

The Legal Position of Judge Confidence in Imposing Criminal Decisions Related to the Principle of Justice-Based on *Dubio Pro Reo*

Meisedelina Yustitia*)

*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: meisedely@gmail.com

Abstract. *Judges in deciding cases must be based on two main criteria, namely the judge's conviction and at least two pieces of evidence to determine that the defendant is the one who committed the crime. If the judge during the trial does not get confidence in valid evidence, then the in Dubio Pro Reo principle applies. This study aims to determine and analyze the legal position of judges' beliefs in imposing criminal decisions related to the principle of justice-based in Dubio Pro Reo. The research method used is normative legal research method. The conclusion of the research results shows that the urgency of the in Dubio Pro Reo principle is applied as a form of protection of human rights, especially for the accused and as a form of fulfilling the presumption of innocence, so that by applying the in Dubio Pro Reo principle.*

Keywords: Confidence; Dubio Pro Reo; Judge.

1. Introduction

The judge's decision is the culmination of the judiciary which has an impact on litigants or justice seekers. A judge in deciding a case considers whether or not the defendant is sentenced by a judge based on the judge's conviction and at least 2 (two) valid pieces of evidence, this provision is contained in Article 183 of the Criminal Procedure Code. In this article, it is not only the judge and his belief that play a role in the trial, but also evidence tools to dig up material truth.¹Provisions regarding evidence have been regulated in Article 184

¹Sunarto, The Urgency of Expert Evidence on the Confidence of Judges in Decisions on Corruption Crimes, *Junal Spectrum Hukum*, Vol. 14/No. 2/October 2017, p. 282.

Paragraph (1) of the Criminal Procedure Code, namely: a). witness statement; b). expert testimony; c). letter; d). instruction; and e). defendant's statement.

One adage that is very popular and widely used as the basis for the process of proof is in criminalibus probationes debent esse luce clariores (evidence of a crime must be brighter than light), meaning that in the process of proving to ensnare a person committing a crime, it must be clear and not cause harm. any doubt (beyond a reasonable doubt). If based on the evidence, the evidentiary process and the evaluation of the evidence the judge is still not sure/doubted, then the things that are most beneficial to the defendant will be decided (in dubio pro reo).²

The legal norms of the in *Dubio Pro Reo* principle can be summarized in two points as follows: First, judges must not hesitate in passing criminal decisions. Second, judges are prohibited from passing criminal decisions without being based on complete conviction and at least two valid pieces of evidence. Meanwhile, written legal rules that can be equated as derivatives of the in *Dubio Pro Reo* principle are Article 183 of the Criminal Procedure Code, in that article it is stated that: "a judge may not impose a sentence on a person unless with at least two valid evidences he obtains confidence that a crime actually occurred and that the accused was guilty of committing it".³

According to M. Yahya Harahap regarding the proof of criminal cases associated with the provisions of Article 183 of the Criminal Procedure Code, it states as follows: The proof system adopted by Article 183 of the Criminal Procedure Code is negative statutory evidence. This means that in addition to fulfilling the minimum limit of proof with valid evidence, sufficient evidence must be accompanied by the conviction of the judges that it is the defendant who is guilty of committing the crime he was charged with.⁴

From the formulation of Article 183 of the Criminal Procedure Code, it appears that evidence must be based on at least two valid pieces of evidence, accompanied by the Judge's conviction obtained from these evidences. This means that the availability of at least two pieces of evidence is not enough to convict the defendant. Conversely, even though the judge is sure of the defendant's guilt, if at least two pieces of evidence are not available, the judge also cannot impose a sentence on the defendant. In this case, the imposition of a sentence against a defendant must fulfill two absolute requirements, namely

²Triantono and Muhammad Marizal, Parameters of Judge Confidence in Deciding Criminal Cases, Journal of Law Justitia Et Pax, Volume 37, Number 2, December 2021, p. 268.

³Wahyu Iswanto, It's Better to Release 1,000 (Thousand) Guilty People, Instead of Convicting 1 (One) Innocent Person, Supreme Court Media, Article, Edition XXIII/2020, p. 98.

