

# Relation of Power in Ratio Decidendi

*by* Anthon F. Susanto

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## Relation of Power in Ratio Decidendi

Antho F. Susanto

Faculty of Law, Pasundan University, Bandung, Indonesia

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### Abstract

Modern scholars (mostly in Western part of the world) agreed to the meaning of “deciding beyond a reasonable doubt” when judges hold their judgment upon a case. This view brings us to the theory of Beyond a Reasonable Doubt saying that an accused is presumed innocent until the conviction is proven beyond a reasonable doubt. When any doubt occurs and the prosecution cannot prove otherwise, the defendant should be acquitted. Is the concept of ratio decidendi limited only to the principle of beyond a reasonable doubt as applied in the Western law? Or, on the contrary, the ratiocination held by the judges has more wide and open meaning? This writing discusses the ratio decidendi of the judges in a more open perspective by presenting the main issues such as first, how judges constitute the reasons through the relation of power and how judges can make a leap of reason in holding their decision. Through philosophy and critique of text, we can draw conclusion on that the ratio decidendi of the judges is not pure, neutral, and absolute. The affirmation is constituted through none other than a relation of power and is a social construction whose existence is determined by many factors.

**Keywords:** *Relation; Power; Ratio Decidendi*

### A. Introduction

How vital is the role of judge reason in deciding upon a case? How to explain the causality relation of evidence and reasons? Is there a relation between the judge’s ratiocination and doubt? This becomes interesting to discuss because the discourse is still limited. It becomes more important when our life is getting more materialistic and even more hedonic. Judge’s ratiocination, on one hand, is determining in a rational decision making. However, on another hand, it contains spiritual value as the inner action of the judge, the hunch. This ratiocination becomes the balance to view the due process is not a mere rational action, but more of spiritual action, conscience, and morality of the judges. Ironically, however, some of judges are convicted for corruption case that makes the spiritual values that deemed to be included in their reasons are utopia.

Normally, we limit the definition of judge’s reason as it is explained in the legislation—the Code of Criminal Procedure, as a formal, rational, and exclusive in the criminal court. Formal: that all references



on judge's ratiocination led to one major source provided by the Code of Criminal Procedure, the Article 183. Rational: that the judge's reasons always related to the empirical fact and data (evidence) and needs rational processing. Exclusive: that reasons are only for the judge only, no other reasons except in the criminal justice system.

Modern scholars (mostly in Western part of the world) agreed to the meaning of "deciding beyond a reasonable doubt" when judges hold their judgment upon a case. This argument brought us to the theory of Beyond a Reasonable Doubt saying that an accused is presumed innocent until the conviction is proven beyond a reasonable doubt. If any doubt occurs and the prosecution cannot prove otherwise, the defendant should be acquitted regardless he or she was the perpetrator or not. We can agree or disagree with the view to be applied in our legal system. Do we adopt the same principle? With that? Article 183 of Law No. 8, 1981 concerning Criminal Procedure stipulating, in restrictive limitative, as minimum evidence (Monang Siahaan, 2017: 98) that "judges cannot pass a criminal judgment upon an accused unless under minimum two probable cause, he or she constitutes the ratiocination that the crime was actually happened and that the defendant is guilty for the wrongdoing". In the judgment, it is also explained that judge repeatedly says "legitimately and affirmably proven" as the evidence that the decision is arrived from the process of proof that is beyond a reasonable doubt.

The words of "legitimately and affirmably proven", naturally refers to the power of the evidence and judge's ratiocination. For the modern rationalism, it shows the strong relation of the proof and reasons. In this context, judge's reason is "reasonable doubt" meaning that an accused brought before the court because the prosecution has satisfied a hard or strong evidence based on which the judges affirmably arrived at the decision. This explanation is relevant to the previous one that the ratiocination of the judges is, determined by the proof presented in the court room, to be rational. The evidence is so reasonable and beyond any doubt that judges arrive at the decision. Is the concept of ratiocination limited only to the beyond a reasonable doubt as comprehended by the Western scholars? Of course not, however, the Western influence on our legal system is very strong due to historical factor, the process of legal transplantation (Anthon F. Susanto, 2015; Tri Budiyo, 2009). The duty and responsibility endured by the judge is vital, mainly when interpreting and making the decision (Anthon F. Susanto, 2016:92), and this where the judge's reason is related to the interpretation.

