



Reconceptualizing Justice: Utilizing the Fair Trial Principle As A Standard For A State's Criminal Justice Systems

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Abstract: *This publication emphasises the critical importance of the right to a fair trial within the criminal justice system, highlighting its role in protecting human rights and ensuring justice. Referencing international treaties like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the article illustrates that fair trials are a fundamental entitlement, requiring independent and impartial hearings. The principle serves as a safeguard against state abuses, such as arbitrary detention and torture. It encompasses essential guarantees, such as the presumption of innocence, the right to legal defence, and public hearings. These components are vital for preventing miscarriages of justice and maintaining transparency and accountability in the judicial process. Engaging with theories of justice, the article discusses John Rawls' concept of fairness, which advocates for equitable treatment in the legal system. Amartya Sen emphasises addressing real injustices, while Ronald Dworkin argues that individual rights, including the right to a fair trial, should not be compromised for the sake of the majority. Thus, the principle of a fair trial is foundational to the legitimacy of any criminal justice system.*

Keywords: Fair Trial Principle, Criminal Justice System, International Human Rights Instrument

A. Introduction

In a democratic state governed by the rule of law, the protection of human rights serves as a non-negotiable foundation for the state. A fundamental aspect of this protection is the principle of a fair trial, which ensures that every individual has the right to an independent, impartial, and public hearing in accordance with established legal

procedures. The principle of a fair trial transcends mere moral idealism; it has garnered universal recognition through various international legal instruments, both binding and non-binding.

Specifically, Article 10 of the 1948 Universal Declaration of Human Rights (UDHR) states, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Additionally, Article 14 of the 1966 International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law Number 12 of 2005, further elaborates on this principle. The ICCPR outlines rights such as equality before the courts, the presumption of innocence, the right to legal defence, the right to be present at trial, the right to examine witnesses, and the right to be free from coercion during confession. Consequently, it can be concluded that the right to a fair trial is a fundamental civil and political right that is non-derogable within the framework of modern human rights protection.

As a fundamental reference, Article 10 of the 1948 UDHR clearly states: "Everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charges against him." Similarly, Article 14 of the 1966 ICCPR, ratified by Indonesia through Law Number 12 of 2005, reaffirms this principle with greater specificity. The ICCPR outlines several key rights, including equality before the courts, the presumption of innocence, the right to legal representation, the right to be present at trial, the right to cross-examine witnesses, and protection against coercion to confess guilt. Consequently, it can be concluded that the right to a fair trial is a fundamental civil and political right that remains non-derogable within the framework of contemporary human rights protection.

This concept is represented as a form of balance and serves as a check and balance mechanism for a state that has the authority to create its own laws. In principle, the State, as the governing authority, holds the right to impose sanctions on individuals who do not comply with established regulations. This right, known as jurisdictional authority, empowers the state to maintain legal standards. In Indonesia, sanctions are classified into three categories: criminal sanctions, civil sanctions, and administrative sanctions.¹ Soesilo describes criminal punishment, or sanctions, as an unpleasant experience (misery) imposed by a judge through a verdict against an individual who has violated criminal law.²

According to Article 64 of Law Number 1 of 2023 concerning the Criminal Code, criminal sanctions are classified into three categories: principal penalties, additional

¹ Suci Prasastiningsih et al., "Kewenangan Negara Untuk Memberikan Sanksi Guna Menumbuhkan Ketaatan Hukum," *Lex LATA* 2, no. 1 (2022): 392–408, <https://doi.org/10.28946/lexl.v2i1.626>.

² R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP), Serta Komentar Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politeia, 1996).

penalties, and special penalties for specific crimes as established by law. Article 65 outlines the forms of principal penalties, which include imprisonment, detention, supervision, fines, and community service. Article 66 outlines additional penalties, including the revocation of certain rights, confiscation of specific goods and/or bills, publication of judicial decisions, payment of compensation, withdrawal of licenses, and fulfilment of local customary obligations. Article 67 addresses special penalties mentioned in Article 64, letter c, including the death penalty, which is always available as an alternative.

Within this framework, the government serves as the holder of authority, and this power must be exercised in alignment with the community's will. Consequently, governmental authority must be constrained by laws and supportive conditions. The State, represented by its governing body, holds the power to impose sanctions on those who fail to comply with the law, thereby reinforcing the principle of jurisdictional authority. Moreover, it is essential to acknowledge that the imposition of sanctions must be rooted in a fair trial process, ensuring that the accused persons are granted various rights at every stage of the criminal justice system.

As previously stated, the imposition of criminal sanctions cannot take place without a fair judicial process. In this context, the state that is granted the authority to enforce the law plays a crucial role in the trial process in determining an individual's guilt or innocence. This law enforcement authority must be exercised in accordance with human rights principles. Moreover, it should be limited, accompanied by mechanisms for accountability, and subject to oversight by other institutions. These precautionary measures are crucial in preventing the misuse of authority and arbitrary actions, as emphasised earlier in this article.

