

How Could Judges Ignore the *Audi Et Alteram Partem* Principle in a Criminal Case Trial?

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Abstract

In a judge's decision, legal considerations aim to delve into the facts revealed at trials based on the audi et alteram partem principle, which must exist and become a foundation. The philosophy of the audi et alteram partem principle is essentially the values of justice and balance. In applying the audi et alteram partem principle in a criminal case, although the judges have judicial power, they should consider the evidence and facts that are not only submitted by the public Prosecutor but also have to consider the evidence and facts submitted by the defendant. In decision Number 123/Pid.B/2022/PN Yyk, the panel of examining judges rejected the explanation of the witness a de-charge which was not based on a clear reason, so it was felt that the panel of judges examining the case did not consider the explanation of the witness which was mitigating for the defendant and violated the principle of audi et alteram. Therefore, this study aims to elaborate on how the judicial panel examined the case by applying the audi et alteram partem principle. To answer these legal issues, this study uses combined research methods of normative and empirical data with data collection methods by conducting interviews and literature reviews as well as using descriptive qualitative data analysis methods. The result of this study showed that the judicial panel examining case number 123/Pid.B/2022/PN Yyk did not consider the audi et alteram partem principle for the judgment because the judges were not balanced by only considering the prosecutor's explanation and rejecting the testimony of the defendant's witnesses and ignoring material truth of defendant's proof.

Keywords: *The audi et alteram partem principle; Judge's Decision; Criminal Case; Judicial Power.*

Introduction

In carrying out the rule of law concept, a state must guarantee justice for its people, especially through the judiciary. It is because the judiciary plays an important role in building the civilization of the nation and state to be more dignified. In addition, the ultimate goal of a legal system is creating a harmonious life, which is closely related to its role as a way to distribute and uphold a set of values in a society imbued with the concept of truth, commonly referred to as justice.¹

Judicial institutions in Indonesia, as regulated in Article 24 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, are implemented by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.² All of these judicial institutions in accordance with their roles and functions, are to exercise independent judicial power. The meaning of this independent judicial power can be interpreted that the implementation of the judicial process must be independent and free from the influence of other powers. This independent judicial power is further emphasized in Article 1 Paragraph (1) of RI Law No. 48 of 2009 concerning Judicial Power which explains that "The Judicial Power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the rule of law of the Republic of Indonesia."³ The scope of the meaning of this independent judicial power can be explained in detail regarding matters that include:

- a. There is no interference from state power or other influences;
- b. There is no coercion, directives or recommendations from other interested parties except for matters regulated and emphasized in laws and regulations.

Concerning the exercise of judicial power held by the Supreme Court, in accordance with Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which explains that "The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under laws against statutes, and has other powers granted by law."⁴ The Supreme Court's authority is further regulated in RI Law No. 14 of 1985 concerning the Supreme Court. In RI Law no. 14 of 1985 concerning the

¹ Lawrence M Friedman, *Legal System, The: A Social Science Perspective* (Russell Sage Foundation, 1975), <http://www.jstor.org/stable/10.7758/9781610442282>.

² Article 24 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

³ Article 1 Paragraph (1) Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

⁴ Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Supreme Court, the functions and duties of the Supreme Court, in addition to the judicial function, also have a supervisory and regulatory function. The supervisory function of the Supreme Court includes:⁵

- a. The Supreme Court, as the highest judicial institution, has the function of supervising judicial processes in all judicial environments under the scope of the Supreme Court both at the first level, appellate level and cassation level, which aims to ensure that trials conducted by the judiciary are carried out thoroughly and reasonably in accordance with the principle in judicial power, namely the principle of fast, simple and low-cost trials without reducing or limiting the freedom of judges in examining and deciding cases;
- b. The Supreme Court has the authority to supervise the behavior of judges and other judicial officials who violate or violate the code of ethics;

In addition to the supervisory function, the Supreme Court has a regulatory function. As a form of this regulatory function, the Supreme Court can make its own rules in either a Supreme Court Regulation (Perma) or a Supreme Court Circular Letter (Sema). Concerning the judicial functions of the Supreme Court, in carrying out these functions it is carried out by judicial bodies under the Supreme Court, which judges of each judicial body carry out. Regarding the function and role of judges in a judicial institution, especially within the scope of the Supreme Court, especially in a criminal case, the judge has an important role in actively digging for material truth to be able to examine a criminal case based on objectivity and carried out impartially.

