Journal of Legal and Cultural Analytics (JLCA)
Vol. 5, No. 2, 2026 : 273 - 292

Dissenting Opinion in the Indonesian Judicial System: An Epistemological Study

Ahmad Muzayyin Destuladoe[1]*, Zudan Arief Fakrulloh[2]
Universitas Borobudur Jakarta, Indonesia
Corresponding Author: Ahmad Muzayyin Destuladoe destuladoe@gmail.com

A R T I C L E I N F O

Keywords: Dissenting Opinion, Epistemology, Judicial Power, Judicial Decision

Received : 25 March 2026
Revised : 26 April 2026
Accepted: 27 May 2026

A B S T R A C T

Dissenting opinion is an important arrangement in contemporary judicial systems, represent the independence of judges and free will behind legal decisions. Its existence is recognized normatively in Article 14 of Law Number 48 the Year 2009 on Judicial Power in Indonesia. Those rules are often applied inconsistently and in ways that create a gap between the law says and judges act, diluting courts' transparency and accountability. This article studies dissenting opinion through an epistemological concept, considering how legal truth is constructed, put to the test and justified in judicial reasoning. Legal knowledge: viewed as an epistemic construction created out of a dialectical interplay between empirical facts rational discourse. Accordingly, judicial truth cannot be reduced to opinion, or even to majority opinion. Such an account elevates dissenting opinion to a strategic epistemic role within this framework: it is internal controls on the reasoning of majority opinion, mirrors competing concepts of legal interpretation, reinforces judicial accountability and further codifies evolving areas of doctrine. This research focuses on transactions related to Decision Number 68/Pid. Sus-TPK/2025/PN. Jkt. Pst. The Decision shows that dissent dislodges majority confusion, especially in terms of the difference between loss to the state and criminal liability, the former being a descriptive fact and only the latter being normative. Consequently, the practice of dissenting opinion is not only a normative obligation but also an epistemic necessity for contemporary judicial systems in order to improve the quality, reasoning and legitimacy of judicial decisions.

DOI : https://doi.org/10.55927/jlca.v5i2.16686
ISSN-E: 2961-807X
https://journal.formosapublisher.org/index.php/jlca

INTRODUCTION

Dissenting opinion is one of the important arrangements in a contemporary judicial system, represent the independence of judges and free will behind legal decisions. In the Indonesian legal system, the existence of dissenting opinions is declared through Article 14 of Law Number 48 of 2009 concerning Judicial Power, which explicitly requires every judge to provide written reasoning and to accommodate differing opinions in judicial decisions (Asnawi, 2014).

The implementation of dissenting opinions in the Indonesian judiciary has not developed consistently. In many decisions, especially at the first-instance and appellate levels, differences of opinion among judges are not included in the judgment but are instead documented only internally. This condition reflects a gap between legal norms and judicial practice, which has direct implications for the transparency and accountability of judicial decisions (Atmadja, 2013).

The limited application of dissenting opinions indicates a tendency to describe those judicial decisions simply as products of majority agreement, rather than as the result of a dialectical process of legal reasoning. From the perspective of the philosophy of science, especially epistemology, truth is not constructed entirely through consensus, but through processes of testing, critique, and the possibility of refutation of a proposition. In other words, the absence of dissenting opinions has the potential to create epistemic closure, which refers to the closure of space for alternative knowledge that is, in fact, necessary to test the validity of a truth. From this perspective, dissenting opinion must be understood as an epistemic mechanism to critically evaluate the quality and legitimacy of a decision, instead as an expression of subjective differences among judges. Differences of opinion provide the possibility of internal correction of majority rulings, while also opening pathways for the development of law through a plurality of reasoning (Austin, 1995). One other concern about dissenting opinions is that they can create uncertainty in the law. That perspective is predicated on the assumption that certainty in law is equivalent to consistency of decisions. Such an assumption fails to acknowledge that uniformity does not always equal truth and, in some cases, can lead to errors that are never tested (Bacon, 2000).

Studies on dissenting opinions in Indonesian law are still located in a normative-procedural perspective, that is as part of the decision-making mechanism conducted by panel of judges. This study will be concerned with the transparency, independence, and accountability of the judiciary. However, it fails to confront what is perhaps a fundamental issue: that the functions of dissenting opinion in the construction of legal knowledge itself. Differences in reasoning are not viewed as deviations, but as an inherent part of legal practice in modern legal literature. According to Ronald Dworkin, law is an interpretative practice that is subject to multiple meanings (Bruggink, 1999), while for Jürgen Habermas the mere existence of a discursive process allowing for differences in argumentations endows legal legitimacy (Descartes, 1998). There is still little pursuant of the connection between dissenting opinion and its epistemological dimension —

namely as a mechanism to test the validity of judicial truth—especially within the context of the Indonesian judicial system.

Previous studies of dissenting opinions, for example, tend to place them in formal and procedural settings. Most of the studies focus on its role to commend judicial independence, and strengthen transparency and accountability. In Indonesia, dissenting opinion is arguably a term that only found in conversation lemurs grasp feature legislative but not on how this applies in the judiciary decision. Nonetheless, comparative studies from foreign jurisdictions show the significance of dissenting opinion in constitutional adjudication because it allows deliberative democracy to flourish and it leads to an alternative interpretation of law which would be enriched further. But those studies are mostly centered around the institutional and doctrinal aspects, without attending to the epistemological side of judicial reasoning. Such an omission is crucial, as lackting insight into dissensus in the epistemic frame of the law, its function may easily be limited to a procedural- or symbolic feature; not constituting part of a substantial mechanism through which judicial determinations are rendered rational and legitimated.

This article seeks to contribute a corrective by repositioning dissenting opinion not simply as procedural institution but as an epistemic mechanism in the justice system. It argues that dissenting opinion plays a fundamental role in testing legal reasoning, preventing epistemic closure (Dworkin, 1986), and ensuring that judicial truth remains open to critique and correction. Through this epistemological analysis, together with a case study of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst, this article offers a novel perspective that integrates legal theory, philosophy of knowledge, and judicial practice. This submission thus also contributes to the development of a critical and reflective understanding of dissenting opinion within modern legal systems, especially in Indonesia.