The right to a fair trial is an integral aspect of human rights implementation within the criminal justice system. It is an internationally recognised human right that serves to establish the truth and is essential for all parties involved in a case. Fair trials are a cornerstone of democracy, ensuring equitable societies and curbing potential abuses by governments and state authorities. The Universal Declaration of Human Rights (UDHR) explicitly states in Article 10 that every individual is entitled to a fair and public trial conducted by an independent and impartial tribunal when determining their rights and obligations, as well as in any criminal charges brought against them. Additionally, the right to a fair trial is further elaborated upon in the International Covenant on Civil and Political Rights (ICCPR), particularly in Article 14, Paragraphs (1) and (2). The ICCPR provides detailed insights into the essential elements of a trial process that align with the principle of a fair trial.

The state's authority to arrest, prosecute, and punish individuals, culminating in the imposition of criminal sanctions, represents the most coercive exercise of state power short of warfare. This authority must be wielded with caution, and robust safeguards

must be in place to protect the rights of individuals accused of crimes. Those suspected of wrongdoing should be treated with dignity and compassion. Moreover, if convicted, they should not be defined solely by their actions. Safeguarding the right to a fair trial goes beyond merely ensuring that procedures before and after a trial respect fundamental rights. It is also about fostering a criminal legal system and a society that is fair, equal, and just.³

Not all states maintain a consistent and transparent approach to establishing fair trial standards within their criminal justice systems. This reality illustrates that even when a nation formally acknowledges human rights, particularly the importance of the right to a fair trial, it may still face significant challenges related to both its legal framework and its practical implementation.

Indonesia serves as a troubling example. Despite Indonesia's ratifying the Convention Against Torture and committing to the elimination of such inhumane practices, instances of torture continue to persist alarmingly. A recent monitoring report from Komisi untuk Orang Hilang dan Tindak Kekerasan (KontraS), covering the period from June to August 2024, documented nine specific incidents of torture. The findings reveal the devastating impact of these acts, resulting in serious injuries for 29 individuals and, tragically, the death of one person. Notably, 15 of the 30 victims were minors, underscoring the vulnerability of specific populations affected by this brutality. The data compiled by KontraS highlights a disturbing trend: an average of 10 individuals experienced torture each month during this timeframe. This ongoing cycle of violence and abuse reflects a deeply entrenched issue where acts of cruelty are becoming increasingly normalised within law enforcement and state authorities.⁴

Moreover, the issue of wrongful arrests serves as a clear indication of the criminal justice system's failure to uphold the fair trial principle at the implementation level. According to a presentation by KontraS, from July 2023 to June 2024, there were at least 15 documented cases of wrongful arrests by the police, impacting a total of 23 individuals, nine of whom sustained injuries.⁵

The stipulations and regulations regarding protection against torture and wrongful arrest underscore that mere recognition of human rights is inadequate. The

³ Fair Trials International, "The Right To A Fair Trial," 2019, <https://www.fairtrials.org/the-right-to-a-fair-trial/#:~:text=If you are accused of,by governments and state authorities.>

⁴ Komisi untuk Orang Hilang dan Tindak Kekerasan, "Update Situasi Penyiksaan 2024: Normalisasi Dan Berulangnya Kultur Kekerasan Dalam Penegakan Hukum," KontraS, 2024, <https://kontras.org/artikel/update-situasi-penyiksaan-2024-normalisasi-dan-berulangnya-kultur-kekerasan-dalam-penegakan-hukum>.

⁵ Singgih Wiryo and Icha Rastika, "Kontras: Polisi 15 Kali Salah Tangkap Dalam Setahun Terakhir, Korbannya 23 Orang," Kompas.com, 2024, <https://nasional.kompas.com/read/2024/07/01/19001741/kontras-polisi-15-kali-salah-tangkap-dalam-setahun-terakhir-korbannya-23>.

state must comprehend and operationalise the standards embedded in human rights principles within the framework of its criminal justice system. Effective implementation requires a systemic integration of these standards to ensure accountability and safeguard individual rights.⁶ This article aims to explore in detail the international legal standards associated with human rights principles and to contextualise these standards within the Indonesian criminal justice system. Additionally, this research aspires to provide insights that can contribute to renewing Indonesia's criminal justice system in alignment with human rights standards, particularly regarding the fair trial principle.

