International Affairs and Global Strategy
ISSN 2224-574X (Paper) ISSN 2224-8951 (Online)
Vol.61, 2018

The Principle of Audi et Alteram Partem in Civil Dispute Settlement in District Court in Indonesia

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Abstract
The civil dispute settlement, in its practice is less sufficient to provide justice for the weak party. One of the legal principles in the Civil Procedure Law is *Audi et alteram partem* (hear from the other side/other party) as the basis of the rules and enforced by the judges in the civil judicial proceeding, in fact the process is long and the application of the principle is ignored, in addition in Law of the Republic of Indonesia Number 48 Year 2009 on Judicial Power has not regulated it and prevail execution of Civil Procedure Code from the Dutch colonial era (HIR and RBG). This study aims to find the essence of *Audi et alteram partem* therefore the government shall regulate in Law Number 48 Year 2009 concerning Judicial Power therefore the sanctions would be more assertive, and the civil judgment would utterly reflect justice, legal certainty and beneficial. This type of research is empirical law research with descriptive qualitative approach method. Data sources include primary and secondary data. Secondary data are grouped, created an overview namely jurisprudence inventoried and grouped to quest for its *ratio decidendi*. Primary data are examined for its completeness, grouped according to its type and compared to each other. Primary data are analyzed qualitatively hence resulted the description of the process of civil dispute settlement through proof, while the secondary data is analyzed by Statute, Conceptual, and Case Approach to conduct legal reasoning, legal interpretation and legal argumentation in logical systematic way, to discover the development of free proofing assessment theory. Conclusion of research, there is difference of interpretation regarding the essence of *Audi et alteram partem* among litigants. Judges must decide upon the essence of *Audi et alteram partem* namely justice, equity, equality of opportunity by virtue of the free authority granted by law. This research recommends: the government shall regulate the principle of *Audi et alteram Partem* in a single article in Law of the Republic of Indonesia Number 48 Year 2009 or Civil Procedure Law. Furthermore, the judge shall include reasons for the disregard/exclusion of the evidence of any party in judgment consideration thereby justice, equilibrium and legal certainty are expected by the parties can be achieved.
Keywords: *audi alteram partem*, civil dispute, district court, Indonesia.

I. Introduction

In accordance with the provision that the state of Indonesia is a state law (Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, one of important principles in the state of law shall be the guarantee of the exercise of the independent judicial powers free from other powers influence to enforce judiciary in order to uphold law and justice. More specifically set forth in the provision of Chapter IX Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and subsequently is set forth in Law of the Republic of Indonesia Number 48 Year 2009 on Judicial Power.

The principle of enforcement of an independent justice and free from other powers influence, relates to one of the principles in the Civil Procedure Law which is the principle of *Audi et alteram partem* which is exercised as the base and basis of a rule and enforced by judges in the judicial proceeding for civil dispute settlement. *Alteram partem* principle contains meaning, "hear from the other side or party".[1] In reality, it often causes problems because in its enforcement the judge often ignores the principle. Law of the Republic of Indonesia Number 48 Year 2009 has not regulated the principle of *Audi et alteram partem* and prevail of civil procedure law in Dutch colonial era, namely *Het Herzien Indonesisch Reglement* (HIR) for Java-Madura or *Rechtsreglement Buitengewesten* (RBG) for outside Java-Madura, hence the dispute settlement may experience obstacles and the process is prolonged. Until today, the rules used as guidelines are the code of ethics and judicial conduct guidelines namely Joint Decree (SKB) between the Chief Justice of the Supreme Court of the Republic of Indonesia (MARI) and the Chairman of the Judicial Commission of the Republic of Indonesia Number: 047/KMA/SK/IV/2009 - Number 02/SKB/P.KY/IV/2009 concerning Code of Ethic and Code of

[1] According to Henry Campbell Black in *Black's Law Dictionary*, 1990, Sixth Edition, St. Paul Minn, West Publishing co., p.1331, Audi alteram partem: *hear the other side; hear both side*.

Conduct of Judges *juncto* Joint Regulation between Supreme Court of the Republic of Indonesia and Judicial Commission of the Republic of Indonesia Number 02/PB/MA/IX/2012 – Number 02/PB/P.KY/09/2012 Concerning Enforcement of the Code of Ethics and Code of Conduct of Judge. Theoretically, the principle of *Audi et alteram partem* implemented by judges on civil litigation process, ranging from stage of the dispute entry to stage of execution of judgment.