The work of a judge in a criminal case does not only focus on the formulation and description of the elements in a statutory regulation, but a judge must involve conscience and conviction in giving a decision on whether a person who is presented at trial is worthy of being made a convict or No. Bearing in mind that in a criminal case, the main issue is not winning or losing but the fate of a person both from the side of the accused and the victim. The judge will be the center of attention for the community, considering that every decision will receive an assessment from the community on whether the decision provides a sense of justice for the victim, the accused and society in general. Bearing in mind that a judge's decision will become a source of law. Even though in the civil law legal system, the judge's decisions (jurisprudence) are recognized as a source of

⁵ Rinsofat Naibaho dan Indra Jaya M. Hasibuan, (2021), 'Peranan Mahkamah Agung Dalam Penegakan Hukum Dan Keadilan Melalui Kekuasaan Kehakiman', *Nommensen Journal of Legal Opinion*, 2.2 p.208, <http://ejournal.uhn.ac.id/index.php/opinion>

law, in practice, this jurisprudence is still very much neglected than the description and formulation of elements in statutory regulation.

A judge's decision, especially in a criminal case, will contain legal considerations (*ratio decidendi*) obtained from the facts revealed in the trial, whether submitted by the Public Prosecutor (JPU) or the Defendant's Legal Counsel. The facts revealed at trial are essential in a criminal case, especially when the facts revealed at the trial are sourced from witness statements that can explain the chronology of events associated with evidence and other evidence presented in a criminal trial process. Therefore, in this case, a judge must be objective and balanced by considering the evidence presented by the Prosecutor and the defendant's legal counsel.⁶ It is in accordance with the application of the *audi et alteram partem* principle. This principle or principle is not literal in RI Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). However, it is implicitly implied to animate the articles in the Criminal Procedure Code, which prioritizes the principle of balance between the rights of the accused in the mechanism of disclosing material truth in the criminal justice system process. This principle sends a message that the judicial process must be balanced even though judicial practice in Indonesia greatly favours the Prosecutor's view.⁷

The practice of imbalance in the evidentiary process occurs in Decision Number 123/Pid.B/2022/PN Yyk. In the *a quo* decision, the Panel of Judges at the Yogyakarta District Court (PN Yogya) ruled out the testimony of the *a de-charge* witness presented by the defendant's legal counsel because the *a de-charge* witness had the same school and organizational background as the defendant. In addition, the Panel of Judges also ruled out the facts revealed at trial which were mitigating for the defendant, such as the fact that the evidence in the form of a sharp jagged gear presented at trial did not match the *visum et repertum* regarding the death of the victim who died as a result of being hit by a blunt disc. Based on this, this research will examine how far the principle of *audi et alteram partem* is applied in the criminal justice system in Indonesia and how the panel of judges examining case Number 123/Pid.B/2022/PN Yyk applies the principle of *audi et alteram partem*.

⁶ Anton Widodo dkk., (2022), 'Ratio Decidendi Hakim Dalam Vonis Penjara terhadap Korban Penyalahgunaan Narkotika Pada Putusan No.797/Pid.Sus/2020/PN.KPN', *Jurnal Civic Hukum*, 7.2 p. 204, <https://doi.org/10.22219/jch.v7i2.22116>

⁷ To be able to reach justice, a judge must not ignore the reasons that can dispose of criminal cases for the accused in the process of criminal justice even though all written elements of a formulated complaint are already met. *Oksidelfa Yanto et al.*, (2022), Can Judges Ignore Justifying And Forgiveness Reasons For Justice And Human Rights? *Srimijaya Law Review*, Volume 6 (1) p. 126, <http://dx.doi.org/10.28946/slrev.Vol6.Iss1.1054.pp122-142>

Talking about the study of the application of the *audi et alteram partem* principle, it is not something new but focuses on the judge's decision above, is never done before. This study uses a combined legal research method, namely normative and empirical law, with data collection techniques using interviews and literature studies, and descriptive qualitative data analysis methods.