B. Method

The study utilises a normative juridical methodology, which entails a thorough evaluation of library resources and secondary information. The secondary information for this research includes primary legal documents, such as statutory laws; secondary legal documents, encompassing books and scholarly articles; and tertiary legal documents sourced from news media, both online and printed. A comparative framework is employed to systematically analyse two or more subjects in relation to various human rights instruments associated with the principle of a fair trial. Qualitative data analysis methods are used to address the research inquiries, with the findings presented in both descriptive and prescriptive formats.

C. Result & Discussion

1. Understand the Concept of Rights to a Fair Trial

The principles governing the right to a fair trial are outlined in the Universal Declaration of Human Rights (UDHR), specifically in Article 10. This article states that every individual is entitled to a fair and public hearing by an independent and impartial tribunal when their rights and obligations are being determined, or when they are facing any criminal charges. Additionally, the International Covenant on Civil and Political Rights (ICCPR) provides more specific details about the right to a fair trial, particularly in Article 14, Paragraphs 1 and 2. This article emphasises essential components of a trial that align with fair trial standards.

Various international instruments and treaties also protect the right to a fair trial. This stipulation is regulated in Article 6 of the European Convention on Human Rights, Article 8 of the American Convention on Human Rights, and to a slightly lesser extent,

⁶ M. Rizki Yudha Prawira, "Regulation Act of Torture in Criminal Code: Opportunity and Challenge to Improve Human Rights Situation in Indonesia," *Justisi* 11, no. 1 (2025): 17-35, <https://doi.org/10.33506/js.v11i1.3653>.

Article 7 of the African Charter on Human and Peoples' Rights, Article 13 of the Revised Arab Charter on Human Rights, and Article 20 of the ASEAN Human Rights Declaration.

International humanitarian law, notably the Third and Fourth Geneva Conventions of 1949, establishes judicial guarantees for prisoners of war and civilians detained for criminal offences related to international armed conflict. Article 75, Paragraph (4) of Additional Protocol I to the Geneva Conventions provides additional fair trial rights for any individual facing criminal charges in such contexts. Common Article 3 Paragraph (1 d) of the Geneva Conventions, which regulates non-international armed conflicts, prohibits the imposition of sentences and the execution of punishments without a prior judgment rendered by a regularly constituted court that offers all judicial guarantees deemed essential by civilised societies. This principle is recognised as customary international law. Further fair trial guarantees relevant to non-international armed conflicts can be found in Article 6 of Additional Protocol II. The fair trial guarantees outlined in human rights treaties continue to apply during armed conflict, except in rare cases where a state may justifiably derogate from these provisions. The denial of the right to a fair trial can, under certain circumstances, be considered a war crime.⁷

After reviewing various international human rights instruments that establish and elucidate the fundamental principles of fair trials, it becomes evident that these documents delineate three distinct qualifications. These qualifications serve to clarify the standards and expectations essential for ensuring that trial processes are just, equitable, and respectful of the rights of all individuals involved. Upon closer examination, the principles of a fair trial, as articulated in Article 14 of the ICCPR, can be categorised into three main areas: fundamental provisions, minimum guarantees, and additional provisions aimed at ensuring a fair trial.⁸

a. Fundamental provisions of fair trial

The fundamental provisions of the right to a fair trial include the principles of equal treatment before the court and the guarantee of a fair and open hearing. Article 14 of ICCPR affirms the right to access courts concerning criminal charges and the related rights and obligations involved in legal proceedings. To ensure that no individual is deprived of their right to seek justice, access to the administration of justice must be effectively guaranteed in all cases. The right to access courts and tribunals, as well as the right to be treated equally before them, is not limited to citizens of states parties; it extends to all individuals, regardless of nationality or statelessness.

⁷ United Nations and Counter-Terrorism Implementation Task Force, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, CTITF (New York, 2014), <https://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>.

⁸ Jixi Zhang, "Fair Trial Rights in ICCPR," *Journal of Politics and Law* 2, no. 4 (2009): 39–43, <https://doi.org/10.5539/jpl.v2n4p39>.

This guarantee prohibits any distinctions in access to courts and tribunals that are not based on law and cannot be justified by objective and reasonable grounds. Suppose specific individuals are prevented from bringing a lawsuit against others due to factors such as race, colour, gender, language, religion, political opinions, or any other status. In that case, it constitutes a violation of this guarantee.

The derivative interpretation of the fair trial principle, as it pertains to essential regulations, underscores the entitlement to a fair and public hearing conducted by a tribunal that is competent, independent, and impartial, as defined by law. The need for independence primarily relates to the processes and criteria for appointing judges, as well as the protections concerning their job security until they reach the mandatory retirement age or until the end of their term, when applicable. This includes the stipulations around promotion, transfer, suspension, and removal from their positions, as well as ensuring the judiciary's actual independence from political meddling by both the executive and legislative branches.

