant is made to the indonesian legal system which is so vulnerable to fraud and corruption in a legal process.

***Falsum* from Islamic Standpoint and Its Existence in the Indonesian Context**

In Islamic jurisprudence, the term "*falsum*" is equivalent to describing untruth, which is especially important in situations such as witness testimony and evidence under Sharia Law. Islamic jurisprudence places a strong emphasis on the value of truthfulness and firmly forbids any kind of deceit or dishonesty. Witnesses have a crucial function in legal proceedings, particularly in criminal trials, while following Islamic values. In Islamic law, if a verdict is likely to contain errors or disputes rendered by the *qādi*, the verdict will be annulled by the *qādi qūdah*, then the *qādi qūdah* or his deputy is given the right to Revision all the verdicts of the lower courts to either cancel the verdict if it is incorrect or correct the verdict that needs correction. If the verdict is deemed correct, it is determined as it is.²⁴

This procedure seems to have a close relationship with some relevant Islamic sources of law, ranging from the Qur'an and hadith. One of which is the Qur'anic verse meaning "O you who believe! Establish justice as witnesses for the sake of Allah. And let not hatred prompt you to be unjust. Be just, for that is closer to piety". (QS. Al-Mā'idah (5);8).²⁵ In Islam, the notion of "*falsum*" is therefore related to the principles of honesty, justice, and integrity. Islam opposes dishonesty, deception, and false testimony, and promotes the values of truth and honesty in all aspects of life. Islamic teachings explicitly condemn bribery (*risywah*) and *falsum*, namely dishonest conduct in the trial process, emphasizing the need of honesty and integrity in court proceedings (Al-Baqarah 2:188, al-Mā'idah 6:8).

Judges play a central role in upholding justice by ensuring fair and consistent application of the law. The principle of impartiality is a cornerstone of the judiciary, ensuring that legal decisions are not influenced by external factors such as social status or personal relationships. To achieve this goal, a judge is required to have emotional balance and clarity of mind, as explained in a hadith:

²⁴ Muhammad Salam Madkur, *Al-Qāda Fi Al-Islām* (Kairo: Dār an-Nahdah, n.d.), 23; Roni Efendi, "Pidana Mati dalam Perspektif Hukum Pidana dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 125, <https://doi.org/10.31958/juris.v16i1.965>.

²⁵ Dhira Majid, *Kepemimpinan dalam Perspektif al-Qura'an* (Aceh: Searfiqh, 2019), 214.

عن عبد الرحمن بن أبي بكره عن أبيه أن رسول الله صلى الله عليه
وسلم قال: لا يقضي القاضي وهو غضبان.

Narrated by 'Abdurrahman ibn Abu Bakrah, from his father, the Prophet Muhammad PBUH admonished: "Do not allow a judge to render a verdict while in a state of anger."²⁶

Furthermore, the ramifications of a judge adjudicating a case without adhering to the principles outlined above are profound, such as judge's categorization in a hadith into three; one in heaven and two in hell. Judges who demonstrate a deep understanding of justice and make decisions properly will be granted admittance into heaven as a reward. On the other hand, judges who make legal decisions by manipulating their knowledge or those who lack of knowledge that make a wrong decision is so that the decision is condemned to the hell (Reported by the Four Imams and Hakim).²⁷

It becomes crystal clear that fundamental principles of the Islamic justice system, particularly in relation to the concepts of truth, justice and integrity clearly demonstrate that Islamic law places a very strong emphasis on the importance of honesty in all aspects of life, particularly in the context of trials. The role of witnesses as providers of evidence is crucial, and their honesty is key to achieving justice. In addition, it also underscores the importance of the role of judges as upholders of justice. A judge is required to have high integrity, be free from bias, and be able to make decisions based on the law and available evidence.