LITERATURE REVIEW

Epistemology, as the branch of philosophy concerned with the origin, structure, method, and validity of knowledge, occupies a central place in legal theory because judicial decisions are fundamentally products of knowledge construction (Ehrlich, 1936). In the legal realm, epistemology is not just some abstract philosophical consideration; it actually provides the analytical framework through which judges discern facts from fiction, normative interpretation and justification for truth claims contained in judicial onion (Fuller, 1969). Hence, a judgment should be viewed as an epistemic by-product, that is a specific type of legal knowledge created through the dialectical intertwiningof evidence and legal reasoning and justificatory argument.

Epistemological inquiry dates back to classical Greek philosophy. Pre-Socratic philosophers tended to assume that reality was objectively knowable by means of rational contemplation of nature (Gadamer, 2004). However, the Sophists introduced a skeptical orientation by questioning whether human cognition truly corresponds to objective reality or merely reflects subjective persuasion (Gautama, 1983). This change of mind is important for legal

epistemology because it shows that truth — including judicial truth — is never quite free from doubt, challenge, and the possibility of rectification.

In its contemporary evolution, epistemology branched into two main streams of thought: empiricism and rationalism. Empiricism, particularly as developed in the philosophy of Francis Bacon, holds that valid knowledge must be based on sensory experience, observation and verification (Gie, 2004). Within adjudication, this empirical dimension manifests in the law of evidence, where judges reconstruct legal reality from testimony, documents, expert opinion and other evidentiary instruments proffered during trial; Judicial truth, in this sense, is based on the disciplined verification of facts.

On the other hand, rationalism defined by René Descartes states that knowledge becomes certain through reason and logical coherence (Guthrie, 1962). Descartes' methodic doubt is especially relevant to judicial reasoning because it requires every proposition to be critically tested before being accepted as true. In legal adjudication, this rational dimension appears in the requirement of the judge that the inferential step from facts to conclusions at law be made valid in termsof logic—for internal coherence—and justification on normative grounds. A fact that is empirically proven does not automatically produce legal truth unless it is rationally connected to the applicable norm.

This relationship was elaborated later by John Locke with his concept of tabula rasa, arguing that human understanding is initially empty and later shaped by experience processed through reflection (Habermas, 1996). This insight is crucial in legal epistemology because as it shows that legal knowledge is not static or given but ever being madein a process held between the world and self-reflective juridical interpretation.

From these philosophies, it becomes clear that legal truth is neither purely factual nor purely logical. Its emergence from a dialectic between empirical proof and rational interpretation, whereby facts are tested evidentially and then illuminated with juridical meaning through legal argumentation. In this sense, the correctness of a judicial decision can only rely not on what they proved but rather how such proof is understood in an encompassingnormative framework (Hart, 1994).

Modern epistemology also teaches that truth is only valid so long as it remains available to criticism, refutation, and correction. Thus, the legitimacy of legal knowledge does not arise from an unquestioned status — rather, it comes from going through sustained scrutiny that allows only some of its characterizations to thrive. This proposition is eminently relevant in judicial practice, where the quality of a judgment consists upon its resistibility to internal and external critique.

Epistemologically, this approach cannot be separated from the doctrine of living law in Indonesian law where the purpose of making law is not solely statutory text but also social reality and the values that live in society (Huijbers, 1982). This perspective has a strong presence in Satjipto Rahardjo's progressive legal theory that sees law as a human-facing endeavor–one oriented toward substantive justice, not a closed logical system of norms (Kelsen, 1967). According to Satjipto, judges should not be passive "mouthpieces of legislation,"

but active moral-intellectual agents charged with generating a legal truth that is socially meaningful and ethically defensible.

The same orientation also appears in sudikno mertokusumo which states that the purpose of law is the harmonious combination of legal certainty, justice and utility (Kusumaatmadja, 2006). From an epistemological point of view, such judical truth cannot be reduced to a mere formal consistency, but must instead express an equilibrated synthesis in between doctrinal correctness and substantial fairness.

Mochtar Kusumaatmadja also emphasizes through his theory of law as a means of social engineering that legal norms are the tools for directing social development (Locke, 1997). Legal knowledge is therefore dynamic and contextual by nature, as it hasto reflect changing conditions in society. It supports the idea that Indonesian legal epistemology is inherently open, contextual, and dynamic, rather than exclusively positivistic.

This framework is further supported by Bagir Manan's expectation that judicial reasoning should not be content with textual legality, but should instead find justice through responsible legal interpretation, grounded in constitutional values and societal needs (MD Mahfud, 2010). In this sense, Indonesian judging epistemology demand judges to go beyond syllogistic formalism to the value-based rational justification.

This statement is complemented by the thought of M. Natsir Asnawi, who emphasizes that judicial reasoning is essentially a legal discovery (rechtsvinding) proceeding which is based on argumentative responsibility. Judges do much more than mechanically follow rules — they also create legal meaning through interpretation, legal principles, and doctrinal coherence; sensitivity to the social consequences of how a case is decided (Manan, 2007). Anepistemological lens affirms that judicial truth is constructed via a methodologically self-aware process of reasoning, in which the correctness of a decision lies in the transparency, rationality and accountability with which the path to its conclusion can be traced.

Natsir Asnawi's approach is particularly valuable for Indonesian adjudication precisely because it shows that the legitimacy of a judgment does not stem from its compliance with written norms alone, but in the quality of a judge's justificatory reasoning. This supports the idea that knowledge about law when it comes to judicial decisions is interpretive, contestable, and always open to other ways of construing. Therefore, differences of judicial reasoning, including dissenting opinion, requires to be appreciated as an inherent epistemic by-product of the judicial obligation to constantly challenge the sufficiency of legal reasoning.