A State should enact specific measures to maintain judicial independence, shielding judges from any political influence in their judgments by employing constitutional provisions or laws that define transparent processes and objective standards for the selection, compensation, duration of service, advancement, suspension, and removal of judges, including any disciplinary actions taken against them. To ensure their independence, the legal framework must secure the status of judges, encompassing their terms, autonomy, job security, adequate pay, working conditions, pensions, and retirement age.

The requirement for impartiality includes two main aspects. Firstly, judges must prevent personal bias or prejudice from influencing their decisions and should not bring preconceived opinions to the cases they preside over. They must also refrain from taking actions that could improperly favour one party over another. Secondly, the tribunal itself must seem impartial to a reasonable observer. For instance, if a trial is heavily influenced by a judge who legally should have been disqualified, it cannot be deemed impartial. The first aspect is known as the subjective test of impartiality, while the second is referred to as the objective test of impartiality. Generally, all criminal trials should be carried out orally and in public. The right to a public hearing includes the transparency of both the proceedings and the final judgments. This openness serves as a fundamental protection that advances the interests of both individuals and society as a whole. Courts are required to notify the public regarding the timing and venue of oral hearings and to provide suitable facilities for interested individuals to attend, within reasonable limits considering the expected interest in the case and the length of the hearing.

In principle, all trials related to criminal issues should be conducted orally and publicly. The right to a public hearing covers the transparency of both the hearings

and the decisions made. This openness upholds the integrity of the proceedings and serves as an essential safeguard for both individual rights and societal interests. Courts must inform the public about the schedule and location of oral hearings and make reasonable provisions for public attendance, taking into account factors such as the level of interest in the case and the length of the hearing. Article 14, paragraph 1, recognises that courts have the discretion to exclude all or part of the public for reasons such as public morals, order, national security, the privacy of the involved parties, or under exceptional circumstances when public access could jeopardise justice. Even when the public is barred from proceedings, the judgment, which comprises critical findings, evidence, and legal reasoning, must still be made public, except in cases involving minors or those concerning matrimonial issues or child custody. The publicity of the judgment is accomplished through both oral announcements and recorded documents.⁹

Furthermore, the third principle highlighted in this section is the right of every individual to be presumed innocent until proven guilty. According to Article 14, Paragraph 2, everyone facing a criminal charge is entitled to the presumption of innocence until their guilt is proven beyond a reasonable doubt in accordance with the law. This fundamental principle is crucial for safeguarding human rights, as it places the burden of proof on the prosecution, ensures that no one is deemed guilty until the evidence is proven beyond a reasonable doubt, and grants the accused the benefit of the doubt. It also mandates that individuals facing charges be treated in accordance with this principle.¹⁰ During trials, the indicted defendants should typically not be shackled or confined in cages. They also should not be presented in a manner that suggests they are dangerous criminals. Additionally, the media should exercise caution and avoid reporting in ways that could undermine the presumption of innocence.

b. The minimum guarantees of fair trial rights

The provisions outlined in this section are elaborated in Article 14, Paragraph (3) of the ICCPR, which highlights the fundamental rights guaranteed to individuals who are reported or accused of a crime. This section details seven specific minimum guarantees. The seven standards of minimum guarantees referenced are:¹¹

- 1) Everyone has the right to be informed of the charge, and everyone has the right to obtain all forms of information as precise and complete as possible regarding the judicial process.

⁹ Centre for Civil and Political Rights, *Right to Equality before Courts and Tribunals and to a Fair Trial: Factsheets for Legal Practitioners and Civil Society Actors* (Geneva: Centre for Civil and Political Rights, 2024).

¹⁰ Vivin Nurviana, "The Principle of Presumption of Innocence in Criminal Law Policy in Indonesia," *Proceedings of the International Seminar on Sharia and Law* 1 (2023): 115–22.

¹¹ Zhang, "Fair Trial Rights in ICCPR.", *Ibid.*

- 2) The right to prepare a defence and to communicate with counsel, Paragraph 3 (b) stipulates that individuals accused of a crime must be afforded sufficient time and resources to adequately prepare their defence, as well as the opportunity to engage in communication with legal counsel of their own selection;
- 3) The right of the accused to be tried without undue delay, as outlined in Article 14, paragraph 3 (c), serves multiple important purposes. It aims not only to prevent individuals from remaining in a state of uncertainty about their fate for too long, but also to ensure that, in cases where they are held in detention during the trial, such deprivation of liberty is justified and does not extend beyond what is necessary given the specific circumstances. Additionally, this stipulation upholds the interests of justice.
- 4) The right to be present during trial, to defend and to legal assistance, article 14 paragraph 3 (d) outlines three essential rights: the right of the accused to be present at their trial, the availability of two types of defence strategies, and the provision of legal assistance at no charge for those who cannot afford it, whenever justice necessitates.
- 5) The right to call and examine witnesses, as guaranteed in paragraph 3(e) of Article 14, ensures that accused persons have the right to confront witnesses presented by the prosecution and to summon witnesses in their favour under equivalent conditions. This principle of equality of arms is fundamental to ensuring a robust and effective defence in legal proceedings.
- 6) The right to the free assistance of an interpreter, as guaranteed in Article 14, paragraph 3 (f), ensures that defendants who are not proficient in the court's language receive free interpreter assistance. This provision is vital for ensuring fairness and equality in the criminal justice process, allowing the accused to participate fully without linguistic barriers.
- 7) The privilege against self-incrimination, Article 14, paragraph 3 (g), ensures the right not to testify against oneself or admit guilt, requiring that no physical or undue psychological pressure be applied by authorities to obtain a confession.