Court decision should not be made from impulsive individual opinion but it should rather come from strong consideration on sense of justice or holistic context of the situation. Judges or other law enforcement agents use more their rationale/logic and persuasion to convince themselves about their perception of the truth as put in as if we cannot see or hear something, and if there is no important proof about the existence. Why do we have to accept what other people are saying? Why do we have to believe it? Sometimes, everybody whether they are a policeman, a judge, a prosecutor, or anyone of other profession accept things as a truth such as news, friend's opinion, in short, many things even something that is irrational. Therefore, dialogue or communication taking place in the court room, naturally, is a rational dialogue.

Affirmation encourages the process of proof to contain spiritual value as part of the materialization that judge is God representatives and a responsibility of a creature to its creator. The evidence process that tends to be rational and realistic is enhanced with sense of spirituality by the judge, therefore the concept of judge's ratiocination is closely related to the spiritual values as such the heading of the decision saying "Justice based on God Almighty".

The perspective on that the affirmation is merely related to the concrete fact in the judicial process or some put it as "rationalization" is shallow. We often separate reality of spirituality in the decision-making process by constructing that the decision made is based on the facts, data and evidence or two probable causes. We forget that actually fact or hard evidence will always be constructed or

interpreted and read in the context of humanity. Affirmation does not relate in line with what is presented by the proofs or existing fact. If the evidence considered to be the truth says A, the affirmation does not always show the coherently with the existing evidence. In this position, the ratiocination may be beyond what is presented by the evidence; however, the leap of the affirmation is always being spiritual in nature or, on the contrary, is the process of relation of power or social relation.

Is there any connection between the affirmation and the truth? Even though the probability is high, it is not automatically that the reasons lead us to the truth considering the meaning of the truth is also diverse. The objectives of criminal justice system other than as the tool of social control is also the vehicle to reach material truth that is almost exact or substantial truth. This material truth can only be achieved through a strict, exact, and meticulous process of examination. The process of proof with high validity in which the judges truly and thoroughly throw their attention to the case heard. Through strict stages, judges are expected to arrive at their ratiocination to make decision, therefore, it is expected that his affirmation can lead him to reach the substantial truth. Is material truth can be reached if the judge affirmed? This argument is more reasonable even though it needs further explanation.

It is necessary to think more about the concept and meaning of judge's ratiocination using a more fundamental approach: philosophical approach mainly the hermeneutical approach and the critique of text. Therefore, the essence of judge's reason can be seen in individual and social space. Hermeneutic helps to understand the relation of textual meaning because naturally hermeneutic is the method or the art of interpretation as F. Budi Hardiman (2015:5) mentioned as the art to understand: literalism. Hermeneutic when approaching Dilthey's understanding (Kaelan, 2009:269) is the philosophy of life because it tries to analyze the process to understand that makes us know the idea (soul) of ourselves and the idea of others.

The critique of text known as critique of discourse/analysis of discourse and mostly used in Philosophy is recognized as textual study (Ali Harb, 2003), and is also used by Gregory Leyh (1992) to deconstruct the reading of hermeneutic to arrive at the nature of reading (Anthon F. Susanto, 2019; 132). We can say that this is the nature of philosophical reading that is reflective and heuristic at the same time. Reflective-Heuristic as an endeavor to look into, to see through self-awareness, study further using a new understanding to see the hidden assumption to lead the new way to the new comprehension (Anthon F. Susanto, 2010:36).

## ***B. Problem Discussed***

Problem discussed in this article is about the judge's ratiocination discussing more specifically about (1) What is the meaning of the judge's ratiocination and what are the elements constituting? (2) How is the relation of judge's affirmation with the constructive truth? (3) How is the relation of power and the judge's reasons?

## ***C. Discussion and Analysis***

### **1. The Meaning of Affirmation and Elements Constituting**

Simon Blackburn (2013:94) argued that affirmation is "upholding a proposition to be the truth". Philosophy tries to understand the type of condition that can constitute the ratiocination or the confidence. For example, is affirmation emerged from the condition of behavior? Or is a more complex condition constituting the affirmation? Is verbal skill or verbal behavior essential for the existence of affirmation? Is



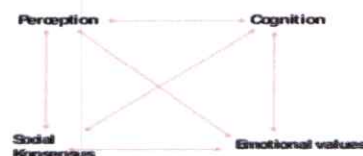
a pre-linguistical condition creating the confidence in babies even, perhaps, since the animal stage of human that obviously cannot yet speak?

