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ENHANCING EVIDENTIARY FAIRNESS IN INDONESIAN CRIMINAL LAW: ADAPTING BRADY V. MARYLAND PRINCIPLES FOR EQUITABLE TRIALS

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ABSTRACT

This article examines the imbalance in the evidentiary system in criminal cases in Indonesia, especially regarding the limited authority of the public prosecutor in assisting the defendant to present mitigating evidence. This problem is contrary to the principle of equality of arms which requires equality between the public prosecutor and the defendant in evidence. By adopting principles from *Brady v. Maryland*, this article provides a normative framework to enhance the Indonesian criminal evidence system, particularly by advocating for clearer prosecutorial disclosure obligations. While *Brady* originates from the common law tradition, its core principle ensuring fairness through evidence disclosure can be adapted within Indonesia's civil law system through judicial interpretation and procedural reforms, aligning with the broader aim of strengthening due process and evidentiary fairness. A normative juridical approach is used by analyzing primary and secondary legal materials, including a comparative study of the application of the Brady Rule in the United States of America. The results show that the need to reform Indonesian criminal procedural law by regulating the obligation of public prosecutors to actively reveal evidence that exculpates defendants in order to ensure substantive equality. This proposed norm to create criminal trials that are quitable in achieving material truth, ensuring only guilty parties are sentenced, while the innocent are acquitted.

Keywords: Criminal Evidence; Brady Rule; Substantive Equality; Material Truth; Indonesia

INTRODUCTION

Herbert Packer introduces a "due process model" to promote fairness in the criminal justice system[1]. The trial of criminal cases is a key part of this system, where judges are responsible for receiving, examining, and deciding cases based on freedom, honesty, and impartiality. A vital element of the trial process is evidence; the party making an allegation carries the burden of proof and must provide supporting evidence[2]. According to Article 66 of the Code of Criminal Procedure, the defendant does not bear this burden, meaning the prosecutor is entirely responsible for proving the case. However, the defendant has the right to challenge the prosecution's charges by presenting mitigating evidence and witnesses, as outlined in Article 116(3) of KUHAP. This ensures that both parties have an equal opportunity to present their evidence in the criminal justice system[3].

[1] Jocelyn Simonson, "The Place of 'the People' in Criminal Procedure," Columbia Law Review 119 (2019): 250–308, https://download.ssrn.com/19/01/28/ssrn_id3324489_code700555.pdf?response-content-disposition=inline&X-Amz-Security-Token=IQoJb3JpZ2luX2VjED0aCXVzLWVhc3QtMSJIMEYCIQDxEsodF4MfehmPYMshmK7103G8G6PXHXjGkX9XGyOZFwIhALx6Kiw%2F3obp5UbXHAm59m9xZlrbZcw1N9XAnnDpnT8gKsYFCNb%2F%2F%2F%2F%2F%2F%2F%2F%2F%2F%2F%2FwEQBBoMMzA4NDc1MzAxMjU3IgxE0cd9vzJG0wwchvoqmgVx0SNmq1fePy1THOh%2Bv5zAMYpul2JlwcmkWHE3gmbBg5%2BFyVn4jJ2CsPgN9XOcA7Ujc%2B0sWN4WdvDNYRWItN%2BdFxYxCiws%2FKMr9sBg6khmJtKeETWmaS%2FCW1vHfjTySxVpVkQtTsAPpG8LJdmzgmGHWXahqUK1dNtm8qMuYzmIgmuyHZcqtbbB5SVX9QcaNO2o4mJmMTRxe4j8rvnI3vTkyLefaajDZRTYSjNuT3sjyXCO1gglQII0hRGmXoqDPzmU1gT76jTJ5Hhi0A2brkjEzHCIv1PbGBZIg%2Fd9KCSo%2BpgTqP0fMfeK%2BUokr52m7TtlImzotH5%2F8DufCxN%2FTsXHDfD4H1owREnBOuY4i73Q%2F6jrZLrI9y7z0iIl9F3nDtb1hGwAJD88HwaTFJTxaEftxrVwtJp2y0MtJn6SEycYtTemD6hZNRjl7spYdfHyl52sM%2F3Pvmu%2F6Yr%2FG8e3uHgtVgQN30sKEY%2FfZjRhE8PdWizUAHdq159k6FuyFBZSMrmVKI0FNWybfL31jnIMhgjTSqlxGibr8evWI7t7I1fnZzvMfIp%2FTNwv%2B%2Fe4COzYUiTowkZcGepIsfC6h8hvsDRZCQadXqL5PGxCc%2BZd2AJNUmr%2FzOykDHt94B2teq1eWARwCxVhPTKDjWLyioX0TbMiob5O7FvgkZUrNQvZS0OMdqRGpaoEB2XotPgtB7O2FpIQ5gY%2Baemris6b8MovrdSYUAnSIcGz60RO1G%2FUSeL657w7PfVfUlXEVcRvYD9ezZWDIuEAznge8HipA3BYMT%2FrgKqoSJyuObMxcFcpUXbtellYPCzM6jl4EZ3d04vr7U8mCrTT83GoraDLTd2nNSEuLkcjLZ9GrPeYi0W8chq4%2BE0dD7oYssDPCKwwoYXTwAY6sAEtoqVaHffzuj6uvH4Y6KdR8mkIZXGT550MlCOda0Fg3WMbJtisUxncrXxxu6vDKjIzz35ZgqQ4E7v13fCY60t8YG%2Bk2U7J2I9zLw4mVqzmkAYGDxlWVgwhooRbCPkhJYWI6Xv52%2FuZexwQxgWHIfgQ7%2F4kkAetZAploJAyPCSbX6T22F94gJb1VBlwU3Tx%2F%2B5MEz7%2FlomGeMsDVrrlLYAawkadwbyxpg8H0rd8PV%2FuxA%3D%3D&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20250502T140235Z&X-Amz-SignedHeaders=host&X-Amz-Expires=300&X-Amz-Credential=ASIAUPUUPRWEVXU2KL7R%2F20250502%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Signature=0c065664d366941dd6d67e534fe7c8d2b4b3dfa0248d1b0febcc16a211c0ff1e&abstractId=3273565.