Discussion

Judge Decisions in Criminal Cases

The judge's decision is the key and the estuary of the success of a law enforcement process in a crime that reflects justice for the defendant, victim, and society in general. Referring to Article 1 Point 1 of the Criminal Procedure Code, it is explained that "a judge's decision or a court decision is a statement by a judge stated in an open trial, which can be in the form of conviction or acquittal or exemption from all lawsuits in matters and according to the procedures stipulated in the law."⁸ The qualifications of a judge's decision can be differentiated based on the time of its imposition and its nature and form in a criminal case.

The type of judge's decision based on the time of imposition can be divided into two, namely, an interlocutory decision and a final decision. An interlocutory decision is handed down before a final decision. In a criminal case, an interlocutory decision is present if the defendant/his legal adviser submits a note of objection. In comparison, the final decision is a decision that aims to end or resolve a case that takes place at a judicial level. As for decisions based on their nature, they can be distinguished between declaratory decisions that only confirm or state a legal situation. Then a constitutive decision is a decision that can eliminate a situation law or creates a new legal situation, and a condemnatoir decision is a decision that punishes the party that was defeated in a trial to fulfill an obligation (achievement).⁹ In addition, there are three forms of decisions in a criminal case: sentencing, acquittal, and acquittal.

As stipulated in Article 193 paragraph (1) of the Criminal Procedure Code, the sentencing decision explains, "If the Court thinks that the defendant is guilty of committing the crime for which he was charged, then the court imposes a sentence."¹⁰ In more detail, a sentencing decision states that a defendant is legally proven to have committed a crime so that he is

⁸ Article 1 point 1 of the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code.

⁹ Sandro Unas, 'Kajian Yuridis Terhadap Bentuk Putusan Hakim Dalam Tindak Pidana Korupsi', *Lex Et Societatis*, VII.4 (2019), 58–65.

¹⁰ Article 193 Paragraph (1) of the Criminal Procedure Code.

subject to criminal sanctions. Apart from that, there is also an acquittal, as stipulated in Article 191 paragraph (1) of the Criminal Procedure Code, which explains that an acquittal is "if the court thinks that from the results of the examination at trial, the guilt of the defendant for the act he was charged with has not been legally and convincingly proven, then the defendant severed free."¹¹ Meanwhile, there is also an acquittal as stipulated in Article 191 paragraph (2) of the Criminal Procedure Code, which explains that "If the court thinks that the act charged against the defendant is proven, but the act does not constitute a criminal act, then the accused is acquitted of all charges."¹² The presence of this release decision is due to the excuse and justification reasons as stipulated in Article 49 paragraph (1) and Paragraph (2).

The Principle of Audi *Et Alteram Partem* in a Judge's Decision

Decisions become a crucial product issued in a case to create a sense of justice and legal certainty for the litigants. A decision issued by a panel of judges is based on sociological, philosophical, and juridical aspects strengthened by the facts revealed at trial. In compiling a decision, especially in exploring the facts revealed in court, a judge must consider the matters put forward by the two litigants. On this basis, the principle of *audi et alteram partem* was born.¹³

The principle of *audi et alteram partem* in a judge's decision is mostly found in a civil case decision.¹⁴ It is because the Civil Procedure Code is implicitly regulated in Article 121 Paragraph (1) and Paragraph (2) HIR/Article 145 and Article 146 Rbg, which regulates as follows:

- 1) "After the claim or claim filed by the Registrar has been registered in the register provided for that purpose, the chairperson will determine the day and time the case will be examined before the district court, and order the summons of both parties, to be present at the appointed date accompanied by the witnesses they want to be examined, bringing all the certificates to be used.¹⁵
- 2) " In determining the day of trial, the chairperson should remember how far the place of residence or residence of both parties is from the place

¹¹ Article 191 Paragraph (1) of the Criminal Procedure Code.

¹² Article 191 Paragraph (2) of the Criminal Procedure Code.

