

The Effectiveness Of Criminal Judges Virtually (Online) During The Covid-19 Pandemic In Court

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Abstract

The purpose of this study is to examine and analyze the effectiveness of the virtual criminal justice process in the Covid-19 pandemic conditions on the workings of the criminal justice system in the courts.. This study uses a normative juridical approach. Based on the research, it can be concluded that the practice of online trial, known in the Supreme Court as e-Litigation, will not be effective if Act No. 8 of 1981 concerning Criminal Procedure Code (KUHAP) does not change. The principle of the presence of the defendant (in absentia) in the Criminal Procedure Code is contrary to the practice of e-litigation, if e-litigation is applied to criminal cases. Meanwhile, the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 does not allow criminal cases to be examined through the e-Litigation application. These things cause the implementation of online court proceedings in Indonesia to not be effective, where regulatory developments are stagnant and there is disharmony between regulations. If the stakeholders do not immediately address, then this problem will cause quite complicated and complex problems in the future. On the other hand, conducting online trials is the only way out during the Covid-19 pandemic so that the settlement of criminal cases under the Supreme Court does not stop.

Keywords: Criminal Justice; Virtual; Covid-19; Court.

1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes the applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.¹ One of the fields of law in order to maintain order and security for Indonesian citizens is criminal law.² Criminal law reform is an effort to orientate and reform criminal law in accordance with the central sociopolitical, socio-philosophical and sociocultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia.³

¹ Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Bloro), Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>

² Saviera Chntyara, 2018, Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan, Faculty of Law, UMS, Surakarta, p.2.

³ Barda Nawawi Arief, 2010, Bunga Rampai Kebijakan Hukum Pidana, Jakarta: Kencana, p.29.

As social beings, humans are always related to one another, because humans cannot live alone. In life there are norms that are very influential in determining the behavior of members of the community. These norms are made for the sake of order and harmony in common life, and among these norms there are legal norms.⁴In this case, criminal law includes public law, and criminal law studies the norms or rules of criminal and criminal law. One of the purposes of studying criminal law is so that legal officers can apply the rules of criminal law appropriately and fairly.⁵ And the function of criminal law in general is to regulate and organize people's lives in order to create and maintain public order.⁶ Therefore, whoever violates the provisions in the criminal law of Act No. 1 of 1946 concerning the Criminal Code (KUHP) and fulfill the elements stipulated in the provisions, it can be subject to criminal sanctions.⁷

In the criminal justice mechanism, the judicial process is highly demanded in adjusting to the digitalization system with the development of the current era. The world has entered the Industrial Revolution Era 4.0, where the process of computerization and digitization occurs and has affected almost all aspects of human life, including the legal system. At the level of legal practice, especially in the judiciary, the digitalization process is familiar. The best known evidence of the digitization process in the judiciary is the Virtual Civil Courts, in Indonesia we know it as an integrated unit in the e-court system.⁸ The year 2020 which was marked by the outbreak of the Covid-19 Pandemic and the insistence on Revolution 4.0, was not only a witness to the development and maturation of digital technology applied to the world of science alone.⁹ Moreover, the development of the use of technology to the era of the Internet of Things (IoT) has also dragged all dimensions of people's lives from trade, transportation, industry, health, education to social.¹⁰ This also appears to be symptomatic of the dimension of law enforcement (rechttoepassing or rechtshandhaving) that appears in the virtual courtroom through teleconference facilities.

To prevent Covid-19, the Supreme Court (MA) has issued a Circular Letter No. 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention

⁴ Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

⁵ Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora), *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

⁶ Haris Wahyu Sunarno and Akhmad Khisni, Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court), *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>

⁷ Adam Chazawi, 2002, *Pelajaran Hukum Pidana Bagian 1*, Jakarta: PT. Raja Grafindo Persada, p.15.

⁸ Lederer Fredric I, 1999, *The Road to the Virtual Courtroom? A Consideration of Today's and Tomorrow's, High Technology Courtrooms*, Virginia, Faculty Publications, William and Mary Law School Scholarship Repository, pp.800-801

⁹ Tien Y.Ting, Daniel Shu Wei, Lawrence Carin, Victor Dzau & Wong, *Digital Technology and COVID-19, Nature medicine*, Vol.26 No. 4, 2020, pp.459-461.

