

The Principle of *Audi et Alteram Partem* in the Process of Proof in Criminal Cases (Analysis of Decision No. 123/PID.B/2022/PN YYK)

Hartanto¹, Susanto², Daniil Alimpeev³

¹ Law Faculty, Widya Mataram University, Indonesia, E-mail: hartanto.yogya@gmail.com*

² Law Faculty, Widya Mataram University, Indonesia. E-mail: gustisonte579@gmail.com

³ Institute for Public Administration and Governance, HSE University, Russia, E-mail:

dalimpeev@hse.ru

Article Info

Article History

Received: Jun 14, 2024;

Reviewed: Oct 5, 2024;

Accepted: Oct 20, 2024.

Keywords:

Judge; Evidence; Crime; Decisions; Justice

Corresponding Author:

Name : Hartanto

Email :
Hartanto.yogya@gmail.com

How to cite [Chicago Manual of Style 17th edition (full note)]:

Hartanto, Susanto and Daniil Alimpeev "The Principle of Audi and Alteram Partem in The Process of Proof in Criminal Cases (Analysis of Decision Study No. 123/PID.B/2022/PN YYK)" *Jurnal Legalitas* 17, No. 2 (2024): 132-145.

DOI :

10.33756/jelta.v17i1.26079

Abstract

This research examines the application of the *audi et alteram partem* principle by the panel of judges in case Number 123/Pid.B/2022/PN Yyk, focusing on how it influenced the judicial decision-making process. The *audi et alteram partem* principle, which ensures that both parties in a trial have an equal opportunity to present their arguments and evidence, is central to ensuring justice and fairness in legal proceedings. However, this study finds that the principle was not fully applied in this case, leading to an imbalance in the trial. The research combines normative and empirical methods, including interviews and literature reviews, to explore whether the evidence presented was adequately considered according to the Criminal Procedure Law. Findings suggest that the judges' failure to properly apply this principle resulted in a decision that did not meet the required standard of balance or fairness, ultimately weakening the defendant's position. This research highlights the urgent need for judicial reforms to strengthen adherence to procedural fairness, ensuring that legal decisions reflect the facts of the case and the fundamental principles of justice. The study contributes to the broader understanding of how judicial practices affect the fairness of criminal trials in Indonesia, offering recommendations for improving the application of legal principles in future cases.

1. Introduction

Indonesia is a country that adheres to a rule of law system or a country based on law, a cornerstone fostering social dynamics and creating a just and prosperous

society. Legal frameworks, including regulations and laws under the constitution, must support the development of a prosperous society. The interactions between the state and its citizens, as well as among members of society, certainly prioritise the values of justice and general welfare. This is parallel to the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly on December 10, 1948, through resolution 217 A (III) in the first paragraph of the preamble, which highlights the recognition of the natural dignity and equal and inalienable rights ... as the basis of freedom, justice and peace in the world.¹

The 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution) is the highest constitution that serves as the basis for forming laws and regulations. The hierarchy of statutory regulations is asserted in Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Statutory Regulations. Article 3 (1), states that the 1945 Constitution is the basic law in statutory regulations. Pancasila, complementing this structure, is the philosophical foundation and source of all legal principles, embodying the way of life for Indonesians in their national and state affairs.

Pancasila, as the source of all legal norms, occupies a central role as the ideal foundation of Indonesian law. Its values, established in the noble cultural traditions of the nation and agreed upon by the founding fathers, represent a synthesis of religious, humanitarian, nationalist, democratic, and socio-cultural principles. These five core values are integrated into a unified framework that must be upheld and implemented by all citizens, particularly those in government. Pancasila and the 1945 Constitution serve as the ethical compass for the nation and state.²

Article 1(3) of the 1945 Constitution declares that "Indonesia is a state based on law." This legal foundation obligates Indonesia to ensure justice for its people, particularly through its judicial institutions. The judiciary is vital in fostering the nation's progress and dignity. Additionally, the ultimate objective of a legal system is to create harmony in society, promoting and upholding values imbued with the universal principles of truth and justice.³

The 1945 Constitution regulates the judiciary in Indonesia in Article 24 (2), entrusting judicial authority to the Supreme Court and its subordinate bodies, including religious courts, general courts, court-martials, state administrative courts, and the Constitutional Court.⁴ All of these judicial institutions have their role in exercising independent judicial power.

The principle of independent judicial power ensures that judicial processes are conducted autonomously and without the sway of other branches of power. This independent judicial power is further confirmed in Article 1 Paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, which defines the scope of judicial independence. This includes freedom from interference by state authorities or external influences and protection against coercion, directives, or

¹ P.B.B., *Mukadimah Deklarasi Universal Hak Asasi Manusia (DUHAM). Majelis Umum PBB tanggal 10 Desember 1948 melalui resolusi 217 A (III)* (Perancis: Paris, 1948).

² Fifink Praiseda Alviolita, "Fenomena Kepala Daerah Berprestasi Kaitannya Dengan Tindak Pidana Korupsi Dalam Perspektif Kriminologi," *Badamai Law Journal* 8, no. 2 (2023), <https://doi.org/10.32801/damai.v8i2.15862>.