[2] Pemerintah Pusat Indonesia, "Kitab Undang-Undang Hukum Pidana No 1 Tahun 2023," bpk.go.id § (2023), https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023.

[3] Lydia Pallas Loren, "Proving Infringement: Burdens of Proof in Copyright Infringement Litigation," *Lewis & Clark Law Review* 23, no. 2 (2019): 621–80, https://download.ssrn.com/19/09/23/ssrn_id3458667_code1050716.pdf?response-content-disposition=inline&X-Amz-Security-Token=IQoJb3JpZ2luX2VjED4aCXVzLWVhc3QtMSJGMEQCIH%2FXLv3Nbxl9IpHEJ0OIszI7AynZpNk%2BzFIeaPFa6rnrAiA8uLetmvF%2BvAQ3sI6ofYbk6dQXsFNGB7p5eWpUMCZ%2F1CrGBQjX%2F%2F%2F%2F%2F%2F%2F%2F%2F%2F%2F%2F8BEAQaDDMwODQ3NTMwMTI1NyIMMcPfvvQBFB25H%2FgTKpoFkpdD5X8vDiAbljcIDJeRP9lztNiI207kSMlOftAnyKtMLCihuE6B1Z7fixI8qV7c%2F%2FxTSfRXQ4fsZAh3q4tQwQhC%2FrQAmmSvEzypM7gzfRTLeL5a0YIm3tohiXAkGic9dbOHLKUpDlqLcuEkjlaQVEr3HwTi8mIGIz68KkSd%2BujJJhusJ0PobSasvb5Fe3m8Cii6rKJUeldreYHw6MQSjqaVOzd%2FWN4XP4uyLQR%2FU%2BaoTjuo9rps8Wsm5Qtsgzvg6kVXRjPyyjuqkzqZW1rMCrzuoBiyP%2FP5Mtcagb7LkdDqq8vblFfOTbMKJAurfpVnlc33JHQSQGmlL6eyyKUUAmsdVkR3XMnpktrpObmIUKj1bqhKLR1wM18aurUUUdaZGkimKJVe0WaA1S9kSgbfSM2nTM2hqA%2FMk%2By7%2BVuRwcRze1p%2FWvACbJZJyJopMAXKhLc9JyCFsMN%2F4VP74jXhDqDKpUhkzSWHgQbAbiE1nrCsVn%2Fd

An imbalance in position between the defendant and the public prosecutor can occur, especially if the defendant does not understand the law or does not have legal counsel. This causes trials to tend to be controlled by the public prosecutor, so that the defendant is unable to defend himself optimally. This is contrary to principle *equality of arms*, which demands equal rights in trials. This principle ensures that each party, including the defendant, has a fair opportunity to defend themselves, such as providing evidence equally[4]. Equality in trials is a constitutional right guaranteed under Article 27 paragraph (1) of the 1945 Constitution, which confirms the equal status of all citizens before the law, and Article 28D paragraph (1), which guarantees fair and equal legal treatment for everyone.

An imbalance in the hearing can prevent the judge from considering both sides fairly and objectively, which contradicts the principle of *listening to the other side*. This principle mandates that each party be given an equal opportunity to present their arguments in order to achieve a correct and fair decision[5]. Although the Criminal Procedure Code does not specifically outline the public prosecutor's obligation to assist the defendant in providing evidence, this obligation is emphasized in the case of *Brady v. Maryland* in the United States, which highlights the public prosecutor's duty to disclose evidence that is favorable to the defendant.

The case of *Brady v. Maryland* shows a variety of important perspectives. Riley E. Clfton offers an approach *explanationism* as a new paradigm for proving materiality that

TsgWH7UsDB98VbPuoV1foQ%2FjZBUIGSWhaXACZrFdaMDyeCAAZCF5fF2Hw2gftjT4ZQ1ELZMCtKtDlK%2BPgAUVi3JiACX%2Bic%2FWjS6hMsM9Q9X40XTDjZVf0D4poJRrHxogd1N997XeyfKZ4SRSr%2BA4oyS5UNG15oF2H8Q%2FWkKebdX0DdtaZ5PLEo6Zd%2FfwigqHL%2FFo2JRa4KQx4eIaLSsq6HYJWjzU4oSYv2A9areCs5FgnhpAlUMNQx73JRYSN0OBkOxjuPmr3LVJMEKfcT1vYh6e2xT4PwO2MH1fCs0P7A%2FUw1cfpboB%2BCw%2BbB8r5n88I1udBbDqua%2FaHCnw4n4atfvXKhYuVe4Gun94dJepreXbAC7IhYZDY7leVLwaJ4TzB%2BmoNhrVMImW08AGOrIB1SdY9KpSS9j0jrcn8OI0YMUdI8iYtsZFOUCzqmrp9yX70UoH%2FSQiYPgew7r%2FWBEveRdC046yRuSlG7i5TyOejysbJyQE3zeOA%2FDr%2BM7UUtbseMjgxsWnlTYyBNmKjuGAyAqR5RorBH0eumFcb0dplrb1YzkYWx92G9us8yUxdIf5CMBeNSmadCDwk9V%2FL1b%2BRa%2F%2BKATqzDrCEQdmtPsU8%2FfoAYrwlkmjT%2FLosIKzYMEg5g%3D%3D&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20250502T135824Z&X-Amz-SignedHeaders=host&X-Amz-Expires=300&X-Amz-Credential=ASIAUPUUPRWEWNV2CGSK%2F20250502%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Signature=f64ac26bc9cced09a42ad80ac60d2d8aa824593dc0f70725eaa5590dfb1d245e&abstractId=3458667.