c. The Other Provisions

This section outlines the minimum standards for fair trial principles within a criminal justice system, taking into account specific contexts and circumstances. For example, certain cases may necessitate the application of distinct or additional standards. The stipulation articulated comprehensively in Article 14 of the ICCPR, Article 14(1) establishes the core principle of equality before courts and tribunals. Its subsequent paragraphs—particularly paragraphs 4 to 7, together with Article 15—articulate more precise guarantees that render the fair trial principle operational within modern criminal justice systems.

Article 14, Paragraph (4) of the International Covenant on Civil and Political Rights (ICCPR) stipulates that juvenile offenders in criminal proceedings must be treated according to their developmental stage, highlighting the primacy of rehabilitation over punishment. Further, Article 14, Paragraph (5) affirms the right of every convicted individual to seek a review of their conviction and sentence by a higher tribunal. This stipulation aligns with the foundational principle that the justice system must maintain a mechanism for correctability to uphold its legitimacy.

Article 14, paragraph (6) stipulates the right to compensation in cases of judicial error, actualising the state's obligation to acknowledge and amend significant judicial missteps. This provision is grounded in Kantian principles of human dignity and is reinforced by transitional justice frameworks. Compensation serves not only as an individual remedy but also acts as a systemic safeguard for the legitimacy of criminal justice institutions. Paragraph (7) enshrines the *ne bis in idem* principle, prohibiting double jeopardy and thereby embodying the *Rechtsstaat* doctrine, which emphasises legal certainty and finality.¹² Once an individual has been acquitted or convicted by a competent court, they are protected from further prosecution for the same offence, thus safeguarding them from harassment and the potential misuse of prosecutorial power.

Complementing these procedural safeguards, Article 15 affirms the principle of legality, encapsulated in the maxim: *nullum crimen, nulla poena sine lege*. This principle prohibits the prosecution of acts that were not designated as criminal at the time they were committed, and it protects individuals from the retroactive application of harsher penalties. Collectively, Articles 14, Paragraphs (4)–(7) and Article 15 illustrate how the ICCPR translates the broad assurance of a fair trial into specific rights that uphold human dignity and constrain state power.

2. The Principle of the Right to a Fair Trial as a Standard for the Criminal Justice System

Establishing fair trial principles is crucial in any criminal justice system, particularly when viewed through the lens of human rights. The right to a fair trial is universally recognised as a fundamental entitlement, enshrined in various international and regional human rights instruments. These documents consistently articulate and reinforce the necessity of fair trial protections, highlighting their importance in upholding judicial integrity and safeguarding individual liberties.

The significance of the fair trial principle becomes even more evident when analysed through the frameworks of human rights theory and justice theory. This dual

¹² Center for Civil and Political Rights, "ICCPR Article 14 Factsheets: Right to Equality Before Courts and Tribunals and to a Fair Trial," CCPR Centre, March 28, 2024, <https://ccprcentre.org/ccprpages/iccpr-article-14-factsheets-right-to-equality-before-courts-and-tribunals-and-to-a-fair-trial>.

perspective not only enhances our understanding of its crucial role in protecting individual rights but also promotes equitable legal processes.

a. Fair Trial Principle as a Human Rights Standard

The principle of a fair trial is widely recognised at the international level and is incorporated into numerous human rights treaties and legal instruments across various legal systems. The Universal Declaration of Human Rights, adopted in 1948, is a key global document that introduced the concept of a fair trial. Article 10 of this Declaration states, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him." Additionally, Article 11, Paragraph 1 reinforces the presumption of innocence, stating that individuals should be considered innocent until proven guilty in an open court, with necessary legal protections in place. Although the Universal Declaration of Human Rights is not a legally enforceable treaty, it establishes a moral standard that emphasises the importance of the right to a fair trial as essential for every individual.

The International Covenant on Civil and Political Rights (ICCPR) serves as a significant human rights instrument that includes specific provisions regulating the right to a fair trial, as detailed in Articles 14 and 15. These articles outline the necessary guarantees and procedural protections essential for maintaining justice and ensuring fair legal processes.

