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Legalized Injustice in Indonesia: Violation of the Defendant's Right to be Heard Last at Trial

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Abstract. Procedural injustice in criminal trials in Indonesia is an important concern, especially regarding violations of the defendant's right to be heard last in the process of objecting to an indictment. This research focuses on the analysis of the provisions of Article 156 paragraph (1) of the Criminal Procedure Code which provides the public prosecutor with the opportunity to respond to the defendant's objections without giving the defendant or his legal advisor the right of final response. This provision creates inequality of opportunity in trials, which is contrary to the principle of equality of arms and the principle of audi alteram partem. Based on a conceptual approach and legal comparison with the criminal justice system in the Netherlands, this research identifies that reconstruction of Article 156 paragraph (1) of the Criminal Procedure Code is necessary to reflect the principle of equality. The addition of a right of final response for defendants in the objection process was proposed as a step to ensure fairer and more equitable criminal trials. This research makes a significant contribution to developing criminal procedural law in Indonesia by emphasizing the urgency of implementing the defendant's right to be heard last, as a form of protecting human rights and access to fair justice without discrimination.

Keywords: Criminal Trial, Defendant's Right to be Heard Last, Equality.

1. BACKGROUND

The prosecutor's office is a very important institution in enforcing criminal law, through which the public prosecutor determines whether a case is worthy of being submitted to court based on the results of the police investigation. Without a decision by the public prosecutor, alleged criminal acts cannot be tried in court.[1] This role is known as *the owner of the suit*, which means case controller.[2] In the Indonesian criminal justice system, the authority to submit cases to court, known as prosecution, is regulated in Article 1 point 7 of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).

Although many consider the Criminal Procedure Code to be a paradigm shift from an inquisitorial system to an accusatory system, this view is not entirely correct. This is due to the practice of still reporting examinations of witnesses (Article 75 paragraph (1) letter h of the Criminal Procedure Code) and suspects (Article 75 paragraph (1) letter a of the Criminal Procedure Code) carried out by investigators, which reflects the influence of the inquisitorial approach in criminal justice in Indonesia.[3] In Indonesia, the public prosecutor only provides instructions in accordance with Article 138 of the Criminal Procedure Code, which is different from in the Netherlands, where the prosecutor plays an active role in the investigation.[4] The public prosecutor prepares an indictment based on the case file and the results of the investigator's examination, and the authority of the public prosecutor to make the indictment is regulated by Article 114 letter d of the Criminal Procedure Code. After the indictment is completed, the case is transferred to the court for trial.

The first trial begins with checking the defendant's identity in accordance with Article 155 paragraph (1) of the Criminal Procedure Code, followed by the reading of the indictment by the public prosecutor as regulated in Article 155 paragraph (2) letter a. After that, the defendant or his legal advisor can submit an objection to the indictment, which is then responded to by the public prosecutor. Before the judge decides on the objection as regulated in Article 156 paragraph (1) of the Criminal Procedure Code, the public prosecutor is given a final opportunity to respond to the defendant's objection. This condition shows inequality, because the public prosecutor has two opportunities (to read the indictment and provide a response), while the defendant only has one opportunity, namely to raise an objection, without the right to respond to the public prosecutor's response.

This condition reflects the inequality in providing opportunities in trials caused by problems in the legal provisions. In criminal trials, balance of opportunity between the parties to the case must be guaranteed as a form

[1] Johan Dechepy-tellier, "The Public Prosecutor' s Office in the French Legal System," *DPCE Online* 62, no. 1 (2020): 311–36, https://www.dpceonline.it/index.php/dpceonline/article/view/2082. hlm. 312.
[2] Kuntadi Kuntadi, "House of Restorative Justice as a Forum of Actualizing the Nation's Culture in Solving Criminal Cases," *Jurnal Dinamika Hukum* 22, no. 2 (2022), https://doi.org/10.20884/1.jdh.2022.22.2.3242. hlm. 324.
[3] David Zbíral and Robert L.J. Shaw, "Hearing Voices: Reapproaching Medieval Inquisition Records," *Religions* 13, no. 12 (2022), https://doi.org/10.3390/rel13121175. hlm. 9.
[4] N. L. Holvast and J. M.W. Lindeman, "An Inquiry into the Blurring Boundaries between Professionals and Paraprofessionals in Dutch Courts and the Public Prosecution Service," *International Journal of Law in Context* 16, no. 4 (2020), https://doi.org/10.1017/S1744552320000270. hlm. 378.