[4] David Leslie et al., "Artificial Intelligence, Human Rights, Democracy, and the Rule of Law: A Primer," *SSRN Electronic Journal*, 2021, 1–46, https://doi.org/10.2139/ssrn.3817999.

[5] Sekhar Chandra Pawana and Vincentius Patria Setyawan, "Principles Audi Et Alteram Partem Compatibility in Litigation Process at State and Religious Court: Impact of Pandemic," *Musamus Law Review* 4, no. 2 (April 29, 2022): 70–84, https://doi.org/10.35724/mularev.v4i2.4108.

is more effective in ensuring fairness and implementation of the Brady doctrine[6]. Prisha Mehta and Ryne Sandel highlight that the "materiality" clause in *Brady Rule* is susceptible to subjectivity and risks triggering violations, whether intentional or not[7]. Jaylla Brown emphasized the importance of disclosing facial recognition technology as Brady material to protect defendants' rights in cases of mistaken identification[8]. John D. King underscores that disclosure of evidence favorable to the defendant is critical to overcoming the practice *gamesmanship* public prosecutor and maintaining the legitimacy of criminal justice[9].

This article develops the concept that the public prosecutor should have the authority to help the defendant exercise the right to prove equally according to principle *equality of arms*. By adapting the principles contained under *Brady v. Maryland*, this article develop understanding on: *first*, examines conceptions of equality; second, the essence of criminal evidentiary law and the absence of the prosecution's authority to assist the defendant in presenting mitigating evidence ; And *third*, building a conception that strengthens equality of evidence in trials by taking the principles contained in the case *Brady v. Maryland*.

RESEARCH METHOD

This research uses a normative juridical approach by analyzing primary and secondary legal materials. Primary legal materials include statutory regulations, such as the Criminal Procedure Code, related legal doctrines, as well as international instruments such as *Universal Declaration of Human Rights* And *International Covenant on Civil and Political Rights*. Secondary legal materials include law journals and court decisions relevant to the issue of equality in criminal evidence, especially principles *Brady Rule* and its application. This research employs a descriptive-analytical approach to identify imbalances in Indonesia's criminal evidence system and analyze normative solutions

[6] Riley E Clafton, "A Material Change to Brady: Rethinking Brady v. Maryland, Materiality, and Criminal Discovery," *Journal of Criminal Law and Criminology* 110, no. 2 (2020): 307–48, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7669&context=jclc.
[7] Clafton.
[8] Jaylla Brown, "Police, We Don't All Look the Same: The, Use of Facial Recognition and Rule," *Fed.Com* 74, no. 3 (2021): 329–52, https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedcom74&div=22&id=&page=.
[9] J D King, "Gamesmanship and Criminal Process," *American Criminal Law Review* 58, no. 47 (2021): 47–96, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1642&context=wlufac.

through the adoption of the *Brady Rule* principles. A comparative analysis is used to examine the application of these principles in the US and the EU, particularly within civil law jurisdictions, to ensure their relevance and compatibility with Indonesia's legal framework. While the *Brady Rule* originates from common law, similar obligations on prosecutorial disclosure have been recognized in European human rights jurisprudence and civil law systems, offering a more adaptable model for Indonesia's criminal procedural reform.

RESEARCH OUTCOME AND DISCUSSION

1. Concept of Equality in Criminal Burden of Proof

Universal Declaration of Human Rights (1948) was the first document to guarantee the protection of Human Rights (HAM), including the right to a fair trial (fair trial). This document is considered the main foundation of human rights in the world because for the first time it established universal standards that recognize basic human rights regardless of nationality, race, religion or social status. This Declaration became the basis for the development of other international legal instruments that guarantee these rights throughout the world. This right was then strengthened in various international legal instruments such as International Covenant on Civil and Political Rights (1966). The right to a fair trial including the right to obtain an adequate defense, the right to be tried by an independent and impartial court, the right to know the charges faced, the right to call witnesses and present evidence, and the right not to be forced to confess. guilty, and one of them is the right to be treated equally[10]. Guaranteeing all these rights aims to create a truly fair and transparent judicial process. In the context of the rule of law, it includes principles such as legal certainty, effective legal protection by independent courts, separation of powers, and equality before the law[11]. Since this section discusses equality, its main focus is on the principle of equality before the law. This principle is reflected in the Criminal Procedure Code, as in the General Explanation number 3 letter a, which emphasizes that "Equal treatment for everyone before the law without any

[10] Nakibuule Gladys Kisekka, "Plea Bargaining as a Human Rights Question," ed. Kar-wai Tong, *Cogent Social Sciences* 6, no. 1 (January 17, 2020): 1–29, https://doi.org/10.1080/23311886.2020.1818935.
[11] Caroline de la Porte and Mads Dagnis Jensen, "The next Generation EU: An Analysis of the Dimensions of Conflict behind the Deal," *Social Policy & Administration* 55, no. 2 (March 5, 2021): 388–402, https://doi.org/10.1111/spol.12709.

discrimination." This shows the KUHAP's commitment to ensuring equality, especially in trials.