¹³ Iffah Almitra, (2013), 'Audi Et Alteram Partem Dalam Perspektif Undang-Undang Nomor 49 Tahun 2009 Tentang Peradilan Umum Dan Herziene Inlandsche Reglement (Hir)', *Jurnal Verstek*, 1.3, 13–23, <https://jurnal.uns.ac.id/verstek/article/view/38816/25694>

¹⁴ Sufiarina, Sufiarina., et al., (2022), The Organization of The General Meeting of Shareholders Based on Court Determination from The Perspective of Shareholder Rights' Protection, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law) (PJIH)*, Vol 9, No 2, p.170-190, <https://doi.org/10.22304/pjih.v9n2.a2>

¹⁵ Article 121 Paragraph (1) HIR.

where the district court is being held, and the time between the day of the summons of both parties and the day of the trial may not be less than three working days unless the case really needs to be resolved immediately checked and it was mentioned in the warrant ."¹⁶

In the formulation of the article, there are two phrases: "summoning of both parties" and "answering the lawsuit." These two phrases provide legitimacy that both parties have the same right to carry out a proof of argument, both of which must be considered by the judge. Nevertheless, in the decision of a criminal case, the judge is also required to apply the principle of *audi et alteram partem*. It is because a person presented before the court as a defendant has the right to defend himself against any matters that the Public Prosecutor has charged. The form of the defense carried out by the defendant can be in the form of submitting evidence as stipulated in Article 184 of the Criminal Procedure Code, which includes:¹⁷

- 1) Witness, as someone who saw, heard, and personally experienced a criminal event.
- 2) Expert, as someone who gives his opinion based on his expertise to make light of a criminal event that has occurred for examination.¹⁸
- 3) Letters, all forms of letters made before and/or by officials within the government.¹⁹
- 4) A clue is an act, event or circumstance which indicates that a crime has occurred and who the perpetrator is because of the correspondence between one another and the crime itself.²⁰
- 5) Defendant's Statement,

According to Yahya Harahap, evidence is the central point of examining cases in court proceedings. Evidence is provisions that contain outlines and guidelines regarding ways justified by law to prove the guilt of the accused. Evidence is also a provision that regulates evidence that is justified by law that a judge may use in proving the guilt of the accused. Court proceedings may not arbitrarily and arbitrarily prove the guilt of the accused.²¹

A person brought to trial as a defendant does not necessarily mean he is the perpetrator of a crime. It is confirmed in the principle of criminal procedural law, namely the principle of *presumption of innocence* or the principle of presumption of innocence. The meaning of the principle of presumption

¹⁶ Article 121 Paragraph (2) HIR.

¹⁷ Article 184 of the Criminal Procedure Code.

¹⁸ Article 1 point 28 of the Criminal Procedure Code.

¹⁹ Article 187 letter (b) of the Criminal Procedure Code.

²⁰ Article 188 Paragraph (1) of the Criminal Procedure Code.

²¹ General Explanation of RI Law No. 8 of 1981 concerning Criminal Procedure Code.

of innocence is that every person who is suspected, arrested, detained, charged and prosecuted and/or presented before a trial must be considered innocent until a court decision states his guilt and obtains permanent legal force following the general explanation of UU RI No. 8 of 1981 concerning Criminal Procedure Code (KUHAP).²² The provisions for the application of the presumption of innocence are not only regulated in the Criminal Procedure Code but are also emphasized in Article 8 Paragraph (1) of RI Law No. 48 of 2009 concerning Judicial Power. Based on this, the judge must pay attention to the principle of *audi et alteram partem* in examining and deciding on a criminal case in his decision.

The Principle of Audi Et Alteram Partem in Indonesian Law

The principle of *audi et alteram partem* in the perspective of Indonesian law, especially criminal procedural law and RI Law no. 48 of 2009 concerning Judicial Power, is still not regulated. The *audi et alteram partem* principle is only regulated in Article 121 Paragraph (1) and Paragraph (2) HIR/Article 145 and Article 146 Rbg. Nevertheless, the application of *the audi et alteram partem* principle is regulated in the rules of the code of ethics and guidelines for the behavior of judges, namely the Joint Decree (SKB) between the chairman of the Supreme Court of the Republic of Indonesia (MARI) and the chairman of the Judicial Commission Number: 047/KMA/SK/IV/2009 – 02 /SKB/P.KY/ IV/2009 concerning the Code of Ethics and Code of Conduct for Judges *jo.* MA and KY Joint Rules Number 02/PB/MA/IX/2012 and Number 02/PB/P.KY/09/2012 concerning Guidelines for Enforcement of the Code of Ethics and the Code of Conduct of Judges, which in the rules of the code of ethics sanctions are applied when judges do not apply the principle of *audi et alteram partem* in a decision is only in the form of ethical sanctions, not sanctions for violations originating from laws and regulations.