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of the principle of equality before the law.[5] In Indonesia, this principle is reflected in the spirit of the Criminal Procedure Code, as explained in the General Explanation number 3 letter a, and is constitutionally guaranteed to every citizen based on Article 27 paragraph (1) of the 1945 Constitution.

In relation to the topic of objections to the indictment, research by Fatwa Al Yusak and Hariman Satria discusses the polemic of the invalidation of the indictment due to carelessness in its preparation, as seen in Decision Number 501/Pid.B/2022/PN.Kdi.[6] Miftahul Jannah builds objection construction using a basic approach *"Special Law System.."*[7] Erwin Susilo and Eddy Daulatta Sembiring studied the judge's authority to detain defendants, their objection was accepted.[8] Matheos F. Santos, et al. Reviewing objections to the indictment reviewing the defendant's rights, court decisions, and legal remedies based on Article 156 paragraph (1) of the Criminal Procedure Code.[9] Ridwan Antonius Manurung examines the objections to the indictment in the corruption case at the Semarang District Court, focusing on the reasons, the public prosecutor's response, and the interim decision.[10] Based on the literature review, there has been no research that specifically addresses the issue of inequality in the mutual response process as regulated in Article 156 paragraph (1) of the Criminal Procedure Code. This research fills this gap by focusing on examining inequality due to the provisions in Article 156 paragraph (1) of the Criminal Procedure Code. By putting forward a conceptual approach to building legal principles that guarantee equality, this research not only provides a new perspective on criminal procedural law but also offers solutions in the form of legal reconstruction of provisions that have the potential to violate the principle of equality. The relevance of this research lies in efforts to identify the urgency of enforcing the principle of equality in criminal trials, how this principle should be implemented through the defendant's right to be heard last, and how to create appropriate legal constructions to ensure that the principle of equality is upheld in trials. Thus, this research complements previous discourse while providing an important contribution to the development of criminal procedural law in Indonesia.

2. RESEARCH METHODS

This research uses a normative juridical method with a literature review approach. This research analyzes relevant laws and regulations, examines related cases, applies a comparative approach to enrich research insights, and uses a conceptual approach to formulate ideal concepts in resolving the legal problems raised in this research.

3. DISCUSSION

3.1. The Principle of Equality in Criminal Trials

Protection of freedom and human rights (HAM), such as the right to life, property and security of every individual, is the main optic in human rights. These rights are owned by everyone regardless of race, gender, religion or nationality.[11] Equality is not only seen as a basic principle but also an integral part of human rights.[12] In the context of human rights protection, equality is very important because equal treatment allows individuals, especially those in vulnerable conditions, to gain access to justice fairly and equally. This confirms that without equality, efforts to protect human rights cannot be fully realized. Equality means that everyone is treated equally and fairly in making and implementing laws, without discrimination, to ensure that human values are respected,[13] and equality aims to provide protection for citizens.[14] Access to justice is the ability of individuals, especially vulnerable groups, to resolve their problems.[15] However, the criminal justice system often faces challenges in the form of slow processes, high costs, complexity, and potential conflicts, which can hinder access to justice, both for individuals who use legal counsel and those who do not.[16] In this context, access to justice or justice remains a big challenge, even for those who have legal counsel. Therefore, regulations are needed that ensure equality in access to justice, so that everyone can obtain fair legal protection without discrimination.

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[5] Adrian Zbiciak and Tymon Markiewicz, "A New Extraordinary Means of Appeal in the Polish Criminal Procedure: The Basic Principles of a Fair Trial and a Complaint against a Cassatory Judgment," *Access to Justice in Eastern Europe* 6, no. 2 (2023), https://doi.org/10.33327/AJEE-18-6.2-a000209. hlm. 15.