Everyone has the right to be recognized as a legal subject before the law and enjoy human rights without discrimination. Everyone is treated equally before the law and has the right to fair and equal legal protection without discriminatory treatment. In addition, everyone has the right to effective protection against all forms of discrimination. Affirmative action taken to help individuals or groups who have been disadvantaged by discrimination is not considered a form of discrimination, this is a fairly comprehensive meaning in understanding the principle of equality before the law[12].

The principle of equality before the law is in line with the views of John Rawls who emphasizes the importance of a fair process through the application of correct rules and procedures[13]. For example, in the context of criminal law, the application of the presumption of innocence reflects this principle, where the defendant is given the right not to be presumed guilty before being proven through a valid trial. In civil law, the application of procedures that give both parties an equal opportunity to present evidence and arguments without discrimination also shows the implementation of Rawls's view of justice. Another example can be seen in the implementation of affirmative action in the legal system, where underrepresented groups are given special treatment to ensure equality in access to justice. Equal standing provides opportunities for everyone to access the law fairly. This is in line with the principle *equality of arms*, which emphasizes equality between the state and the defendant in debating and providing evidence, so that the judicial process can take place fairly without the domination of one party[14]. Principle *equality of arms* ensuring that all parties in the legal process get a fair opportunity to express their views, as well as guaranteeing treatment that is free from bias or arbitrariness in decision making, so as to create a fair and balanced trial[15].

[12] Alice Taylor, "Substantive Equality and the Possibilities of the Queensland Human Rights Act 2019," *The University of Queensland Law Journal* 43, no. 1 (April 3, 2024): 41–70, https://doi.org/10.38127/uqlj.v43i1.8123.
[13] Howard A Doughty, "John Rawls and the Evolution of Liberalism," *Innovation Journal* 24, no. 3 (2019): 1–29, https://epe.bac-lac.gc.ca/100/201/300/innovation_journal/2021/www.innovation.cc/discussion-papers/2019_24_3_2_doughty_rawls-evolution-liberalism.pdf.
[14] MARY ILIADIS, OLIVIA SMITH, and JONATHAN DOAK, "Independent Separate Legal Representation for Rape Complainants in Adversarial Systems: Lessons from Northern Ireland," *Journal of Law and Society* 48, no. 2 (June 30, 2021): 250–72, https://doi.org/10.1111/jols.12295.
[15] Ilias Bantekas, "Equal Treatment of Parties in International Commercial Arbitration," *International and Comparative Law Quarterly* 69, no. 4 (October 24, 2020): 991–1011, https://doi.org/10.1017/S0020589320000287.

Principle *equality of arms* implemented by ensuring that the public prosecutor and the defendant have equal opportunities to provide evidence. For example, in the European Court of Justice case ZZ (C-300/11)[16], defendants were given full access to the reasons for the decision adverse to them. Another example is the *Otis* case (C-199/11), where the European Court emphasized the importance of equality in the presentation of evidence between the parties involved. These cases demonstrate how the courts ensure that no party is disadvantaged by inequality in access to evidence or opportunities to defend themselves. Rules such as the burden of proof on the public prosecutor, high standards of proof, and the obligation of the public prosecutor to disclose relevant evidence are important mechanisms to protect defendants from domination by the state, while ensuring fair and balanced trials[17]. This principle of equality is reflected in various European Court cases, such as *ZZ* (C-300/11), which confirms that the right to defense includes the defendant's right to know the reasons for an adverse decision, and *M.G.* (C-383/13), which shows that serious violations of the right to be heard can invalidate a decision. In *Lindner* (C-327/10), the European Court of Justice confirmed that the right to defense applies in civil procedures. On *Otis* (C-199/11), principle *equality of arms* emphasized as an important standard for ensuring equality between parties in civil proceedings[18]. Although most of these cases relate to civil cases, these principles are also very relevant in criminal cases, because criminal trials are always closely related to the protection of human rights.

With a principled approach *equality of arms*, the trial must be conditioned so that all parties have equal access to evidence. To support this principle, further understanding is needed about the concept of equality, which is a basic value and fundamental right. Equality can be understood in two models, the first is formal equality, which emphasizes equal treatment for individuals while ignoring differences in individual characteristics[19].

[16] The Court, "Judgment of the Court (Grand Chamber), 4 June 2013. ZZ v Secretary of State for the Home Department," 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62011CJ0300.
[17] Olivia Smith, "Cultural Scaffolding and the Long View of Rape Trials," in *Sexual Violence on Trial* (Routledge, 2021), 241–53, https://doi.org/10.4324/9780429356087-25.
[18] Volker Roeben, "Judicial Protection as the Meta-Norm in the EU Judicial Architecture," *Hague Journal on the Rule of Law* 12, no. 1 (April 14, 2020): 29–62, https://doi.org/10.1007/s40803-019-00085-3.
[19] Taylor, "Substantive Equality and the Possibilities of the Queensland Human Rights Act 2019."

Formal equality is often criticized because it is seen as maintaining injustice that harms weak groups, resulting in the emergence of a conception of substantive equality[20]. In substantive equality, equal legal guarantees for all are considered insufficient to achieve fair equality. Therefore, this equality is achieved through the rule of law adapted to needs, using the principle of positive discrimination, which is part of the state's active efforts to ensure balance for vulnerable groups[21].