³ M.Friedman Lawrence, *The Legal System : A Social Science Perspective* (New York: Rusell Sage Foundation, 1975).

⁴ "Pasal 24 Ayat (2) Undang Undang Dasar Negara Republik Indonesia Tahun 1945".

recommendations from outside parties, except as explicitly permitted by statutory regulations.

In relation to the exercise of judicial power held by the Supreme Court, Article 24A (1) of the 1945 Constitution states, "the Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other authorities granted by law".⁵ The authority of the Supreme Court is further set out in Law No. 14 of 1985 concerning the Supreme Court, which outlines its functions and duties. These include not only judicial functions but also supervisory and regulatory responsibilities:

- 1.1 As the highest judicial institution, the Supreme Court supervises the judicial process across all levels of the general judicial system. This includes first-instance courts, appellate courts, and cassation courts. The goal is to ensure that trials are conducted diligently, fairly, and according to the principles of justice—prompt, simple, and affordable.
- 1.2 The Supreme Court is authorised to supervise the behaviour of judges and other judicial officials, particularly in cases of ethical violations or breaches of conduct. The Court emphasises that judges play an active role in uncovering substantive truth, ensuring objectivity, and conducting proceedings impartially in criminal cases.⁶

In a criminal trial, the focus is not on winning or losing but on determining the fate of a person, whether it concerns the defendant or the victim. The judge becomes the focal point of public scrutiny, as every decision he pronounces will receive an assessment from the community on whether it delivers justice for the victim, defendant, and society in general. Judges' decisions can set jurisprudence; however, in practice, these decisions often take a backseat to the description/formulation of statutory regulations.

When delivering judgments, it is essential to use clear and straightforward language while adhering to legal norms as a foundation of legal science.⁷ At the same time, the application of the Law must embody justice from a philosophical perspective established in the values of Pancasila. Such justice must be grounded in wisdom and care, guided by principles that honour the values of Almighty God and aim to ensure fairness for all Indonesian citizens.

2. Method

This research employs a normative legal method, utilising methodologies from legal science, including conceptual and case approaches.⁸ This research examines

⁵ "Pasal 24A Ayat (1) Undang Undang Dasar Negara Republik Indonesia Tahun 1945" (Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia).

⁶ Marcellino Hertoni, "Independensi Hakim Dalam Mencari Kebenaran Materiil," *Lex Crimen V*, no. 1 (2016): 46.

⁷ Daniel Alimpeev, "The Language Of Regulatory Legal Acts: Is It Time To Sound The Alarm?," *Bulletin of Perm University, Legal Sciences* 57, no. 3 (2022): 401, <https://doi.org/10.17072/1995-4190-2022-57-399-426>.

⁸ W. Putri Madamba, "Application of Territorial Principles Against Pedophile Criminal Act Perpetrators Perpetrated By Foreign Citizens," *Jurnal Legalitas* 14, no. 1 (2021), <https://doi.org/10.33756/jelta.v14i01.11114>.

norms, applicable laws, and regulations (positive law) from an applied perspective⁹ to investigate the following problems: What is the concept of the principle of proof in the Criminal Procedure Code in Indonesia, and how is the principle of evidence applied under the Criminal Procedure Code, specifically in Case No. 123/Pid.B/2022/PN Yyk?

3. Analysis or Discussion

A judge's decision contains a legal analysis called legal considerations (*ratio decindi*), which is obtained from the facts revealed in the trial, both submitted by the Public Prosecutor and the Defendant's Attorney. The facts revealed at trial are the most essential matters in a criminal case, especially when the revealed facts come from the testimony of witnesses who provide the chronology of events linked to evidence. In such instances, judges are required to remain objective and balanced in taking into account the evidence presented by the Public Prosecutor and Legal Advisor. This approach aligns with the principle of *audi et alteram partem*. Although this principle is not explicitly stated in Law No. 8 of 1981 concerning the Criminal Procedure Code, it implicitly puts forward the principle of balance between the state's and the defendant's rights. However, judicial proceedings in Indonesia often lean toward favouring prosecution, as evidenced in Decision No. 123/Pid.B/2022/PN Yyk.

3.1. Types of Judges' Decisions in Criminal Cases

A judge's decision serves as the culmination of the law enforcement process in criminal cases, encompassing justice for the defendant, the victim, and society as a whole. According to Article 1 point 1 of the Criminal Procedure Code, a judge's decision carries significant weight.¹⁰ These decisions can be classified based on the timing of their issuance, as well as their nature and form in a criminal case. In criminal proceedings, judges may deliver several types of decisions, including:

1. Acquittal: The defendant is declared not guilty and acquitted of all charges.
2. Guilty Verdict: The defendant is found guilty of the crime charged.
3. Sentencing Decision: The defendant is found guilty and sentenced to a crime according to applicable legal provisions.
4. On-Parole Decision: The defendant is found guilty but is released under certain conditions that the defendant must fulfil.
5. Additional Penalty Decisions: The defendant found guilty may be subject to additional penalties other than the main penalty, such as fines, revocation of certain rights, or recovery of losses.
6. On-Bail Decision: The defendant is not detained and is given the opportunity to wait for further legal proceedings without having to serve jail sentence.
7. Rehabilitation Decision: If the defendant is proven to have committed a crime due to the influence of narcotics or psychotropic substances, the judge can issue a rehabilitation decision to return the defendant to society.