[6] Fatwa Al Yusak and Hariman Satria, "Menalar Putusan Surat Dakwaan Yang Batal Demi Hukum Dalam Delik Perzinaan Kajian Putusan Nomor 501/Pid.B/2022/PN.Kdi," *Yudisial* 17, no. 2 (2024): 225–41, https://doi.org/10.29123/jy/v17i2.650.

[7] Miftahul Jannah, "Analisis Yuridis Penerapan Konsep Asas Lex Specialis Sytematis Dalam Tindak Pidana Perpajakan," *Journal of Contemporary Law Studies* 2, no. 2 (2024): 141–58, https://doi.org/10.47134/lawstudies.v2i2.2291.

[8] Erwin Susilo and Eddy Daulatta Sembiring, "Kewenangan Hakim Melakukan Penahanan Terhadap Terdakwa Yang Dalam Perkara Sebelumnya Keberatan Terdakwa/Penasihat Hukum Diterima," *Jurnal Yuridis* 11, no. 1 (2024): 64–77, https://doi.org/10.35586/jyur.v11i1.7271.

[9] M F Santos, "KAJIAN HUKUM EKSEPSI ATAS DAKWAAN JAKSA PENUNTUT UMUM MENURUT KETENTUAN PASAL 156 AYAT (1) UNDANG UNDANG NO. 8 TAHUN 1981," *Lex Crimen*, 2021.

[10] Ridwan Antonius Manurung, "Pelaksanaan Eksepsi Oleh Penasihat Hukum Dalam Proses Pemeriksaan Perkara Pidana Korupsi Di Pengadilan Negeri Semarang Dalam (Putusan: 31/Pid.Sus-TPK/2022/PN.Smg)," *Dinamika Hukum* 14, no. 2 (2023): 210–36.

[11] Nazar Hussain, Asif Khan, and Dr. Liaquat Ali Chandio, "Legal Safeguards Against Mob Justice: An Analysis of Blasphemy Laws in Pakistan and International Human Rights Norms," *Al-Qamar*, 2023, https://doi.org/10.53762/alqamar.06.01.e02. hlm. 22.

[12] Dagmar Schiek and Aislinn Fanning, "Equality Law after 'Brexit'-Stunted or Reverse 'Repatriation'?," in *Research Handbook on Legal Aspects of Brexit*, 2022, https://doi.org/10.4337/9781800373143.00025. hlm. 2.

[13] Branko Korže and Ivana Tucak, "Justification of the Citizens' Right of Access to Public Passenger Transport Services by the Human Rights to Mobility and Equality before the Law," *Lex Localis* 19, no. 1 (2021), https://doi.org/10.4335/19.1.149-174(2021). hlm. 157-158.

[14] Koen Lenaerts, "New Horizons for the Rule of Law within the EU," *German Law Journal*, 2020, https://doi.org/10.1017/glj.2019.91. hlm. 30.

[15] Jawad Ahmad and Georg Von Wangenheim, "Access to Justice: An Evaluation of the Informal Justice Systems," *Liberal Arts and Social Sciences International Journal (LASSIJ)* 5, no. 1 (2021), https://doi.org/10.47264/idea.lassij/5.1.16. hlm. 231.

[16] R. James Williams, "Taking a Shot: Access to Justice, Judging and ECourt," *Family Court Review* 59, no. 2 (2021), https://doi.org/10.1111/fcre.12574. hlm. 279.