Positive discrimination allows the application of specific legal measures to eliminate inequalities that hinder the ability of different groups of society to exercise equal rights. An example in Indonesia is the affirmative policy in the form of a 30% quota for women in legislative nominations, which aims to increase women's representation in parliament. This step is designed to address structural and historical inequalities that limit women's participation in political decision making. Therefore, in principle, positive discrimination is not considered discriminatory because it aims to ensure real equality of opportunity, not just formal equality[22]. In context *access to justice*, this means understanding equality not only as an individual's procedural right to obtain legal protection in court, but also as an active effort to create real equality for someone who has unequal conditions[23]. Access to justice means that everyone has equal access to the courts, where their cases are examined, tried and decided by independent and impartial courts, in accordance with the principles of the rule of law. The right to access to justice must guarantee the realization of rights without obstacles or complications, while complying with the norms and spirit of applicable law[24]. This shows the importance of affirmative steps to ensure truly inclusive and equal access to justice.

Thus, in the conception of equality, it is not enough just to formally guarantee equality, but affirmative action is needed to ensure that the parties have an equal position.

[20] Aris Trantidis, "Progressive Constitutional Deliberation: Political Equality, Social Inequalities and Democracy's Legitimacy Challenge," *Politics* 44, no. 3 (August 23, 2024): 453–68, https://doi.org/10.1177/02633957221074899.
[21] A Komziuk et al., "Ensuring Human Rights and Freedoms Does Not Mean Equality for Everyone: Legal Exceptions and Restrictions," *Lex Humana* 16, no. 1 (2023): 127–38, https://seer.ucp.br/seer/index.php/LexHumana/article/view/2864.
[22] Komziuk et al.
[23] Robert Peacock, "Restorative Justice and Access to Justice: Critical Reflections of the Global North-South Divide," *The International Journal of Restorative Justice* 6, no. 2 (August 2023): 191–206, https://doi.org/10.5553/TIJRJ.000161.
[24] Oleksandr Krupchan et al., "Access to Justice within Administrative Proceedings of Ukraine: Modern Realities and European Experience," *Cuestiones Políticas* 41, no. 77 (May 28, 2023): 103–15, https://doi.org/10.46398/cuestpol.4177.07.

These steps are important so that all parties have fair and equal access to trials, as reflected in the principles *equality of arms*, which emphasizes that each party must have an equal opportunity to defend their rights without being disadvantaged by inequality of resources or position.

2. Criminal Evidence and the Limitations on Prosecutor's Role to Promote Equality of Arms

The principle of *presumption of innocence* is a fundamental principle contained in the spirit of the Criminal Procedure Code, as stated in the General Explanation number 3 letter c, which states that "Every person who is suspected, arrested, detained, prosecuted, and/or brought before a court, must be presumed innocent. until there is a court decision stating the error and obtaining permanent legal force." This principle guarantees the human rights of every individual not to be treated as a perpetrator of a criminal offense before his or her guilt is determined by a decision that has permanent legal force. The principle of presumption of innocence is also widely recognized in international law. Article 11 paragraph (1) of the Universal Declaration of Human Rights (UDHR) and Article 14 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) emphasize this principle, which is the basis for preventing arbitrary criminalization.

This principle is an essential element in ensuring fair trials and protecting individual freedom as one of the foundations of the rule of law[25]. However, violations of this principle often occur due to a lack of legal certainty or difficulties in balancing the public interest in upholding the law with the suspect's or defendant's right to be presumed innocent. This challenge is an important concern in law enforcement practice to ensure full respect for this principle[26]. Enforcement of this principle is realized through the provision of the burden of proof (*onus probandi*) to the public prosecutor, as regulated in the principle "*Ei incumbit probatio qui dicit, non-qui negat"* (the burden of proof is on

[25] Bruna Martins Benedeti, "The Influence of the Media on the Principle of the Presumption of Innocence in the Jury Trial," in *CONNECTING EXPERTISE MULTIDISCIPLINARY DEVELOPMENT FOR THE FUTURE* (Seven Editora, 2023), https://doi.org/10.56238/Connexpemultidisdevolpfut-076.
[26] Oksana Khablo and Ivo Svoboda, "International Standards for the Application of the Presumption of Innocence in Criminal Proceedings," *Naukovij Vìsnik Nacìonal'noï Akademìï Vnutrìšnìh Sprav* 29, no. 1 (February 19, 2024): 55–65, https://doi.org/10.56215/naia-herald/1.2024.55.

the accuser, not the denyer)[27]. Even so, the defendant still has the right to challenge, and examine incriminating witnesses and even present evidence in his favor, but it needs to be understood that this is a "right" not an "obligation" to prove his innocence[28]. In Indonesian evidentiary law, this principle is reflected in Article 66 of KUHAP, which states that "the accused or suspect is not burdened with the obligation of proof." In addition, the defendant's right to present evidence, such as mitigating witnesses or experts, is also regulated in Article 65 of the Criminal Procedure Code, which affirms the defendant's right to defend himself by presenting evidence in support of his case[29].

In theory, Article 183 of the Criminal Procedure Code adopts a negative system of evidence according to law (*negative legal evidence theory*). This theory states that proof of the defendant's guilt or innocence must be based on evidence regulated by law and the judge's beliefs. In this system, the judge's decision is based on two main elements: "evidence that is valid according to law and the judge's beliefs which must be in harmony with that evidence."[30] The main goal of this proof model is to discover material truth, namely the truth that actually happened and is the basis for a criminal trial[31]. L.J. van Apeldoorn stated that unlike judges in civil courts who look for formal truth, judges in criminal cases are obliged to look for material truth[32]. Material truth in criminal procedural law aims to reveal facts that actually occurred, and achieving this truth is fundamental and must be carried out in the criminal trial process to ensure substantive justice[33].

