

Constructive Law Enforcement through Interlocutory Injunction: An Effort to Achieve Procedural Justice

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Abstract

An interlocutory injunction is a decision that is temporary before examining the subject matter that was handed down before the final decision and can end the examination of the case in court. that based on Article 156 paragraph (1) of the Criminal Code states that there are several reasons that the defendant or his legal advisor can submit to the exception or objection of the indictment being unacceptable, including: What is being charged against the defendant is not a crime or violation criminal offense or violation but is included in a civil dispute, but in practice, the Panel of Judges in passing an Interim Decision in a criminal case continues the examination of the case based on the Public Prosecutor's Indictment and the Exception of the Defendant's Legal Counsel is not accepted against the object and subject matter of the same case which has been decided legally. Civil law and has permanent legal force at the level of the Supreme Court. The method used in this study is a normative juridical research method using a statutory approach, a case approach and a conceptual approach. The results of this study are expected that the Panel of Judges in giving/imposing an interim decision on a criminal case against the object and subject matter of the same case which has been decided in a civil manner and has permanent legal force, should look at the facts in the trial and the applicable rules, namely the Book of Law. -Law on the Criminal Procedure Code (KUHAP), so that it can give/impress the correct interlocutory decision.

Keywords

civil decision; exception;
interlocutory injunction;
procedural justice



I. Introduction

Lawrence M. Friedman explained that the effectiveness and success of law enforcement depends on three elements in the legal system, namely legal structure, substance of law, and legal culture (Kartoni et al., 2021). The legal structure concerns law enforcement officers, legal substance includes statutory instruments and legal culture is a living law adopted in a society (Haryono, 2019). Of these 3 elements, according to Lawrence M. Friedman, the most important thing is the legal structure with. Lawrence M. Friedman likens the legal system to a factory, where the "legal structure" is the machine, the "legal substance" is what the machine produces or does and the "legal culture" is whatever or whoever decides to turn the machine on and off. and decide how the machine is used. In a legal system, the aspect of law enforcement is the center of "activity" in legal life. Therefore, it can be understood that in law enforcement, the most important thing is law enforcement itself (Nugraha, Katherina, et al., 2019). This is also parallel with the opinion of Bernardus Maria Taverne (Nugroho, 2022): "geef me goede rechter, goede rechter commissarissen, goede officieren van justitien, goede politician ambtenaren, en ik zal met een slecht wetboeken van strafprocessrecht het goede beruken." (free translation

:" give me good judges, prosecutors, police and lawyers, I will surely eradicate crime even without laws .")

Regarding this legal structure, Lawrence M. Friedman describes (Friedman, 1984) : "its skeleton or framework, the durable part, which gives a kind of shape and definition to the whole. The structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why); and modes of appeal from one court to another. Structure also means how the legislature is organized, how many members, what a president can (legally) do or not do, what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system? A kind of still photograph, which freezes the action." In simple terms, the legal structure is related to institutional arrangements and institutional performance along with their apparatus in implementing and enforcing the law, including the pattern of how the law is implemented and enforced in accordance with its formal rules (regarding the performance of the law). law). This law enforcement can be seen in a broad sense and a narrow sense (Utama, 2019). In a broad sense, it includes activities to implement and apply the law as well as take legal action against any violation or legal deviation committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflicts resolution). Meanwhile, in a narrow sense, law enforcement involves taking action against any violation or deviation from the laws and regulations, especially the narrower one through the criminal justice process involving the role of the police, prosecutors, advocates or lawyers, and judicial bodies (Sunstein, 2003) .

In practice, it turns out that although judges are required to have wisdom and be able to explore a sense of justice in society, in reality it is very difficult to realize this. This is based on one of them, because the existing cases are so complex , so that sometimes judges have difficulty finding the right construction in a case, it is not even uncommon that there have been other court decisions on the case, so that sometimes it confuses the judge (Jeremiah Setiawan et al. al., 2022) .

One of the cases that has the potential to confuse judges is when there is a case in which there is a civil dimension and a criminal dimension. In such a case, generally a person can take legal action simultaneously, namely both a civil lawsuit and a police report. However, in such cases, it is not uncommon for such legal remedies not to be simultaneous, but to be used, because one of the efforts did not succeed. For example, when the civil suit is rejected or declared unacceptable, the person then takes legal action for a police report. Sometimes in this case, the case continues until the trial process (P. Setiawan et al., 2020).