Before the judge decides the dispute, he must go through the stage of proof, which is the most important stage to obtain the truth of a particular event, or legal relationship or the existence of a right as the basis of the lawsuit filed by the Plaintiff. Through the proofing stage, judge will assess the evidence presented by the parties by observing the principles prevailing in civil procedure law to provide fair judgment in accordance with procedural fairness and substantial justice.[1]

Whether this principle is also implemented in the execution of judgment (execution), it is necessary to conduct in-depth research and study of the final process of civil dispute settlement, whether it reflects justice, equilibrium and legal certainty as the basis of *Audi et alteram partem* principle. Based on the background of the problem described above, thereby problem is limited to the proofing process with the following legal issues: (1) is the proofing process in civil dispute already based on *Audi et alteram partem*? and (2) What are the characteristics of civil dispute judgment based on the principle of Audi *et alteram partem*?

This research will examine and analyze the legal principle as a guide in rule-making or policy, therefore the principle of law as the basis/main must exist in a rule to find justice and legal certainty. Specifically, this study aims: (1) to analyze and find the essence of *Audi et alteram partem* in proofing process of civil disputes, and (2) to analyze and find the characteristics of civil dispute judgment based on the principle of *Audi et alteram partem.*

It is expected that theoretically, the results of research can enrich the knowledge of Science of Law in particular: 1) to find the essence of *Audi et alteram partem* in the proofing process of civil disputes; 2) to analysis the "theory of free evidentiary judgment" in judges' judgment based on the principle of *Audi et alteram partem* (equitable, lawful and beneficial). Practically: As material of consideration for practitioners and academics in particular, and the government in general in order to formulate the rules/legislation in the field of the new Civil Procedure Law.

II. Research Method

Type of research and approach method

This research is an empirical law research with descriptive qualitative approach method. According to Mukti Fajar, it is a way of analyzing the results of research that produces analytical descriptive data, understand the data expressed informants in writing or oral and real behavior, which researched and studied as something intact.[2] Soerjono Sukanto writes, empirical legal research (sociological) which was studied in the beginning is the library materials, field research or toward society.[3]

Research Sites

To explore the problem/legal issue to be studied, therefore the researcher limits the location of Makassar city and surrounding areas bordering Gowa and Maros Regency, in this area there are District Court (PN) in each regency/city and Court of Appeal (PT) in each Province (South Sulawesi).

Subject of Research

This research focuses on the subjects as informants who provide information to the researcher in order to obtain the truth of the data conferred, in connection with the court proceeding based on the principle of *Audi et alteram partem*, among others: a) District Court judges b) Judge of Court of Appeal. Sample determination is based on a specific purpose (purposive sampling).

Data Source

Generally, in a study is distinguished between primary data/basic data and secondary data. This study will use the following data sources:

a. Primary data, in the form of materials obtained from the field, include the results of interviews and observation/supervision directly in the courts and practices that prevail to the judicial proceeding in the District Court;
b. Secondary data, in the form of books, official documents, research journals, legislation, court judgments and other sources related to the issue.

Data Collection Procedures

Data collection, both primary and secondary, is conducted by way of inventory and categorization of materials

[1] Procedural justice (fomal) is justice based on formal provisions (laws). Substantial justice is justice arranged in accordance with the rules of substantive law, regardless of the wrong procedure. See Black's Law Dictionary, Sixth edition, St. Paul Minn, West Publishing co. 1990, p.1428. It means that justice is obtained based on the context of the case/concrete event to the exclusion of formal procedural/non-procedural provisions gives a sense of justice.
[2] Mukti Fajar ND and Yulianto Achmad, 2010, *Dualistik penelitian hukum Normative dan Empiris*, Pustaka Pelajar, Yogyakarta, p.92
[3] Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, UI Press, Third Edition, Jakarta, p.52.

according to its type. For secondary data such as regulations relating to legal issues are grouped, created as summaries, to find the meaning implied in the rules and to seek relation in order to know the interrelations between the rules with each other either vertically or horizontally, therefore there will be coherence between the principle of *Audi Et alteram partem* in the judicial proceeding with the applicable regulations. Several court judgments relating to the application of *Audi et alteram partem* principle is also inventoried and grouped to find out its *ratio decidendi*. Data from interview (primary data) is examined for its completeness and grouped according to its type either written or unwritten by comparing each other.