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[27] Arushi Lamba, "Ei Incumbit Probatio, Qui Dicit, Non Qui Negat," *Bnblegal.Com*, accessed March 5, 2025, https://bnblegal.com/ei-incumbit-probatio-qui-dicit-non-qui-negat/.
[28] Fardin Y. Khalilov, "'Equality of Arms' in Criminal Procedure in the Context of the Right to a Fair Trial," *RUDN Journal of Law* 25, no. 3 (August 23, 2021): 602–21, https://doi.org/10.22363/2313-2337-2021-25-3-602-621.
[29] Erwin Susilo and Muhammad Rafi, "Pendekatan Favor Defensionis Dalam Merealisasikan Hak Terdakwa Untuk Menghadirkan Saksi Atau Ahli," *Veritas et Justitia* 10, no. 2 (December 29, 2024): 343–63, https://doi.org/10.25123/vej.v10i2.8479.
[30] Ramiyanto Ramiyanto, "Ultra Petita Decisions in The Context of Criminal Law Enforcement in Indonesia," *Jurnal Hukum Dan Peradilan* 10, no. 1 (April 22, 2021): 173, https://doi.org/10.25216/jhp.10.1.2021.173-196.
[31] Rahmat Aries, "Pembuktian Pidana," *Pengadilan Negeri Lhoksukon* , 1–3, accessed March 5, 2025, https://www.pn-lhoksukon.go.id//media/files/20170614130926110350071459 40d3161beaa_20170614131921_Pembuktian+Pidana.pdf.
[32] Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, "Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)," *Journal of Indonesian Legal Studies* 8, no. 1 (May 31, 2023): 243–88, https://doi.org/10.15294/jils.v8i1.67632.
[33] Harry Kamijantono, Dey Ravena, and Tono Hadi Susiarno, "Forensic Autopsy Implementation in Unnatural Deaths to Achieve Material Truth," *European Journal of Law and Political Science* 2, no. 4 (July 21, 2023): 11–18, https://doi.org/10.24018/ejpolitics.2023.2.4.98.

Referring to the concept of substantive equality, the public prosecutor as a representative of the state has an important role in supporting the defendant in providing evidence, especially to ensure the defendant's right to dispute the charges or evidence presented. Even though the principle of presumption of innocence states that the defendant is not required to prove his innocence, space for defense must still be guaranteed. In criminal procedural law, the main aim of the trial is to find material truth, namely the real truth, so that the trial is not just an event of winning or losing.

The Criminal Procedure Code regulates five types of legal evidence, namely: "(a) witness statement, (b) expert statement, (c) letters, (d) instructions, and (e) defendant statement." Apart from that, electronic evidence is also recognized as valid evidence in accordance with Law of the Republic of Indonesia Number 1 of 2024 concerning the Amendment to Law Number 19 0f 206 concerning the Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. However, the evidence of the defendant's instructions and testimony does not require the assistance of the public prosecutor to be presented at trial as mitigating evidence, considering that it originates directly from the trial process and the defendant's testimony.

Article 55 of the Criminal Procedure Code guarantees the defendant's right to choose legal counsel independently or obtain free legal advice if they comply with the provisions of Article 56 of the Criminal Procedure Code. However, even if the defendant has legal counsel, there is no guarantee that mitigating evidence can be presented at trial. Article 14 of the Criminal Procedure Code itself does not give the public prosecutor the authority to present evidence that relieves the defendant.

For example, cases covered by Metrobatam show that even witnesses summoned by the prosecution, such as in the trial of an international online gambling case in Batam District Court, did not appear even though the prosecution had the authority to summon them under Article 14 letter f of KUHAP. Likewise, in a Depati News report, Ahmadi Zubir, former Mayor of Sungai Banyak, was absent several times from the trial in the KONI grant fund corruption case[34]. Another case that shows a similar situation is the trial of the CPNS Prosecutor's Jockey at the Tanjungkarang District Court, which was

[34] Depati News, "Lagi, Ahmadi Mangkir Sidang Tipikor Alasannya Masih Kampanye, Tapi Ferry Satria Hadiri Sidang," *Depatinews.Com*, 2024, https://depatinews.com/2024/10/28/lagi-ahmadi-mangkir-sidang-tipikor/.

also postponed because witnesses from ITB were not present due to exam reasons[35]. This situation shows the gap that even though the public prosecutor has the authority to summon witnesses to support his charges as regulated in Article 14 letter f of the Criminal Procedure Code, There are still witnesses who are not present, as seen in the international online gambling case at the Batam District Court and the corruption case of the KONI grant fund. If the burden of mitigating evidence is entirely on the defendant to present it, then this has the potential to create an imbalance in the evidentiary process. This imbalance can reduce the effectiveness of evidence, which should be a means of finding material truth, as is the main objective of the law of evidence in criminal cases.

With the development of technology and science, the role of forensic medicine is increasingly important in the process of proving criminal law, especially in cases involving the human body or soul, such as murder, assault and rape. Forensic medicine supports law enforcement officers through scientific analysis, *seen and found*, and experts who are the basis for revealing material truths[36]. However, in the context of evidence, it is difficult for the defendant and even his legal advisor to dispute the forensic evidence presented by the public prosecutor, because the Criminal Procedure Code has not explicitly regulated access to forensic services for all parties. The imbalance of evidence regulated in the Criminal Procedure Code has the potential to hinder the achievement of material truth in a trial, which in the end can cause the judge to make an error in deciding a case. This opens up the possibility that guilty people can be acquitted, while innocent people are unfairly punished. This situation encourages the need for reform in the law to ensure more substantive justice and avoid wrong decisions. To ensure substantive justice and minimize wrongful convictions or acquittals, the following steps should be considered as part of the legal reform agenda such as strengthening Prosecutorial Disclosure Obligations that introduce clear legal provisions requiring prosecutors to disclose exculpatory evidence, similar to the Brady Rule in the US and disclosure obligations under ECtHR jurisprudence. Establish penalties for non-disclosure and procedural safeguards to ensure compliance. Amend the Criminal Procedure Code