⁹ Hartanto, "The Development Of Social Media Among Teenagers Which Potentially Violates The Law," *Jurnal Meta-Yuridis* 7, no. 1 (2024): 116, <https://doi.org/10.26877/m-y.v7i1.18437>.

¹⁰ "Pasal 1 Angka 1 Undang Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Kitab Undang Undang Hukum Acara Pidana." (t.t.) (Article 1 Point 1 of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code).

Indonesia follows the Continental European legal system, where judicial decisions are categorised based on their issuance timing and nature. Decisions based on timing are divided into two types: interlocutory decisions and final decisions. An interlocutory decision is issued before the final ruling, such as when a defendant or their legal counsel submits an objection. Based on their nature, judicial decisions can be classified into three types: declaratory decisions, which merely confirm or declare a legal status; constitutive decisions, which create or eliminate a legal status; and punitive decisions, which impose penalties on the losing or at-fault party, requiring them to fulfil specific obligations.¹¹ There are three primary forms of decisions in criminal cases: criminal convictions, acquittals, and dismissals of charges. Each type reflects the court's response to the evidence and legal arguments presented during the trial.

The judge's verdict/decision in criminal cases is regulated in Article 193 Paragraph (1) of the Criminal Procedure Code, asserting, "If the court finds the defendant guilty of committing the criminal act charged against them, the court will impose a sentence."¹² A criminal decision is one that declares a defendant legally proven to have committed a criminal act and imposes the corresponding sanctions. Conversely, as stipulated in Article 191 (1) of the Criminal Procedure Code, an acquittal absolves the defendant of charges.¹³ Additionally, a release decision, outlined in Article 191 (2) of the Criminal Procedure Code,¹⁴ is issued when there are justifying or excusing grounds, as specified in Article 49 (1) and (2).

3.2. Consideration of the Judge's Decision on the Evidence Process in Trial

Legal evidence in an evidentiary event before a court is an effort that must be carried out carefully and aims to explain the legal position of the parties involved. There must be "sufficient space"¹⁵ to reveal/prove the chronology of a case by carefully examining and presenting the legal arguments put forward by each party involved in the case. Through this evidentiary agenda, we aim to present a comprehensive and clear perspective, thereby ensuring that the panel of judges can formulate reasonable conclusions and decisions regarding the truth, falsity or multiple interpretations of the claims submitted by the parties. On the other hand, law enforcers, including police, prosecutors, and judges, who handle cases (trials), are expected to have a comprehensive understanding of legal science.¹⁶

¹¹ Sandro Unas, "Kajian Yuridis Terhadap Bentuk Putusan Hakim Dalam Tindak Pidana Korupsi," *Jurnal Lex Et Societatis* 8, no. 4 (2019): 58-65, <https://doi.org/10.35796/les.v7i4.24704>.

¹² "Pasal 193 ayat (1) Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." (t.t.). (Article 193 Paragraph (1) of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

¹³ "Pasal 191 ayat (1) Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." (t.t.). (Article 191 Paragraph (1) of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

¹⁴ "Pasal 191 ayat (2) Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." (t.t.). (Article 191 Paragraph (2) of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

¹⁵ Anugerah Rizki Akbari, *Audit KUHP* (Jakarta Selatan: Institute for Criminal Justice Reform, 2022).

¹⁶ Muh Sutri Mansyah., "Immunity Rights of Experts Who Provide Statements in Trials (Study Decision No:47/Pdt.G/LH/2018/PN.Cbi," *The Digest Journal of Jurisprudence* 4, no. 2 (2023), <https://doi.org/10.15294/digest.v4i2.75767>.

The quality of decisions greatly influences public confidence in the justice system and can also form precedents for future cases, as in line with the opinion of Paulus E. Lotulung (Young Chairman of the Supreme Court), believing that problems can be obstacles to realising quality decisions in the process of law enforcement by the judicial body, because "upholding the law means upholding the Law; but upholding the law cannot be interpreted as upholding justice."¹⁷ Therefore, the court needs to make fair and rational decisions according to the law and existing facts. A decision is a crucial product issued in a case to create a sense of justice and legal certainty for the parties involved. A decision issued by a panel of judges is based on sociological, philosophical and juridical aspects, supported by the facts revealed at the trial. In preparing a decision, especially in exploring the facts revealed at trial, a judge must consider the matters put forward by both parties to the case. On this basis, the principle of *audi et alteram partem* emerged.¹⁸

Audi et alteram partem in a judge's decision is mostly found in civil case decisions because the Civil Procedure Law is implicitly regulated in Article 121 (1) and (2) HIR/Article 145 and Article 146 Rbg.