Processing and Data Analysis

Primary data in the form of interview result either written or unwritten processed and analyzed qualitatively to be described therefore to obtain descriptive picture about civil dispute settlement through proofing which based on *Audi et alteram partem* principle, while secondary data in the form of legal materials are analyzed and studied by Statute Approach, Conceptual Approach and Dispute Approach to conduct legal reasoning, legal interpretation and legal argumentation in a logical and systematic way. Furthermore, primary and secondary data are studied, analyzed and compared to answer legal issues in order to obtain the findings theory or analysis of a theory.

III. Results and Discussion

The legal principle relates to rule of law, since the rule of law will change according to the development of its society, therefore it will be affected by time and place.[1] Rule of law is a value contained in rules and as a code of conduct. J.J.H. Bruggink in Arief Sidharta writes that the principle/principle of law as meta-rules relating to the rule of law in the form of rules of behavior.[2] Therefore it is necessary to create its norm and pour forth in regulation (legislation).

Judicial Proceeding and Proofing of Civil Dispute

The civil proceeding is a process of civil dispute settlement between the litigants (Plaintiff and Defendant) through the 3rd party (judge/court). The court is the District Court and the Court of Appeal under the General Judiciary (Article 1 paragraph (1) of Law of the Republic of Indonesia Number 49 Year 2009). The judge is a judge at the District Court and the judge at the Court of Appeal (paragraph 2).

Prior to the hearing, mediation is conducted under the Supreme Court Regulation (PERMA) of the Republic of Indonesia Number 1 Year 2008 jo PERMA Number 1 Year 2016 is practiced by mediator (single judge) and if the mediation does not succeed, the dispute will proceed through a judicial proceeding with Penal of Judges to examine the Plaintiff's lawsuit to the Defendant and the Defendant will answer with an exception or an answer in the lawsuit of the dispute. If there are no exceptions about the authority to execute, then proceed to pleading until the judge find the real (occured) dispute. Subsequent process is the proofing that requires the parties to submit evidence (Article 164 *Herziene Indonesisch Reglement* [Article 284 *Rechtsreglement Buitengewesten*]) and Book IV of *Burgerlijke Wetboek* (Article 1865).

John J. Cound cs. in his book "Civil Procedure: Case & Material" as quoted by Yahya Harahap[3] that the Law of Evidence in civil disputes is very complex and the complexity of the situation is more complicated. The law of evidence in the Civil Law Procedure is not *stelsel negative*.[4]

Milton C. Jacobs (Achmad Ali) wrote: "General rules of evidence are the same in equity as at law".[5] In sharing the burden of proof, the application of the principle of proportionality will help to justify the judges' judgment.[6] On a broader scale, the principle of "proportionality"[7] can be enforced to measure the overall balance of the burden of obligations contained in a contractual relationship.[8] According to A. Pitlo, a judge as an impartial third person must make a judgment, equal opportunity for both parties, dividing the burden of proof in such a way that the party burdened proof is lighter than the opposite if proven otherwise.[9]

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[1] Sudikno Mertokusumo, 1996, *Penemuan Hukum Sebuah Pengantar,* Liberty, Yogyakarta, p.34 (Hereinafter abbreviated as Sudikno Mertokusumo-III).

[2] Arief Sidharta, 1996, *Refleksi tentang Hukum*. Translated from J.J.H. Bruggink *(Rechts Reflection*). Citra Aditya Bakti. Cet. I. Bandung, p.120.

[3] M. Yahya Harahap, 2007, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Sinar Grafika, Fourth Edition, Jakarta, p.496.

[4] Positive stelsel means a system of evidence based on the limited evidences proposed by the litigants by law, and is not supported by judges' belief (preponderance of evidence), See Sudikno Mertokusumo, 1993, *Hukum Acara Perdata Indonesia*, Liberty, Fourth Edition, Yogyakarta, p.14 (Hereinafter abbreviated as Sudikno-I). Theoretically the judge seeks formal truth to protect private rights, but may also seek material truth if there is any doubt about the validity of the evidence and requires additional evidence. Instead the Negative Stelsel applied to the Criminal Procedure Code, because the judge sought was material truth.