[35] Danny ZY and Salda Andala, "Sidang Joki CPNS Kejaksaan Ditunda Karena Saksi Tidak Hadir, Hakim: Bisa Dipanggil Secara Paksa," *Lampost.Co*, 2024, https://lampost.co/hukum/sidang-joki-cpns-kejaksaan-ditunda-karena-saksi-tidak-hadir-hakim-bisa-dipanggil-secara-paksa/.
[36] Setyo Trisnadi, "The Role of Forensic Medicine in the Criminal Evidence Process," *Jurnal Pembaharuan Hukum* 8, no. 3 (December 28, 2021): 455, https://doi.org/10.26532/jph.v8i3.18957.

(KUHAP) to explicitly guarantee the defendant's right to access all relevant evidence, especially exculpatory material. Incorporate international best practices from civil law jurisdictions in the EU, ensuring compatibility with Indonesia's legal system. Provide judges with greater authority to enforce disclosure obligations and ensure material truth. Develop guidelines on judicial discretion in assessing prosecutorial misconduct related to evidence suppression. Ensure equal access to evidence between prosecution and defense. Expand legal aid mechanisms to support indigent defendants in accessing necessary legal resources. Adopt international fair trial standards, such as those outlined in the International Covenant on Civil and Political Rights (ICCPR). Promote transparency and accountability within law enforcement agencies and prosecution offices.

3. A Balanced Conception of Proof under *Brady v. Maryland*

Criminal trials do not aim to find out who wins or loses, but rather to establish consistency between the events that occurred and the facts revealed at trial and then the judge decides on the basis of the truth of the events. If evidence is only oriented towards winning or losing, the law risks becoming a tool of criminalization, because it ignores balance and puts aside efforts to find material truth.

Equality of substantive evidence ensures that all parties have equal access to justice, but in unequal situations, affirmative steps are required to achieve substantive equality. In this context, the concept of balanced evidence places the role of the public prosecutor as an important element in supporting the defendant in presenting evidence[37]. Principles in *Brady v. Maryland* in the US it becomes relevant as a reference[38], because it emphasizes the obligation of the public prosecutor to reveal evidence that exculpates the defendant, in order to prevent the judge's decision being wrong (*wrongful convictions*)[39]. Adopting this principle can be a solution to overcome obstacles faced in trials, while ensuring the achievement of substantive justice.

[37] H.S Brahmana, "Teori Dan Hukum Pembuktian," *Pengadilan Negeri Lhoksukon*, 1–12, accessed March 5, 2025, https://www.pn-lhoksukon.go.id/media/files/20170417150853209334910258f4781588e77_20170419145829_Teori%2bdan%2bHukum%2bPembuktian.pdf.
[38] U.S. Supreme Court, Brady v. Maryland, 373 U.S. 83 (1963).
[39] Rachel Moran, "Brady Lists," *Minnesota Law Review* 107 (2022): 1–77, https://doi.org/10.2139/ssrn.4054540.

The Brady v. Maryland case in the US, which gave birth to what is known as the Brady Rule, was decided by the Supreme Court in 1963[40]. In its decision the US Supreme Court determined that the public prosecutor must provide evidence that can help the defendant or evidence that is favorable to the defendant. The principle of equality of arms, as reflected in *Brady v. Maryland*, requires that both prosecution and defense have a fair and balanced opportunity in presenting their cases. In the US, this principle manifests through the prosecutorial duty to disclose exculpatory evidence, ensuring that a defendant has access to material that could impact the outcome of the trial. In the Indonesian civil law system, this principle is not explicitly codified in the KUHAP (Criminal Procedure Code), raising the question of whether it can be adapted. While equality of arms is not explicitly codified in Indonesian criminal law, its underlying principle of fair trial and evidentiary balance is constitutionally protected. By introducing clear prosecutorial disclosure obligations in KUHAP, Indonesia can strengthen procedural justice while maintaining its inquisitorial system. If the public prosecutor conceals evidence that is important to prove the defendant's innocence or that could reduce the defendant's sentence, this is considered unlawful[41].

Emergence *Brady Rule* began when the US Supreme Court ruled that public prosecutors violated the principle *due process* if withholding evidence favorable to the defendant, especially if the evidence is relevant to determining guilt or mitigating the defendant's sentence. The Supreme Court emphasized that this disclosure obligation applies regardless of the good or bad intentions of the public prosecutor. This decision is the basis *Brady Rule*, which requires the public prosecutor to reveal material evidence that can mitigate or support the defendant's defense[42]. Objective *Brady Rule* so that both sides will present evidence equally so that the judge can understand the complete picture of the matter. This approach aims for the guilty to be punished and the innocent to be freed[43]. In international law, this principle is in line with Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which emphasizes the defendant's right

[40] Moran.
[41] Prisha Mehta and Ryne Sandel, "Understanding the Significance & Complexity of the Brady Rule," *Journal of Student Research* 10, no. 3 (October 10, 2021): 1–13, https://doi.org/10.47611/jsrhs.v10i3.1595.
[42] Joshua Herzberg, "The Other Brady Rights," *SSRN Electronic Journal*, 2023, 1–28, https://doi.org/10.2139/ssrn.4543110.
[43] Brian Chen, "Big Data and Brady Disclosures," *New York University Law Review* 99, no. 5 (2024): 1754–92, https://nyulawreview.org/wp-content/uploads/2024/11/99-NYU-L-Rev-1754.pdf.

to obtain guarantees of a fair legal process, including access to mitigating evidence. Integrating this principle into Indonesian criminal law can strengthen the country's commitment to international human rights standards.