Affirmation is a behavior showed by human when he feels aware and conclude that he has reached the truth (Dani Vandiansyah, 2008:5). Because an affirmation is an approach, it may not always be correct or a mere affirmation is not a warranty of a truth. While "belief" means a psychological condition of someone to consider a premise is correct (Eric, Schwitzgebel, 2016). This view separates the affirmation and the belief.

Definition that is more open and far further can, for example, be found in the arguments of Andrew Newberg and Marx Waldman (2013; 60) mentioned that belief is (1) a feeling on something that is right or true, especially of thing without any evidence, (2) an opinion held firmly; (3) things that are believed; (4) faith. Perspective of Newberg and Waldan led to the concept of religious or spiritual belief by laying the possibility that the evidence can never free from the false. If we want to say "an evidence is a series of steps, confirmation or demonstration leading to a legal conclusion even though we understand that there is different standard in explaining the facts from scientific, religious, or legal perspective. This view is different from what is mentioned above that viewing the affirmation and the belief.

Andrew Newberg dan Marx Waldman (2013:61) later defined belief as perception, cognition, or emotion of what is considered true by the brain consciously or unconsciously. It means that perception is used to refer to the information received about ourselves and the surroundings through our senses. Cognition, representing different level of process in the brain including all process of conceptual abstract used by our brain to set and make the perception logical. Memory and awareness are parts of cognition that is important to build the belief. Emotion plays a crucial role in the nervous process and helps to add intensity and values of every perceptual experience and our owned cognitive that all system of belief of an individual is influenced by the inputs their receive from other society member. Because if it lacks of social consensus, the most important belief will never be showed. It can be shown as:

Figure 1.  
**Parts that constitute belief**  
from Andrew Newberg & Mark Waldan's "Born to Believe"



All four elements of the above Figure are interacting one another. Perception, cognition, emotion and social consensus enable us to identify, explore, evaluate and compare various of belief through the most popular evaluation of the world to the most extreme perception that can enlighten our purpose of life. All of this influence the strength, power, and relative truth of a belief. Each part has each own intensity control. The higher the intensity, the more real and trusted the belief. For example, a prosecutor is shaped by the environment and his experience to have a strong affirmation on many problems dealt with of how to finish the task assigned to him. While for a judge, his experience will determine his decision and his belief will improve the quality of the decision making. In its mechanism, the four elements of the belief, principally will be ups and downs depending on what part the four elements are built.

Belief does not always relate to science or scientific truth for the concept of belief is more about spiritual aspect and even social that (sometimes) cannot be tested through the concept of scientific experiment, for example, the concept of God that is connected to the faith, not fact. Even though this argument interchangeably popped up and down along with the understandings developed in the society. However, the phrase of "judge is God's representative on the earth as is mentioned above explains that a judge has a spiritual responsibility in every decision making. It can be confirmed that the concept of judge's affirmation includes spiritual, emotional, and even social aspects. Academically, it is conveyed that judge's belief is no other than judge's holistic intelligence (IQ, EQ, and SQ). This argument is supported by a fundamental understanding on how our brain works and we owe it to the neuroscience that today is more about art than science. The affirmation (of judge's) is so related to perception, cognition, social consensus, and, perhaps the most vital, intuition on what is considered rightful that the truth or untruth in a court decision is connected to the judge's ratiocination.

## 2. Judge's Affirmation and Constructive Truth – Intersubjective

The affirmation of judge is a belief based on rational, emotional, spiritual and even social aspects. When the judge declares that he decides the case on his ratiocination, it means that he (has) meticulously viewing, hearing, and exploring various problems in the case examined as Satjipto Rahardjo (2009) argued that judge should decide with empathy and compassion. Mark Constanzo (2008:431), in his (many) research explained that there are many evidence showing judges to have a relatively strong awareness on his judicial decision-making process.

An accurate judge considers many aspects to be put in his decision. This is the process in which he makes a social construction in his judicial decision making. However, the perception during the humanity debate is none other an intersubjective truth finding that is a dialogue of truth involving some perceptions and thoughts.