Two phrases can be found in the formulation of this article: "summoning both parties" and "answering the lawsuit." These two phrases provide legitimacy that both parties have the same right to prove an argument, both of which must be taken into consideration by the judge. However, in deciding a criminal case, judges are also required to apply the principle of *audi et alteram partem* because a person brought before the court as a defendant has the right to defend himself on whatever matters the public prosecutors have charged him. The form of defence carried out by the defendant can be in the form of submitting evidence as regulated in Article 184 of the Criminal Procedure Code, which covers:

1. Witnesses who directly see, hear, and experience a criminal incident.
2. Experts who provide opinions based on their expertise to shed light on a criminal incident that has occurred for examination.¹⁹
3. Letters involving all forms of letters made before and/or by government officials.²⁰
4. Instructions as information or guidance helping someone understand to complete something. Instructions can take the form of written directions, instructions, or explanations that provide insights or actions necessary to achieve certain goals.²¹

¹⁷ Asep Nursobah, "Mewujudkan Putusan Berkualitas Yang Mencerminkan Rasa Keadilan," 2 Maret 2011, <https://kepaniteraan.mahkamahagung.go.id/artikel-hukum/122-mewujudkan-putusan-berkualitas-yang-mencerminkan-rasa-keadilan-prof-dr-paulus-e-lotulung-sh>.

¹⁸ Iffah Almitra, "Audi Et Alteram Partem Dalam Perspektif Undang-Undang Nomor 49 Tahun 2009 Tentang Peradilan Umum Dan Herziene Inlandsche Reglement (HIR," *Verstek: Jurnal Hukum Acara* 1, no. 3 (2013): 13-23, <https://doi.org/10.20961/jv.v1i3.38816>.

¹⁹ "Pasal 1 butir 28 Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." (t.t.). (Article 1 Point 28 of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

²⁰ "Pasal 187 huruf (b) Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." (t.t.). (Article 187 Letter (b) of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

²¹ "Pasal 188 ayat (1) Undang Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana."(t.t.). (Article 188 Paragraph (1) of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code)

5. Defendant's Statement

Proof is a process or steps to show the truth or validity of a statement or argument. This involves gathering evidence, logic, and systematic thinking to validate a claim. In deciding a criminal case, it is not enough for a judge to base it on the indictment and evidence presented by the Public Prosecutor. Considering that when the charges brought by the Public Prosecutor against the defendant and the evidence presented do not match the actions committed by the defendant, it is clear that this will cause injustice to the defendant. The prosecutor uses "Legal justice" as the established justice determining the act of violation that is detrimental to other parties. This theory aims to ensure that society understands and follows existing laws. Legal justice, according to Aristotle, must be applied simultaneously with natural justice.²²

Gathering evidence, logic, and systematic thinking are important aspects of the judicial process. This involves the collection of evidence, where the judge must ensure that all relevant evidence is presented in the trial. The collection of evidence usually takes place as part of the court process. The judge requests evidence to support the case presented in court. The judge does not collect evidence directly since this is the duty of the parties involved in the case. Another step is logical analysis, where the judge must logically assess the evidence presented and consider the strengths and weaknesses of each. This involves the use of rational and objective reasoning. In collecting evidence, the judge conducts a logical analysis to assess the validity and relevance of the evidence. Logical analysis also includes ensuring that the evidence can be considered fairly without bias. The next step is systematic thinking, which involves the judge systematically structuring and organising his thinking to ensure that all aspects of the case have been properly considered. This includes understanding the arguments from both sides and seeking consistency in legal considerations.

A person who appears in court as a defendant does not necessarily mean he is the perpetrator of a crime. This is confirmed in the principles of criminal procedural law, namely the principle of presumption of innocence, which means that every person who is suspected, arrested, detained, charged and prosecuted and/or brought before a court must be presumed innocent until he/she is proven guilty under a court verdict that holds permanent legal force according to the general explanation Law No. 8 of 1981 of the Criminal Procedure Code. The provisions for implementing the principle of presumption of innocence are regulated in the Criminal Procedure Code and confirmed in Article 8 (1) of Law No. 48 of 2009 concerning Judicial Power. Therefore, judges, in examining and deciding criminal cases in their decisions, must pay attention to the principle of *audi et alteram partem*.

3.3. Application of the Principle of Evidence in Indonesian Law

From the perspective of Indonesian law, especially the Criminal Procedure Code and Law No. 48 of 2009 concerning Judicial Power, this principle is not regulated therein. The principle of *audi et alteram partem* is contained in Article 121 Paragraphs (1) and (2) HIR/Article 145 and Article 146 Rbg. Another rule that

²² Raden Farhan Kartawijaya dkk., "Legal Justice Dan Natural Justice Aristotle," *Praxis: Jurnal Filsafat Terapan* 1, no. 02 (23 Maret 2024), <https://journal.forikami.com/index.php/praxis/article/view/628>.

serves as a reference is the implementation of the principle of *audi et alteram partem* in the code of ethics and behavioural guidelines for judges through Joint Decision (SKB) comprising the decision released by the chairman of the Supreme Court of Indonesia (MARI) and the Judicial Commission Decision No: 047/KMA/SK/IV/2009 – 02/SKB/ P.KY/ IV/2009 concerning the Code of Ethics and Code of Conduct for Judges in conjunction with Joint Regulations of the Supreme Court and Judicial Commission No. 02/PB/ MA/IX/2012 and No. 02/PB/P.KY/09/2012 concerning the Guidelines for Enforcement of the Code of Ethics and Guidelines for Judge's Behavior. Under these ethical guidelines, judges who fail to uphold the principle of *audi et alteram partem* in their rulings face only ethical sanctions.

