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Reconstructing Prosecutorial Epistemology for Substantive Justice in Contract Law: A Comparative Philosophical and International Legal Analysis of Indonesia and Kazakhstan

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Abstract

Introduction: *Contemporary contract law in Indonesia and Kazakhstan faces persistent tension between private autonomy and substantive justice. Both jurisdictions enshrine the principle of good faith, yet lack clear doctrinal guidance for its application, resulting in inconsistencies in interpretation and enforcement within their respective civil law systems.*
Purposes of the Research: *This study aims to examine how prosecutors within these jurisdictions construct legal knowledge and exercise discretion when intervening in contract-related disputes, and to evaluate whether such prosecutorial practices advance or hinder the realization of substantive justice in contractual enforcement.*
Methods of the Research: *This research employs a normative–juridical method complemented by comparative and philosophical approaches. It analyses statutory provisions, judicial reasoning, and international soft-law instruments – particularly the UNIDROIT Principles of International Commercial Contracts – to explore how discretion and evidentiary reasoning shape enforcement.*
Results Main Findings of the Research: *The findings reveal that Indonesian prosecutors, inheriting a Roman-Dutch legacy, invoke good faith inconsistently due to evidentiary ambiguity and weak pre-contractual standards, while Kazakh prosecutors emphasize formal legality that sidelines moral reasoning. This research contributes to comparative legal philosophy by proposing three reconstructive pillars for prosecutorial reasoning – doctrinal clarity, evidentiary proportionality, and principled discretion – to align substantive justice with fairness-oriented norms.*

Keywords: Contract Law; Substantive Justice; Prosecutorial Discretion; Good Faith.

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INTRODUCTION

Contract law represents one of the most enduring pillars of private law, embodying the interaction between autonomy, fairness, and public regulation. In both Indonesia and Kazakhstan, the legal systems—while grounded in the civil-law tradition—have undergone

profound transitions as they adapt to the demands of modern governance and international commerce. These transitions have redefined the roles of state institutions, including prosecutors, in domains that were once the preserve of private parties. Historically, Indonesian contract law derives from the Dutch Burgerlijk Wetboek of 1838, which codifies core principles of civil law including pacta sunt servanda, consensualism, and good faith. These doctrines were transplanted into the Indonesian Civil Code during colonial administration and remain structurally influential, albeit without significant doctrinal refinement. In Kazakhstan, the modern Civil Code emerged in the post-Soviet era, reflecting a hybrid of socialist legalism and European civil law traditions. While formal codification began in the 1990s, customary notions of agreement and moral reciprocity trace back to nomadic legal practices rooted in collective honour and responsibility [1]. In Indonesia, this evolution is framed by a complex regulatory structure governing state contracts and public procurement, which delineates prosecutorial authority in protecting public assets [2]. The involvement of public prosecutors in contract enforcement raises fundamental questions concerning substantive justice, epistemic authority, and the very nature of legal knowledge within civil obligations.

The Indonesian Civil Code, inherited from the Dutch Burgerlijk Wetboek of 1838, affirms the classical doctrine of pacta sunt servanda - that agreements legally formed must be honoured in good faith. Yet, as highlighted by[3], this notion of good faith remains doctrinally vague and lacks operational benchmarks for judicial or prosecutorial application. Similarly, Kazakhstan's Civil Code, despite extensive revisions between 2018 and 2020, continues to

[1] Sabirov, K. K., Konussova, V. T., and M. A. Alenov, "Between Freedom of Contract and the Principle of Good Faith: An inside View on the Reform of Private Law of Kazakhstan," *JANUS.NET e-Journal of International Relations* 10, no. 2 (2019): 35–56, https://doi.org/https://doi.org/10.26619/1647-7251.10.2.10; H. Al Abiad and A. Masadeh, "Law Comparison as a Research Method in Legal Studies, and Its Importance in Promoting Uniformity in Legal Systems," in *In K. Al Marri, F. A. Mir, S. A. David, & M. AlEmran (Eds.), Proceedings of the BUiD Doctoral Research Conference 2023 (LNCE Vol. 473, Pp. 446–454)* (Springer, 2024), 446–54, https://doi.org/https://doi.org/10.1007/978-3-031-56121-4_42.

[2] A Albar, W Aditya, and R Hartini, "Public Procurement Laws and Regulations – Indonesia," in *ICLG*, 2025.