The principle of *audi et altream partem* as implicitly stipulated in Article 121 Paragraph (1) and Paragraph (2) of HIR/Article 145 and Article 146 Rbg is implemented in civil cases starting from registering the case until a decision is made. However, the implementation of the *audi et altream partem* principle is not only in civil cases but is also often applied in criminal cases and even applied in judicial review cases at the Supreme Court, which accommodates the provision of opportunities to express the opinions of the litigants, namely the Respondent as the maker of laws and regulations under the law and the Petitioner as the executor of the law.²³ By seeing that the principle of *audi et*

²² General Explanation of RI Law No. 8 of 1981 concerning Criminal Procedure Code.

²³ Asep Syarifuddin Hidayat, (2019), 'Penerapan Asas Audi Alteram Et Partem Pada Perkara Judicial Review Di Mahkamah Agung', *Mizan: Journal of Islamic Law*, 3.1, 37. <https://doi.org/10.32507/mizan.v3i1.408>.

alteram partem has enormous benefits and influence in a judicial process where this principle provides guidelines for a judge based on all matters argued by a person in court must be balanced between the parties to the case.

Based on the importance of the *audi et alteram partem principle* in forming a judge's decision, it is presumably that the regulation of the *audi et alteram partem principle* needs to be regulated through statutory regulations, especially in the judicial power law. The existence of judicial power laws plays an important role in the role and function of a judge in administering justice for society. Judicial power law became part of the basic norms after the 1945 Constitution of the Republic of Indonesia, formal law and material law. Therefore it is necessary to amend the judiciary power law to include arrangements regarding the *audi et alteram partem principle* in the formulation of judge decisions.

Application of the Audi Et Alteram Partem Principle in Criminal Case Number 123/Pid.B/2022/PN Yyk.

Decision Number 123/Pid.B/2022/PN Yyk. is a decision in the case of the Klitih Gedong Kuning case, which killed the victim with the initials D. In the judicial process, the Klitih Gedong Kuning case later became a hot topic of discussion among the public because several things undermined justice, especially for the defendants who were before the trial. The Yogyakarta Gedongkuning Klitih case involved 5 (five) innocent people: Ryan, Fernandito, Fandi, Andi and Hanif. This case lasted almost 1 (one) year. Ironically, all the series of legal processes that were undertaken showed a lot of injustice for the five defendants. This injustice can be seen in the early stages, namely, the investigation and investigation process experienced by the five defendants, one of whom is Ryan, who was arrested on April 10, 2022, at around 02.00 WIB at Defendant Ryan's house by four people claiming to be from the police, dressed casually not a police uniform no police identity, no assignment warrant or arrest warrant, no search warrant and no village security or RT or RW officials involved.²⁴

The police then entered the house to find and arrest Ryan. Then Ryan was taken to the Sewon Police, Bantul, on the second floor and interrogated. During the interrogation, Ryan was subjected to psychological and physical violence through beatings, stamping on a table and throwing his feet with a

²⁴ Mahkamah Agung Republik Indonesia, 'PUTUSAN PN YOGYAKARTA 123/PID.B/2022/PN YYK', *Publikasi Dokumen Elektronik Putusan Seluruh Pengadilan Di Indonesia*, 2022
<<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed61d5c94583929f42323233303335.html>>.

cigarette ashtray. Such a situation indicates that unscrupulous police officers violate human rights (HAM).²⁵