The principle of *audi et alteram partem*, as regulated implicitly in Article 121 (1) and (2) HIR/Article 145 and Article 146 Rbg, starts from the case registration process to the stage where a final decision is made in civil cases. However, this principle can be applied in civil and criminal cases, as well as in judicial review cases in the Supreme Court, to help provide the opportunity to convey the opinions of the parties in the case, involving the Respondent as the maker of the legislation under the law and the Petitioner as the implementer of the statutory regulation.²³ Considering its enormous benefits and influence in a judicial process, the principle of *audi et alteram partem* provides guidelines for a judge, ensuring that all arguments presented in court are considered fairly and impartially, maintaining a balance between litigants. On the basis of the importance of the principle of *audi et alteram partem* in forming a judge's decision, it would be necessary to regulate this principle through statutory regulations, especially in the judicial power law. The law governing judicial power is crucial in delivering justice to society. It serves as a fundamental legal framework following the 1945 Constitution, encompassing both formal and material law. To enhance the fairness of judicial decisions, it is essential to revise the judicial power law to explicitly include provisions on the principle of *audi et alteram partem* in the formulation of judges' decisions.

3.4. Application of Evidence in Case Number 123/Pid.B/2022/PN Yyk

Decision Number 123/Pid.B/2022/PN Yyk. is the verdict in the case of the *klitih* case on Gedong Kuning Street, which killed D as the victim. The *Klitih* in Gedong Kuning Street case then became a hot topic of conversation among the people of Yogyakarta because several matters undermined justice, especially for the defendants who were brought before the trial. The *Klitih* case in Gedongkuning Yogyakarta involved 5 (five) people suspected of being innocent: Ry, Fer, Fan, and Han. This case lasted almost 1 (one) year. Ironically, all the legal processes undertaken showed injustice for the five defendants. This injustice was obvious during the initial stages of inquiry and investigation processes experienced by the five defendants, one of whom was Ry, arrested on April 10, 2022, at around 02.00 a.m. at his house by four people who identified themselves as police officers. However, these individuals wore plain clothes, failed to present official police identification, and did not produce a letter of assignment, arrest warrant, or search

²³ Asep S. Hidayat, "Penerapan Asas Audi Alteram Et Partem pada Perkara Judicial Review di Mahkamah Agung," *Journal of Islamic Law Al-Mizan* 3, no. 1 (2019), <https://doi.org/10.32507/mizan.v3i1.408>.

warrant. Furthermore, as required by standard procedure, they did not involve local community security officials, such as *RT* or *RW* leaders.²⁴

The police then entered the house, apprehended Ry, and took him to the second floor of the Sewon Police Station, Bantul, for interrogation. During this process, Ry was subjected to psychological and physical abuse, including being beaten, having his feet stomped on a table, and being struck with a cigarette ashtray. These actions clearly demonstrate a violation of human rights committed by the police officers.²⁵

The five defendants in the *Klitih* case in Gedongkuning, Yogyakarta, expressed concerns about unfair treatment and violations of their human rights, which extended beyond the inquiry and investigation stages and persisted into the trial. During the trial, several inconsistencies came to light. For instance, the post-mortem et repertum indicated that victim D had died due to blunt force trauma, yet the Public Prosecutor presented a "gear," a sharp object, as evidence. This "gear" was unfamiliar to the defendants. When the defendants requested a forensic analysis of fingerprints on the "gear," the judges denied the request, citing that the item had been stored for too long after the incident.²⁶

In criminal procedural law, the judge's belief is a key factor in evaluating evidence and determining whether a defendant is guilty. However, the "conviction in time" theory emphasises the importance of clear legal reasoning behind a judge's belief. This reasoning must be logical, sensible,²⁷ and clearly articulated, as it upholds the quality of judicial decisions, ensures fairness for defendants, and protects their rights by limiting judicial discretion. C. Howard highlights that such limitations on judicial belief have dual benefits: they enhance the seriousness and integrity of criminal proceedings while safeguarding defendants' rights.²⁸

In this case, the panel of judges failed to adhere to these principles. The defendants denied any connection to the "gear" and requested forensic testing, which should have been mandated by the judges rather than dismissed with the excuse that the "gear" was too old for fingerprint analysis. Moreover, the discrepancy between the victim's post-mortem findings, which pointed to blunt force trauma, and the sharp-edged "gear" presented by the Public Prosecutor further undermined the credibility of the evidence.