Principle *equality of arms* or equal opportunity is very relevant in creating a fair trial (*fair trial*), especially in criminal justice. This principle stipulates that both parties—both the public prosecutor and the defendant—have equal opportunities to exercise their rights. This includes the right to present evidence, present witnesses, and respond to the evidence of the opposing party without unfair hindrance.[17] This equality ensures that each party gets a fair opportunity to present their views and evidence in court.[18] In criminal justice, the defendant or legal advisor must have equal access and the ability to use and refute all evidence held by the public prosecutor. If this principle is not met, then the principle *equality of arms* will be compromised and the right to a fair trial will be threatened.[19] However, when formulating the goals of criminal justice, such as achieving truth, justice, and the correct legal process, we must recognize that procedural justice has "eternal imperfection" because it is impossible for there to be rules that always produce the right results. Nevertheless, we can still implement strict mechanisms to prevent major and real violations, this is still done in order to bring the criminal justice process closer to the truth.[20] Based on explanation, access to justice and principles *equality of arms* is vital in ensuring criminal trials are fair. Everyone, especially vulnerable parties, must be treated equally and have the same opportunity to defend their rights without discrimination. When this equality does not exist, criminal trials can result in untruths, because even though the trials are carried out equally, there is no guarantee of truth. However, this is at least an effort to prevent the truth from being covered up. In criminal trials, to uphold principles *equality of arms* or equality of opportunity between the parties to a trial, it is important to understand this equality in two forms. *First*, *Formal equality* or formal equality (*de jure equality*) which ensures that everyone is treated equally before the law, without discrimination based on status, race, or other attributes. This ensures that both the public prosecutor and the defendant have equal standing in court. *Second*, *substantive equality* or substantive equality (*indeed equality*) which includes two aspects, namely equality of opportunity (*equality of opportunities*) which provides equal opportunities for all parties to defend their rights in the trial, and equality of results (*equality of outcome*) which seeks to ensure that trial results are achieved fairly and equally, regardless of differences in the conditions or backgrounds of each party.[21] In this case, formal equality focuses on objective equality of treatment, while substantive equality recognizes differences and seeks to ensure that each individual gets a fair opportunity according to their needs and conditions. These two concepts must be implemented in a balanced manner so that criminal trials can take place fairly and provide access to justice for all parties.[22] In criminal trials, both models of equality—formal equality and substantive equality—play a role in ensuring that each party receives fair treatment. Formal equality ensures that everyone is treated equally before the law, without distinction of status or other factors. This provides equal rights for all parties in a criminal trial. However, substantive equality focuses more on affirmative action to address existing inequalities, with the goal of providing equal opportunities for individuals who may be in a weaker position. For example, in criminal trials, defendants who cannot afford legal fees are given the right to obtain free legal assistance. This is an example of implementing substantive equality, which seeks to reduce injustice by providing equal access for those in need.

3.2. Guarantee of the Principle of Equality Through Implementation of the Defendant's Right to be Heard Last

The opportunity to be heard and recognized as a legal subject is an important condition for the defendant to actively defend himself.[23] The opportunity to be heard and recognized as a legal subject is highly relevant in context *due process of law*, because it is a fundamental part of the principles of procedural justice. As explained by Frederick Schauer, concept *due process* rooted in natural justice (*natural justice*), which includes two rights: "the right to be heard and the right to an impartial trial." The right to be heard ensures that the accused can express his views and defense actively, while the right to an impartial trial ensures that the process takes place fairly without bias.[24]

Comparatively, this principle is also reflected in various regulations in various countries. For example, Article 5 LV of the Brazilian Constitution and Article 7 *Code of Civil Procedure* emphasizes the importance of the right to equal defense and procedural guarantees. In France, Articles 6 and 16 *French Declaration of the Rights of Man and of the Citizen of 1789* underlines equality before law and justice. Likewise, in Germany, Articles 3(1), 20(1),