The process of truth finding always dialogic so that it is determined by the communicating powers. Will an accurate action produce a correct decision? Or, on the contrary, can a wrongdoing lead to a fair decision? The rightful action, as Blackburn argued as "finding the truth to be done", is similar to stop the discussion on moral and ethics of what should be done even though it does not always omit the practical aspect. Nevertheless, the analysis on practical reason should whether be concentrated on what is right or only on the good signal about the selection of deontological and theological approach of ethics (Simon Blackburn, 2013:760).

The truth is determined through interpretation, perception, and intuition. Law is a lifeless text that will only be alive if given soul through the process of interpretation. The meaning of the coherent truth in this context is consistency, harmonization, and synchronization of the rules through the process of reading to reach a quasi-coherent truth.

Factual truth to be reached cannot be described accurately according to the definition and concept attached to the definition of the factual truth as it is of a statement that can be clarified: that something fits the fact and the reality. If it happens, it can bring us to the blinding comprehension moreover when related to the human conduct. The examination process in the court trial shows the dynamic of interpretative factual truth (quasi factual truth). Parties playing roles, including judges, are not directly involved or knew exactly what happened. Judges only hearing, collecting information, or reading documents, and concluding in the decision. Judges, prosecutor, and advocate did not personally experience the occurrence. In this stage, finding the truth is always distorted. There is other power playing more major role in decision making process. Some efforts to improve quality of data by exploring deeper through some ways to reveal the case in the court even though, at the end, more cases prosecuted can be occupying the judge's reasons. Judges should crosscheck data they got. In this stage, factual truth



expected to be reached will stuck on a wall of how far the validity of fact and data can be presented in front of the court.

On the next step, the affirmation is connected to functional truth. Functional truth becomes more dominant for the process of decision making. Through this functional truth, the course of the decision will be shown what direction that the judge is heading to with the decision. The functional truth rounds the course of the constructive truth. It can be concluded that the truth to be reached in case examination is Quasi Truth.

## 2. Relation of Power in Judge's Reason: Between Simulation and Doubt

Reasoning is a complex dialogue taking place in a hearing process among judge, prosecutor, counselor, experts, media, and even common people. Such relation opens for disagreement, mainly caused by different point of view. The situation is shaped by interplay between relation of power, relation of authority, or socio-economic relation.

All law enforcers hold 'personal belief' which are formed through daily life, personality, family influence, workplace and social environment (society) related to their beliefs. How someone eats, dresses and also behaves in the community can form beliefs. We all have confidence in our decisions. There is a unique relationship between belief and doubt, like double side of a coin. Sometimes belief is more dominant than doubt, but on the other hand doubt grow stronger and belief fade away. Whether when "belief" is more dominant or vice versa, one still has to make decisions. The relationship can go back and forth, can occur side by side, dominate each other and look after one another. But what is certain is that someone will always be in the "intermediate" reality, when doubt comes with belief.

Dual concept of doubt-belief sometimes confusing in practical manner; however, the case is not in philosophical or psychological approach. Is it true that when someone believe in something, she will not hold any doubt? Or when she doubts, can she hold something to believe at the same moment? Every decision is unique and never show an ideal concept of sharp distinction between doubt of belief. In can be seen through legal texts or hearing process.

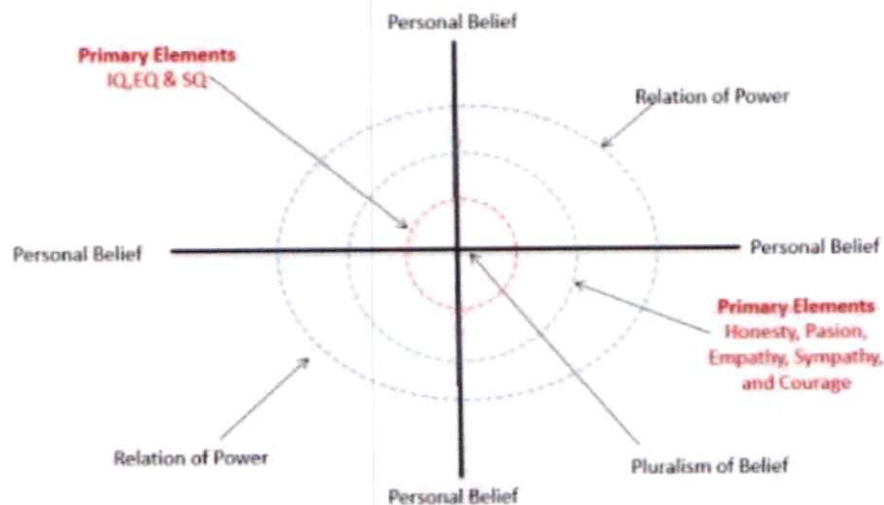
No matter how clear the evidence is presented before the court, it still provides no certainty because of distortion of communication between reality and observation. Therefore, judge, prosecutor, and investigator always unable to reveal the true essence of reality. To illustrate a decision process, take example of a lead judge who holds belief and faced with doubt of other panel of judges, but somehow, they agreed to conclude something together. You may say there is a thing called dissenting opinion, a different standing on certain case, but what about the verdict? Where is this belief stand? Is pure believe a real thing, or everything is a matter of compromising?