⁴M. Yahya Harahap, Discussion and Application of the Criminal Procedure Code, Kartini Library, Jakarta, 1985, p. 861.

sufficient evidence and the conviction of the judge. This proof system is known as the *wettelijk negative system*.⁵

The *in Dubio Pro Reo* principle applies to criminal law even though this principle is not written in the Criminal Code, but its connection cannot be eliminated with the principle of No Criminal Without Guilt (*Geen Straf Zonder Schuld*) or *Anwijzigheid van alle Schuld* which has become a constant jurisprudence.⁶

The principle of *in Dubio Pro Reo* is used if the judge, based on the available evidence, still has doubts about the guilt or innocence of the defendant. If the judge still has doubts about the guilt or innocence of the defendant, then Article 183 of the Criminal Procedure Code applies which prohibits the judge from imposing a sentence if based on at least two valid pieces of evidence he does not obtain conviction that a crime has actually occurred and that the accused is guilty of doing so.⁷

2. Research Methods

The author in compiling this journal uses normative legal research methods, with a juridical-sociological approach, research specifications in the form of descriptive-analytical, data collection methods using primary data and secondary data.

3. Results and Discussion

3.1. Legal Position of Judge Confidence in Imposing Criminal Decisions Related to the Principle of Justice-Based In *Dubio Pro Reo*

Justice as a grant of equal rights but not equality. According to Aristotle's view, it is divided into two kinds of justice, namely "distributive" justice and "commutative" justice. Distributive justice is justice that gives each person a portion according to his achievements. Commutative justice is justice that gives

⁵Stiklif John Ridel Lowway et al, Position of Judges in the Proof of Indonesian Criminal Justice, *jm_lexcrimen*,+19.+STIKLIF+LOWAY+-+Jurnal.pdf., p. 6.

⁶Supreme Court Decision No. 2175/K/Pid/2007 in Wahyu Risaldi et al., Application of the Principles of *In Dubio Pro Natura* and *In Dubio Pro Reo* by Environmental Case Judges, *Konun Journal of Law Sciences*, Vol. 20 No.3 (2018) FH. Syah Kuala University, p. 550.

⁷Imron Sholeh et al.*Use of the In Dubio Pro Reo Principle by the Defendant as a Basis for Submission of Cassation Against the High Court's Decision in the Case of Fake Letters*, *GEMA Journal*, Year XXVII/50/February - July 2015,p. 1798.

the same amount to everyone without differentiating their achievements in this case related to the role of exchanging goods and services.⁸

Article 1 point 8 and 9 of the Criminal Procedure Code states that a judge is an official of the state judiciary who is authorized by law to adjudicate. Judging is a series of actions by judges to receive, examine and decide criminal cases based on the principles of being free, honest and impartial at court hearings in matters and according to the manner regulated by law. Judges are not only executors or mouthpieces of laws, but judges are expected to find laws that develop in society, so that the sense of justice given by judges to society can be realized.

The judge's decision is the crown and culmination of a case being examined and tried by the judge. Therefore, of course the judge in making a decision must pay attention to all aspects in it, starting from the need for caution, avoiding as little as possible inaccuracy, both formal and material to the technical skills to make it. If these negative things can be avoided, of course it is hoped that in the judge's self will be born, grow and develop an attitude or character of moral satisfaction if then the decision he makes can become a benchmark for the same case.⁹

The position of a judge in adjudicating and deciding on a legal case submitted by the Public Prosecutor (JPU) in a trial process is certainly inseparable from the capacity of the judge to use legal reasoning which is systematized by the enforcement of applicable laws and regulations, gather statements from witnesses, examine evidence, even if it is considered important to guarantee the judge's conviction, it is also deemed necessary to present expert testimony to provide legal opinion in court in accordance with the expertise they have.¹⁰

In practice, in court, we often encounter judges' decisions that do not fulfill a sense of justice and create order. We are often disappointed with judges' decisions that are too lenient or even acquit the accused. In certain cases the judge acquits or releases the defendant on the basis of the consideration that the defendant's actions are not a criminal act, the act has not been regulated by

⁸Ana Suheri, *The Form of Justice in Society From the Perspective of National Law, Morality: Journal of Legal Studies*, Vol. 4 No.1 (2018), FH. PGRI Palangkaraya University, p. 62.

⁹Geofani Indra David Palit et al, *The Role of Conviction In Rationale in the Indonesian Criminal Justice System*, *Journal of Lex Crimen*, Vol. X/No. 5/Apr/EK 2/2021, p. 151.