The obligation of judges to have high integrity is also demonstrated by avoiding conflicts of interest when examining a case, in order to ensure the principle of impartiality. Article 17 paragraphs (5) and (6) of Act Number 48 of 2009 concerning Judicial Power has opened up the possibility of a "conflict of interest" as a basis for Revision. This is demonstrated by the obligation for judges and clerks

²⁶ Abi 'Abdillah Muhammad bin Yazid Qazwaini, *Sunan Ibnu Majah Juz 1 / Abi 'Abdillah Muhammad Bin Yazid Al-Qazwaini* (Bairut: Dar al-Fikr, 2008).

²⁷ Siti Ardianti, "Fiqh al-Ḥadīth: Hakim Ada Tiga Golongan," *Shahih: Jurnal Ilmu Kewahyuan* 53, no. 2 (2022): 53-61, <https://doi.org/http://dx.doi.org/10.51900/shh.v5i2.14674>.

to withdraw from proceedings if they have an interest in the case being examined. If judges and clerks violate this provision, the decisions they make will be invalid. If the decision that is deemed invalid is final or legally binding, then the only procedure that can overturn a decision that is tainted by a conflict of interest is through Revision. On this basis, we are of the opinion that *falsum* is actually not only a criminal act that violates criminal law, but is interpreted broadly, namely the existence of a conflict of interest in decision making, which is essentially a violation of ethics.

Although Indonesia does not apply any *falsum* concept at their judicial system, it turns out that Indonesian judges generally believe that *falsum*, which refers to deception, can be used as a foundation for Revision. It is even deemed crucial to establish the falsehood concept in a court of law, as it is the judge's prerogative to determine its veracity. Based on an interview with two judges in Indonesia regarding their opinions on *falsum*, they mentioned:

"*Falsum* can be used as a basis for Revision. However, (it is) on the condition that the *falsum* or falsehood must first be proven in court because it is the judge in court who has the authority to determine whether or not the falsity is true." (Interview excerpt, 6 May 2024-translated).

Similarly, 13 Head of Prosecutor in East Java concur that *falsum* is essential for Revision. However, they emphasize that its influence on the decision and its substantiation in court are of utmost importance:

"*Falsum* are important to use as a basis for Revision for the sake of truth and justice. However, the *falsum* or falsehood must have a significant effect on the decision for which Revision is sought and the falsehood must first be proven by the judge in court." (Interview excerpt, 3-6 May 2024-translated)

These viewpoints emphasize the importance of determining truth and justice in line with Islamic principles that stress integrity and impartiality. Islam, on the other hand, strongly denounces

falsehoods, demonstrating a profound aversion to dishonesty in the sight of Allah.

No matter how *falsum* concept is in the vein with Islamic teaching and the judge's testimony suggesting the urgency of *falsum*, it turns out that the present version of the Academic Manuscript of the draft modification to the Indonesian Criminal Procedure Code maintains an unaltered statement addressing the rule of Revision. It is worth noting that Article 260 paragraph (1) of the proposed Indonesian Criminal Procedure Code is the same as the current Article 263 paragraph (1) of the Indonesian Criminal Procedure Code. This means that Revision requests can only be made by convicts or their heirs and can only challenge conviction decisions.²⁸ In addition, the arrangement of exceptional legal remedies in the Draft Indonesian Criminal Procedure Code closely resembles that of the current code. It includes sections on cassation in the interest of the law (*Kasasi Demi Kepentingan Hukum*) and favorable revisions. However, the Draft Indonesian Criminal Procedure Code does not include provisions for detriment revision and the idea of "*falsum*". We present a comparison of Article 263 of the Criminal Procedure Code and Article 260 of the Draft Criminal Procedure Code in Figure 1.