Thus, in its judicial practice, the construction of legal truth is carried out through three interrelated dimensions:

- Empirical dimension → fact-finding following the rule of law,
- Rational dimension → interpretation and legal reasoning,
- Axiological dimension → namely, justice-based assessment of the outcomes and values.

As such, judicial truth is not simply a mirror of proved facts, but rather the product of an active interpretive process whereby judges give juridical meaning to events. Differences in judicial reasoning therefore are not an anomaly from the lens of the Indonesian progressive jurisprudence perspective, but rather a natural consequence given that legal knowledge itself is dynamic, open, and contextual. This theory gives us a good reason to understand why dissenting opinion is epistemologically legitimate as aspect of the judicial search for truth.

As has been discussed above, we can see that legal truth in the context of judicial decision-making is an epistemic construct independent from any fixed reference or self-evident reality derived from the interaction of facts, norms, values, and judicial reasoning. The plurality and the openness of judicial knowledge to correction have been clear through the integration of progressive legal thought, legal utility, constitutional interpretation, and rechtsvinding method solidifying around Indonesian jurisprudence. In this new perspective, the divergences of judicial rationales cannot be seen as a procedural oddity but as an intrinsic consequence of the interpretative and argumentative nature of law. Dissentingopinion in judicial practice, precisely in this epistemological basis, is the most concrete institutional form of plural legal reasoning.

This research gap becomes even clearer when examined through the prism of Indonesian jurisprudence. The Indonesian theory of law, opened with the works of Satjipto Rahardjo, Sudikno Mertokusumo, Mochtar Kusumaatmadja, Bagir Manan, and M. Natsir Asnawi consistently conceives of law as a process of meaning-making that cannot be separated from social reality, moral judgment, and judicial reasoning rather than just a closed normative system. Within this epistemic framework dissenting opinion cannot merely be understood as the procedural formal creature it has in some authorities; instead, dissent itself is part of the epistemic architecture of judicial reasoning.

Relatedly, M. Natsir Asnawi's idea of judicial reasoning as a process of transparent and accountable legal discovery is now truly relevant. Judicial legitimacy goes beyond mere compliance with the letter of rules and regulations; it hinges on the interpretive logic which makes the conclusion possible. From this perspective, dissenting opinion is a perfectly legitimate alternative route of rechtsvinding, originating in the same facts and norms but yielding a different juridical significance through equally valid reasoning.

Dissenting opinion, therefore, constitutes an intrinsic element of how legal knowledge is constructed, tested, and refined within adjudication. Its recognition, under Law Number 48 of the year 2009 concerning Judicial Power, confirms that contradictory judicial understandings are not extrinsic ideas that only come outside to the judgment — they are solidly embodied in it. A judicial decision is thus not a single consensus of what the law means; it is an ordered field of reasoning where competing understandings live alongside each other, challenge each other, and test their validity against one another.

From the perspective of progressive law (hukum progresif), which Satjipto Rahardjo has developed, dissent becomes normatively and epistemologically more meaningful. Progressive law and the outsiders have gone one step further: Instead of viewing law as a self-contained, rigid system — the opposite of what it means to be human— they see law as an enterprise centered around people and directed toward substantive justice (Mertokusumo and Pitlo, 1993) Within this paradigm, conformity is not inherently good, especially if it serves to smother truth or justice. Thus, a dissenting judge is not departing from the law, but may instead be engaging more faithfully with the law's underlying moral purpose.

This claim is further supported by Sudikno Mertokusumo's triple conceptualization of law as certainty, justice, and functionality (Popper, 2002). In this framework, therefore, unanimity cannot be treated as being truly equal to correctness. An unanimous judgment can meet legal certainty, without critical scrutiny it risks undermining justice and social utility. Dissenting opinion operates as the internal mechanism through which these competing legal values are actively negotiated.

Similiarly, Mochtar Kusumaatmadja's theory of law as a means of social engineering theory attaches importance to legal reasoning remaining responsive to society's evolution (Posner, 2008). Such responsiveness precisely necessitates openness in legal interpretation. Indeed, the dissenting opinion thus becomes an adaptive juridical tool that preserves counter-interpretations with the potential to better conform to changing social realities.

The epistemic significance of dissent becomes particularly salient when assessing judicial practice against the backdrop of internal modalities such as Supreme Court Circular Letters (SEMA). Although not formally categorized as legislation, SEMA serves as a directive principle that ratifies judicial reasoning and uniformity among repetitive cases typologies. At practical level, SEMA Number 1 of 2022 and SEMA Number 3 of 2023 provide doctrinal formulations that judges are to apply uniformly, particularly in family law matters and civil disputes. While such standardization advances the value of legal certainty, it also raises significant epistemological issues. Understanding this, doctrinal formulas risks reducing adjudication into a process of mechanical application, and reducing the space for independent arguments on context and principled conclusions. In this condition, dissenting opinion becomes not only procedurally rare, but structurally disfavoured.

The progressive legal framework should approach the tendency with caution. SEMA should not function as an inflexible barrier to judicial reasoning, but as a standard that is receptive to contextual adjustment and critical revision (Pound, 1954). In this sense, dissenting opinion acts as a corrective mechanism to standardized adjudication, allowing judges to challenge, elaborate on or deviate from more general forms of formulation wherever those do not do justice to the specificities of particular cases.

From an epistemological standpoint, dissenting opinion serves at least four core functions:

1. verification function → testing whether majority conclusions of the majority are sufficiently factually and normatively grounded;
2. falsification function → disclosing logical gaps, exaggerated characterizations and immature assumptions;
3. plurality-preserving function → protecting interpretative pluralism with legal meaning.
4. developmental function → saving alternative reasoning paths that could guide future jurisprudence.

Through these functions, dissent prevents something that could be termed epistemic closure, which is the phenomenon in which judicial reasoning becomes shielded from criticism and takes institutional consensus for misleading certitude. A judgment that suppresses dissent may still produce formal uniformity, but it threatens to sap its epistemic legitimacy.