This situation happens because when we make a decision our minds, reason and senses are in dialogic stance. They will communicate to each other with different perception, such as when our senses confirmed fact A, but at the same time our minds said it is B, and reason analyzed it is C. This remains a mystery.

How belief is shaped? There is what is called individual belief and there is communal belief. Individual beliefs will meet with other individual beliefs to form what is known as communal beliefs. Individual belief cannot be said to be homogeneous, but on the contrary as a different belief (plural / plural). Only different beliefs can fill in the large space of the "belief", because the same belief only fills one space in that belief. However, different beliefs can only be accepted when there is an open dialogue between beliefs so that even different beliefs create differences but become the glue in togetherness.

Through this, a variety of different beliefs are created that form a large space for communal beliefs, as described as follows:

**Figure 2**  
**Shaping Belief**



Communal belief is unique and specific, it is not general despite an open system. For instance, Batak people have certain value as well as Madurans and other tribal societies, but these community fill as Indonesian in communal consciousness. Individual believe can dominate to loosen communal belief, and vice versa. It is hard to imagine that each belief arises at the same time, instead they fill each other's space. When a form of belief weaken, the other become strong, this happens simultaneously to shape dynamic system of belief.

How can different spaces of belief be formed? In normal beliefs, we often perceive that the beliefs that are owned by us are part of the beliefs of others, or we are only one that is in great faith, as a community group which contains various identities, places of residence, origins, tastes, hobbies, commitments. Of course, individuals have a choice of free choice which is limited by the various obstacles in it. The obstacle must be understood as part of reality, which means showing the boundaries of the difference relation. There is nothing more fundamental that belief is the fact that all are always present within limitations, so that belief can appear within limitations. In such a case it can be created, a relationship between competing beliefs. The belief of law enforcers is similarly present in the courtroom. The conviction of the prosecutor can be different from that of the Police, which is different from that of an advocate or defendant. Likewise, a judge's conviction can differ from that of other law enforcers. Differences in belief can unite when the differences in beliefs complement one another, thus creating a large space for belief, namely "judicial beliefs." What is meant by the creation of complementary differences in beliefs? This is the attitude of law enforcers in treating their beliefs. "This is what is meant by" tolerance of belief ". Faith tolerance will only be formed when we treat our beliefs which are supported by knowledge / truth in the right way.

To treat our belief in right way means we open our minds to submerged into abstract reality hidden beneath our complex world (Freager, 2014:62). A *Sufi* argued that "our minds possess eyes to see the world transcending, minds is a temple placed by God in each man – a sacred house to capture divine



sparks within ourselves". Differences in belief is essentially a control of trial process, where judge's belief is to be checked by others to shape the relation of belief control. It can be explained under this diagram:

**Figure 3**  
**Sphere of Belief**



Tolerance is impossible once we create partition of beliefs among law enforcers, which leads to tournament of beliefs. This is fatal to justice system. Such partition creates competition and gap that jeopardize the ongoing system. In a progressive law approach, the requirement of two set of evidence does not necessarily lead to ratio decendi, as well as scientific paradigm taught us. When a scientist holds firm to certain theory, concept, movement, or thoughts, she will act based on guided by those qualities.

Judge's belief is constantly shifting and impermanent, always changing, in the sense that it is creeping, growing, thickening and thinning, even fading and strengthening from one belief to another. A person's belief today will change tomorrow, or an hour later, even a few seconds later, whether due to certain causes or due to other factors that have no causal relationship with the event. Faith can suddenly come to affect the mind and master understanding, like a person is reminded of something then he becomes there. An illustration, such as himself fainting / unconscious and then himself regaining consciousness with a new vision and perspective on the world he lives in.