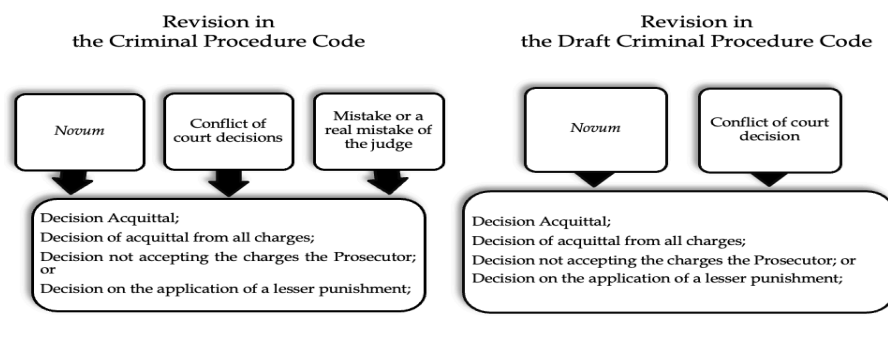


Figure 1. Comparison of Article 263 of the Criminal Procedure Code and Article 260 of the Draft Criminal Procedure Code

It can be seen in Figure 1 that the Draft Indonesian Criminal Procedure Code acknowledges just two grounds for revision: *novum* and conflict of court decisions. Conspicuously lacking is the inclusion of the examination of judicial inaccuracies or mistakes as a foundation for modification. Although it is important to correct judicial errors,

²⁸ Andi Hamzah, *Naskah Akademik RUU Hukum Acara Pidana* (Jakarta: Badan Pembinaan Hukum Nasional, 2009), 93.

the Indonesian Criminal Procedure Code does not include the idea of *falsum*. Article 260 paragraph (2) Draft Indonesian Criminal Procedure Code even eliminates the existence of a mistake or a real mistake of the judge from the arena of reasons for Revision as stipulated in Article 263 paragraph (2) letter c at the Indonesian Criminal Procedure Code. This means that Revision requests can only be made by convicts or their heirs and can only challenge conviction decisions.²⁹ In short, the arrangement of exceptional legal remedies in the Draft resembles that of the current code. It includes sections on cassation in the interest of the law (*Kasasi Demi Kepentingan Hukum*) and favorable Revision. However, the Draft does not include provisions for detriment Revision and the idea of "*falsum*." The grounds for Revision in the Criminal Procedure Code and the Indonesian Draft Criminal Procedure Code can simply be distinguished as follows:

According to Andi Hamzah, the reason underlying removal of the existence of a mistake or a real mistake of the judge as a reason for revision in the Draft Indonesian Criminal Procedure Code is based on the assumption of impossibility for 9 (nine) judges at each level of the District Court, High Court, and Supreme Court be mistaken.³⁰ Regardless of the importance of the real mistake or error of the judge as a reason for Revision, the Indonesian Criminal Procedure Code does not include the concept *falsum* as a reason for Revision or may not even recognize the concept *falsum*.

In fact, Didik Endro Purwoleksono, the leader of the team responsible for creating the 2010 Draft Criminal Procedure Code, supports improvements that involve allowing prosecutors to make Revisions and including *falsum* as a valid ground for Revision. He argues that decision resulting from false evidence, which ultimately lead to a final judicial ruling in favor of the defendant, should be governed by the Criminal Procedure Code. Prosecutors, acting on behalf of the state and victims, should be empowered to request Revision based on *falsum*, without requiring court approval, as long as

²⁹ Hamzah, *Naskah Akademik RUU Hukum Acara Pidana*.

³⁰ Hamzah; Arief Patramijaya, "Criminal Legal Protection for Bona Fide Third Parties Over Assets in Corruption and Money Laundering Cases," *Sriwijaya Law Review* 8, no. 1 (2024): 171-82, <https://doi.org/10.28946/slrev.Vol8.Iss1.2159>, pp171-182.

there is adequate preliminary evidence to support principles of efficiency, simplicity, and cost-effectiveness. He said:

" Revision due to *falsum* that leads to the issuance of final and binding decision and favor of the defendant should be regulated as a reform in the Draft Indonesian Criminal Procedure Code. Prosecutors who represent the interests of the state and victims must be available to uphold justice by filing a Revision due to *falsum*. *Falsum* does not need to be proven until it is decided in a court decision with permanent legal force, but a Revision can be filed with sufficient preliminary evidence to implement the principle of simple, fast and low-cost judicial." (Interview excerpt, 8 May 2024-translated).