[3] M. C. Nugrahenti and A. Hernawan, "Good Faith Principle in Indonesian Contract Law: How to Set the Definition and Its Benchmarks," *Journal of Infrastructure, Policy and Development* 8, no. 10 (2024): 7358, https://doi.org/https://doi.org/10.24294/jipd.v8i10.7358.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
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balance the tension between contractual freedom and equitable fairness[4]. In both jurisdictions, prosecutorial authorities have assumed increasingly prominent roles in cases involving public assets, state contracts, and allegations of economic misconduct. This evolution, while administratively justified, demands renewed scrutiny from the standpoint of substantive justice—the fairness of outcomes rather than the mere legality of procedures. Philosophically, the pursuit of substantive justice finds grounding in normative theories advanced by Rawls and Dworkin. Rawls' theory of justice as fairness posits that social institutions must distribute rights and duties equitably, ensuring that legal outcomes do not merely reflect formal consent but also account for background inequalities. Dworkin extends this argument by asserting that legal interpretation must align with principles of moral integrity, whereby judges and prosecutors ought to treat like cases alike and justify their discretion through coherent ethical reasoning. These perspectives reinforce the necessity of embedding fairness and proportionality into prosecutorial logic, especially when public interest and private obligations intersect [5].

The participation of prosecutors in contract disputes is normatively exceptional within civil-law systems. In Indonesia, State's Attorney are authorised under statutory mandate to represent the state in civil and administrative litigation, particularly where public funds or state interests are implicated. In practice, these prosecutors often mediate disputes that blur the line between public and private law, enforcing obligations in a manner that shapes contractual interpretation. Kazakhstan's Prosecutor General's Office, by contrast, exercises a supervisory function, ensuring legality in state conduct and commercial dealings but refrains from direct civil litigation. Nevertheless, both frameworks embody an epistemological challenge: prosecutors act as gatekeepers of legal truth, determining what constitutes contractual breach, fraud, or bad faith within institutional contexts marked by

[4] Sabirov, K. K., Konussova, V. T., and Alenov, "Between Freedom of Contract and the Principle of Good Faith: An inside View on the Reform of Private Law of Kazakhstan."

[5] J. Rawls, *A Theory of Justice* (Harvard University Press, 1999); R Dworkin, *Law's Empire* (Harvard University Press, 1986).

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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discretion and asymmetrical power [6]. This epistemic authority, while normatively justified, also exposes the ethical and institutional vulnerabilities of prosecutorial discretion. In Indonesia, such vulnerabilities manifest in the blurred boundaries between legal mandate and governance ethics, where prosecutors often navigate tensions between public accountability and legal autonomy [7].

From a philosophical perspective, this prosecutorial involvement reconfigures the epistemic foundation of contract law. The traditional liberal vision—where contractual fairness arises from informed consent and equal bargaining—has been criticised for overlooking structural imbalances and informational asymmetries. As[8] argues, modern private law must transcend procedural neutrality to ensure justice in transactions that recognises substantive inequality. The prosecutor, in this sense, becomes an epistemic agent who interprets, filters, and reconstructs the narratives of contractual relations. Whether this enhances or undermines substantive justice depends on how discretion is exercised and how evidence is conceptualised.

Substantive justice, as [9] observes, concerns not only the fairness of legal rules but also the moral adequacy of their application. It requires that legal institutions, including prosecutors, pursue equity in outcomes even when formal legality appears satisfied. Within contract law, this means that enforcement cannot rely solely on textual interpretation but must account for fairness, proportionality, and good faith. Yet in both Indonesia and Kazakhstan, such value-laden considerations remain underdeveloped within prosecutorial frameworks. Institutional emphasis on legality and evidentiary sufficiency often overshadows ethical reasoning, leading to outcomes that may be procedurally correct but

[6] Törnqvist, N. and Å. Wettergren, "Epistemic Emotions in Prosecutorial Decision-Making," *Journal of Law and Society* 50, no. 2 (2023): 208–30, https://doi.org/https://doi.org/10.1111/jols.12421.

[7] Y Hidayat et al., "Legal Aspects and Government Policy in Increasing the Role of MSMEs in the Halal Ecosystem," *F1000Research* 13 (2025): 722, https://doi.org/https://doi.org/10.12688/f1000research.148322.4.

[8] N. Sage, "On Justice in Transactions," *The Modern Law Review* 84, no. 6 (2021): 1217–48, https://doi.org/https://doi.org/10.1111/1468-2230.12627.

[9] D. Daugirdas, "Putting Freedom of Contract in Its Place," *Journal of Legal Analysis* 16, no. 1 (2024): 94–119, https://doi.org/https://doi.org/10.1093/jla/laae004.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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substantively unjust.