[17] Kelly Blount, "Seeking Compatibility in Preventing Crime with Artificial Intelligence and Ensuring a Fair Trial," *Masaryk University Journal of Law and Technology* 15, no. 1 (2021), https://doi.org/10.5817/MUJLT2021-1-2. hlm. 37.
[18] Gabry Vanderveen, "Remote Justice: A Visual Essay on the Response of the Dutch Justice System to the COVID-19 Pandemic," *Visual Studies* 38, no. 3–4 (2023), https://doi.org/10.1080/1472586X.2022.2050941. hlm. 616.
[19] Dana Wilson-Kovacs et al., "Digital Evidence in Defence Practice: Prevalence, Challenges and Expertise," *International Journal of Evidence and Proof* 27, no. 3 (2023), https://doi.org/10.1177/13657127231171620. hlm. 238.
[20] Viacheslav Blikhar, "Balance of Goal-Means in the System of Criminal Procedure or Can a Good Goal Justify Evil Means?," *Beytulhikme An International Journal of Philosophy* 11, no. 11:4 (2021), https://doi.org/10.18491/beytulhikme.1804. hlm. 1809-1810.
[21] Anne Hellum et al., "Introduction: Nordic Gender Equality and Anti-Discrimination Laws in the Throes of Change," *Nordic Equality and Anti-Discrimination Laws in the Throes of Change: Legal Developments in Sweden, Finland, Norway, and Iceland*, 2023, https://doi.org/10.4324/9781003172840-1. hlm. 10.
[22] Ran Yi, "The Promise of Linguistic Equity for Migrants in Australian Courtrooms: A Cross-Disciplinary Perspective," *Australian Journal of Human Rights*, 2023, https://doi.org/10.1080/1323238X.2023.2232171. hlm. 3.
[23] Esther Nir and Jennifer Musial, "Zooming In: Courtrooms and Defendants' Rights during the COVID-19 Pandemic," *Social and Legal Studies* 31, no. 5 (2022), https://doi.org/10.1177/09646639221076099. hlm. 740.
[24] Kravtsov Serhii and Serheieva Alina, "Right to Be Heard as a Part of Due Process of Law in Arbitration Proceedings: Current Challenges and Lessons for Ukraine," *Revista Brasileira de Alternative Dispute Resolution* 5, no. 10 (2023), https://doi.org/10.52028/rbadr.v5i10.ART10.LU. hlm. 222-223.

and 103(1) *Basic Law* affirms equality before the law, the principle of the rule of law, and the right to be heard. In the United States, the Fifth and Fourteenth Amendments *US Constitution* protect fair legal processes (*due process*) as well as equal protection in the eyes of the law (*equal protection of the law*).[25] At the supranational level, Article 10 *Universal Declaration on Human Rights* (1948) and Article 14(1) *International Covenant on Civil and Political Rights* (1966) affirmed equality before independent and impartial courts. This rule is strengthened by Article 6(1) *European Convention on Human Rights* (1950), Article 47 *Charter of Fundamental Rights of the European Union* (2000), Article 8(1) *American Convention on Human Rights* (1969), and Article 7 *African Charter on Human and Peoples' Rights* (1981).[26] Based on the above rules, what is quite interesting is that the defendant's right to be heard is part of the constitutional rights in Germany, and in the constitution this right is a guarantee of a fair trial (*fair trial*). Article 103 paragraph (1) of the German Constitution states that everyone has the right to be heard in court in accordance with applicable legal provisions. Provisions affirming the defendant's right to self-defense, and making this right part of the constitution, provide Germany with a strong legal basis for protecting individual rights in trials. More broadly, the defendant's right to be heard is the implementation of the principle of equality which is built on the principle of equality *listen to the other side*, namely the obligation to hear all parties fairly in the trial. This principle ensures that the defendant's defense is considered thoroughly so that the court's decision can be based on fair considerations. Rooted in European legal traditions, this principle has long been the basis of fair legal proceedings (*due process*), as confirmed by English courts centuries ago.[27] Apart from criminal cases, the relevance of this principle is emphasized in civil cases, such as the decision of the Singapore High Court in this case "*Gas and Fuel Corporation of Victoria v. Wood Hall Ltd and Leonard Pipeline Contractors Ltd.*"[28] Litigating parties must be given the opportunity to express opinions or defenses, either orally or in writing, before the judge makes a decision.[29] Article 182 paragraph (1) of the Criminal Procedure Code strictly regulates the stages in the trial to guarantee the defendant's rights, including providing a last chance. In letter a, it is stipulated that after the examination is complete, the public prosecutor submits a complaint, which is then followed by a defense (*plea*) the defendant or his legal advisor as specified in letter b. At this stage, the public prosecutor can provide a response through a reply, but the provisions state "that the defendant or legal advisor is always given a final opportunity to present his defense." The provisions of letter b state that the defendant or legal advisor must be given a last chance. The basis on which defendants or legal advisors are given a last chance in Indonesian criminal trials reflects the principle of equality, as guaranteed by the principle *listen to the other side*. This principle ensures that each party in the trial has an equal right to express an opinion or defense. In the Indonesian criminal justice system, the public prosecutor begins by submitting the case to the court for trial, so that the trial proceeds fairly and equally, the defendant or legal advisor is given the last opportunity to be heard.