[5] Achmad Ali, 2012, *Asas-Asas Hukum Pembuktian*, Kencana Prenamedia, I Edition, Jakarta, p.61.

[6] Agus Yudha Hernoko, 2009, "*Penyelesaian Sengketa Kontrak Berdasarkan Asas Proporsionalitas*", Jurnal Yuridika, Vol.24, Number 1, January-April, p.4.

[7] The principle of proportionality is the balance of the litigants rights and obligations to obtain equal opportunities proportionally in the verification process in the hearing.

[8] Y. Sogar Simamora, 2005, *Prinsip-Prinsip Hukum Kontrak dalam Pengadaan Barang dan Jasa oleh Pemerintah*, Universitas Airlangga, Surabaya, p.44.

[9] A. Pitlo, 1978, *Pembuktian dan Daluwarsa Menurut Kitab Undang-Undang Hukum Perdata Belanda*, translated by M. Isa Arief, Original

Judge in conducting of evidence based on three theories namely positive theory in the form of command, negative theory in the form of prohibitions and free theory that contains about freedom in practicing burden of proof process**.** From the results of the study can be presented in table 1 which in mainly illustrates that the essence of *Audi et alteram partem* is not implicit in proving civil dispute in dispute type of "plea", because the character of the type of single party plea (one party/applicant) and on this plea is rarely found legal action, as shown in the table indicated by a blank number (zero).

Tabel.1
List of Civil Disputes (Plea) to the District Court in Makassar Court of Appeal Region. Year 2014

No.	Name of District Court (PN)	Application							
		First Entry	Registered	Decided	Revoked	Last Entry	Appeal	Cassation	PK
1.	PN Makassar	79	346	286	21	118	0	0	0
2.	PN Maros	0	44	43	0	1	0	0	0
3.	PN Sungguminasa	0	32	30	0	2	0	0	0

Data source: the results of the civil disputes entry in application of the Supreme Court's Disputes Information System Republic of Indonesia (1 January-31 December 2014).

On the contrary, by seeing at table 2, it will be illustrated that the character of a civil dispute of type "lawsuit" indicates the essence of *Audi et alteram partem* implemented in the process of settlement dispute before the proceeding of the reading of the lawsuit, pleading, proofing by the parties until the judgment and the execution of the judgment. In the burden of proof process, the judges are authorized to share the burden of proof in a balanced way, to assess the evidence and to consider it properly, correctly and fairly and to apply the principle of benefit to society in general.

Table 2.
List of Civil Disputes (Lawsuit) to the District Court in Makassar Court of Appeal Region Year 2014

No.	Name of District Court (PN)	Lawsuit							
		First Entry	Registered	Decided	Revoked	Last Entry	Appeal	Cassation	PK
1.	PN Makassar	263	372	242	44	349	41	0	0
2.	PN Maros	14	26	28	3	9	15	3	0
3.	PN Sungguminasa	36	44	44	6	30	26	7	0

Data source: the results of the civil disputes entry in application of the Supreme Court's Disputes Information System Republic of Indonesia (1 January-31 December 2014).

From table 2 above, it can be inferred that in District Court of Makassar the number of civil lawsuit entry is greater than in District Court of Maros and Sungguminasa, due to the character/type of civil disputes entry is greater, if compared to District Court of Maros and Sungguminasa. From some of judgments that is “decided” and “revoked” left the final judgment in District Court Makassar as many as 349, in District Court of Maros as many as 9 and District Court of Sungguminasa as many as 26. This illustrates that there are still judgments that will/in the process such as the existence of legal action of appeal, cassation or PK which in its examined outcome revealing that judgment does not provide legal certainty, does not reflect the values of justice for one of the defeated parties and as a result of overriding the principle of *Audi et alteram partem* especially in the stage of proofing. The indicators are based on the balance theory, the parties are given equal rights and opportunities in the trial process so that justice can be achieved. In addition, based on the theory of benefit from Jeremy Bentham, the decision of the judge is expected to provide happiness and benefit to the parties or society in general. At this stage the judge conducts an assessment of evidence instruments pursuant to Article 164 of the HIR, supplementary information (local inspection: Article 153 HIR) which is always applied in cases of land disputes, and expert testimony (Article 154 HIR) as well as judges should consider it before deciding the case. The additional information is intended to assist the judge to make the case clear. Due to the principle of freedom of judges, the judge is easy to override it by non-binding purposes and not regulated in Article 164 HIR (284 RBG) on the evidence in the Civil Procedure Law namely letters, witness statements, presuppositions, confessions and oaths.