Comparative legal scholarship has underscored that the globalisation of commercial norms, exemplified by instruments such as the UNIDROIT Principles of International Commercial Contracts, provides a soft-law template for integrating fairness into contractual interpretation[10]. These principles, particularly Article 1.7 on good faith and fair dealing, impose a non-derogable obligation on parties and have influenced many civil-law jurisdictions. However, neither Indonesia nor Kazakhstan has formally incorporated the UNIDROIT Principles or the CISG into domestic legislation, resulting in fragmented doctrinal development. The gap between normative aspiration and institutional implementation remains a defining challenge for both systems.

The epistemological aspect of this challenge lies in how prosecutors construct and validate legal knowledge,[11] and[12] highlight that decision-makers within legal institutions often rely on affective and cognitive heuristics that influence case framing. In contract enforcement, these epistemic filters determine which harms are deemed credible, which parties are seen as trustworthy, and which narratives prevail. Prosecutorial discretion, therefore, is not merely administrative; it constitutes an act of knowledge production that can either reinforce or rectify injustice. Understanding this epistemological dimension is essential for reconstructing prosecutorial reasoning towards a standard of substantive justice that integrates moral, legal, and evidentiary coherence.

This research responds to these gaps by analysing the intersection between prosecutorial discretion, evidentiary reasoning, and the philosophy of justice within contract law. Using a normative–juridical and comparative method, it examines how Indonesian and Kazakh

[10] G. Peng, *Good Faith in Long-Term Relational Supply Contracts in the Context of Hardship: A Comparative Perspective* (Springer, 2022), https://doi.org/https://doi.org/10.1007/978-981-16-5513-5.

[11] C. McKay, "Remote Criminal Justice and Vulnerable Individuals," *Tilburg Law Review* 28, no. 1 (2024): 47–64, https://doi.org/https://doi.org/10.5334/tilr.386.

[12] H. N Evans and M Hazim, "Epistemic Injustice at the ICC? An Empirical Analysis of the Use of Third-Party Evidence in the Afghanistan Situation," *Journal of International Criminal Justice* 22, no. 1 (2024): 59–79, https://doi.org/https://doi.org/10.1093/jicj/mqad053.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

prosecutors interpret, apply, and internalise the principles of good faith and fairness. The central inquiry guiding this study is: to what extent does prosecutorial epistemology in contract enforcement advance or hinder substantive justice, and how might it be reconstructed to align with international standards of fairness?

From a comparative perspective, both Indonesia and Kazakhstan operate within the civil law tradition, prioritising codified statutes over case precedent. This distinguishes them from common law jurisdictions such as England or the United States, where judicial decisions and adversarial procedures play a more formative role in shaping contract doctrines. In common law systems, prosecutorial involvement in civil disputes is rare and typically limited to enforcement through public-interest litigation. The divergence underscores the need to evaluate how discretionary authority functions differently across legal families, particularly when translating moral expectations into enforceable norms [13]. The study is significant in three respects. First, it contributes to comparative contract law by exploring the prosecutorial role in civil enforcement—an area seldom addressed beyond criminal procedure. Second, it enriches theoretical debates on substantive justice by linking philosophical and epistemological frameworks with practical legal institutions. Third, it offers prescriptive insights for reforming prosecutorial reasoning and evidentiary standards, drawing on the UNIDROIT Principles and other transnational norms as guiding references. The overarching aim is to develop an integrative framework where prosecutorial discretion operates not as an arbitrary power but as a structured, justice-oriented process within contract law.

In sum, this introduction situates the study within the evolving landscape of civil-law governance, where the pursuit of justice increasingly demands epistemic integrity as well as doctrinal precision. By interrogating how prosecutors construct, interpret, and apply the law in contractual contexts, the research seeks to illuminate the broader philosophical

[13] P. Garg, *Comparative Contract Law and Civil Justice* (Cambridge University Press, 2023).

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

question of how legal institutions can reconcile autonomy with fairness, legality with morality, and procedural rationality with substantive justice.