Indeed, the relationship between SEMA and dissenting opinion also expresses a deeper jurisprudential tension between uniformity and epistemic openness. While SEMA is intended to provide uniformity, dissent preserves the opportunity for critique, correction and evolution of law. Both values need to be maintained in balance by a mature judicial system.

From the standpoint of Indonesian progressive jurisprudence, the strength of a judicial institution does not resonate at a single voice but rather in its ability to embrace principled dissent. A court that never allows dissent may still speak with one voice, but one voice is not always the voice of truth.

METODHOLOGY

This research employs a normative legal research method using a conceptual approach, statutory approach, and case approach. The conceptual approach is utilized to examine dissenting opinion from the perspective of legal epistemology, legal reasoning theory, and the views of legal philosophers and scholars concerning the construction of legal truth. The statutory approach focuses on analyzing legal provisions governing dissenting opinions, particularly Article 14 of Law Number 48 of 2009 concerning Judicial Power, along with other relevant regulations. Meanwhile, the case approach is conducted through an analysis of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst to identify the epistemological functions of dissenting opinion in testing the validity of legal reasoning, preventing epistemic closure, and strengthening the legitimacy of judicial decisions. The legal materials consist of primary legal sources, including legislation and court decisions, as well as secondary legal sources such as books, scholarly journals, and relevant legal philosophy literature. The collected legal materials are analyzed qualitatively using a descriptive-analytical method to obtain a comprehensive understanding of the position of dissenting opinion as an epistemic mechanism within the Indonesian judicial system.

RESEARCH RESULT

Dissenting Opinion as an Epistemic Mechanism: Case Analysis of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst

Following up on the epistemological framework developed in Chapters B and C, Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst provides an example of how dissenting opinion functions as an internal mechanism for tests of judicial truth. From the perspective of legal epistemology, a judicial decision cannot be reduced to the mere subsumption of facts under norms. a judicial decision is not the mere subsumption of norms under facts. Instead, it is an object of knowledge of a legal kind that emerges from the judge's act of rechtsvinding, interpretive reasoning, and argumentative justification. In this sense, judicial truth is not something conferred so much as self-constructed and subject to perpetual correction.

This conceptual foundational principle is especially critical when a decision exposes competing judicial theories for bridging empirical facts with normative conclusions. The current corruption case clearly demonstrates a conflict between two different criminal law modes of reasoning, especially regarding the relationship between state financial loss and criminal culpability.

The majority reasoning appears to rely heavily on one indicator, the quantitative calculation of state financial loss. From this empirical result, the majority proceeds to conclude that the elements of corruption are fulfilled, and subsequently infers the existence of abuse of authority. This structure displays a consequence-driven form of reasoning, where loss gradually shifts from being an empirical fact into becoming a normative charge of guilt.

While this may seem like a pragmatic way to operate, it raises deep epistemological concerns. The relationship between loss and fault in criminal law is never automatic. Loss belongs to the empirical domain, while fault (schuld) is a normative construct that must be proven separately through evidence of causal nexus, mens rea and excess of authority. When this inferential bridge is not rigorously justified, the reasoning risks producing what legal epistemology recognizes as a logical leap— an inference that may seem persuasive on its face but is ultimately insufficiently justified.

This concern becomes even more acutely because the facts of the case arise from corporate policy and business decision-making, where valuation, negotiation, and transactional structuring inherently carry commercial risk. Within such a framework, failure is not an exception but an inherent aspect of legal business practice. Therefore, not all economic loss could rightly be converted into the fault of a crime.

It is precisely at this point that the epistemic significance of dissenting opinion, as theorized in Chapter C, becomes fully visible. The dissent in this case does not merely reject the majority's conclusion; it reconstructs the very architecture of legal reasoning.

> "Menimbang, bahwa tidak setiap kebijakan korporasi yang kemudian menimbulkan kerugian negara dapat serta merta dikualifikasikan sebagai perbuatan melawan hukum dalam arti pidana."

(Considering that not every corporate policy which subsequently results in state financial loss can automatically be qualified as an unlawful act in the criminal sense).

"Menimbang, bahwa dalam perkara a quo tidak ditemukan adanya bukti yang cukup mengenai niat jahat (mens rea) atau penyalahgunaan kewenangan oleh para terdakwa."

(Considering that in the present case, there is insufficient evidence of criminal intent or abuse of authority).

"Menimbang, bahwa fakta-fakta yang terungkap lebih menunjukkan adanya risiko bisnis (business risk) yang tidak berhasil, sehingga tidak dapat ditarik kesimpulan adanya kesalahan pidana."

(Considering that the revealed facts more accurately indicate failed business risk, and therefore no conclusion can be drawn regarding criminal fault).

"Menimbang, bahwa oleh karena itu, unsur kesalahan belum terbukti secara sah dan meyakinkan."

(Considering that accordingly, the element of fault has not been legally and convincingly proven).

The dissent above reveals that dissenting opinion is not merely a disagreement over conclusions but a disagreement over epistemological paradigms of judicial reasoning. Consistent with M. Natsir Asnawi's approach of judicial legitimacy as methodological transparency in legal discovery, the dissent explicitly separates loss as an economic fact from fault as a juridical construct requiring independent proof (Rahardjo, 2009). This distinction is important in legal epistemology because it is not just the isolated fact or bundle of facts that determines truth, but rather whether the inferential relationship between those facts and normative conclusion can survive scrutiny. By emphasizing the absence of mens rea and reframing the case as business risk rather than criminal abuse, the dissent brings a legal argument back to a stricter epistemic discipline: criminal liability must never be presumed from consequences alone, but must be proven beyond reasonable doubt through a coherent chain of reasoning.

In direct synchronization with Chapter C, the dissent in this case clearly performs the four epistemic functions of dissenting opinion.