The forms of injustice and other human rights violations experienced by the five defendants in the Yogyakarta Gedongkuning Klitih case did not stop at the investigation. However, it continued until the trial process, where the facts were revealed at trial, such as the discrepancy between the results of the *post-mortem et repertum*, which stated that victim D died as a result of being hit by a blunt object but the evidence shown by the Public Prosecutor was in the form of gear which was a sharp object and the gears were also not recognized by the defendants. When the defendants asked for a forensic test to be carried out on the fingerprints in the gears, the panel of judges refused because the gears had been stored for a long time since the incident occurred.²⁶

Even though in the concept of proof in criminal procedural law, there is an element of the judge's belief in determining a piece of evidence that can determine whether a person who is presented as a defendant is guilty or not guilty of having committed a crime, the element of the judge's belief must be clearly explained, where the judge must describe and explain the reasons underlying the belief in the guilt of the accused. The reasons in question must be acceptable with common sense.²⁷ Therefore, the reason for rejecting legal facts when the defendant denied that the defendant used the gear to commit a crime and the defendant asked for a forensic examination, the panel of judges should have ordered the Prosecutor to carry out a forensic test and not provide an excuse that the gear was old so that fingerprints could not be proven. This reason should not have been issued by a judge, especially the evidence of *post-mortem et repertum* from the victim stating that he died as a result of being hit by a blunt object, which does not match the evidence presented by the Prosecutor, namely gear teeth with a sharp angle. In addition, concerning the *audi et alteram partem* principle, the judges have violated the *a quo principle*. It is because when the defendant was confronted with the evidence presented by the Public Prosecutor. Then the defendant gave his statement. The panel of judges should also consider the defendant's statement, and seek the truth between the arguments put forward by the Prosecutor and the statement from the defendant. However, in this case, the judges only accepted statements from the Public Prosecutor.

Judges are clearly prohibited from accepting information from one of the parties as truth (including evidence submitted by the Prosecutor), if the opposing party is not heard or is not allowed to express his opinion or denies

²⁵ Interview with Azril, Parents of Defendant Ryan on Wednesday 1 February 2023 ..

²⁶ Putusan Nomor 123/Pid.B/2022/PN Yyk, p. 30..

²⁷ Munir Fuady, *Teori Hukum Pembuktian Pidana Dan Perdata* (Bandung : Citra Aditya Bakti, 2006, 2012).

the evidence or information presented, in the principle of *audi et alteram partem* it means that Submission of evidence must be made before the trial in the presence of the parties to the case and tested in the clearest way possible. The existence of *the audi et alteram partem* principle has a noble purpose, namely to provide equal rights and degrees in the process of examining cases in court against the parties (*equality before the law*) and also to provide the right to equal treatment before the law (*equal protection on the law*).²⁸

In addition to the facts revealed in the trial as mentioned above, there were also facts revealed in other trials in the form of the testimony of the witness *a charge* presented by the Public Prosecutor who had weak evidentiary power. It can be seen from the testimony of the witness Muhammad Daffa Saputra who gave testimony at the trial, that the witness did know about the Gedong Kuning incident but could not clearly identify the perpetrators. According to his statement, he saw the perpetrator wearing a mask, narrow-eyed, the witness only recognized the shape/posture of the perpetrator and the perpetrator's clothes, wearing a grey Hoodie Jacket with an illustration and a box shape and the words "Imagine" which was shown by the Prosecutor during the trial. Meanwhile, IT experts' testimony at trial explained that the alleged perpetrators wore colored hoodies that tended to be bright and plain.²⁹ However, in the facts revealed in another trial at the time of the incident, Defendant Ryan Nanda Syahputra was wearing a plain yellow Hodie jacket on the back and on the front that read "Starcross" and wore a Light Gray Denim hat with the Quicksilver brand logo. It is evidenced by the CCTV footage installed at the Hiswana Migas Randubelang Bangunharjo Shophouse, Sewon District, Bantul Regency, with the current time shown on the CCTV at 02.04 WIB on April 3, 2022.³⁰

From the description of the facts revealed at the trial it turned out that the panel of judges did not consider the CCTV evidence and only considered the testimony of the witness Muhammad Daffa Saputra. It shows that the panel of judges ruled out the CCTV evidence in the *a quo* case. What's more, the evidence was obtained in a way that was not against the law because the CCTV evidence came from investigators who were carried out during the investigation so that the CCTV evidence.