METHODS OF THE RESEARCH

This study employs a normative–juridical approach framed within comparative and philosophical reasoning to analyse how prosecutorial epistemology in contract law can be reconstructed towards substantive justice. The normative–juridical method—often termed doctrinal research—seeks to interpret law as a normative system rather than as empirical behaviour. It examines what the law is (das sein) and evaluates what the law ought to be (das sollen) by analysing statutory texts, judicial precedents, and doctrinal commentaries within their philosophical context [14]. Such a method is particularly suited to inquiries concerning the coherence of legal reasoning and its moral foundation, since it treats law not as a social symptom but as a rational architecture of principles and values. The normative–juridical method is particularly suited to evaluating legal reasoning within codified systems, where law is primarily found in authoritative texts rather than in practice. This approach allows for systematic interpretation of statutes, prosecutorial regulations, and civil codes, tracing how legal meaning is constructed through language and doctrine. As explains, doctrinal research remains fundamental to legal analysis because it grounds legal interpretation in textual authority and internal coherence. The method is especially appropriate in civil-law jurisdictions like Indonesia and Kazakhstan, where legal development often follows codification rather than precedent.[15]

Within this framework, the research draws upon primary and secondary legal materials. The primary corpus consists of the Indonesian Civil Code, the Kazakh Civil Code, prosecutorial regulations, and judicial decisions involving contractual disputes and state litigation. These sources provide the textual ground for interpreting how prosecutors act within civil law. Secondary materials include contemporary scholarship, doctrinal analyses, and policy papers

[14] Majeed, N., Hilal, A., and A. Nawaz Khan, "Doctrinal Research in Law: Meaning, Scope and Methodology," *Bulletin of Business and Economics* 12, no. 4 (2023): 559–63, https://doi.org/https://doi.org/10.61506/01.00167.

[15] S Theil, "Carefully Tailored: Doctrinal Methods and Empirical Contributions," *Oxford Journal of Legal Studies*, 2025, https://doi.org/https://doi.org/10.1093/ojls/gqaf029.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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discussing contract law, prosecutorial authority, and international soft-law instruments such as the UNIDROIT Principles. As [16] observes, normative legal inquiry gains validity through its meticulous treatment of authoritative sources and the logical integration between positive norms and justice ideals.

The comparative method strengthens the validity of this research by allowing legal concepts—such as good faith and prosecutorial discretion—to be evaluated across jurisdictions. As observe, comparison not only highlights formal differences but also reveals underlying normative values that shape legal practice. This cross-jurisdictional lens helps identify both convergence and divergence in how substantive justice is pursued, and whether global soft-law norms (like the UNIDROIT Principles) are internalised in domestic prosecutorial reasoning. Because the subject traverses two distinct jurisdictions, a comparative legal dimension complements the doctrinal core. Comparative reasoning enables the identification of both shared foundations and structural divergences between Indonesia and Kazakhstan in defining good faith, prosecutorial discretion, and contract enforcement. It further allows the evaluation of these domestic doctrines against international reference points such as the CISG and the UNIDROIT Principles, revealing areas where domestic law lags behind transnational standards of fairness. As[17] contend, comparison serves not merely to contrast legal rules but to uncover the value systems that underlie them, thereby facilitating a form of harmonisation that respects legal culture while promoting universal justice.

The methodological perspective is also philosophical in orientation. Prosecutorial discretion is treated here as an epistemic act—a process of knowledge construction that transforms facts into legally recognised truths. Understanding this process requires engagement with the ontological and axiological bases of law. Following[18], the philosophical method allows legal inquiry to probe the moral purposes and cognitive assumptions that sustain legal systems. It

[16] A. Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94–100, https://doi.org/https://doi.org/10.56444/jidh.v7i2.3154.

[17] Al Abiad and Masadeh, "Law Comparison as a Research Method in Legal Studies, and Its Importance in Promoting Uniformity in Legal Systems."

[18] A. G. H. Wulakada, "Philosophical Approach in Legal Research," *Journal of Public Representative and Society Provision* 5, no. 3 (2025), https://doi.org/https://doi.org/10.55885/jprsp.v5i3.606.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

clarifies the meaning of key concepts—justice, good faith, proportionality—and situates them within broader ethical and institutional contexts. In this way, the study combines descriptive interpretation with normative reflection, ensuring that doctrinal critique remains grounded in philosophical coherence rather than positivist formalism.

Data were gathered through documentary analysis, in which legal texts and academic writings were systematically reviewed, interpreted, and synthesised. The analysis proceeded qualitatively and interpretatively: identifying normative patterns, tracing conceptual tensions, and evaluating their implications for substantive justice,[19] notes that the strength of doctrinal research lies not in statistical validation but in the persuasiveness of its reasoning and the consistency of its internal logic. Accordingly, the validity of this study rests upon triangulation across legal sources, theoretical alignment with philosophical literature, and the use of up-to-date scholarship. The interpretative process moves iteratively from textual reading to conceptual clarification and finally to normative prescription, ensuring both analytical depth and methodological rigour.