To answer the second legal issue of judgment based on the principle of *Audi et alteram partem*, it can be illustrated from civil lawsuit judgment analysis namely MARI Judgment No. 107PK/PDT/2008 dated September 11, 2008.

The parties in the dispute are: Plaintiff (I) named Peter Palimbong (late) and heirs, Plaintiff (II) B. Sampe Ruru (late) and heirs, Plaintiff (III) L. Liku, Plaintiff (IV) Ribka Rabanna , all of them are the heirs of Ne 'Kaso and Barrini, the late husband and wife. The Defendant are Defendant (I) Andang, Defendant (II) Soma,

Book: “Bewijs en Verjaring naar het Nederlands Burgerlijk Wetboek” Published by H.D. Tjeenk Willink & Zoon, Haarlem-Nederlands-1968, Intermasa, First Edition, Jakarta, p.48.

Defendant (III) Roba', Defendant IV So' Kasi and Defendant (V) Y Kandek.

Subject of Lawsuit: Married couple named Ne 'Kaso and Barrini' has died and inherited property of a plot of land called "Passikki'na Kaso" in Padongiring Village, Rantetayo Subdistrict, Tana Toraja Regency of South Sulawesi Province with boundaries: North: with the land of Pallai, Puppung and Papa. East: with Sumule and Bangga land. South: with Pong Bongi and paddy field of Kaso. West: with a cliff to paddy field of Kaso.

The Defendant have occupied the land by build a building, planting crops in the area of Passikki'na as many as 30,000 m^2 land without the permission of the Plaintiff, conducted by unlawful act.

Judgment and legal considerations. Judgment of District Court Number 23/Pdt.G/2001/PN.Mkl. Makale dated September 4, 2001: In exception: decline the Defendant's exception. In lawsuit: to decline the Plaintiff's claim entirely; to punish Plaintiff to pay court fees. In this dispute the Plaintiff was defeated, subsequently submit an appeal. Judgment of Makassar Court of Appeal Number 414/Pdt/2002/PT Mks Date March 7, 2002: to receive appeal; to cancel the District Court judgment, adjudicate insufficiently: In the exception: to decline the Defendant's exception. In lawsuit: to grant the Plaintiff's claim entirely; to declare the right to land disputes are Plaintiff and descendants of Ne' Kaso and Barrini. In this matter the Plaintiff as a winning party and subsequently the Defendant as defeated party in cassation.

Judgment of the Supreme Court Number 905K/Pdt/2003 date 12 April 2005: Granting the cassation request of the Defendant/Cassation of Appelant; Canceling the judgment of Court of Appeal; to adjudicate insufficiently; to decline the Defendant' exception; Declining the Plaintiff's claim entirely; Punishing the Cassation of Respondent (Plaintiff) to pay the court fees. Because the Plaintiff is on the defeated side, then subsequently filed a legal action namely Judicial Review (PK) accompanied by a Judicial Review Brief comprised judge's judgment as a real *dwaling* (mistake): 1) in the first lawsuit letter was comprised by incomplete boundaries of land dispute as the basis lawsuit, therefore it is equipped and repaired by the Plaintiff. 2) At the first hearing the lawsuit has been equipped and revised by their Proxy (attached) and questioned by the judge in the hearing whether the revised lawsuit letter will be changed? 3) In the judgment of the District Court level, Court of Appeal and Supreme Court turns out the change of the lawsuit is not included in the judgment and is not considered.

Opinion of Supreme Court in cassation level that the Passikki'na Kaso with Tanetena Pong Bongi was directly adjacent, in fact the revised lawsuit letter was not included in the judgment either in District Court, Court of Appeal or Supreme Court (cassation level). In this dispute, it can be questioned by the Plaintiff, how could the Supreme Court be able to argue such statement if in its judgment did not include a revised lawsuit? This matter is then considered by Supreme Court that even if the appeal plea is granted on the basis of the lawsuit, the judgment cannot be executed because the matters that can be executed by law is a judgment not a lawsuit.