Additionally, the judges violated the principle of *audi et alteram partem*. When confronted with the evidence presented by the Public Prosecutor, the defendants provided their statements, but the judges failed to consider these statements adequately. Instead of cross-examining and validating the prosecutor's evidence against the defendants' testimonies, the judges relied solely on the Public

²⁴ An interview with Az, the defendant Ry's parent on Wednesday 1 February 2023, t.t.

²⁵ Ibid.

²⁶ "Putusan Nomor 123/Pid.B/2022/PN Yyk" (t.t.), 30. (Decision Number 123/Pid.B/2022/PN Yyk)

²⁷ Munir Fuady, *Teori Hukum Pembuktian (Pidana dan Perdata* (Bandung: Citra Adhitya Bakti, 2020), 40.

²⁸ Silvana Diani dkk., "Implications of Narcotics Crime Regulation in the National Criminal Code Against Narcotics Abusers," *JURNAL LEGALITAS* 17, no. 1 (6 Mei 2024): 49–65, <https://doi.org/10.33756/jelta.v17i1.23490>.

Prosecutor's account. This indicates a lack of cross-examination and failure to balance perspectives.²⁹

A judge must not rely solely on information from one party, even if it includes evidence presented by the Public Prosecutor, without hearing or allowing the opposing party to present their case. This principle emphasises that evidence must be submitted and examined openly in court, with all parties present, to ensure it is thoroughly tested. Such an approach is essential to achieving true justice.³⁰ The principle of *Audi et Alteram Partem* holds the noble aim of providing equal rights and degrees in the process of examining cases in court for the parties (*equality before the law*) and must also provide equal rights and treatment before the law (*equal protection on the law*).³¹

In addition to the facts presented earlier, other trial revelations highlighted inconsistencies in the prosecution's evidence, particularly the testimony of witness Muh. D. Saputra, which demonstrated weak evidentiary value. The witness stated that he could not identify the perpetrator while he was aware of the incident on Gedong Kuning Street. According to his testimony, the perpetrator wore a mask and had slanted eyes. He could only describe the individual's body shape and clothing, specifically mentioning a grey hoodie jacket with box-shaped illustrations and the word "Imagine," as presented by the Public Prosecutor in court.

However, contrasting details emerged from the testimony of an Information Technology (IT) expert, who stated that the alleged perpetrator wore a bright, plain hoodie.³² Further discrepancies were revealed when evidence from the night of the incident showed that Defendant RNS was wearing a plain yellow hoodie jacket with the word "Starcross" on the back and front, paired with a light grey denim hat bearing the Quicksilver logo. This was substantiated by CCTV footage from the Hiswana Migas Randubelang shophouse in Bangunharjo, Sewon District, Bantul Regency, recorded at 02.04 a.m. on April 3, 2022.³³

The facts described above were revealed at trial, but the panel of judges did not consider the CCTV evidence and only considered the testimony of witness Muh. D. Saputra. This shows that the panel of judges ignored CCTV evidence and failed to comply with Article 28 of the Judicial Power Law, stating, "Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society" because they excluded proof of evidence in the trial."

In this case, the panel of judges dismissed the testimony of the defence witnesses (*a de charge* witnesses) on the grounds that their statements lacked objectivity due to their close relationship with the defendant. The judges reasoned that, as members of the Morenza gang, the witnesses displayed a strong sense of solidarity and a tendency to protect fellow gang members. Citing Article 185 (6),

²⁹ Iskandar Yoisingadji, "Kedudukan Hukum Saksi Yang Tidak Hadir Dipersidangan Sebagai Alat Bukti Dalam Pemeriksaan Perkara Pidana," *Justisia* 7, no. 14 (2020), <https://www.jurnal.umm.ac.id/index.php/justisia/article/view/1294>.

³⁰ Desi Bangun, "Penerapan Asas Audi Et Alteram Partem Pada Perkara Wanprestasi Dalam Hal Ketidakhadiran Pihak Tergugat Di Pengadilan Negeri Pekanbaru," *JOM Univ. Riau* VI, no. 2 (2019): 2.

³¹ I.Dewa Gede Admaja, *Filsafat Hukum Dimensi Tematis dan Historis* (Malang: Setara Press, 2013).

³² Putusan Nomor 123/Pid.B/2022/PN Yyk, 32-33. (Decision Number 123/Pid.B/2022/PN Yyk, 32-33)

³³ Ibid.

points (c), and (d) of the Criminal Procedure Code, the panel emphasised that in assessing the credibility of witness testimony, judges must carefully consider any reasons that might motivate a witness to provide a particular statement. Additionally, they must evaluate the witness's lifestyle, morality, and other factors that could affect the reliability of their testimony. Based on this reasoning, the judges chose to disregard the statements of the *a de charge* witnesses, who were fellow members of the Morenza gang.³⁴