3.3. Correcting Legalized Injustice in Indonesia: Violation of the Defendant's Right to be Heard Last at Trial

Article 3 of the Criminal Procedure Code emphasizes that criminal justice must follow the rules set out in the Criminal Procedure Code, reflecting the principle of legality as the main principle in the rule of law and a means of protecting human rights to prevent arbitrary actions.[30] However, the provisions in Article 156 paragraph (1) of the Criminal Procedure Code, which states that "after an objection is raised by the defendant or his legal advisor, the public prosecutor is given the opportunity to express an opinion before the judge decides," does not provide a final chance to the defendant or his legal advisor. This provision ignores the principle of equality which is a fundamental element in human rights, thus reflecting trial conditions that are not completely fair and could potentially violate the defendant's right to equal treatment in criminal trials.

Article 156 paragraph (1) of the Criminal Procedure Code should reflect the principle of formal equality, namely providing equal opportunities to all parties in the trial to express their opinions. Gustav Radbruch's view of justice as formal equality is very relevant here, because the principle of minimal justice requires equal treatment without taking sides.[31] Furthermore, Radbruch emphasized that law loses its essence as law if there is no effort to achieve justice, especially when equality, which is the essence of justice, is deliberately ignored in the

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[25] Felipe de Andrade and Geert Van Calster, "Due Process-Protecting the Right to Fair Trial of Foreign Defendants in Cross-Border Proceedings: Comparing Practices, Investigating Conflicting Principles, and Searching for Common Standards," *MPI Luxembourg*, 2024, https://lirias.kuleuven.be/retrieve/770132. hlm. 1-2.

[26] Andrade and Calster, "Due Process-Protecting the Right to Fair Trial of Foreign Defendants in Cross-Border Proceedings: Comparing Practices, Investigating Conflicting Principles, and Searching for Common Standards." hlm. 2.

[27] Birutė Pranevičienė, "The Implementation of the Principle Audi Alteram Partem in the Covid-19 Pandemic.," *Public Security & Public Order / Visuomenes Saugumas Ir Viesoji Tvarka* 2035, no. 24 (2020): 525–36, https://doi.org/10.13165/PSPO-20-24-35. hlm. 527.

[28] Serhii and Alina, "Right to Be Heard as a Part of Due Process of Law in Arbitration Proceedings: Current Challenges and Lessons for Ukraine." hlm. 223.

[29] P Hlongwane, "The Nemo Iudex in Causa Sua and Audi Alteram Partem: Lessons from State of Capture Report for Public Sector Officials," *International Conference on Public Administration and Development*, 2020, https://www.researchgate.net/profile/Alex-Nduhura/publication/346677813_Public_Private_Partnerships_Systematic_Review_of_Available_Models_for_Improving_Healthcare/links/5fce28814585 1568d146d81c/Public-Private-Partnerships-Systematic-Review-of-Available-Mo. hlm. 138.

[30] Cornelia Beatrice Gabriela Ene-dinu, "And the Principle of Legality of Indictment," in *RAIS Conference Proceedings, August 8-9, 2024*, 2024, 8–15, https://doi.org/10.5281/zenodo.13550429. hlm. 10.

[31] Robert Alexy, "Gustav Radbruch's Concept of Law," in *Law's Ideal Dimension*, 2021, https://doi.org/10.1093/oso/9780198796831.003.0008. hlm. 8.

making or application of positive law. In such conditions, the law is not just a "flawed law," but completely fails to function as a law.[32]

The provisions of Article 156 paragraph (1) which do not give the defendant or his legal advisor a last chance create inequality in the trial, which is contrary to the standards of formal justice as outlined by Radbruch. This not only reflects injustice in legal practices legalized by law, but also reduces the legitimacy of law itself as an institution that should serve justice. Thus, granting the defendant the right to a last chance is an important step to ensure that criminal trials proceed fairly and equally for the litigants.