Consideration of the judgment of the Court of Appeal may be concluded: 1) the land owned by Kaso (the grandmother of the Plaintiff); 2) the land owned by Pong Bongi (the grandmother of the Defendant); 3) the two borders are marked with border markings called Betteng; 4) above the land of Betteng is planted with betung,aur, and parring.

Supreme Court considerations: Land occupied by the appellants of the cassation (Defendant) does not include in Passik'na location but include being in Tanetea Pong Bongi location which has been occupied for generations and limited by *betteng* planted with betung, aur and parrin. The Court is wrong and mistakenly assesses the evidence because it is not its authority but the authority of *judex facti*. The Supreme Court only takes into account the witnesses of the Defendant and profitable to Defendant' favor, while older witnesses of the Plaintiff (more than 70 years old) who are more trustworthy, are not assessed and are not considered and the assessment of evidence is the jurisdiction of *judex facti*. From the legal considerations of the Court of Appeal it is been correct and proper to be taken over by the Supreme Court as a legal consideration of Judicial Review (PK) and its judgment is to grant the PK request for half, in this dispute the Plaintiff / PK Appellant is the winning party.

Analysis

According to the author, opinion and consideration of the Supreme Court is inappropriate and does not reflect the essence of justice and equilibrium because it only considered and favored one of the parties namely the Defendant therefore the legal principles are violated as the *Audi alteram partem's* mandate. In fact, after being examined by the Plaintiff's power, it is found that the 2nd letter of the lawsuit which is a revision of the lawsuit is not included in the judgment of the District Court, Court of Appeal and Supreme Court although in the Court Record has been put forth on the improvement/alteration of the lawsuit in the dispute of the boundaries of land dispute namely: North: adjacent to the land of Pallai Pappang and Papa. East: adjacent to the land of Sumule and Bongga. South: adjacent to the land of Passikki'na Kaso. West: adjacent to cliff - Kaso paddy fields

Thereby only half of land of Passikki'na Kaso is the object of the dispute and only the southern part has different boundary namely southern that is directly adjacent to Passik'na Kaso as an inseparable unity, therefore that basis the Local Examination results are also inappropriate. On the Defendant's side also filed a Cons of Brief of Judicial Review in response to the Judicial Review reason/brief of the Judicial Review appellant

(Plaintiff/Litigant).

An analysis of the Supreme Court judgment (which is already legally binding) relation with *Audi et alteram partem* that irregularities is occured in terms of the exclusion of improvement lawsuit ruling by District Court, Court of Appeal and Supreme Court that can be interpreted as judge does not hear the information submitted by one party (Plaintiff) moreover, otherwise the statements of the Plaintiff's witnesses are not heard and overrode, not even barely considered therefore the values of justice and the equilibrium of the parties have been ignored. These values are the philosophy of the Audi et alteram partem, therefore the judge decides on justice, and determines which side will be won according to valid and correct evidence so that legal certainty is fulfilled. The judge's authority to assess the evidence is based on the freedom of judges provided for in the law and the importance of the principle of benefit, as the judge's decision must be accountable to the public.

Based on judge's consideration of the proposed Judicial Review brief, the Plaintiff (Judicial Review appellant) and the proof is reasoned and based on the law then the winning party is the Plaintiff therefore the Plaintiff is entitled to the land of the dispute. Hence the judgment based on *Audi et alteram partem* is a judgment based on the proceeding process from starting from dispute registered to the District Court to the execution of the judgment namely the calling of parties, answer and reply, pleading, proofing process, conclusion, judgment and execution of judgment. At the stage of the proofing process, there is the judge's authority with the "free proofing assessment theory" namely the theory based on the judge's freedom to assess the evidence presented by the litigants based on the authority granted by law so that at that stage it is the most possible stage for the occurrence of irregularities. The provisions on the instruments of evidence are provided in Article 164 of the HIR (284 RBG) and the judge is bound by that article, while the Expert's Testimony (Article 154 HIR) and Local Examination (Article 153 HIR) free judge (unbound) it is easy for judges to set it aside.