¹⁰Thaufik Amirullah et al, *Legal Considerations of Judges in Deciding Cases of Premeditated Murder with Motives of Traditional Ceremonial Offerings by the Noaulu Tribe of Central Maluku*, <https://media.neliti.com/media/publications/34956-ID>, p. 12.

law or because the judge has doubts about declaring an act to be a criminal act that deserves a penalty.¹¹

The judge's consideration is one of the most important aspects in making a decision in the hope of realizing the value of justice for the parties, so that the judge's consideration must be carried out carefully, properly and carefully. The basis for the judge's consideration is based on the facts obtained during the examination process at trial, namely the statements of witnesses, the testimony of the accused and evidence. The trial began with the reading of the indictment by the public prosecutor. It is this indictment of the public prosecutor that will later be proven through subsequent examinations.¹² So that the judge can make a decision with his conviction based on at least two legal pieces of evidence according to the law as stipulated in Article 184 Paragraph (1) of the Criminal Procedure Code.

With regard to the judge's conviction in proof, it must be formed on the basis of legal facts obtained from at least two valid pieces of evidence. The judge's conviction that must be obtained in the verification process to be able to impose a sentence, namely:¹³

1. The belief that a crime has been committed as charged by the public prosecutor, meaning the facts obtained from the two pieces of evidence (objective ones) form the judge's belief that the crime charged has actually occurred. In practice, it is stated that the crime charged by the public prosecutor has been legally and convincingly proven. Legally means using evidence that meets the minimum requirements, namely from two pieces of evidence. Confidence that a crime has been proven as charged by the prosecutor is not enough to convict, but two other convictions are also needed.

2. Confidence about the defendant who did it, is also a belief in something objective. These two beliefs can be called objective things that are subjective. Confidence is something subjective that judges get for something objective.

3. The belief that the defendant is guilty in terms of committing a crime can occur in two things/elements, namely the first thing that is objective is the absence of justification for committing a crime. In the absence of justification for the defendant himself, the judge believes the defendant's guilt. While the judge's belief about subjective matters is the judge's belief about the defendant's guilt

¹¹Poltak H. Situmorang, Application of the In Dubio Pro Reo Principle to Judge Considerations Decision Number: 423/PID.SUS/2015/PN.DUM Concerning Cases of Forest Encroachment, JOM Faculty of Law, University of Riau Volume VI Edition 2 July-December 2019, p. 1.

¹²Ibid., p. 8.

¹³Fachrul Rozi, System of Evidence in the Criminal Case Trial Process, Unaja Juridical Journal, Vol. 1 No. 2, December 2018, p. 26.

which is formed on the basis of matters regarding the defendant himself. That is, when committing a crime against the defendant there is no reason for forgiveness (*fait d'excuse*). It could be that the defendant did indeed commit a crime and the judge is sure about it, but after obtaining the facts concerning the mental state of the defendant during the trial, the judge has not formed his conviction about the guilt of the defendant in committing the crime.

Thus, the purpose of carrying out the evidentiary examination process in order to reach the judge's conviction as stipulated in Article 183 of the Criminal Procedure Code, is for the judge to make a decision based on his conviction which is supported by at least two valid pieces of evidence. The panel of judges carried out the verification process first with the aim of achieving the highest degree of justice and legal certainty in making a decision. So that proof is not only aimed at imposing a sentence based on the minimum requirements of two pieces of evidence and the judge's conviction that must be met, but can also acquit the defendant as in *Dubio Pro Reo* principle, if the judge is not sure of the defendant's actions because it is not supported by two valid pieces of evidence .