In the case of such a case (in casu : the civil suit is rejected or cannot be accepted), then the defendant should be able to file an exception (exceptie) which can make the judge impose an interlocutory injunction (tuss end verdict). (PJ Setiawan et al., 2021) . Based on Article 156 paragraph (1) of Law Number 8 of 1991 concerning the Criminal Procedure Code (KUHAP) it is stated that there are several reasons that a defendant or his legal advisor can submit an exception or objection to an indictment that cannot be accepted, including : criminal act or violation, the thing charged against the defendant is not a crime or violation but is included in a civil dispute, but in practice, the Panel of Judges in imposing an Interlocutory Injunction in a criminal case continues the examination of the case based on the Public Prosecutor's Indictment and the Exception of the Defendant's Legal Counsel does not accepted against the object and subject matter of the same case which has been decided in a civil manner and has permanent legal force at the level of the Supreme Court.

Indeed, there is a dualism related to the existence of the Interlocutory Injunction by the Panel of Judges, where there are those who think that the Interlocutory Injunction is only purely formal, so that it is related to the existence of a civil decision, then it has entered the main case, so it must be examined in court. and must use the final verdict (Harahap, 2017). However, if the judge turns out to be in the end using the Interlocutory Injunction to declare the case unacceptable, then of course this is contrary to the contante principle. justitie or what is known as the principle of fast, simple and low-cost justice (Febrian, 2019), because it means something that can be decided without having to examine the subject matter of the case, but it is only decided after the main case.

One example of a case that has been filed for this exception is the Kupang District Court Decision Number 55/ Pid.B /2021/PN Kpg. In this case, Desy Carolina Chandra was charged with Article 372 of the Criminal Code (KUHP) subsidiary 372 of the Criminal Code. in conjunction with Article 53 Paragraph (1) of the Criminal Code. Whereas against the Public Prosecutor's indictment, the Defendant's Legal Counsel has filed an objection and it has been decided with the Interlocutory Injunction Number 55/ Pid.B /2021/PN Kpg, dated 09 June 2021, the order of which is as follows: "1. Stated that the objection from the Defendant's Legal Counsel, Desy Carolina Candra Jaya, was accepted; 2. To declare the Public Prosecutor's Indictment Number PDM60a/N.3.10/Eoh.2/04/2021 dated 23 April 2021 as null and void by law; 3. Ordered the release of the Defendant from city custody; 4. Ordered the return of this case file to the Public Prosecutor; 5. Charges court fees to the state; However, it turned out that there was resistance to the Interlocutory Injunction and the resistance was accepted by the Panel of Judges, but it turned out that when the main case was examined again , one of the judges' legal considerations (ratio decedendi): "Considering, that regarding the unilateral cancellation of the agreement by the Defendant, there is a civil decision of the Kupang District Court Number 22/ Pdt.GS /2020/PN Kpg which grants the default lawsuit filed by the victim witness Hengki Go as the Plaintiff, dated October 14, 2020, in that decision the defendant as the Defendant was sentenced to pay the loss due to default to the witness victim calculated as much as Rp. 172,200,000.00 (one hundred seventy-two million two hundred thousand rupiah);". From these considerations, it appears that in the end the judge again stated that the defendant's actions were not criminal acts. This is certainly not in accordance with the principles of fast, simple and low-cost justice as mandated in Article 4 paragraph (2) of Law 48/2009 and certainly contradicts the principles of constructive law enforcement, and it can be said that the investigation is allowed to get to the point of the case, even though it is not. meet the formal requirements, it can be said that it does not meet procedural justice (Hawilo et al., 2022).

Based on this background, this research will analyze related: 1) The basis for imposing Interlocutory Injunction by judges in criminal cases and 2) Imposing Interlocutory Injunctions by judges in criminal cases due to the existence of a civil decision with permanent legal force. The objectives of this study are: 1) To analyze the basis for imposing Interlocutory Injunctions by judges in criminal cases and 2) To analyze the imposition of Interlocutory Injunctions by judges in criminal cases due to the existence of a civil decision with permanent legal force.