We do agree with Didik Endro Purwoleksono's perspective as a criminal law expert who highlights the importance of regulating the Revision made by prosecutors and *falsum* in the future Indonesian Criminal Procedure Code. This alignment guarantees that Indonesia stays up to date with Revision procedures worldwide such as in the Dutch and Germany which are used as Revision standards. Although the Dutch and Germany have lesser levels of religiosity compared to Indonesia, both countries nonetheless prioritize the values of justice that religion teaches.

Level of religiosity the three countries can be seen Constitutionally. In the Dutch, everyone shall have the right to profess his religion or belief freely (See Article 6 (1) of the 2018 *Grondwet voor het Koninkrijk der Nederlanden*). In addition, Germany also guarantees that freedom of faith and conscience, and freedom to profess a religious or philosophical creed, shall be inviolable (See Article 4 (1) of the 2014 *Grundgesetz für die Bundesrepublik Deutschland*). Interestingly, preamble the Germany's Constitution begins with the sentence "Conscious of their responsibility before God and man". It can be understood that Germany is a country that recognizes the existence of God and values of justice that come from God. Compare to Indonesia, in Article 28J (2) of the 1945 Constitution of the Republic of Indonesia which limits the rights and freedoms of every person with

consideration of religious values.³¹ Restriction of the rights and freedoms of every person due to religious values can be understood that the Prosecutor should be allowed to conduct a Revision and correct a verdict that has been influenced by fraud or falsehood condemned by Religion. Urgency of granting Revision authority to the Prosecutor is intended to be in line with the basis on which the Indonesian state was founded. Considering Indonesia's establishment as a nation founded on the belief in a higher power, it is advisable for the country to implement comparable processes for Revision.

Urgency of *Falsum* in The Future Revision of the Indonesian Criminal Procedure Code: Challenges and Opportunities

Revision is an exceptional and final action used to correct mistakes that are present in the decision-making process of a court. Upon reflection of the discussion above, a number of valuable observations come to light. In Indonesia, the existing regulations prevent prosecutors from starting Revision processes, limiting them to using Revision as an extraordinary legal remedy to correct the error of an unjust decision. Legal systems in nations such as the Dutch and Germany have Revision proceedings that explicitly deal with *falsum*, referring to deliberate actions that impact acquittals or unjust convictions. These adjustments are not entirely determined by the condemned people or their heirs, but can also be launched by prosecutors representing the victim. Between 2001 and 2016, Indonesia witnessed a minimum of 10 court decisions regarding Revision petitions submitted by prosecutors on behalf of victims.

Nevertheless, there is a lack of uniformity in these determinations, with certain ones refused while others permitted. The reason for the judge to grant the request for reconsideration in 5 out of 10 court decisions related to the request for reconsideration by the prosecutor about the absence of explanation of interested parties eligible for submitting a request for reconsideration in Article 263 paragraph (1) of the Criminal Procedure Code and Article 23 paragraph (1) of Act Number 4 of 2004 concerning Judicial Power. Therefore, the Supreme Court in its decisions, namely Decision No.55

³¹ Edi Kuswanto et al., "Internalizing Islamic Moderation: A Model Approach for Educational Institutions," *IJoReSH: Indonesian Journal of Religion, Spirituality, and Humanity* 2, no. 1 (2023): 93–113, <https://doi.org/10.18326/ijores.v2i1.93-113>.