Initially, *Brady Rule* only requires the public prosecutor to hand over information to the defendant if requested. However, in case *Giglio v. United States*, the Supreme Court expanded this obligation to include information that affects the credibility of government witnesses (*impeaching information*), without questioning the good or bad intentions of the public prosecutor. In *United States v. Bagley*, this obligation is strengthened by requiring disclosure of evidence even if the defendant does not request it. Although *Brady* And *Giglio* does not require the public prosecutor or the police to seek evidence on behalf of the suspect or defendant, the Supreme Court emphasized the obligation of the public prosecutor to find out and disclose favorable evidence from other parties acting on behalf of the government, including the police. In *Kyles v. Whitley*, violation *Brady* confirmed to occur if the public prosecutor does not reveal evidence known to the police. The Supreme Court also requires prosecutors' offices to establish procedures to carry out this obligation, as reiterated in *Strickler v. Greene* And *Youngblood v. West Virginia*.[44]

In the US *Brady Rule* used as a basis for canceling a court decision due to violations *Brady Rule*, where considering the developments, three conditions must be met: (1) The evidence is favorable to the defendant, either to lighten the sentence or weaken the credibility of the public prosecution witness. (2) The evidence is hidden by the state, either intentionally or unintentionally. (3) The evidence must be material, that is, significantly influence the outcome of the trial. If there is truly extenuating evidence. Thus, *Brady Rule* encourage fairer trials. However, this approach demands a lot from prosecutors, given their competitive mindset at trial and the challenges in assessing the materiality of evidence during the trial[45].

In this research, the principles adopted from *Brady Rule* It is not intended solely to be a basis for the defendant to obtain the assistance of the public prosecutor in presenting mitigating evidence. Well inside *Brady Rule* as well as this research, both emphasize the importance of the active role of public prosecutors. However, the approach is not limited

[44] Herzberg, "The Other Brady Rights."
[45] Herzberg.

to function *Brady Rule* which is the basis for the US Supreme Court to overturn a decision. By referring to principles *Brady Rule*, mitigating evidence can be requested not only by the defendant, but also by the judge or even by the public prosecutor *out of office*, to find material truth.

Application of principles *Brady Rule* Future reform of Indonesian criminal procedural law should include provisions so that not all evidence presented by the defendant must be assisted by the public prosecutor. To ensure the efficiency of the trial, concrete conditions need to be formulated, such as:

1. The evidence presented must have real potential to reduce the defendant's sentence or even exonerate him; and/or
2. This evidence is able to refute the evidence presented by the public prosecutor.

By adopting this principle, evidence in criminal trials can be directed to achieve material truth more effectively. This approach emphasizes the importance of transparency of evidence by the public prosecutor as a form of implementation of the principle of substantive equality. This will give the defendant a fairer opportunity to defend himself. In this context, criminal trials are no longer just an arena for competition between litigants, but have turned into collaboration in uncovering the true truth of a case. The goal is clear: "to ensure that only those who are truly guilty are sentenced, while those who are innocent are released." As part of the reform of the Criminal Procedure Code, this offers proposals for the construction of norms to support the principle of balance in evidence. The proposed norms read: "The prosecutor is obligated to assist in the presentation of evidence that may exonerate the defendant if the defendant has difficulty presenting favorable evidence and the judge determines that the evidence is admissible and not excluded by law."

The formulation of this norm is relevant as a regulation in Indonesian criminal procedural law in the future. With these norms, the principles of substantive equality and the search for material truth can be realized more effectively. This also ensures equality in criminal evidence, which in turn supports a criminal justice system that can realize material truth.

CONCLUSION

The principle of equality of arms is a crucial cornerstone for ensuring a fair trial, where all parties are afforded an equal opportunity to present evidence without any one party dominating the proceedings. Achieving this equality requires more than mere formal guarantees; it necessitates a substantive approach that includes affirmative action to address existing inequalities and to ensure fair treatment for vulnerable individuals. By taking these steps, we can realize equal access to justice, allowing independent and impartial courts to examine, adjudicate, and resolve cases in a balanced manner. This, in turn, fosters a legal system that genuinely upholds the rule of law and protects human rights.

Imbalances in evidence regulations within the Criminal Procedure Code, particularly the public prosecutor's lack of authority to assist defendants in presenting mitigating evidence, pose significant challenges to uncovering the material truth in criminal trials. Although the presumption of innocence and the principle of equality of arms guarantee a defendant's right to defend themselves, insufficient presentation of mitigating evidence can lead to grave injustices, either resulting in the acquittal of a guilty individual or the wrongful punishment of an innocent person. Thus, legal reform is essential to enhance defendants' access to mitigating evidence.

The concept of balanced proof, grounded in internal principles such as the *Brady Rule*, is vital for achieving material truth in criminal trials. This principle underscores the importance of the public prosecutor's proactive role in disclosing evidence that could benefit the defendant. This duty not only serves the interests of the defendant but also contributes to the trial's search for material truth. By instituting affirmative measures that mandate the public prosecutor to assist in presenting mitigating evidence, we can create a more equitable evidentiary landscape. This approach not only promotes fairness in trials but also ensures that only the guilty are punished, while the innocent are exonerated aligning with the primary objective of criminal trials in Indonesia to establish material truth.

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