II. Review of Literature

The research is legal. According to Jonaedi Effendi and Johnny Ibrahim, legal research is (Effendi & Ibrahim, 2020): "a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by

analyzing them, except that, then an in-depth examination of the legal facts is also held to then seek a solution to the problems that arise in the phenomenon concerned". In this article, legal phenomena will be described, related to the imposition of Interlocutory Injunction by judges in criminal cases due to the existence of a civil decision with permanent legal force .

The legal research, the approach used is the statutory approach, conceptual approach, and case approach. The three approaches are used to produce comprehensive legal articles related to the imposition of Interlocutory Injunction by judges in criminal cases due to the existence of a civil decision with permanent legal force .

Regarding sources of legal research, Peter Mahmud Marzuki argues that (Marzuki, 2013): "legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials". In this research, the primary legal materials consist of statutory regulations, official records/minutes in the making of legislation, and court decisions/decisions relating the imposition of Interlocutory Injunctions by judges in criminal cases due to the existence of a civil decision with permanent legal force. The secondary legal materials used in this research are all publications on the law that are not official documents, in the form of legal writings and opinions of scholars, both in the form of books, journals, legal dictionaries, as well as articles published in print and electronic media, which are related to the legal issues studied in this article. In this paper, primary legal materials and secondary legal materials that exist are then analyzed and processed, then its conclusions are drawn by the author.

III. Result and Discussion

3.1 Basis for Imposing Interlocutory Injunction by Judges in Criminal Cases

Ad Recte document oporteur prime inquirere noun, quia rum cognitio a nominibus rum dependent (In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names) (Hiariej, 2015) . A legal postulate that has a depth of meaning, that to understand a legal concept holistically, it must begin with understanding the definition of the legal concept. Therefore, before describing the basis for imposing an interlocutory injunction by a judge in a criminal case, the interlocutory decision will be described first. In the Criminal Procedure Code, it is not comprehensively regulated related to interim decisions, even the mention of the term "interim decision" *expressly verbis* does not exist in the Criminal Procedure Code. Therefore, we will look at the definition of an interim decision from various expert opinions:

1. Indra Afita (Afrita, 2021) : "An interim decision is a decision issued by the Panel of Judges before the examination of the main case is carried out."
2. Agus Kasiyanto (Kasiyanto, 2018) : "Interim decisions / *tuss end verdicts* are decisions handed down by judges on matters that do not yet involve the subject matter of the case, as regulated in Article 156 paragraph 2 of the Criminal Procedure Code."
3. Lilik Mulyadi (Mulyadi, 2007) : "An interim decision is an objection or exception submitted by the defendant or his attorney regarding the prosecutor's indictment."

From these various opinions, it can be concluded The synthesis is that the Interlocutory Decision is a decision issued by the Panel of Judges before the examination of the main case is carried out, due to the objections or exceptions submitted by the defendant or his legal counsel regarding the prosecutor's indictment (Ramadhan et al., 2020) .

Regarding the provision of the interim decision in the Criminal Procedure Code, it can be seen in Article 156 of the Criminal Procedure Code paragraph (1) jo. Paragraph (2) KUHAP. Article 156 paragraph (1) of the Criminal Procedure Code stipulates: "1) In the event that the defendant or legal adviser raises an objection that the court is not authorized to hear his case or the charge cannot be accepted or the indictment must be cancelled, then after being given the opportunity to the public prosecutor to state his opinion, the judge considers the objection to further make a decision; Furthermore, Article 156 paragraph (2) of the Criminal Procedure Code stipulates: "If the judge declares that the objection is accepted, then the case is not examined further. ;" From these provisions it can be understood:

1. The interlocutory decision was handed down by the judge, because there was an exception to the indictment, because it could not be accepted or had to be annulled
2. The public prosecutor should be given the opportunity to express his opinion regarding the objection
3. The interlocutory decision is considered by the judge before examining the subject matter of the case
4. If the judge declares that the objection is accepted, then the case is not examined further, preferably in the event that it is not accepted or the judge is of the opinion that it can only be decided after the examination is complete, then the trial is carried out.