- First, it performs the verification function, by re-examining whether the conclusion of the majority is sufficiently tethered to facts and legal norms.
- Second, it performs the falsification function, by exposing the legal debate an important logical gap in equating state loss with criminal culpability without fulfilling the burden on proof of fault.
- Third, it serves the plurality-preserving function, by preserving an alternative legal interpretation rooted in business-risk doctrine and criminal law principles.
- Fourth, it performs the developmental function, because this alternative reasoning may influence future jurisprudence in distinguishing corporate loss from corruption offenses.

This is precisely why dissent protects against epistemic closure, a condition described in Chapter C where institutional consensus calcifies into false certainty. Without the dissent, the majority reasoning could easily crystallize into a single cold judicial truth despite areas of lingering inferential weakness. With dissent, however, legal truth remains open, contestable, and continuously testable.

At a deeper level, the clash between the majority and dissent embodies two paradigms of legal reasoning. Most take a reductionist approach, compressing legal aggregation to one measure—loss of revenue for the state. The dissent, by contrast, operates within a critical-reflective paradigm: every legal conclusion must remain tethered to an intelligible framework of logic, proof and normative distinction. This second paradigm is fully aligned with Satjipto Rahardjo's progressive legal theory, which requires judges to move beyond formalistic certainty and be committed to keeping substantive justice (SEMA No. 1, 2022). It is also consistent with Sudikno Mertokusumo's insistence on to balance actual certainty, justice and utility, particularly in the case of corruption relating to business policy

The implication is fundamental: without dissenting opinion, majority reasoning runs the risk of being enshrined as truth simply because there exists no internal mechanism to challenge it. Dissent leaves judicial truth unfrozen, and in the gripof ongoing epistemic scrutiny.

Ultimately, Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst shows that the health of a judicial institution does not consist in speaking with one voice but in letting principled disagreement serve as a means to trial and error in pursuit of legal truth. A court may still produce decisions without dissent, but without dissent it may fail to produce truths that have been genuinely examined. The theoretical framework presented in Chapters B and C, along with its concrete verification through the exploration of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst in Chapter D, jointly assert that dissenting opinion is not an incidental feature of adjudication process. Rather, it is the institutional manifestation of legal epistemology itself, through which judicial truth is always a work in process vulnerable to creative testing, thoughtful revision, and lively doctrinal translation. This remarkable case study confirms that the legitimacy of judicial truth depends not on the numerical dominance of majority votes, but on the strength of the justificatory reasoning that survives critical scrutiny. It is from this clear and the following conclusion emerges with confidence this interweaving of theoretical insights and empirical evidence that leads to the conclusion.

DISCUSSION

Dissenting Opinion from an Epistemological Perspective

If the earlier chapter showed an epistemological premise that judicial truth is interpretive, contextual, and revisable over time, then dissenting opinion must be understood as part of a theory of judicial knowledge production. If the earlier chapter proved an epistemological premise that judicial truth is inter pretive, contextual, andrevisable over time, then dissenting opinion must be understood as part of a theory of judicial knowledge production. Within this

framework, dissent becomes much more than a procedural provision for opposing views; incidental to collegial adjudication it becomes an essential site of methodologically legitimate alternative legal discovery (rechtsvinding).

Research on dissenting opinion in Indonesia has predominantly been viewed through the normative-procedural lens. Most writings position dissent as a parameter of the judicial independence, transparency, and accountability; or as one manifestation of collegial decision making under Article 14 Law Number 48 year in 2009 about Judicial Power (Marzuki, 2017). Muchof this scholarship works within a dominant line in which dissenting opinion is treated more as an institutional device of adjudication than a phenomenon directly tied to the nature, construction, and validation of legal knowledge itself.

Even when comparative scholarship expands the discussion—connecting dissent to issues connected to constitutional adjudication or deliberative democracy, for instance, or discursive legitimacy—the analysis often ends up confined to doctrinal and institutional considerations. While Dworkin, Habermas, and Alexy offer crucial foundations based on interpretation, discourse, and rational justification within the meanings of what is proffered from decisions of jurisprudence acknowledging dissenting opinion as a means to be devised in deliberation process, its specifically epistemological consequence has not yet found high-profile attention by Indonesian thinkers who have been inspired by those three three prominent scholars.

This research gap becomes even clearer when examined through the prism of Indonesian jurisprudence. The Indonesian theory of law, opened with the works of Satjipto Rahardjo, Sudikno Mertokusumo, Mochtar Kusumaatmadja, Bagir Manan, and M. Natsir Asnawi consistently conceives of law as a process of meaning-making that cannot be separated from social reality, moral judgment, and judicial reasoning rather than just a closed normative system. Within this epistemic framework dissenting opinion cannot merely be understood as the procedural formal creature it has in some authorities; instead, dissent itself is part of the epistemic architecture of judicial reasoning.

Relatedly, M. Natsir Asnawi's idea of judicial reasoning as a process of transparent and accountable legal discovery is now truly relevant. Judicial legitimacy goes beyond mere compliance with the letter of rules and regulations; it hinges on the interpretive logic which makes the conclusion possible. From this perspective, dissenting opinion is a perfectly legitimate alternative route of rechtsvinding, originating in the same facts and norms but yielding a different juridical significance through equally valid reasoning.

Dissenting opinion, therefore, constitutes an intrinsic element of how legal knowledge is constructed, tested, and refined within adjudication. Its recognition, under Law Number 48 of the year 2009 concerning Judicial Power, confirms that contradictory judicial understandings are not extrinsic ideas that only come outside to the judgment — they are solidly embodied in it (Mertokusumo, 2007). A judicial decision is thus not a single consensus of what

the law means; it is an ordered field of reasoning where competing understandings live alongside each other, challenge each other, and test their validity against one another.

From the perspective of progressive law (hukum progresif), which Satjipto Rahardjo has developed, dissent becomes normatively and epistemologically more meaningful. Progressive law and the outsiders have gone one step further: Instead of viewing law as a self-contained, rigid system — the opposite of what it means to be human— they see law as an enterprise centered around people and directed toward substantive justice (Mertokusumo and Pitlo, 1993). Within this paradigm, conformity is not inherently good, especially if it serves to smother truth or justice. Thus, a dissenting judge is not departing from the law, but may instead be engaging more faithfully with the law's underlying moral purpose.