The UN Human Rights Committee, in its General Comment No. 32 on Article 14 of the ICCPR, highlighted the importance of the fair trial principle. The General Comment declares that the right to a fair trial is a "key element of human rights protection" and serves as a procedural measure to uphold the rule of law. The Committee noted that while Article 14 of the ICCPR can technically be suspended during emergencies, the fundamental principle of a fair trial must not be overlooked. Deviations from essential fair trial principles, including the presumption of innocence, are strictly forbidden, even in such circumstances. This reinforces the notion that the right to a fair trial is a universal and fundamental human right that states must uphold without compromise.

The treaty about the fair trial principle in the European region refers to the 1950 European Convention on Human Rights (ECHR). Article 6 of the ECHR explicitly states that everyone is entitled to a fair and public hearing within a reasonable timeframe before an independent and impartial tribunal. This article also includes essential guarantees such as the presumption of innocence, whereby the accused is considered innocent until proven guilty, as well as the right to legal representation and to be fully informed of the charges against them.¹³ The principle of a fair trial is upheld through the ECHR

¹³ Council of Europe, "The European Convention on Human Rights," accessed July 19, 2025, Europe,.

mechanism, with the European Court of Human Rights ensuring that member countries respect this fundamental right.

In the Americas, the American Convention on Human Rights, also known as the “Pact of San Jose, Costa Rica” of 1969 (ACHR), establishes the right to a fair trial in Article 8. Paragraph (1) of Article 8 states that everyone is entitled to a fair hearing with sufficient guarantees and within a reasonable timeframe, by a competent, independent, and impartial tribunal established in accordance with the law. Furthermore, like other human rights instruments, the ACHR includes the principle of the presumption of innocence and outlines various minimum rights for the accused during the judicial process, as specified in Paragraph (2) of Article 8. As a binding regional treaty for member countries of the Organisation of American States, the ACHR emphasises the importance of respecting the right to a fair trial as a fundamental human right worldwide.¹⁴

The consistent application of fair trial principles enhances the legitimacy of the criminal justice system. A transparent and objective judicial process that respects the rights of the accused helps build greater public trust in the judiciary. Conversely, ignoring fair trial procedures can lead to miscarriages of justice, which ultimately undermines public confidence in law enforcement.¹⁵ By maintaining the integrity of a fair trial, court decisions are viewed as more legitimate and equitable by the public because they follow proper procedures. This principle is crucial for sustaining legitimacy; the public is more likely to accept and respect judicial outcomes when the process is perceived as honest and fair.

The principle of a fair trial is fundamental in preventing arbitrariness in law enforcement. By safeguarding fair trial rights from the investigation phase through the trial itself, we ensure that suspects and defendants—who often face the overwhelming power of the state—have ample opportunity to mount a defence.¹⁶ With access to legal counsel, transparent trials, and oversight from independent judges, law enforcement officials are restricted from handling criminal cases arbitrarily. For instance, the prohibition against using torture or coercion to obtain confessions protects individuals from arbitrary treatment. Similarly, the requirement that detention or punishment can only be enacted based on a court ruling guarantees that the state cannot unjustly deprive individuals of their liberty without due process.

¹⁴ Treaties UN, “American Convention on Human Rights: ‘Pact of San José, Costa Rica’. Signed at San José, Costa Rica, on 22 November 1969” (1969), [https://treaties.un.org/doc/publication/unts/volume1144/volume-1144-i-17955-english.pdf#:~:text=2,speak the language of the](https://treaties.un.org/doc/publication/unts/volume1144/volume-1144-i-17955-english.pdf#:~:text=2,speak%20the%20language%20of%20the).

¹⁵ Phil Bowen and Emily Gold LaGratta, *To Be Fair: Procedural Fairness in Courts*, Criminal Justice Alliance (London: Criminal Justice Alliance, 2014), <http://www.justiceinnovation.org/better-courts/publications/be-fair-procedural-fairness-courts>.

¹⁶ Iftitahsari, *Mendorong Pengaturan Hak-Hak Fair Trial Khusus Bagi Orang Yang Berhadapan Dengan Pidana Mati Dalam RKUHAP* (Jakarta: Institute for Criminal Justice Reform, 2022).