The interlocutory verdict was decided after the judge considered the charges against the Public Prosecutor, the Exceptions for the Defendant/Legal Counsel, the Replic for the Public Prosecutor and the Duplicate-Defendant/Legal Counsel. The interlocutory decision has been read out by the Chair of the Panel of Judges, after that the Chairperson of the Panel can explain as necessary the outline of the decision, and gives the public prosecutor or defendant the right to challenge the High Court through the local District Court. Interim decisions can be in the form of: a. Accepting the defendant's exception, the juridical consequence of the examination of the case must be stopped. b. Rejecting the defendant's exception, the legal consequences of the case must be continued for examination. C. The exception can only be decided after the examination is complete, consequently the juridical trial must continue (Kasiyanto, 2018).

An example of an interim decision related to the acceptance of this exception can be seen in the Pelelawan District Court Decision Number 315/ Pid.Sus /2020/PN Plw . In the interim decision, the judge decided: " 1. To declare that the objection from the Defendant's Legal Counsel was not accepted; 2. Ordered the Public Prosecutor to continue the examination of case 315/ Pid.Sus /2020/PN Plw on behalf of the Defendant Susi Yanti Binti Sukadi ; 3. Deferring the cost of the case until the final decision." From the interlocutory decision, it can be seen that the judge rejected the objection and the examination was continued.

With regard to the interlocutory decision, it does not mean that there is no absolute legal remedy or that the decision has permanent legal force without any legal remedies, such as a pretrial decision, as decided by the Constitutional Supreme Court in Article 3 paragraph (1) of the Criminal Procedure Code jo. Decision of the Constitutional Court Number 65/PUU-IX/2011 (Kusuma et al., 2020). As for this legal remedy, it can be seen in Article 156 paragraph (3) to paragraph (7) of the Criminal Procedure Code which stipulates: "3) In the event that the public prosecutor objects to the decision, then he can file a challenge to the high court through the district court which concerned; (4) In the event that the objection submitted by the defendant or his legal adviser is accepted by the high court, then within fourteen days, the high court with its decision letter annuls the decision of the district court and orders the competent district court to examine the case;

(5) a. In the event that the objection is submitted together with a request for appeal by the defendant or his legal adviser to the high court, then within fourteen days after he receives the case and confirms the defendant's resistance, the high court with a decision cancels the decision of the district court concerned and appoints the competent district court. ; b. The high court submits a copy of the decision to the competent district court and to the district court which originally tried the case in question accompanied by the case file to be forwarded to the district attorney who has delegated the case. (6) If the competent court as referred to in paragraph (5) is domiciled in the jurisdiction of another high court, the district attorney shall send the case to the district attorney in the jurisdiction of the competent district court at that place; (7) The judge presiding over the trial because of his position even though there is no resistance, after hearing the opinions of the public prosecutor and the defendant with a letter of determination containing the reasons may declare the court to be incompetent."

As for examples related to the existence of legal remedies against interlocutory decisions , which can be seen in the Kupang District Court Decision Number 55/ Pid.B /2021/PN Kpg . In this case, the defendant filed an objection and an interim decision was given which reads as follows : "1. To declare that the objection from the Defendant's Legal Counsel, Desy Carolina Candra Jaya, was accepted; 2. To declare the Public Prosecutor's Indictment Number PDM60a/N.3.10/Eoh.2/04/2021 dated 23 April 2021 as null and void by law; 3. Ordered the release of the Defendant from city custody; 4. Ordered the return of this case file to the Public Prosecutor; 5. Charges court fees to the state; However, it turned out that there was resistance to the Interlocutory Injunction and the resistance was accepted by the Panel of Judges, but it turned out that when the main case was examined again , one of the judges' legal considerations (*ratio decedendi*): "Considering, that regarding the unilateral cancellation of the agreement by the Defendant, there is a civil decision of the Kupang District Court Number 22/ Pdt.GS /2020/PN Kpg which grants the default lawsuit filed by the victim witness Hengki Go as the Plaintiff, dated October 14, 2020, in that decision the defendant as the Defendant was sentenced to pay the loss due to default to the witness victim calculated as much as Rp. 172,200,000.00 (one hundred and seventy-two million two hundred thousand rupiah); However, the Public Prosecutor filed a legal countermeasure . With regard to this legal remedy, the Kupang High Court in accordance with the Decision of the Appellate Panel of Judges Number 1/PID/PLW/2021/PT KPG dated 24 June 2021 essentially stated: "To try: 1. Accept the opposition from the Public Prosecutor; 2. To cancel the decision of the Kupang District Court Number 55/ Pid.B /2021/PN Kpg , dated June 9, 2021 for which the challenge is requested, hereinafter; Self-Judgment: 1. Rejecting the Exception submitted by the Defendant's Legal Counsel; 2. Ordered the Kupang District Court to reopen the trial to examine and try the criminal case Number 55/ Pid.B /2021/PN Kpg dated March 16, 2021 on behalf of the Defendant Desy Carolina Chandra Jaya." After the decision was made, the Kupang District Court reopened the trial to examine and hear the case against the defendant.