Nonetheless, this study does not include empirical data such as interviews or case studies of prosecutorial decisions. While doctrinal analysis allows for internal consistency and normative clarity, it cannot fully capture how legal principles operate in practice. The absence of fieldwork limits the ability to assess how discretion is exercised day-to-day or how evidentiary standards are interpreted by individual prosecutors. Ascautions, doctrinal studies may miss key contextual insights without empirical supplementation. Future research could therefore enrich this inquiry by incorporating qualitative or quantitative data to evaluate how closely prosecutorial practices align with normative ideals. Alternative methodologies could have been considered, such as empirical socio-legal approaches or mixed-method designs. These could provide valuable insights into how legal actors understand and apply concepts like fairness, proportionality, or good faith in real-world disputes. However, the present study intentionally focuses on reconstructing legal reasoning from within the normative structure of

[19] J. R. P. Torres, "Navigating Legal Knowledge: A Comparative Analysis of Quantitative, Qualitative, Applied, and Descriptive Research Methodologies in Law," *SSRN*, 2025, https://doi.org/https://doi.org/10.2139/ssrn.5258015.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

law, rather than observing external practices. As noted by [20], doctrinal and empirical methods are not mutually exclusive, but serve different analytical purposes. The selection of a normative–juridical lens here aims to preserve philosophical depth while acknowledging the need for future empirical validation. In sum, the research design integrates normative, comparative, and philosophical strands into a coherent methodological whole. The doctrinal analysis establishes what the law prescribes; the comparative dimension reveals how different legal cultures pursue similar ends; and the philosophical inquiry evaluates these findings against the moral demands of substantive justice. Through this triangulated approach, the study aspires not merely to describe prosecutorial practices but to reconstruct them conceptually—demonstrating how epistemic responsibility and normative fairness can be embedded within the fabric of contract enforcement.

RESULTS AND DISCUSSION

The pursuit of substantive justice within contract law requires a reconciliation between the rigidity of formal legality and the fluidity of moral reasoning. In both Indonesia and Kazakhstan, the evolution of prosecutorial functions within civil-law frameworks demonstrates that this reconciliation remains incomplete. Prosecutors, while historically positioned as custodians of legality, increasingly serve as epistemic mediators between law's textual authority and the moral imperatives of fairness. The results of this research reveal that their discretionary reasoning—how they construct knowledge, interpret evidence, and apply doctrine—directly determines whether contractual disputes culminate in genuine justice or mere procedural compliance.

The Indonesian experience illustrates how legal transplantation and institutional inertia intersect. The Civil Code, inherited from the Dutch *Burgerlijk Wetboek* of 1838, still frames contractual obligations through the classical doctrine of *pacta sunt servanda*. Yet, the absence of interpretive coherence regarding *good faith* (*itikad baik*) creates an epistemic vacuum.

[20] Theil, "Carefully Tailored: Doctrinal Methods and Empirical Contributions."

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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Prosecutors acting as *Jaksa Pengacara Negara* often invoke *good faith* to justify state participation in civil litigation, but their reasoning remains inconsistent and predominantly pragmatic. As[21] observe, the Indonesian judiciary recognises *good faith* as an ethical ideal rather than an enforceable standard. Consequently, prosecutorial decisions depend more on intuitive moral assessment than on articulated evidentiary norms, producing uneven outcomes that oscillate between moral paternalism and legal formalism. For example, in a 2021 procurement dispute involving a state-owned enterprise in Indonesia, the public prosecutor intervened on grounds of 'public interest', despite the underlying issue being a delayed delivery clause in a private contract. The judiciary later ruled the intervention disproportionate, citing lack of clear statutory basis. This illustrates how prosecutorial discretion, when unbounded by evidentiary discipline or doctrinal benchmarks, may disrupt contractual equilibrium. In Kazakhstan, a 2019 arbitration case involving a public infrastructure project saw prosecutors refuse to participate due to lack of explicit statutory trigger, even when one party alleged economic duress. These contrasting postures reflect broader institutional cultures: Indonesia's flexible interventionism versus Kazakhstan's legalistic restraint.

Kazakhstan, by contrast, has modernised its Civil Code through successive reforms that integrate post-Soviet legal rationalism with European civil-law influences. The *Prosecutor General's Office* exercises oversight of legality in transactions involving state property and public contracts, reflecting a positivist orientation. Sabirov et al. (2019) explain that this modernisation has strengthened procedural consistency but has not embedded substantive moral reasoning into the prosecutorial framework. Kazakh prosecutors exhibit higher adherence to textual legality yet demonstrate limited engagement with *good faith* as an interpretive doctrine. Their epistemology privileges certainty over equity—a pattern characteristic of transitional jurisdictions seeking institutional stability. A comparative reading thus exposes a paradox. Indonesia's system over-moralises discretion without doctrinal clarity;

[21] Nugrahenti and Hernawan, "Good Faith Principle in Indonesian Contract Law: How to Set the Definition and Its Benchmarks."