This claim is further supported by Sudikno Mertokusumo's triple conceptualization of law as certainty, justice, and functionality (Popper, 2002). In this framework, therefore, unanimity cannot be treated as being truly equal to correctness. An unanimous judgment can meet legal certainty, without critical scrutiny it risks undermining justice and social utility. Dissenting opinion operates as the internal mechanism through which these competing legal values are actively negotiated.

Similiarly, Mochtar Kusumaatmadja's theory of law as a means of social engineering theory attaches importance to legal reasoning remaining responsive to society's evolution (Posner, 2008). Such responsiveness precisely necessitates openness in legal interpretation. Indeed, the dissenting opinion thus becomes an adaptive juridical tool that preserves counter-interpretations with the potential to better conform to changing social realities.

The epistemic significance of dissent becomes particularly salient when assessing judicial practice against the backdrop of internal modalities such as Supreme Court Circular Letters (SEMA). Although not formally categorized as legislation, SEMA serves as a directive principle that ratifies judicial reasoning and uniformity among repetitive cases typologies. At practical level, SEMA Number 1 of 2022 and SEMA Number 3 of 2023 provide doctrinal formulations that judges are to apply uniformly, particularly in family law matters and civil disputes. While such standardization advances the value of legal certainty, it also raises significant epistemological issues. Understanding this, doctrinal formulas risks reducing adjudication into a process of mechanical application, and reducing the space for independent arguments on context and principled conclusions. In this condition, dissenting opinion becomes not only procedurally rare, but structurally disfavoured.

The progressive legal framework should approach the tendency with caution. SEMA should not function as an inflexible barrier to judicial reasoning, but as a standard that is receptive to contextual adjustment and critical revision (28). In this sense, dissenting opinion acts as a corrective mechanism to standardized adjudication, allowing judges to challenge, elaborate on or deviate from more general forms of formulation wherever those do not do justice to the specificities of particular cases.

From an epistemological standpoint, dissenting opinion serves at least four core functions:

1. verification function → testing whether majority conclusions of the majority are sufficiently factually and normatively grounded;
2. falsification function → disclosing logical gaps, exaggerated characterizations and immature assumptionsplurality-preserving function → protecting interpretative pluralism with legal meaning.

developmental function → saving alternative reasoning paths that could guide future jurisprudence.

Through these functions, dissent prevents something that could be termed epistemic closure, which is the phenomenon in which judicial reasoning becomes shielded from criticism and takes institutional consensus for misleading certitude. A judgment that suppresses dissent may still produce formal uniformity, but it threatens to sap its epistemic legitimacy.

Indeed, the relationship between SEMA and dissenting opinion also expresses a deeper jurisprudential tension between uniformity and epistemic openness. While SEMA is intended to provide uniformity, dissent preserves the opportunity for critique, correction and evolution of law. Both values need to be maintained in balance by a mature judicial system.

From the standpoint of Indonesian progressive jurisprudence, the strength of a judicial institution does not resonate at a single voice but rather in its ability to embrace principled dissent. A court that never allows dissent may still speak with one voice, but one voice is not always the voice of truth.

Dissenting Opinion as an Epistemic Mechanism: Case Analysis of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst

Following up on the epistemological framework developed in Chapters B and C, Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst provides an example of how dissenting opinion functions as an internal mechanism for tests of judicial truth. From the perspective of legal epistemology, a judicial decision cannot be reduced to the mere subsumption of facts under norms. a judicial decision is not the mere subsumption of norms under facts. Instead, it is an object of knowledge of a legal kind that emerges from the judge's act of *rechtsvinding*, interpretive reasoning, and argumentative justification. In this sense, judicial truth is not something conferred so much as self-constructed and subject to perpetual correction.

This conceptual foundational principle is especially critical when a decision exposes competing judicial theories for bridging empirical facts with normative conclusions. The current corruption case clearly demonstrates a conflict between two different criminal law modes of reasoning, especially regarding the relationship between state financial loss and criminal culpability.

The majority reasoning appears to rely heavily on one indicator, the quantitative calculation of state financial loss. From this empirical result, the majority proceeds to conclude that the elements of corruption are fulfilled, and subsequently infers the existence of abuse of authority. This structure displays a consequence-driven form of reasoning, where loss gradually shifts from being an empirical fact into becoming a normative charge of guilt.

While this may seem like a pragmatic way to operate, it raises deep epistemological concerns. The relationship between loss and fault in criminal law is never automatic. Loss belongs to the empirical domain, while fault (*schuld*) is a normative construct that must be proven separately through evidence of causal nexus, mens rea and excess of authority. When this inferential bridge is not rigorously justified, the reasoning risks producing what legal epistemology recognizes as a logical leap— an inference that may seem persuasive on its face but is ultimately insufficiently justified.

This concern becomes even more acutely because the facts of the case arise from corporate policy and business decision-making, where valuation, negotiation, and transactional structuring inherently carry commercial risk. Within such a framework, failure is not an exception but an inherent aspect of legal business practice. Therefore, not all economic loss could rightly be converted into the fault of a crime.

It is precisely at this point that the epistemic significance of dissenting opinion, as theorized in Chapter C, becomes fully visible. The dissent in this case does not merely reject the majority's conclusion; it reconstructs the very architecture of legal reasoning.

"Menimbang, bahwa tidak setiap kebijakan korporasi yang kemudian menimbulkan kerugian negara dapat serta merta dikualifikasikan sebagai perbuatan melawan hukum dalam arti pidana."

(Considering that not every corporate policy which subsequently results in state financial loss can automatically be qualified as an unlawful act in the criminal sense.)

"Menimbang, bahwa dalam perkara a quo tidak ditemukan adanya bukti yang cukup mengenai niat jahat (mens rea) atau penyalahgunaan kewenangan oleh para terdakwa."