In comparison, in the Netherlands, the public prosecutor has a significant role as *the owner of the suit* (case controller), which is formally implemented through its authority to determine the continuation of a case to court and prepare an indictment. This role includes the responsibility to ensure that charges are formulated clearly, based on relevant evidence, and in accordance with applicable legal provisions.[33] Although this role is similar to that in Indonesia, criminal trials in the Netherlands provide a final opportunity for the defendant or his legal advisor to respond to the public prosecutor's response to the defendant's or legal advisor's objections as regulated in Article 283 *Code of Criminal Procedure* (SV). In paragraph (1) that the defendant or legal advisor can submit an objection (*defence*) regarding the invalidity of the summons, the court has no authority to try, or the prosecution cannot be accepted. Paragraph (2) gives the right to the public prosecutor (*public prosecutor*) to respond to the objection, while paragraph (3) confirms that after a response from the public prosecutor, the defendant or legal advisor can provide another response. Even if the public prosecutor provides additional responses, the defendant or legal advisor still has the right to provide a final opinion before the court decides. This provision reflects the principles of procedural justice that can be adopted in the Indonesian criminal justice system to create fair and equal trials for the parties.

By referring to the theoretical framework and comparative law in the Netherlands, this research recommends the reconstruction of Article 156 paragraph (1) of the Criminal Procedure Code to better reflect the principle of equality. The original provision which only gave the public prosecutor the opportunity to express an opinion without giving the right of final response to the defendant or his legal advisor created inequality. For this reason, the article was reconstructed to read: "In the event that the defendant or legal advisor raises an objection that the court has no authority to try the case or the indictment cannot be accepted or the indictment must be cancelled, then after being given an opportunity for the public prosecutor to express his opinion," and the response of the defendant or legal advisor regarding the opinion of the public prosecutor," the judge considered the objection before making a decision." This reconstruction adds the phrase "and the defendant's or legal advisor's response to the public prosecutor's opinion." This reconstruction is very relevant to future Indonesian criminal law policy to ensure that defendants or legal advisors are given the right to respond to the public prosecutor's opinion or are given a final chance before the judge decides, and with this reconstruction, criminal trials will be more fair and equalize the parties at trial.

4. CONCLUSION

Equality in criminal trials is the main element to guarantee the protection of human rights and the achievement of justice. This principle is realized through formal equality (equal treatment before the law without discrimination) and substantive equality (fair opportunities and outcomes for all parties, including those who are vulnerable). The defendant's right to be heard, including the last opportunity at trial, is an implementation of the principle *listen to the other side* which ensures that all parties have equal rights to express views, including the defense of the defendant or legal advisor. Comparatively, this provision is reflected in Article 103 paragraph (1) of the German Constitution and Article 182 paragraph (1) letter b of the Indonesian Criminal Procedure Code, which emphasizes that the defendant or legal advisor must be given a last chance. However, Article 156 paragraph (1) of the Criminal Procedure Code fails to reflect this principle because it does not give the defendant the right of final response to the opinion of the public prosecutor, thereby creating inequality. By referring to practice in the Netherlands, which grants this right to defendants as regulated in Article 283 SV, the reconstruction of Article 156 paragraph (1) becomes very relevant. Reconstruction aims to ensure that Indonesian criminal trials can provide equality for the parties involved in the case.

5. SUGGESTION

The government and lawmakers need to revise Article 156 paragraph (1) of the Criminal Procedure Code by adding provisions that give the defendant or his legal advisor the right to respond to the public prosecutor's opinion before the judge makes a decision. This addition will reflect the principles of equality and fairness in criminal trials.

[32] Seow Hon Tan, "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies," *Canadian Journal of Law and Jurisprudence* 34, no. 2 (2021): 461–91, https://doi.org/10.1017/cjlj.2021.12.hlm.462.

[33] Martijn De Koning, "An Anthropologist in Court and out of Place," *NAVEIÑ REET: Nordic Journal of Law and Social Research*, no. 11 (2022), https://doi.org/10.7146/nnjlsr.vi11.132008.hlm.154.

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