The ultimate goal of a judge's decision is to provide justice, the freedom of the judge in imposing a sentence is very much bound by this justice, because the judge may not use this freedom arbitrarily and freely. The freedom of the judge in its application must be limited by the values of justice. Essentially in the discourse of justice, that justice can be seen in two main meanings, namely in the formal sense which requires that the law applies in general, and in the material sense which demands that every law must be in accordance with the ideals of social justice.¹⁴

3.2. Application of the In *Dubio Pro Reo* Principle in the Indonesian Supreme Court Review Decision in Case Number 179 PK/Pid.Sus/2019¹⁵

The convict drg. PRIYO LANGGENG TRIBINUKO, MM bin RENOTO HADI WALOEYO was filed before the Corruption Court at the Surabaya District Court for being charged with the following subsidiary charges: Primair: The defendant's actions are regulated and punishable under Article 2 juncto Article 18 of Act No. 31 of 1999 concerning the Eradication of Corruption as amended and supplemented by Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code; Subsidair: The actions of the Defendant are regulated and punishable under Article 3 in conjunction with Article 18 of Act No. 31 of 1999 concerning the Eradication of Corruption as amended and supplemented by Act No. 20 of 2001.

¹⁴Frans Magnis Suseno in Geofani Indra David Palit et al, op.cit., p. 153.

¹⁵Supreme Court Decision Number 179 PK/Oid.Sus/2019.

The Supreme Court Review Panel of Judges in case Number: 179 PK/Pid.Sus/2019, gave an acquittal against drg. PRIYO LANGGENG TRIBINUKO, MM bin RENOTO HADI WALOEYO for not being proven legally and convincingly guilty of committing a crime as charged by the public prosecutor in his indictment. The acquittal or *vrijspraak* is related to the principle of no crime without fault which can only be held accountable if someone has previously committed a crime. Because the principle of accountability in criminal law is: not to be punished if there is no mistake (*geen straf zonder schuld*). This principle is not stated in written law but in unwritten law which also applies in Indonesia.¹⁶

Article 191 Paragraph (1) of the Criminal Procedure Code has determined that "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 was charged with has not been legally and convincingly proven, then the defendant is acquitted."

Meanwhile, in the Elucidation of Article 191 paragraph (1) of the Criminal Procedure Code, what is meant by "the actions charged against him are not legally and convincingly proven" is insufficient evidence according to the judge's assessment on the basis of evidence using evidence according to the provisions of this criminal procedural law. If a basic conclusion is drawn above, systematically the provisions of Article 191 paragraph (1) of the Criminal Procedure Code and its explanation determine that a free decision/*vrijspraak* can occur if:¹⁷

1. Based on examination in court hearings.
2. The guilt of the defendant for the act he was charged with was not proven legally and convincingly according to law because:
 - a. There is no evidence as determined by the negative minimum principle of proof according to law (negative *wettelijke bewijs* theory) as adhered to by the Criminal Procedure Code. For example, the judge during the trial did not find one piece of evidence in the form of the defendant's statement only (Article 184 paragraph (1) letter e of the Criminal Procedure Code) or only one piece of evidence (Article 184 (1) point d of the Criminal Procedure Code).
 - b. The panel of judges is of the opinion that the minimum principle of proof in accordance with the law has been fulfilled, for example, there are two pieces of evidence in the form of witness statements (Article 184 paragraph (1) letter a of

¹⁶Moeljatno, *Criminal Law Principles*, Rineka Cipta, Jakarta, p. 165.

¹⁷Mulyadi in Tri Nugroho Akbar Hendra, *Application of the In Dubio Pro Reo Principle in the Decision of the Supreme Court of the Republic of Indonesia in Criminal Cases*, *Reportorium Scientific Journal of Notary Science*, Vol. 10, No. 1, May 2021, p. 95.

the Criminal Procedure Code) and evidence of instructions (Article 184 paragraph (1) letter d of the Criminal Procedure Code). However, the panel of judges could not impose a sentence because they were not sure of the guilt of the defendant.

3. Therefore, the panel of judges handed down an acquittal (*vrijspraak*) to the defendant.

In order to give a sentencing decision, the judge must have confidence that the defendant is truly guilty of committing a crime. Because the judge cannot impose a sentence if the judge has doubts about the defendant's guilt. Curzon is of the opinion that in order to be able to hold someone accountable and therefore impose a sentence against him, there should not be the slightest doubt in the judge's self about the guilt of the accused. The birth of belief must be based on legal argumentation which is a form of reasoning involving legal logic (*sylogism*) in justifying rationality, logical consistency and doctrinal consistency to reach conclusions in deciding a problem or problem (case) being faced.¹⁸

Supreme Court Decision Number: 179 PK/Pid.Sus/2019, the panel of judges acquits the defendant drg. PRIYO LANGGENG TRIBINUKO, MM bin RENOTO HADI WALOEYO because the panel of judges had doubts that the convict was guilty of committing a crime as stated in the indictment/charge. These doubts can be seen in the legal considerations as follows:

1. Whereas it did not turn out that there was an intentional element of the Convict causing a loss to the State's finances, because since the appointment of the Convict, the Convict had filed an objection to the Regent of Ponorogo on the grounds that the Defendant was a dentist who did not have expertise in the construction sector but the Regent of Ponorogo did not respond to the objection of the Convict;
2. That it does not turn out that there is also a role for the convict in the process of disbursing funds for the dr. Hardjono Ponorogo because the Convict as the Head of the Technical Team is responsible for providing support to the Commitment Making Officer (PPK) in the form of input to the PPK that is technical in nature, and there is no evidence that the Convict received an illegal flow of funds in the activity;
3. Whereas the signature of the convict in the documents is of an administrative nature because the responsibility for the issuance of these documents rests with the PPK;

¹⁸Ibid.

The application of the in *Dubio Pro Reo* principle in the Supreme Court decision Number: 179 PK/Pid.Sus/2019 can be seen in the basis of the legal considerations of the panel of judges mentioned above, where it is clear that the Panel of Judges is of the opinion that the actions of the convict do not fulfill all the elements of a crime as the indictment of the Public Prosecutor. Thus the Panel of Judges was unable to declare the defendant's actions legally and convincingly proven. Therefore the judge acquitted the defendant based on Article 183 of the Criminal Procedure Code which prohibits the judge from imposing a sentence if based on at least two valid pieces of evidence he does not obtain conviction that a crime has actually occurred and that the defendant is guilty of committing it. Because if the judge hesitates in handling a case,

The application of the in *Dubio Pro Reo* principle is in line with the provisions of Article 183 and Article 182 Paragraph (6) of the Criminal Procedure Code. Article 183 of the Criminal Procedure Code requires judges who wish to pass criminal decisions to obtain conviction based on evidence that a crime has actually occurred and that it is the defendant who is guilty of committing it. Meanwhile, Article 182 Paragraph (6) of the Criminal Procedure Code stipulates that if the decision-making process in the deliberations of the panel of judges does not reach unanimous results, and a decision cannot be made based on the majority of votes (because the opinions of the members of the panel of judges vary), then the decision chosen is the opinion judge who is most favorable to the accused. So, in practice the in *Dubio Pro Reo* principle is used if the judge based on the available evidence still has doubts about the guilt or innocence of the defendant.¹⁹The application of the in *Dubio Pro Reo* principle can provide a sense of justice, both to the accused and to the people seeking justice.

3.3. Qualifications of Judge Confidence in Imposing Criminal Decisions Based on Legal Certainty

According to Gustav Radbruch, legal ideas as cultural ideas cannot be formal. On the contrary, it is directed at *rechtsidee*, namely justice. In order to fill this justice with concrete content, we must look at its finality. And to complete its justice and finality, certainty is needed. So for Radbruch, law has three aspects namely justice, finality, certainty. The aspect of justice refers to equal rights before the law. The aspect of finality refers to the purpose of justice, which is to promote goodness in human life. This aspect determines the content of the law. Whereas certainty refers to guarantees that the law (which contains justice and norms

¹⁹Imron Saleh et al, op. cit., p. 1797.

that promote goodness), actually functions as a rule that is obeyed. Demands for justice and certainty, according to Radbruch, are permanent parts of the law.²⁰

The judge in imposing criminal sanctions based on Article 5 Paragraph (1) of Act No. 48 of 2009 concerning Judicial Power, "Judges and Constitutional Justices are obliged to explore, follow and understand the values of law and the sense of justice that lives in society". Based on this article, judges before imposing criminal sanctions must explore and understand legal values and a sense of justice that exists in society.

Furthermore Article 6 Paragraph (2) states, "No one can be sentenced to a crime, unless the court because of a valid means of proof according to law, gets the conviction that someone who is considered to be responsible, has been guilty of the act he is accused of." .