(Considering that in the present case, there is insufficient evidence of criminal intent or abuse of authority.)

"Menimbang, bahwa fakta-fakta yang terungkap lebih menunjukkan adanya risiko bisnis (business risk) yang tidak berhasil, sehingga tidak dapat ditarik kesimpulan adanya kesalahan pidana."

(Considering that the revealed facts more accurately indicate failed business risk, and therefore no conclusion can be drawn regarding criminal fault.)

"Menimbang, bahwa oleh karena itu, unsur kesalahan belum terbukti secara sah dan meyakinkan."

(Considering that accordingly, the element of fault has not been legally and convincingly proven.)

The dissent above reveals that dissenting opinion is not merely a disagreement over conclusions but a disagreement over epistemological paradigms of judicial reasoning. Consistent with M. Natsir Asnawi's approach of judicial legitimacy as methodological transparency in legal discovery, the dissent explicitly separates loss as an economic fact from fault as a juridical construct requiring independent proof. This distinction is important in legal epistemology because it is not just the isolated fact or bundle of facts that determines truth, but rather whether the inferential relationship between those facts and normative conclusion can survive scrutiny. By emphasizing the absence of *mens rea* and reframing the case as business risk rather than criminal abuse, the

dissent brings a legal argument back to a stricter epistemic discipline: criminal liability must never be presumed from consequences alone, but must be proven beyond reasonable doubt through a coherent chain of reasoning.

In direct synchronization with Chapter C, the dissent in this case clearly performs the four epistemic functions of dissenting opinion.

1. First, it performs the verification function, by re-examining whether the conclusion of the majority is sufficiently tethered to facts and legal norms.
2. Second, it performs the falsification function, by exposing the legal debate an important logical gap in equating state loss with criminal culpability without fulfilling the burden on proof of fault.
3. Third, it serves the plurality-preserving function, by preserving an alternative legal interpretation rooted in business-risk doctrine and criminal law principles.
4. Fourth, it performs the developmental function, because this alternative reasoning may influence future jurisprudence in distinguishing corporate loss from corruption offenses.

This is precisely why dissent protects against epistemic closure, a condition described in Chapter C where institutional consensus calcifies into false certainty. Without the dissent, the majority reasoning could easily crystallize into a single cold judicial truth despite areas of lingering inferential weakness. With dissent, however, legal truth remains open, contestable, and continuously testable.

At a deeper level, the clash between the majority and dissent embodies two paradigms of legal reasoning. Most take a reductionist approach, compressing legal aggregation to one measure—loss of revenue for the state. The dissent, by contrast, operates within a critical-reflective paradigm: every legal conclusion must remain tethered to an intelligible framework of logic, proof and normative distinction. This second paradigm is fully aligned with Satjipto Rahardjo's progressive legal theory, which requires judges to move beyond formalistic certainty and be committed to keeping substantive justice.It is also consistent with Sudikno Mertokusumo's insistence on to balance actual certainty, justice and utility, particularly in the case of corruption relating to business policy

The implication is fundamental: without dissenting opinion, majority reasoning runs the risk of being enshrined as truth simply because there exists no internal mechanism to challenge it. Dissent leaves judicial truth unfrozen, and in the gripof ongoing epistemic scrutiny.

Ultimately, Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst shows that the health of a judicial institution does not consist in speaking with one voice but in letting principled disagreement serve as a means to trial and error in pursuit of legal truth. A court may still produce decisions without dissent, but without dissent it may fail to produce truths that have been genuinely examined. The theoretical framework presented in Chapters B and C, along with its concrete verification through the exploration of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst in Chapter D, jointly assert that dissenting opinion is not an incidental feature of adjudication process. Rather, it is the institutional manifestation of legal epistemology itself, through which judicial truth is always

a work in process vulnerable to creative testing, thoughtful revision, and lively doctrinal translation. This remarkable case study confirms that the legitimacy of judicial truth depends not on the numerical dominance of majority votes, but on the strength of the justificatory reasoning that survives critical scrutiny. It is from this clear and the following conclusion emerges with confidence this interweaving of theoretical insights and empirical evidence that leads to the conclusion.

CONCLUSIONS AND RECOMMENDATIONS

From the overall discussion, it can be concluded that dissenting opinion is not just a procedural tool in collaborative judicial decision making, but a fundamental component of how law creates, attests to and constantly challenges its own truth. As such, the conjunction of general epistemology, Indonesian legal thought and actual judicial practice shows that legal truths cannot merely accepted as final because they are validated by majority decision. Rather, the legitimacy of judicial truth is strongest when it is subject to critique, plurality of reasoning and the possibility of correction

This study proves that legal knowledge is essentially the product of a dialectical relationship between facts, normative reasoning and value-oriented judicial interpretation. Here, however, dissenting opinion acts as an epistemic mechanism of internal verification and falsification; judicial reasoning can be tested against other interpretive possibilities. It enriches legal argument, preserves methodological transparency, and guarantees that majoritarian conclusions genuinely rest on adequate rational grounds.

The analysis of Decision Number 68/Pid.Sus-TPK/2025/PN.Jkt.Pst concretely verifies this proposition. Indeed, the separate opinion in that case does not just arrive at a different conclusion but essentially reconstructs what can only be described as the inferential sinews of the majority's argument—most notably by disentangling what state financial loss is as an empirical matter from criminal fault as a normative concept whose necessity requires independent proof. In resisti ngthe premature equation of loss and culpability, the dissent places criminal adjudication back on a more demanding epistemic footing of coherent logic, proof of mens rea and beyond reasonable doubt.

These findings further affirm that the absence of dissenting opinion creates the risk of epistemic closure, namely the foreclosure of the internal space necessary for testing legal truth. Under such conditions, judicial decisions may harden into false certainty: conclusions that appear institutionally authoritative but have never been adequately exposed to critique. Accordingly, the common criticism that dissenting opinion undermines legal certainty must be critically reassessed. Legal uncertainty does not arise from principled disagreement, but from conclusions whose reasoning remains insufficiently tested.