PK/Pid/1996 and Decision No.3 PK/Pid/2001 has given an extensive interpretation of what is meant by interested parties in a criminal case other than the convicted person or his heirs is the public prosecutor. On the other hand, the application for Revision in several decisions, namely Decision No.84 PK/Pid/2006, and Decision No. 57 PK/Pid/2009, was not accepted by the judge due to the consideration that the law expressly determines it as the right of the convict or his heirs and also on the basis that the prosecutor was declared unable to demonstrate the public interest that must be protected through the application for Revision. Table 2 shows several court decisions that have been granted and not acceptable on Revision by prosecutors

Table 2. Decisions on Revision Requests by Prosecutors from 2001-2016

Revision Granted	Revision Not Acceptable
Supreme Court Decision 3 PK/Pid/2001	Supreme Court Decision 84 PK/Pid/2006
Supreme Court Decision 15 PK/Pid/2006	Supreme Court Decision 57 PK/Pid/2009
Supreme Court Decision 109 PK/PID/2007	Supreme Court Decision 173 PK/Pid.Sus/2011
Supreme Court Decision 12/PK/PID.SUS/2009	Supreme Court Decision 56 PK/Pid/2012
Supreme Court Decision 162 PK/Pid.Sus/2013	Supreme Court Decision 195 PK/Pid.Sus/2016

Source: primary legal materials processed

The lack of consistency in court rulings regarding Revision requests made by prosecutors, who represent the rights of victims, as indicated in Table 2, undoubtedly leads to disparities and injustices. This factor is closely linked to the paradox arising from the conflict between Article 263 paragraph (1) of the Criminal Procedure Code which prohibits prosecutors from seeking revision, and Article 263 paragraph (3) of the Criminal Procedure Code, which provides limited opportunities for prosecutors to seek Revision. The judges' considerations in the granted Revision decision refer to Article 263 paragraph (3) the Criminal Procedure Code, and Article 23 paragraph (1) of Act Number 4 of 2004, the revision decision in the Muktar Pakpahan and Ram Gulumal cases to maintain the consistency of the

decision, the theory of balance of interests, and the doctrine of preference of legal purpose taught by Radbruch to deviate Article 263 paragraph (1) and Article 266 paragraph (3) the Criminal Procedure Code. This can be seen in Supreme Court Decision 3 PK/Pid/2001; Supreme Court Decision 15 PK/Pid/2006; Supreme Court Decision 109 PK/Pid/2007; Supreme Court Decision 12 PK/Pid.Sus/2009; and Supreme Court Decision 162 PK/Pid.Sus/2013.

Meanwhile, consideration of the judges who decided that Revision is not acceptable is referring to Article 263 paragraph (1) of the Criminal Procedure Code which only limits convicts and their descendants who can apply for revision and this limitation is a function of due process of law to limit state power over citizens. However, Article 263 of the Criminal Procedure Code can be relaxed if the Revision is intended to protect the greater public interest, but the prosecutor cannot demonstrate the public interest in the revision request.

Inevitably, non-uniformity of the decisions referred to in Table 2 is also due to the different ways of thinking of judges' syllogisms in making decisions. Judges granting Revision use 'based on rules, based on precedent and based on legal principles'. Judges who did not accept Revision used the 'based on rules', principle as well as a consequence of the principle of supremacy of legislative power which put them in a position of inability to change the language of the rules in applying the rules.³² Therefore, in the future, the regulation of the prosecutor's authority to apply for Revision on the basis of *falsum* and other reasons must be firmly written in the rules. This is very important because in Indonesia which adheres to the civil law system, a judge is bound by procedural law. By doing so, it is hoped that there will be consistency in court decisions between Revision requests while preventing disparities and injustice.

Furthermore, the ground for Revision under Article 263 paragraph (2) of the Criminal Procedure Code are exclusively restricted to *novum*, judicial error, and inconsistency in court rulings. Nevertheless, the absence of the *falsum* concept as a basis for revising

³² Philipus M. Hadjon and Tatiek Sri Djamiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2017), 36-37; Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022): 237-62, <https://doi.org/10.15408/ajis.v22i1.26359>.

court decisions in the Criminal Procedure Code presents significant legal challenges in the Indonesian legal system. Decisions in Table II did not find a reason for Revision because a *falsum* was not found, which is actually reasonable because Article 263 paragraph (2) of the Criminal Procedure Code does not open up opportunities for Revision on the basis of *falsum*. This creates a legal vacuum and allowing court decisions tainted by malicious acts to be unchallengeable even if they are defective in substance and procedure.