3.2 Imposition of Interlocutory Injunction by Judges in Criminal Cases Due to the Presence of a Civil Decision with Permanent Legal Force

As described above, that the indictment, because it cannot be accepted or must be canceled, can be filed with an exception and has the potential to be handed down an interim decision by the judge. One of the reasons that should be considered by the judge is when there has been a civil decision with permanent legal force related to the *a quo case*. (Anarki, 2019). There are those who qualify this as an exception free from all lawsuits / *onstlag van all rechtsvervolging* (Susilo, 2020). This is based on the fact that the defendant

is released from all legal charges handed down by the judge if in the trial it turns out that the defendant is legally and convincingly proven guilty as stated in the indictment of the public prosecutor, but it is known that the act is not a criminal act and therefore the defendant will be declared acquitted. all lawsuits, as regulated in Article 191 paragraph (1) of the Criminal Procedure Code: "1) If the court is of the opinion that from the results of the examination at trial, the guilt of the defendant for the actions he is accused of is not legally and convincingly proven, then the defendant is acquitted.

As for classical jurisprudence, which is often used in connection with the existence of this civil decision which has permanent legal force, it can be seen in Supreme Court Decision No. 645.K/ Pid /1982, dated August 15, 1983, where in a concrete event it was discovered that the defendant received a loan of money for trading business capital from a friend, but in its development it turned out that the defendant was unable to repay the loan in full and by the owner of this money the defendant then reported to the police on charges of fraud. However, in the trial, it turned out that the judge found legal facts stating that the defendant was proven to have borrowed from a friend, his actions were not criminal acts but had entered the scope of civil law actions (Arief, 2021).

Even though the judge should have rendered an interim decision, in fact it is not that simple. The judge still has to pay attention to the details and precision of the objects in the decision whether they are really the same or not. For example, there is a lawsuit related to defamation from A to B, but the lawsuit is rejected, then A reports to the police B, it does not mean that the judge in a criminal case immediately releases B, because there has been a civil decision, but the judge must first examine other matters in detail, for example related to the form of insult in the lawsuit and the police report is the same or not. If they are different, then the person cannot be released immediately.

One of the ontological grounds for the existence of a related exception is the existence of a civil decision, so that this is not a criminal case, it is efficiency. Don't let it get to the point where it is examined, the judge will then make a decision on the basis that there has been a civil dispute. This, of course, does not reflect the speedy principle of trial that should be adopted in the judiciary. If it is clear that there has been a civil decision, it can be said that when it is not decided it will injure procedural justice (Hartono et al., 2021).

One example of inefficient law enforcement in court even though there has been a civil decision with permanent legal force is the Kupang District Court Decision Number 55/ Pid.B /2021/PN Kpg . In this case, the defendant filed an objection and an interim decision was given which reads as follows : "1. To declare that the objection from the Defendant's Legal Counsel, Desy Carolina Candra Jaya, was accepted; 2. To declare the Public Prosecutor's Indictment Number PDM60a/N.3.10/Eoh.2/04/2021 dated 23 April 2021 as null and void by law; 3. Ordered the release of the Defendant from city custody; 4. Ordered the return of this case file to the Public Prosecutor; 5. Charges court fees to the state; However, it turned out that there was resistance to the Interlocutory Injunction and the resistance was accepted by the Panel of Judges, but it turned out that when the main case was examined again , one of the judges' legal considerations (*ratio decedendi*): "Considering, that regarding the unilateral cancellation of the agreement by the Defendant, there is a civil decision of the Kupang District Court Number 22/ Pdt.GS /2020/PN Kpg which grants the default lawsuit filed by the victim witness Hengki Go as the Plaintiff, dated October 14, 2020, in that decision the defendant as the Defendant was sentenced to pay the loss due to default to the witness victim calculated as much as Rp. 172,200,000.00 (one hundred and seventy-two million two hundred thousand rupiah); However, the Public Prosecutor filed a legal countermeasure . With regard to this legal remedy, the Kupang