Therefore, the consistent implementation of dissenting opinion must be understood not only as compliance with Article 14 of Law Number 48 of 2009 concerning Judicial Power, but as an epistemic necessity in a modern, democratic, and intellectually accountable judiciary. Dissent does not weaken the authority of judicial decisions; on the contrary, it strengthens their legitimacy by showing

that legal conclusions have emerged from an open process of argumentative contestation.

From the perspective of Indonesian progressive jurisprudence, the true strength of a judicial institution lies not its homogeneity of voice, but rather that it embraces principled differences as part and parcel of the quest for justice. A judiciary that attempts to silence dissent may still deliver authoritative decisions, yet it risks detaching law from its moral and epistemic vitality. In the end, eliminating dissenting opinion does not remove differences of judicial opinion; it removes the law's internal mechanism for testing truth itself. A court may still produce decisions without dissent, but without dissent it may fail to produce truths that have been genuinely examined.

REFERENCES

Alexy, Robert. A Theory of Legal Argumentation. Oxford: Oxford University Press, 1989.

Asnawi, M. Natsir. Hermeneutika Putusan Hakim: Pendekatan Multidisipliner dalam Memahami Putusan Peradilan Perdata. Yogyakarta: UII Press, 2014.

Atmadja, I Dewa Gede. Filsafat Hukum: Dimensi Tematis dan Historis. Malang: Setara Press, 2013.

Austin, John. The Province of Jurisprudence Determined. Cambridge: Cambridge University Press, 1995.

Bacon, Francis. Novum Organum. Cambridge: Cambridge University Press, 2000.

Bruggink, J.J.H. Refleksi Tentang Hukum. Bandung: Citra Aditya Bakti, 1999.

Descartes, René. Discourse on Method. Indianapolis: Hackett, 1998.

Dworkin, Ronald. Law's Empire. Cambridge: Harvard University Press, 1986.

Ehrlich, Eugen. Fundamental Principles of the Sociology of Law. Cambridge: Harvard University Press, 1936.

Fuller, Lon L. The Morality of Law. New Haven: Yale University Press, 1969.

Gadamer, Hans-Georg. Truth and Method. London: Continuum, 2004.

Gautama, Sudargo. Pengertian Tentang Negara Hukum. Bandung: Alumni, 1983.

Gie, The Liang. Pengantar Filsafat Ilmu. Yogyakarta: Liberty, 2004.

Guthrie, W.K.C. A History of Greek Philosophy, Vol. I. Cambridge: Cambridge University Press, 1962.

Habermas, Jürgen. Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy. Cambridge: MIT Press, 1996.

Hart, H.L.A. The Concept of Law. Oxford: Oxford University Press, 1994.

Huijbers, Theo. Filsafat Hukum dalam Lintasan Sejarah. Yogyakarta: Kanisius, 1982.

Kelsen, Hans. Pure Theory of Law. Berkeley: University of California Press, 1967.

Kusumaatmadja, Mochtar. Konsep-Konsep Hukum dalam Pembangunan. Bandung: Alumni, 2006.

Locke, John. An Essay Concerning Human Understanding. London: Penguin Classics, 1997.

Mahfud MD, Moh. Membangun Politik Hukum, Menegakkan Konstitusi. Jakarta: Rajawali Pers, 2010.

Manan, Bagir. Menjadi Hakim yang Baik. Jakarta: Mahkamah Agung RI, 2007.

Marzuki, Peter Mahmud. Penelitian Hukum. Jakarta: Kencana, 2017.

Mertokusumo, Sudikno. Mengenal Hukum: Suatu Pengantar. Yogyakarta: Liberty, 2007.

Mertokusumo, Sudikno, and A. Pitlo. Bab-Bab Tentang Penemuan Hukum. Bandung: Citra Aditya Bakti, 1993.

Popper, Karl. The Logic of Scientific Discovery. London: Routledge, 2002.

Posner, Richard A. How Judges Think. Cambridge: Harvard University Press, 2008.

Pound, Roscoe. An Introduction to the Philosophy of Law. New Haven: Yale University Press, 1954.

Plato. Protagoras. Oxford: Clarendon Press, 1976.

Rahardjo, Satjipto. Hukum Progresif: Hukum yang Membebaskan. Jakarta: Kompas, 2009.

Rahardjo, Satjipto. Ilmu Hukum. Bandung: Citra Aditya Bakti, 2006.

Rawls, John. A Theory of Justice. Cambridge: Harvard University Press, 1971.

Rasjidi, Lili, and Ira Thania Rasjidi. Dasar-Dasar Filsafat dan Teori Hukum. Bandung: Citra Aditya Bakti, 2004.

Shidarta. Karakteristik Penalaran Hukum dalam Konteks Keindonesiaan. Bandung: CV Utomo, 2006.

Soekanto, Soerjono. Pengantar Penelitian Hukum. Jakarta: UI Press, 1986.

Subekti. Hukum Pembuktian. Jakarta: Pradnya Paramita, 2008.

Suteki and Galang Taufani. Metodologi Penelitian Hukum: Filsafat, Teori dan Praktik. Depok: Rajawali Pers, 2018.

Tanya, Bernard L. Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi. Yogyakarta: Genta Publishing, 2010.

Titus, Harold H. Living Issues in Philosophy. New York: American Book Company, 1959.

Wignjosoebroto, Soetandyo. Hukum: Paradigma, Metode dan Dinamika Masalahnya. Jakarta: Elsam, 2002.

Indonesia. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Indonesia. Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Indonesia. Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Mahkamah Agung Republik Indonesia. Surat Edaran Mahkamah Agung Nomor 1 Tahun 2022.

Mahkamah Agung Republik Indonesia. Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023.

Pengadilan Negeri Jakarta Pusat. Putusan Nomor 68/Pid.Sus-TPK/2025/PN.Jkt.Pst.