In a broad interpretation, belief can be influenced by conditions inside and outside the court, outside and inside knowledge of facts and even beyond. For example, power relations can encourage judge belief, so that there is a leap of faith. Power relations can change and shift a person's belief position, power relations can create conditions where facts and evidence are not important, or their position is shifted. For example, economic relations with the tendency for both or one of the parties to benefit. In the context of the leap of faith, the meaning of the judge's conviction goes beyond what we can calculate and explain above. A judge can perform what we call the "leap of faith". The leap of faith referred to here is that "belief" does not depend on the facts of causality (linear), but appears beyond the facts themselves. Some kind of insanity, or something that goes beyond the ordinary, even beyond the essence of the decision itself. Why did this happen? The essence is that the reality around us presents such great and abundant information, that our souls and minds can no longer sort out or sort out which realities are present in front of us. The information that is so abundant around it triggers fundamental changes to ourselves and our behavior. It provides all of what we need and what we don't need. Information is not something we have to look for but instead something that is looking for us invades our consciousness and replaces our existing consciousness.

Essentially, the judges' belief as well as the public's belief can only be built because there is almost no visible barrier that brings the judge's belief closer to social media or information technology. In

this situation, it is possible to form local values with universal values, or what we create by meeting local and global values or becoming "Glocalization." Media technology infuses local gossips can present variety of truths in front of us. Thus, it can also present new truths and new identities that are competing with old identities. In this condition, what is called "simulation" of truth will be born. The simulation of truth which will then form a "simulation of belief".

Simulation is a stage, filled with knowledge that replaces order. In that situation, the "judge's belief" will enter a new phase. With this simulation, belief will become a "stage for the gathering of power relations", gathering of economic power, gathering of political power, which can replace the truth out of existing truth. So, the Court, which is the stage, turns into a "simulation of justice", thus giving birth to various faces of justice, various identities that are fighting over each other. The judge's belief turned into a "belief theater - and turned into a simulation of truth. In the stage / simulation of the truth, various knowledge that appears in front of everyone displays various kinds of truths that cannot be taken for granted. For example, the evidences in court seem to show the truth, but they may be newly formed facts, or artificial facts, namely facts that are attached to other facts, even set facts, namely facts that are far from the essence of truth. In such a stage, the prosecutor could act as if it were on behalf of the state, but it turned out to be in his own interest. Counselor seem to speak in the name of justice but actually hope for their own victory, and judges appear as if they are just decision makers even though they decide based on the needs of their stomachs.

On the other hand, "public belief" is shaped through a variety of information presented in front of them that are differ from evidence at the court. Diverse public opinion can create alternative truth affecting the court. The public will see the judiciary or court in the way they get information from the media and communication technology. This situation leads to variety of truths, which then resulted in a simulation of the truth. The role simulation performed by the players involved in the justice system. In this perspective, truth simulation is not something that becomes true or can one party accept as truth? But only alternative truth, truth experiences relativity (the process of being relative).

Simulation of belief is emerged when various beliefs reflect their respective dimensions of truth. Judges present the dimensions of knowledge and truth that appear in the facts of the trial, but the public can perceive them from the various realities that are present before them, for example through social media, information technology and many others. The context described above directs us that beliefs can clash with each other, negate each other, but at the same time are connected to one another and may also not have any relationship. This is a simulation of the truth which gives birth to a simulated belief. However, this intersection of beliefs can form what we call "truth control" which is born from a free relationship between various things. Freedom can only be formed when each belief that is formed can determine one another. Public belief becomes the control for judges' belief or judicial system belief, in which society is free and not intervened by the judicial system, and vice versa.

### **Conclusion**

We can conclude our findings as following, 1) the meaning of belief is broad and extend far beyond reasoning activity, it also includes judge's emotional and spiritual insight which shape a holistic intellect. Its elements are not merely individual, but also social. It is not singular but plural, in which al relations are completely filled. 2) Judge's belief is tied to inquiry of truth, even so this kind of truth comes under constructivist or intersubjective approach, through dialogue of inter-components. 3) Judge's belief is not something impartial, pure or sacred, but tainted by relation of power, authority, social and economic tension, which created leap of faith when it comes with doubt. Leap of faith occurred when doubt dominated our sense of certainty, but belief becomes absolute and dogmatic when doubt unable to check our belief.



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