Upon normative legal analysis, it becomes evident that there is a legal vacuum concerning *falsum* within Indonesia's criminal justice system. It is important to carefully analyze the possible advantages and disadvantages of applying this *falsum* concept. Although the inclusion of *falsum* may result in longer legal proceedings and increased litigation expenses, it in fact helps to strengthen justice for victims and prevent criminals from avoiding responsibility because of factual errors.

Theoretical and philosophical analyzes of *falsum* emphasize its function in reducing errors inherent in choices of acquittal, therefore promoting fair outcomes for victims.³³ Revision processes are implemented to address erroneous judicial decisions, acknowledging their fallibility. *Falsum* deserves to become a basis for Revision, without having to be proven through a court decision with permanent legal force. However, it is sufficient to base it on sufficient preliminary evidence of the existence or non-existence of *falsum*. This adjustment is intended to be in line with the principles of simple, speedy and low cost judicial and to prevent "justice delayed is injustice".

Examining the Revision systems of states like Dutch and Germany provides interesting insights for Indonesia, considering its establishment on religious grounds. Moreover, Islamic teaching on truth and justice requires modifications to the next Draft Criminal

³³ Adedoyin Akinsulorea, "The Nigeria Police Philosophy and Administration of Criminal Justice Post 2015: Interrogating the Dissonance," *Sriwijaya Law Review* 4, no. 2 (2020): 136-53, <https://doi.org/10.28946/slrev.Vol4.Iss2.432.pp136-153>; H Munawaroh, "Restorative Justice in Settling Minor Criminal Disputes in Ponorogo, East Java: An Islamic Law Perspective," *Mazahib Jurnal Pemikiran Hukum Islam* (core.ac.uk, 2019), <https://core.ac.uk/download/pdf/279111469.pdf>; Ariefulloh Ariefulloh et al., "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 1 (2023): 19-36, <https://doi.org/10.18326/IJTIHAD.V23I1.19-36>.

Procedure Code, granting prosecutors the authority to commence correction of harm and include procedures for addressing falsehood. Nevertheless, the investigation of claimed falsehood should not be limited just to the study of the alleged misconduct itself, but should also take into account any new evidence that arises either prior to or subsequent to the final determination.

Conclusion

Islamic teaching views *falsum* as a part of deceit or dishonesty which makes it categorized as a condemned action. On the contrary, Islam teaches the importance of honesty, truth, equality, justice, and the protection of everyone's rights in all aspects of life. The Dutch and Germany have implemented the concept of *falsum* which can be used as a best practice for Revision of acquittals or unfair verdicts, such as falsified documentary evidence, witnesses or experts committing perjury and judges accepting bribes. In contrast, the draft Indonesian Criminal Procedure Code does not contain any concept of *falsum* and only limits *novum* and contradictory court decisions as grounds for Revision. In fact, it only limits convicts and their descendants to apply for Revision, not prosecutors who represent the interests of victims. Therefore, this legal vacuum should be used as an opportunity by the legislative body in designing the concept of *falsum* in the Indonesian Criminal Procedure Code in the future. Not only modeling the concept of *falsum* in Dutch and Germany, but also expanding *falsum* to include conflict of interest as a basis for filing a Revision. The idea of regulating *falsum* in Indonesia poses challenges from the aspect of litigation costs and prolonged time. However, these challenges are worth fighting to for the sake of upholding justice for victims whose interests are represented by the prosecutor by allowing the Revision of acquittals or unfair verdicts due to various kinds of substantial and procedural errors. The limitations of this research are that it only gathers views of law enforcement professionals and criminal procedure law specialists through a limited interview survey. In order to enhance the scope of this study, future research should expand its sample size to include legal professionals and stakeholders from all backgrounds, in addition to Class A prosecutors in East Java. This would contribute to a more thorough comprehension and the development of an inclusive legal framework.

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