After the Judge gets his conviction, the Judge can arrange his considerations as to whether the elements in the article are fulfilled and also includes regarding the severity of the sentence, which becomes the Judge's considerations, among others, whether the elements of the crime are fulfilled or not because if these elements are not fulfilled it can influencing judges in imposing criminal sanctions. There are 2 considerations that can be made by the Judge, namely juridical considerations, among others, the public prosecutor's indictment, witness statements, defendant statements, evidence, articles of criminal law regulations, and non-juridical considerations, among others, the background of the defendant's actions, the consequences of the defendant's actions, the condition of the defendant, the social and economic conditions of the defendant, the religious factor of the defendant.²¹

The judge's conviction must be formed on the basis of legal facts obtained from at least two valid pieces of evidence. Whereas there are three judge convictions that must be formed on the basis of using at least two valid pieces of evidence:²²

First, belief that a crime has been committed as charged by the public prosecutor. *Second*, the belief that the defendant was right to do so. *Third*, the judge believes that it is true that the defendant in committing the crime can be

²⁰Satjipto Raharjo, *Theory of Law from Various Spaces and Generations*, Genta Publishing, Yogyakarta, 2010, p. 130.

²¹Tri Guntur Julianto and R. Rahaditya, *Analysis of Judge Confidence in Imposing Criminal Sanctions Against Children as Perpetrators of the Crime of Theft*, *Journal of Adigama Law*, Volume 4, Number 1, June 2021, p. 1277.

²²Francisco Jero Runturambi, *Sentence Based on Two Evidences and Judge Conviction*, *Journal of Lex Crimen* Vol. 4/No. 4/June/2015, p. 168.

blamed on him. The three conditions for a judge's conviction that are formed are multilevel - cannot be separated - a unanimity, but can be distinguished.

First belief is a belief about the occurrence of a crime, meaning a belief in an objective event. The facts obtained from the two pieces of evidence (objective ones) form the judge's belief that the crime being charged has actually occurred. In practice, it is stated that the crime charged by the public prosecutor has been legally and convincingly proven. Legally means using evidence that meets the minimum requirements, namely from two or more valid pieces of evidence. Confidence that a crime has been proven as charged by the public prosecutor is not enough to convict the defendant, but two further convictions are also needed.

The second belief about the defendant who did it, is also a belief in something objective. These two beliefs can be called objective things that are subjective. Confidence is something subjective that judges get on something objective. However, regarding the third judge's conviction, it could be different from the first and second convictions.

On the third judge's conviction, namely the belief that the defendant is guilty of committing a crime; can happen to two things/elements, namely the first thing that is objective and the second thing/element. Confidence about objective matters is the judge's belief about the defendant's guilt which is formed on the basis of objective matters. These things that are objective are the absence of justification for committing a crime. In the absence of justification for the defendant himself, the judge believes the defendant's guilt. While the judge's belief about subjective matters, is the judge's belief about the defendant's guilt which is formed on the basis of matters regarding the defendant himself. That is, when committing a crime against the perpetrator there is no reason for forgiveness (*fait d'excuse*).

With regard to the qualifications of a judge's belief in imposing a criminal decision based on legal certainty, it must be formed on the basis of applicable law in Indonesia, not based on the mere conviction of a judge. The judge's conviction must be obtained from the facts of the trial based on at least two valid pieces of evidence as stipulated in Article 184 Paragraph (1) of the Criminal Procedure Code. The judge's conviction that must be obtained in the verification process to be able to impose a sentence, namely:

1. The belief that a crime has been committed as charged by the Public Prosecutor, means the facts obtained from the two pieces of evidence (objective ones) form the judge's belief that the crime charged has actually occurred. In practice, it is stated that the crime charged by the Public Prosecutor has been legally and convincingly proven.

2. Beliefs about the defendant who did it.
3. Belief that the accused is guilty of committing a crime,

If the judge, based on at least two valid pieces of evidence, does not obtain a conviction or there is doubt, the judge can apply the in *Dubio Pro Reo* principle.

4. Conclusion

If the judge still has doubts about the guilt or innocence of the defendant, then Article 183 of the Criminal Procedure Code applies which prohibits the judge from imposing a sentence if based on at least two valid pieces of evidence he does not obtain confidence that the crime has actually occurred and that the defendant is guilty of committing it, apply the principle of in *Dubio Pro Reo*. The application of the in *Dubio Pro Reo* principle can provide a sense of justice, both to the accused and to justice seekers who are spiritually accountable to God Almighty.

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