Furthermore, in the *a quo case*, the panel of judges ruled out the testimony of the witness *a de-charge* (the witness who relieved the defendant) because the witness *a de-charge* did not have objectivity due to their closeness to the defendant. The panel of judges thought that because the witness was a member of the Morenza gang who tended to have a high sense of solidarity

²⁸ I Dewa Gede Atmadja, *Filsafat Hukum: Dimensi Tematis Dan Teoretis* (Malang : Setara Press, 2013), p. 66.

²⁹ Putusan Nomor 123/Pid.B/2022/PN Yyk, p. 32-33.

³⁰ *Ibid.*, p. 34.

to protect fellow members of the Morenza gang. Based on Article 185 paragraph (6) of the Criminal Procedure Code points C and D stated that in assessing the veracity of the testimony of a witness, the judge must seriously pay attention reasons that may be used by the witness to provide certain information, and also taking into account the way of life and decency of the witness as well as everything that in general can affect whether or not the statement can be trusted. So that on that basis the testimony of witnesses *a de-charge* fellow members of the *Morenza* gang ruled out.³¹

From the attitudes and views of the panel of judges, the trial was confirmed by a stigma that seemed unfair. It is based on the fact that the value of objectivity should be accompanied by wisdom. The stigma against motorcycle gangs that get framed by the media and society is not better and fairer because, according to many criminologists, the incident is considered juvenile delinquency where the solution is not with repressive law enforcement and prejudice but with preventive efforts. Apart from that, to state that someone has bad moral values can be seen when that person has a record of cases of law violations from the police. Seeing the facts in the *a quo* case that all the *a de-charge witnesses* who were presented had no record of breaking the law from the police and were not recidivists, it could not be said that this person had bad morals. Therefore, the reason for the witness's refusal of *a de-charge* by the panel of judges cannot be justified legally.

The *a de-charge* witness presented by the defendant's legal counsel also included the actions of the panel of judges, which violated the principle of *audi et alteram partem* and the principle of presumption of innocence so that the defendant was not allowed to defend himself. It clearly does not reflect justice for the accused. Furthermore, the *a quo case* is also not in accordance with Article 185 Paragraph (1) of the Criminal Procedure Code, which explains that "witness testimony as evidence is what the witness stated before the court hearing."³² In the *a quo* case, the witness *a charge*, namely Redy Syahputra, withdrew his investigation report (BAP) because he was afraid to be involved in this case. He experienced violence from investigators while searching for gear and rope evidence and giving testimony at trial, whose material content was different from that in the BAP. However, in their decision, the panel of judges quoted the testimony of witnesses in the BAP. It clearly violates Article 185 Paragraph (1) of the Criminal Procedure Code.

³¹ *Ibid.*, p. 133.

³² Article 185 Paragraph (1) RI Law No. 8 of 1981 concerning the Criminal Procedure Code.

Conclusion

The principle of *audi et alteram partem* is a fundamental principle that judges must apply in making a decision. The essence of the principle of *audi et alteram partem* in a criminal case is a form of application of the value of justice and the balance of rights for litigants, especially someone who is presented in court as a defendant. In criminal procedural law, a defendant has the right to defend himself by presenting evidence at trial or refuting the Prosecutor's indictment statement. The panel of judges in a criminal case should also pay attention to the facts revealed at trial objectively by listening to both parties in the form when the Prosecutor presents evidence as well as from the Defendant/Legal Counsel also presents evidence or denies evidence should have been material consideration of the judge in deciding the case. As for Decision Number 123/Pid.B/2022/PN Yyk, the judges examining the case did not pay attention to the *audi et alteram partem principle* in their decision. It can be seen that the panel of judges did not seek material truth related to the incompatibility of the *post-mortem et repertum* of the victim's death with the evidence presented by the Public Prosecutor, the judge ruled out the CCTV evidence that relieved the defendant, the judge ruled out the testimony of the *a de-charge* witness because the *a de-charge* witness presented had bad moral values without being based on police records and the panel of judges also does not pay attention to Article 185 Paragraph (1) of the Criminal Procedure Code.

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