Ensuring a fair trial is deeply intertwined with the pursuit of substantive justice. A procedurally fair process is essential for uncovering the truth and achieving genuine justice. Experts contend that substantive justice can only be realised when judicial proceedings adhere to the principles of a fair trial, thereby transcending mere formalities.¹⁷ This indicates that a truly just outcome relies on the respect for the defendant's rights from the outset, along with the integrity of the process itself. A fair trial serves to protect the innocent from wrongful conviction while ensuring that the guilty are held accountable based on reliable evidence. As a result, a fair trial promotes substantive justice for both the defendant and the victim, enhancing the likelihood that the final decision reflects the truth and embodies a sense of justice. Ultimately, this equitable application of the law fulfils its fundamental purpose: to promote justice, benefit society, and ensure legal certainty.

b. State Obligation as Duty Bearer

Within the framework of human rights theory, the fair trial principle holds that the state is the primary duty bearer, responsible for respecting, protecting, and fulfilling the human rights of every citizen. The right to a fair trial is one of the fundamental human rights that the state is obligated to guarantee. As a duty bearer, the state must refrain from intervening in a manner that violates the right to a fair trial (duty to respect), must prevent any party from interfering with the fulfilment of this right (duty to protect), and must take proactive steps to ensure the fulfilment of a fair trial in practice (duty to fulfil).¹⁸ This principle aligns with the constitutional mandate that the promotion and fulfilment of human rights is the responsibility of the state, particularly the government.

The principle of a fair trial, in terms of obligation to respect, mandates that state officials – such as law enforcement, prosecutors, and judges – must act in ways that fully respect and uphold the rights of suspects and defendants. They should refrain from any actions that might obstruct or compromise these rights during legal proceedings. For instance, government and law enforcement officials should not restrict suspects' access to legal counsel, pressure the judiciary, influence judges, or engage in practices like arbitrary detention or torture.

Additionally, the state has an obligation to protect individuals from violations of fair trial rights committed by third parties. This means the state must ensure that no external parties, such as the media or public opinion, interfere with judicial independence or undermine the presumption of innocence through what is often referred to as trial by

¹⁷ Prayogi Aryovandri Podomi, Roy Marthen Moonti, and Ibrahim Ahmad, "Peran Putusan Sela Dan Putusan Akhir Dalam Mewujudkan Keadilan Prosedural Di Pengadilan. Naskah Jurnal Hukum Tata Peradilan Indonesia.," *Mahkamah: Jurnal Riset Ilmu Hukum* 2, no. 3 (2025): 124–40, <https://doi.org/https://doi.org/10.62383/mahkamah.v2i3.694>.

¹⁸ Office of The United Nations High Commissioner for Human Rights, *Frequently Asked Questions on A Human Rights-Based Approach to Development Cooperation* (New York & Geneva: United Nation, 2006).

media. To uphold the integrity of fair trials, the state needs to implement robust oversight mechanisms for law enforcement officials. This includes establishing accountability measures to ensure that officers who contravene procedural standards can be held responsible and face prosecution. Such measures are vital in safeguarding the rights of suspects and defendants throughout the criminal justice process, thereby reinforcing the rule of law.

The obligation to uphold fair trials is enshrined in the legal framework, which includes the necessary institutions and resources to guarantee that trials are conducted fairly. From a legal policy perspective, the state is required to implement legislation that secures every aspect of a fair trial. Many countries incorporate guarantees of fair trial rights into their constitutions and criminal procedure laws. For example, the Code of Criminal Procedure (KUHAP) emphasises the protection and respect for human rights throughout criminal proceedings, particularly highlighting the rights of the accused, although some provisions are controversial. This legal provision demonstrates the state's commitment to upholding the right to a fair trial through robust regulations and procedures.

Furthermore, the state must establish independent judicial institutions capable of conducting fair trials. This requires the courts to operate under an impartial judiciary, where judges are granted independence in their decision-making, and the judicial process remains transparent. The state is also responsible for implementing a legal aid system to assist disadvantaged individuals, as mandated by the free legal aid policy. This ensures universal access to legal representation and aligns with Law No. 16 of 2011 on Legal Aid, which requires the state to provide legal assistance to underprivileged groups, thereby affirming the right to a fair trial and access to justice for all segments of society.

In terms of law enforcement practice, the state's role as a duty bearer is evident in its commitment to implement fair trial principles by law enforcement officials effectively. The government is responsible for training and supervising these officials to ensure that fair trial standards are upheld at every stage of the criminal process. For example, police investigators must respect the suspect's right to remain silent and to have legal counsel present during questioning; public prosecutors are required to conduct indictments and prosecutions professionally, avoiding the fabrication of evidence; and judicial institutions must ensure trials are conducted openly, with decisions based on objective criteria. Additionally, the state must provide essential infrastructure, such as adequate courtrooms, interpreters for defendants who do not understand the court's language, and technology that facilitates efficient trials. Collectively, these efforts reflect the state's commitment to safeguarding its citizens' right to a fair trial.

c. Fair Trial Principle as an Element of Justice

The principle of a fair trial stands as a fundamental pillar of criminal law and human rights. It guarantees that every defendant is treated equitably, without bias, and through appropriate procedures before any sentencing occurs. Philosophically, the concept of a fair trial embodies the essence of justice, as it ensures equal treatment under the law and safeguards against arbitrariness. John Rawls, for instance, through his theory of justice as fairness, emphasises that the right to due process is one of the essential freedoms that should be afforded equally to all individuals.¹⁹ In this regard, a fair trial serves as a tangible manifestation of the principle of justice, ensuring that no one is subjected to a prejudiced legal process.