IV. Conclusion

The process of proving civil cases has been based on the principle of Audi et alteram partem by giving opportunity to both the litigants, Litigant and Defendant to prove in advance of the trial. Litigant proves the suit/claim, while the Defendant proves the answer/denial of the lawsuit. In fact, there are still cases that are in the process of assessing and considering the evidence of each party that lit unfounded Audi et alteram partem due to the freedom and authority of judges provided by law.

The character of a civil dispute judgment based on *Audi et Alteram Partem* is the process of completion by implementing the legal principle of "hear the parties" starting from dispute entry or registered to the court until the execution of the judgment. Initially the principle of *Audi et alteram partem* was applied only to civil disputes ("special" principle), but in fact is developed into a "general" principle applicable to all matters both in the public and administrative courts (TUN), Religious Court.

V. Recommendation

The government should immediately regulate the principle of "hear the two sides" (*Audi et Alteram Partem*) in "one article" on the Judicial Power Law or the new Civil Procedure Law which will replace the HIR (RBG) Proposal article: "Judge to examine, hear and decide by hearing the parties in a fair and balanced manner". It should be that the evidences set forth in Article 164 of HIR originally amounted to 5 types namely letters, witnesses, presuppositions, confessions, oaths and by adding local examinations and expert testimony, all amounted to 7 types or the government immediately to enact a new Civil Procedure Code to replace HIR/RBG.

Audi et alteram Partem's judgment should be characterized and contained the value of equality/balance of private rights and the value of justice, because essentially the legal principle is to bind the judge in deciding disputes therefore the judgment will reflect justice, legal certainty and benefit in society, that is by including reasons for overriding the evidences of the defeated party hence the judge's judgment is more objective.

References

Ali, Achmad 2012. *Asas-Asas Hukum Pembuktian Perdata*. Kencana Prenada Media Group. First Edition. Jakarta.

Hernoko, Agus Yudha, 2009, "Penyelesaian Sengketa Kontrak Berdasarkan Asas Proporsionalitas", *Jurnal Yuridika*, Vol.24, Number 1, January-April, Surabaya.

Campbell Black, Henry 1990. *Black's Law Dictionary*. Sixth edition. St. Paul Minn. West Publishing co.

Fajar ND, Mukti and Yulianto Achmad, 2010. *Dualistik Penelitian Hukum Normative dan Empiris*, Pustaka Pelajar, Yogyakarta.

Garner, Bryan A, (ed.) 2009. *Black's Law Dictionary*. Tenth Edition. West Publishing co. St. Paul MN.

Harahap, M. Yahya, 2007. *Hukum Acara Perdata-Tentang Gugatan, Persidangan, Penyitaan, Pembuktian & Putusan Pengadilan*. Sinar Grafika. Cet. VI. Jakarta.

Mertokusumo, Sudikno, 1996. *Penemuan Hukum,* Liberty, Yogyakarta.

Mertokusumo, Sudikno, 1999. *Mengenal Hukum.* Liberty. Fourth Edition. Yogyakarta.

Mertokusumo, Sudikno, 2006. *Hukum Acara Perdata Indonesia*. Liberty. Seventh Edition. Yogyakarta.
Muhammad, Abdulkadir, 2000. *Hukum Acara Perdata Indonesia*. Citra Aditya Bakti. Bandung.
Pitlo, A. 1978. *Pembuktian dan Daluwarsa,* translated by M. Isa Arief. Intermasa. Jakarta.
Rawls, John, 2011. *Teori Keadilan,* book translation: "*A Theory of Justice*" by Uzair Fauzan. Pustaka Pelajar. Yogyakarta.
Sidharta, Arief, 1996. *Refleksi Tentang Hukum*. Translated by J.J.H. Bruggink *(Rechts Reflection*). Citra Aditya Bakti. Bandung.
Soekanto, Soerjono, 1986. *Pengantar Penelitian Hukum*. UI Press. Jakarta.
Soepomo, 2002. *Hukum Acara Perdata Pengadilan Negeri*. Pradnya Paramita. Jakarta.
Subekti, 1989. *Hukum Acara Perdata,* Bina Cipta. Bandung.
Simamora, Y. Sogar, 2005, *Prinsip-Prinsip Hukum Kontrak dalam Pengadaan Barang dan Jasa oleh Pemerintah*, Universitas Airlangga, Surabaya.