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

Kazakhstan's system over-formalises legality without moral sensitivity. Both models fall short of substantive justice because they fail to balance epistemic freedom with normative guidance. As Daugirdas (2024) contends, the ideal of contract law lies not in the supremacy of freedom of contract but in its integration with equitable rationality. In prosecutorial practice, this balance demands that discretion be exercised through reasoned proportionality—anchored in good faith yet disciplined by evidentiary rigour.

The analysis of normative materials further reveals that the absence of epistemic criteria in prosecutorial regulation is a primary source of inconsistency. Neither the Indonesian Attorney General's directives nor Kazakhstan's prosecutorial statutes define how discretion should be justified in civil enforcement. The result is a form of "institutional subjectivism," where decisions are legitimised by position rather than reasoning, [22] argues that such gaps erode trust in legal institutions because epistemic authority becomes personal rather than systemic. The findings here confirm that the legitimacy of prosecutorial involvement in contract disputes depends on transparency in how knowledge and judgement are produced.

From a philosophical perspective, the research identifies three intersecting elements that shape prosecutorial epistemology: cognitive reasoning, moral orientation, and evidentiary proportionality. Cognitive reasoning concerns the intellectual method through which facts are translated into legal truths. Moral orientation concerns the ethical values—fairness, reciprocity, responsibility—that guide discretionary judgement. Evidentiary proportionality concerns the relationship between the weight of proof and the severity of intervention. When these three elements are unbalanced, prosecutorial decisions either drift into moral intuitionism (as in Indonesia) or bureaucratic positivism (as in Kazakhstan). This disparity exemplifies the need for epistemic justice—a normative condition where legal decision-makers not only apply rules correctly but also acknowledge how knowledge is constructed, filtered, and validated. As[23]

[22] McKay, "Remote Criminal Justice and Vulnerable Individuals."
[23] Evans and Hazim, "Epistemic Injustice at the ICC? An Empirical Analysis of the Use of Third-Party Evidence in the Afghanistan Situation."

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
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argue, the legitimacy of legal reasoning depends on the transparency of epistemic processes, including the ethical framing of facts and the interpretive weight assigned to evidence. In prosecutorial settings, epistemic justice entails recognising that discretion is not neutral but shaped by institutional incentives, moral assumptions, and cognitive heuristics. Achieving substantive justice thus requires recalibrating prosecutorial epistemology so that cognition, morality, and evidence form an integrated reasoning process.

The principle of *good faith* operates as a doctrinal bridge linking these elements. Internationally, Article 1.7 of the UNIDROIT Principles of International Commercial Contracts establishes *good faith and fair dealing* as non-derogable obligations. This principle has epistemic implications: it demands that decision-makers act not merely honestly but cooperatively, evaluating conduct through standards of fairness recognisable to both parties. In Indonesia, courts occasionally reference this principle but without systematic incorporation into prosecutorial reasoning. In Kazakhstan, the principle is acknowledged within private law discourse but remains detached from prosecutorial practice. The persistent detachment from soft-law frameworks such as the UNIDROIT Principles or the CISG undermines efforts to harmonise domestic prosecutorial standards with global norms. As[24] highlights, Article 1.7 of the UNIDROIT Principles, which mandates good faith and fair dealing, is increasingly regarded as a benchmark of equitable contract interpretation across civil law jurisdictions. Incorporating such standards into prosecutorial reasoning would offer a structured, value-based lens through which discretion can be exercised—bridging the divide between procedural legality and relational justice. The comparative analysis suggests that embedding *good faith* as an operative prosecutorial norm would harmonise domestic practice with global standards while reinforcing the moral foundation of contract law.

Empirically, doctrinal documents and case analyses reveal that Indonesian prosecutors often justify intervention in contractual disputes involving state losses or corruption-related

[24] Peng, *Good Faith in Long-Term Relational Supply Contracts in the Context of Hardship: A Comparative Perspective*.