The stance and perspective of the panel of judges reinforce the perception of an unfair judiciary. Objectivity, while critical, should always be tempered with wisdom. Numerous theories about justice emphasise the importance of fairness in judicial decisions. For those seeking justice, a quality judicial decision genuinely reflects a sense of fairness and justice. This perception of justice among those directly impacted may differ from the opinions shared by netizens on social media.³⁵ The media and societal framing of motorcycle gangs often perpetuate stigmas that can influence fairness in judicial processes. According to many criminologists, such incidents are often categorised as juvenile delinquency, best addressed through preventive measures rather than repressive law enforcement or prejudice. Furthermore, labelling someone with poor moral character should be based on concrete evidence, such as prior legal violations or a criminal record. In the case discussed, all *a de charge* witnesses presented had no prior criminal records or histories of legal violations, nor were they recidivists. Therefore, there is no valid basis to claim that these witnesses had poor moral character. As such, the panel of judges' decision to dismiss the *a de charge* witnesses lacks legal justification.

The exclusion of *a de charge* witnesses presented by the defendant's legal counsel reflects actions by the panel of judges that violate the principles of *audi et alteram partem* and the presumption of innocence. By denying the defendant the opportunity to present a defence, the process fails to uphold fairness and justice. This approach also contradicts Article 185 Paragraph (1) of the Criminal Procedure Code, which states that "witness testimony as evidence" refers to what the witness declares before the court.³⁶ In this case, witness R.S., an *a de charge* witness, withdrew their Police Investigation Report (BAP) due to fear of being implicated in the case and reported experiencing violence during the evidence-gathering process involving the "gear" and ropes. Additionally, R.S.'s testimony in court differed materially from the contents of the Police Investigation Report. However, rather than considering the testimony provided in court, the panel of judges relied on the statements from the report in their decision. This approach contravenes the defendant's rights and constitutes a clear violation of Article 185 Paragraph (1) of the Criminal Procedure Code.

³⁴ Ibid., 133.

³⁵ Hartanto, "Memaknai Rasa Keadilan Masyarakat Era Digital," rechtsvinding.bphn.go.id, accessed on 9 June 2024, <https://rechtsvinding.bphn.go.id/?page=artikel&berita=900>.

³⁶ "Pasal 185 Ayat (1) UU RI No. 8 Tahun 1981 tentang Kitab Undang Undang Hukum Acara Pidana" (t.t.). (Article 185 Paragraph (1) of Law of the Republic of Indonesia concerning Criminal Procedure Code)

4. Conclusion

Principle *audi et alteram partem* is a fundamental principle that judges must apply in deciding based on the evidentiary process in criminal cases. The essence of the principle of *audi et alteram partem* in a criminal case serves as a form of implementing the values of justice and a balance of rights for the litigants, especially the one who is brought before the trial as a defendant. Considering that a person who is suspected or accused of having committed a criminal act against himself does not necessarily mean that he is guilty, considering the principle of *presumption of innocence*. A defendant has the right to defend himself either by presenting evidence at trial or refuting information in the indictment released by the Public Prosecutor. The panel of judges in a criminal case should also pay attention to the facts revealed at trial objectively by listening to both parties—the Public Prosecutor and the defendant. All the facts revealed at the trial are used as the basis for the panel of judges to provide legal considerations (in their decision). Decision No. 123/Pid.B/2022/PN Yyk indicates that the panel of judges examining the case did not pay attention to the principle of *audi et alteram partem*. It can be seen that the panel of judges did not explore the substantive truth regarding the discrepancy between the post mortem et repertum of the victim's death and the evidence presented. The judges disregarded CCTV footage that implicated the defendant, dismissed the testimony of *a de charge* witnesses by labelling them as having poor moral character without substantiating this claim through police records, and failed to consider the provisions of Article 185 (1) of the Criminal Procedure Code. It is hoped that the Supreme Court will proactively disseminate comprehensive guidelines for judges to ensure fair and just decision-making processes and strengthen internal oversight mechanisms to maintain judicial integrity.

References

- Admaja, I.Dewa Gede. *Filsafat Hukum Dimensi Tematis dan Historis*. Malang: Setara Press, 2013.
- Akbari, Anugerah Rizki. *Audit KUHAP*. Jakarta Selatan: Institute for Criminal Justice Reform, 2022.
- Alimpeev, Daniel. "The Language Of Regulatory Legal Acts: Is It Time To Sound The Alarm?, Bulletin of Perm University." *Legal Sciences* 57, no. 3 (2022): 401,. <https://doi.org/10.17072/1995-4190-2022-57-399-426>.
- Almitra, Iffah. "Audi Et Alteram Partem Dalam Perspektif Undang-Undang Nomor 49 Tahun 2009 Tentang Peradilan Umum Dan Herziene Inlandsche Reglement (HIR." *Verstek: Jurnal Hukum Acara* 1, no. 3 (2013): 13-23,. <https://doi.org/10.20961/jv.v1i3.38816>.
- Alviolita, Fifink Praiseda. "Fenomena Kepala Daerah Berprestasi Kaitannya Dengan Tindak Pidana Korupsi Dalam Perspektif Kriminologi." *Badamai Law Journal* 8, no. 2 (2023). <https://doi.org/10.32801/damai.v8i2.15862>.
- Bangun, Desi. "Penerapan Asas Audi Et Alteram Partem Pada Perkara Wanprestasi Dalam Hal Ketidakhadiran Pihak Tergugat Di Pengadilan Negeri Pekanbaru." *JOM Univ. Riau* VI, no. 2 (2019): 2,.
- Diani, Silvana, Fenty U. Puluhulawa, Dian Ekawaty Ismail, dan Distya Putri Handayani. "Implications of Narcotics Crime Regulation in the National