High Court in accordance with the Decision of the Appellate Panel of Judges Number 1/PID/PLW/2021/PT KPG dated 24 June 2021 essentially stated: "To try: 1. Accept the opposition from the Public Prosecutor; 2. To cancel the decision of the Kupang District Court Number 55/ Pid.B /2021/PN Kpg , dated June 9, 2021 for which the challenge is requested, hereinafter; Self-Judgment: 1. Rejecting the Exception submitted by the Defendant's Legal Counsel; 2. Ordered the Kupang District Court to reopen the trial to examine and try the criminal case Number 55/ Pid.B /2021/PN Kpg dated March 16, 2021 on behalf of the Defendant Desy Carolina Chandra Jaya." After the decision was made, the Kupang District Court reopened the trial to examine and hear the case against the defendant.

In examining the main points of the case, one of the judges' considerations was: "Regarding the unilateral cancellation of the agreement by the Defendant, there has been a civil decision at the Kupang District Court Number 22 / Pdt . Go as the Plaintiff, dated October 14, 2020, in that decision the defendant as the Defendant was sentenced to pay the loss due to default to the victim witness which was calculated in the amount of Rp. 172,200,000.00 (one hundred seventy-two million two hundred thousand rupiah); The judge considered: "Considering, that based on the considerations above, the Panel of Judges is of the opinion that the dispute between the Defendant and the victim witness Hengki Go concerns civil law regarding the achievements that must be fulfilled in the house renovation work as stated in the agreement dated 27 June 2018 so that the Criminal Judges Council does not have the authority to assess it exercise the authority of the Civil Judge; Therefore, in the end, the judge issued a decision to release the Defendant from all legal claims;

From the decision of the Kupang District Court Number 55/ Pid.B /2021/PN Kpg , it can be seen that the defendant initially filed an exception and it was granted by the Panel of Judges, but the prosecutor filed a resistance and the resistance was accepted. This case is a civil case, not a criminal case. This shows that it is very inefficient and certainly seems to delay the defendant from obtaining his right to be released. This is contrary to the legal principle of *iustitiae non est neganda , non differenda* (Justice is not to be denied or delayed (Nugraha, Frisa Katherina, et al., 2019).

That as a record of this , if the case is then brought forward again by the Prosecutor/General Prosecutor, *nebis in idem applies* . There is an opinion that the condition that must be fulfilled in the *nebis in idem element* is that the defendant has been sentenced based on the subject matter of the case, the content of the decision in the form of punishment, being free or free from all charges is inaccurate or wrong, because in fact there are exceptions that do not involve the subject matter and the decision is final and the decision applies the principle of *nebis in idem*, which includes, among other things, the exception of "authority to judge" (*exception of incompetence*) both absolute and relative and in the exception of "authority to sue, lapses", namely; 1) *judicate exceptions* (article 76 of the Criminal Code) 2), *in tempores exceptions* (article 78 of the Criminal Code), and 3) the defendant died (article 77 of the Criminal Code).

IV. Conclusion

The basis for imposing an interlocutory decision from the judge is because there is an exception from the defendant or his legal advisor regarding that the indictment cannot be accepted or must be canceled. The exception classification itself is also diverse. One of the exceptions that can be used by the defendant is the exception of being free from all lawsuits/ onstlags van all rechtsvervolging is related to the existence of a civil decision that

has permanent legal force. Should there be a civil decision with permanent legal force on the same object, then the judge will give an interim decision, because if the main point of the case is examined then this is contrary to the speedy principle of trial and does not provide procedural justice for the defendant.

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