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

contracts on the basis of public interest. This *public-law intrusion* into private law, although normatively defensible, frequently blurs the boundary between contractual breach and administrative misconduct. The epistemological risk lies in transforming contract law into an instrument of policy enforcement rather than a framework of mutual responsibility. Kazakh prosecutors, conversely, maintain stricter demarcation but at the cost of flexibility; they seldom intervene unless procedural illegality is manifest, leaving substantive unfairness unaddressed. Both experiences demonstrate that discretion without epistemic discipline—whether expansive or restrictive—fails to achieve substantive justice.

A more constructive prosecutorial model can be drawn from the notion of epistemic accountability.[25] highlight that decision-makers must justify not only *what* they decide but *how* they know what they claim to know. Applying this to contract enforcement means that prosecutors should articulate the epistemic grounds of their conclusions: the evidentiary logic, normative standards, and moral principles informing their reasoning. Institutionalising such accountability could take the form of internal reasoning reports, standardised evidentiary matrices, or published prosecutorial opinions—mechanisms that make discretion transparent and reviewable. Such reasoning protocols could include internal memoranda outlining the rationale for intervention, evidentiary thresholds applied, and ethical principles considered. These instruments would not only enhance peer accountability but also serve as precedents for future prosecutorial action. Transparency in epistemic justification aligns with the broader movement towards evidence-based public administration and restores trust in discretionary institutions. Institutionalising these practices would also facilitate judicial review, enabling courts to scrutinise not just outcomes but the processes by which decisions were formed.

Furthermore, integrating the philosophy of juridical humanism provides a normative framework for reform. Law, in this view, is a moral architecture structured by reason, empathy,

[25] Evans and Hazim, "Epistemic Injustice at the ICC? An Empirical Analysis of the Use of Third-Party Evidence in the Afghanistan Situation."

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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and responsibility. The prosecutor, as an organ of the state, embodies this architecture when exercising authority with ethical restraint. Sage (2021) argues that justice in transactions emerges not from mechanical adherence to rules but from the equitable recognition of relational obligations. By internalising this philosophy, prosecutors in both Indonesia and Kazakhstan could shift from reactive enforcement to proactive guardianship of fairness—treating contractual disputes as opportunities to reaffirm the moral order of law.

The findings also reveal that the tension between legality and morality manifests differently within institutional cultures. Indonesian legal reasoning, influenced by post-colonial pluralism, tends to accommodate moral argumentation even within technical adjudication. This elasticity, though valuable, often degenerates into unpredictability due to the absence of written reasoning standards. Kazakhstan's legal culture, shaped by Soviet bureaucratic rationality, prioritises textual fidelity and hierarchical control, resulting in consistency without contextual empathy. The comparative insight here is not evaluative but reconstructive: both systems exhibit complementary strengths that could inform a shared model of epistemically responsible prosecution.

Such a model would rest upon four pillars. First, doctrinal clarity, achieved by codifying prosecutorial obligations to consider *good faith* and fairness explicity in civil enforcement. Second, evidentiary proportionality, ensuring that interventions are commensurate with the degree of contractual breach and the publict interest involved. Third, reasoned transparency, requiring written justification of discretionary choices subject to peer or judicial review. Fourth, philosophical coherence, embedding legal ethics within prosecutorial training and institutional culture so that discretion reflects both legal accuracy and moral insight.

Implementing these reforms would not necessitate radical structural overhaul. Rather, they would realign prosecutorial reasoning with the broader jurisprudential movement towards *substantive justice*—justice understood as the fairness of outcomes, not merely the correctness

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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of procedures. As[26] reminds, philosophical engagement in legal reasoning prevents the ossification of doctrine by keeping law attuned to human rationality and moral purpose.

Ultimately, the comparative analysis leads to a unified conclusion: substantive justice in contract law cannot be realised without epistemic justice in prosecutorial reasoning. Indonesia and Kazakhstan, though different in historical trajectory, share the challenge of transforming discretion into a transparent, principled, and accountable practice. Reconstruction of prosecutorial epistemology along these lines would not only strengthen domestic contract enforcement but also contribute to a universal jurisprudence of fairness. Prosecutors would then act not as mere custodians of legality, but as moral interpreters of the law—agents ensuring that legal certainty and human dignity coexist within the same normative horizon.