- Criminal Code Against Narcotics Abusers." *JURNAL LEGALITAS* 17, no. 1 (6 Mei 2024): 49–65. <https://doi.org/10.33756/jelta.v17i1.23490>.
- Fuady, Munir. *Teori Hukum Pembuktian (Pidana dan Perdata*. Bandung: Citra Adhitya Bakti, 2020.
- Hartanto. "Memaknai Rasa Keadilan Masyarakat Era Digital." rechtsvinding.bphn.go.id. Diakses 9 Juni 2024. <https://rechtsvinding.bphn.go.id/?page=artikel&berita=900>.
- . "The Development Of Social Media Among Teenagers Which Potentially Violates The Law." *Jurnal Meta-Yuridis* 7, no. 1 (2024): 116. <https://doi.org/10.26877/m-y.v7i1.18437>.
- Hertoni, Marcellino. "Independensi Hakim Dalam Mencari Kebenaran Materiil." *Lex Crimen V*, no. 1 (2016): 46.
- Hidayat, Asep S. "Penerapan Asas Audi Alteram Et Partem pada Perkara Judicial Review di Mahkamah Agung." *Journal of Islamic Law Al-Mizan* 3, no. 1 (2019). <https://doi.org/10.32507/mizan.v3i1.408>.
- Kartawijaya, Raden Farhan, Tias Dijayanti, Alta Deliaawan Pamungkas, dan Mohammad Alvi Pratama. "Legal Justice Dan Natural Justice Aristotle." *Praxis: Jurnal Filsafat Terapan* 1, no. 02 (23 Maret 2024). <https://journal.forikami.com/index.php/praxis/article/view/628>.
- Kitab Undang Undang Hukum Acara Pidana. (t.t.).
- Lawrence, M.Friedman. *The Legal System : A Social Science Perspective*. New York: Rusell Sage Foundation, 1975.
- Mansyah., Muh Sutri. "Immunity Rights of Experts Who Provide Statements in Trials (Study Decision No:47/Pdt.G/LH/2018/PN.Cbi." *The Digest Journal of Jurisprudence* 4, no. 2 (2023). <https://doi.org/10.15294/digest.v4i2.75767>.
- Nursobah, Asep. "Mewujudkan Putusan Berkualitas Yang Mencerminkan Rasa Keadilan," 2 Maret 2011. <https://kepaniteraan.mahkamahagung.go.id/artikel-hukum/122-mewujudkan-putusan-berkualitas-yang-mencerminkan-rasa-keadilan-prof-dr-paulus-e-lotulung-sh>.
- P.B.B. *Mukadimah Deklarasi Universal Hak Asasi Manusia (DUHAM)*. Majelis Umum PBB tanggal 10 Desember 1948 melalui resolusi 217 A (III). Perancis: Paris, 1948.
- Putri Madamba, W. "Application Of Territorial Principles Against Pedophile Criminal Act Perpetrators Perpetrated By Foreign Citizens." *Jurnal Legalitas* 14, no. 1 (2021). <https://doi.org/10.33756/jelta.v14i01.11114>.
- Putusan Nomor 123/Pid.B/2022/PN Yk (t.t.).
- Unas, Sandro. "Kajian Yuridis Terhadap Bentuk Putusan Hakim Dalam Tindak Pidana Korupsi." *Jurnal Lex Et Societatis* 8, no. 4 (2019): 58-65. <https://doi.org/10.35796/les.v7i4.24704>.
- Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (t.t.).
- Wawancara dengan Az, Orang Tua Terdakwa Ry pada hari Rabu 1 Februari 2023, t.t.
- Yoisangadji, Iskandar. "Kedudukan Hukum Saksi Yang Tidak Hadir Dipersidangan Sebagai Alat Bukti Dalam Pemeriksaan Perkara Pidana." *Justisia* 7, no. 14 (2020). <https://www.jurnal.umm.ac.id/index.php/justisia/article/view/1294>.



Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: ©JELTA UNG. This is an open access article distributed under the terms of the Creative Commons Attribution-Non Commercial 4.0 International License, which permits copy and redistribute the material in any medium or format, remix, transform, and build upon the material, provided you must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use and you may not use the material for commercial purposes.

Jurnal Legalitas (J.Legalitas – JELTA) is an open access and peer-reviewed journal published by Faculty of Law, Universitas Negeri Gorontalo. The contents of the articles and advertisements published in the Jurnal Legalitas (JELTA) are sole and exclusive responsibility of their respective authors and advertisers.