Contemporary philosophers underscore the importance of the principle of a fair trial as a fundamental element of justice. Amartya Sen posits that the emphasis of justice theory should be directed toward alleviating actual injustices within society rather than merely developing ideal principles.²⁰ From Sen's perspective, guaranteeing a fair trial is crucial for preventing real injustices, such as the wrongful conviction of innocent individuals or the violation of the rights of the accused. On the other hand, Ronald Dworkin contends that individual rights—including the right to a fair trial—function as "trump cards" that should never be compromised for the sake of the public or the majority. This right must be upheld, even in the face of public pressure, as it protects the dignity and equality of every person before the law. Dworkin further observes that proper legal processes are inherently linked to moral considerations; a judge must remain ethically attuned to the principles of justice.²¹ Thus, a fair trial should not be regarded merely as a procedural technicality but rather as a manifestation of the judicial system's moral commitment to fairness.

The principle of a fair trial is upheld through various mechanisms and institutional structures within the criminal justice system. Firstly, the judge must act as an independent and impartial adjudicator, ensuring an objective trial process. Secondly, the role of the public prosecutor involves pursuing charges with professionalism and reliance on valid evidence, rather than focusing solely on securing a conviction. Furthermore, the prosecutor bears the responsibility of safeguarding the rights of defence attorneys and legal advisors, thereby allowing them the opportunity to advocate for their clients effectively. This balance between prosecutors and defence attorneys illustrates the principle of "equality of arms," which is essential for achieving justice. Additionally, the evidentiary procedure is designed to be transparent and equitable: each party is entitled

¹⁹ John Rawls, *A Theory of Justice: Revised Edition* (Massachusetts: Harvard University Press, 1999).

²⁰ Open Democracy, "Amartya Sen and the Idea of Justice," Open Democracy, 2010, <https://www.opendemocracy.net/en/amartya-sen-and-idea-of-justice/#:~:text=by John Rawls and Robert,in the here and now.>

²¹ Ronald Dworkin, *Law's Empire* (Massachusetts: Harvard University Press, 1986).

to present and challenge evidence, call witnesses, and counter opposing arguments. When proceedings are conducted impartially and in a balanced manner by an unbiased judge, the resulting verdicts are considered fair and reflective of the truth.

The principle of a fair trial is upheld through various mechanisms and institutional structures within the criminal justice system. Firstly, the judge must act as an independent and impartial adjudicator, ensuring an objective trial process. Secondly, the role of the public prosecutor involves pursuing charges with professionalism and reliance on valid evidence, rather than focusing solely on securing a conviction. Furthermore, the prosecutor bears the responsibility of safeguarding the rights of defence attorneys and legal advisors, thereby allowing them the opportunity to advocate for their clients effectively. This balance between prosecutors and defence attorneys illustrates the principle of "equality of arms," which is crucial to attaining justice. Additionally, the evidentiary procedure is designed to be transparent and equitable: each party is entitled to present and challenge evidence, call witnesses, and counter opposing arguments. When proceedings are conducted impartially and in a balanced manner by an unbiased judge, the resulting verdicts are considered fair and reflective of the truth.²²

The principle of a fair trial embodies the value of justice, both in philosophical theory and institutional practice. By ensuring a fair trial, the criminal justice system strikes a balance between state power and individual rights, embodying the notion that each person should be treated as an end in themselves. This principle upholds the moral integrity of the law and guards against arbitrary actions, ensuring that judicial outcomes are not only legally sound but also ethically and socially legitimate. In a democratic state governed by the rule of law, a fair trial is essential for achieving substantive justice and safeguarding the human rights of every citizen.

D. Conclusion

The principle of a fair trial is a fundamental aspect of a nation's criminal justice system. It encompasses essential human rights as outlined in various international human rights documents, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), particularly in Articles 14 and 15. Incorporating the fair trial principle into a criminal justice system demonstrates a commitment to upholding justice and fairness. Therefore, this principle should not be viewed merely as a theoretical idea; it must be established as a standard practice within any criminal justice framework.

²² Annenberg Classroom, "Chapter 12: The Right to a Fair Trial," Annenberg Classroom, accessed July 20, 2025, <https://www.annenbergclassroom.org/resource/our-rights/rights-chapter-12-right-fair-trial/#:~:text=The image is an old,one that speaks the truth.>

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