CONCLUSION

The relationship between law and justice, though ancient in philosophy, remains unresolved in modern governance. Philosophically, substantive justice cannot be confined to the procedural boundaries of legality. It requires the internalisation of ethical reasoning within legal cognition. As affirms, the philosophical method in legal research ensures that law remains a human enterprise, not a technocratic mechanism. Prosecutorial epistemology, therefore, must be anchored in reflective morality—where discretion operates as a form of practical wisdom (phronesis) rather than arbitrary authority. This realignment transforms legal institutions from instruments of command into instruments of conscience. The analysis undertaken in this study reveals that the reconstruction of prosecutorial epistemology in contract law represents not merely an institutional reform but an ontological renewal of legal thought itself. Law, as the classical jurists affirmed, must always be grounded in justice (*ius est ars boni et aequi*)—the art of what is good and equitable. Yet, in both Indonesia and Kazakhstan, the prosecutorial function in civil matters has drifted from this principle, oscillating between moral intuition and bureaucratic formality. The findings of this research reaffirm that substantive justice cannot exist without the internalisation of fundamental legal principles (asas hukum) that anchor the

[26] Wulakada, "Philosophical Approach in Legal Research."

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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law within moral reason. Among these, three deserve particular emphasis: *good faith (itikad baik)*, *proportionality (asas proporsionalitas)*, and *legal certainty (kepastian hukum)*. In contract law, *good faith* embodies honesty, fairness, and trust as the ethical substratum of obligation. It demands that the parties—and by extension, the prosecutor as the state's representative—act not merely within the letter of law but within the spirit of mutual respect. *Proportionality*, derived from the classical maxim *suum cuique tribuere*, ensures that every act of discretion corresponds rationally to its purpose and does not exceed the bounds of necessity. *Legal certainty* guarantees predictability in application, ensuring that justice is not capricious but reasoned. In Indonesia, the imbalance among these principles manifests through the dominance of morality over method. Prosecutorial reasoning often appeals to Good Faith as a moral defence for state action, yet it lacks epistemic discipline in translating such values into legal argumentation. Without doctrinal precision, moral rhetoric risks transforming justice into paternalism. Kazakhstan, conversely, privileges certainty and structure but neglects proportionality and empathy. Its prosecutorial institutions, shaped by the positivist legacy of Soviet legality, equate justice with procedural correctness. The consequence is a form of *moral minimalism*: fairness is acknowledged rhetorically but not operationally embedded. Reconstructing prosecutorial epistemology thus requires a realignment of these foundational principles into a coherent epistemic framework. Prosecutorial discretion must operate as a *reasoned process*, guided simultaneously by legality, morality, and proportionality. The exercise of power, to borrow from Fuller's moral theory of law, must be transparent, consistent, and purposive. The prosecutor should not simply apply rules but interpret them in light of justice, recognising the law's dual identity as both command and conscience. This reconstruction also draws upon the General Principles of Good Government, which, though developed in administrative law, provide a normative compass for all public decision-making. Principles such as fairness (*keadilan*), transparency (*keterbukaan*), accountability (*akuntabilitas*), and professionalism (*profesionalitas*) are equally relevant in prosecutorial contexts. Applying AUPB to prosecutorial reasoning would ensure that discretion is not only lawful but also justifiable in moral and epistemic terms. For instance, *the principle of propriety (kepatutan)* obliges

PATTIMURA Legal Journal, 4 (3) December 2025: 328 - 253
E-ISSN: 2830-2435
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prosecutors to consider the proportionality of intervention; *the principle of accuracy (kecermatan)* demands intellectual rigour in the assessment of evidence; and *the principle of impartiality (tidak memihak)* prohibits moral bias from distorting legal interpretation. The doctrinal analysis reveals that the Indonesian and Kazakh legal frameworks remain silent on these epistemic duties. No statutory provision obliges prosecutors to articulate their reasoning when invoking discretion in civil cases. This vacuum undermines both accountability and legitimacy. In essence, this study concludes that the reconstruction of prosecutorial epistemology is both a legal and moral necessity. It bridges the divide between doctrinal rigidity and ethical responsiveness, ensuring that contract law fulfills its dual mission: to uphold the sanctity of agreement and to realise justice in its substance. When the law thinks, reasons, and empathises through its interpreters, it ceases to be a mere system of rules and becomes a civilisation of fairness. That, ultimately, is the meaning of *substantive justice*—a justice that lives not only in the books but in the reasoning hearts of those who enforce it. Reconstructing prosecutorial epistemology is not solely a juridical exercise but a moral imperative. The pursuit of substantive justice requires legal systems to think, reason, and empathise through their interpreters. Only when epistemic integrity, doctrinal clarity, and ethical virtue converge can law fulfil its dual vocation—to regulate human conduct and to ennoble it. This study, though limited to normative reconstruction, aspires to contribute to that ongoing dialogue between legality and morality, where justice ceases to be an abstraction and becomes a lived institutional reality.

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