¹⁰ Winarsih, Maya Indriastuti, & Khoirul Fuad, 2020, *Impact of Covid-19 on Digital Transformation and Sustainability in Small and Medium Enterprises (SMEs): A Conceptual Framework*. *CISIS 2020: Complex, Intelligent and Software Intensive Systems*, pp.471- 476

of the Spread of Corona Virus Disease (Covid-19) within the Supreme Court and Judicial Bodies Under It (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was later amended by SEMA No. 2 of 2020 and amended again by SEMA No. 3 of 2020. The regulation stipulates that judges and judicial officers can carry out their official duties by working at home or their place of residence (work from home / WFH). The WFH includes the implementation of the case examination trial agenda which is carried out electronically via teleconference. The policy to conduct trials electronically is strengthened by the existence of a cooperation agreement between the Supreme Court, the Attorney General's Office,

However, if abstracted, the virtual trial still leaves a problem, therefore in this paper the problem can be classified into three types: First, the juridical-procedural problem, this is based on the view that the legal umbrella that currently exists is not yet established. regulated in Act No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP); Second, the juridical-substantive problem, this specifically refers to the application of virtual courts for the types of cases that do not allow trial in absentia in ordinary examinations and brief examinations. Which matters, apart from being regulated in the Criminal Procedure Code Article 154 paragraph (4) of the Criminal Procedure Code, is also a principle in criminal law. Third, the technical-empirical problem, which refers to the real conditions in the field,

Based on the above background, this study aims to determine and analyze the effectiveness of the virtual criminal justice process in the Covid-19 pandemic condition on the workings of the criminal justice system in the courts.

2. Research Methods

This study uses a normative juridical method, with the specification of the research is descriptive analytical. The type of data used in this study is secondary data, namely: covering primary legal materials, namely laws and regulations relating to the criminal justice system and online judicial process policies, secondary legal materials and tertiary legal materials. The data collection technique in this research is literature study. After the field data was collected, it was analyzed using qualitative descriptive analysis.

3. Results and Discussion

In accordance with the provisions of the procedural law, namely Article 64 of the Criminal Procedure Code (KUHAP), it is stated that the defendant has the right to be tried in a court session which is open to the public. From the provisions of the article, what is meant by "trial hearing" is a trial process that is held in a court building and is open to the public. Thus, the defendant has the right to be presented before the court by the Public Prosecutor on the orders of the Panel of Judges to then be examined, tried, and seek the right to his defense.

KUHAP itself does not explicitly define what and how the form and mechanism of court proceedings are. However, from some of the provisions of the articles in the Criminal Procedure Code, it can be understood simply that the trial is carried out in a

court building, or it can also be carried out outside the court building for certain criminal acts or certain circumstances. The trial in court in accordance with the provisions of the Criminal Procedure Code is carried out classically or face-to-face, led by the Panel of Judges assisted by the Substitute Registrar, and attended by the Public Prosecutor and the Defendant and their Legal Counsel.¹¹

The holding of long-distance online criminal court hearings or teleconferences in the midst of the current global Covid-19 pandemic is the most appropriate form of breakthrough and must continue to be perfected by the Supreme Court, because the slow pace of legal reform in Indonesia (Expired Law) will violate the fulfillment of the guarantee of legal rights for each individual who are in conflict with the law. In addition, the online trial mechanism also needs to be regulated in more detail and permanently with a higher legal umbrella, so that the trial process is truly ideal and does not harm the rights of the defendant in presenting his defense.

On March 23, 2020, the Supreme Court issued Circular Letter Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 (COVID-19) within the Supreme Court of the Republic of Indonesia and the Judicial Bodies Under it. This letter evaluates and revokes the Circular Letter of the Secretary of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Adjustment of the Work System of Judges and Judicial Apparatuses in Efforts to Prevent the Spread of COVID-19 in the Indonesian Supreme Court and the Judicial Bodies Below, which was issued on March 17, 2020.

In order to work from home, all service tasks, including the implementation of court administration, use the e-Court application. Meanwhile, for the implementation of the trial using the e-Litigation application. This application has been implemented within the Supreme Court since the issuance of Perma Number 1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically which came into effect on August 19, 2019.

SEMA RI Number 1 of 2020 regulates Court Trials during the COVID-19 pandemic. Although the Supreme Court applies e-Litigation to replace conventional trials that present the parties in the courtroom, not all trials can be conducted with e-Litigation. The trial of criminal cases in the District Court, military crimes in the Military Court and *jinayat* in the Religious Courts will still be carried out specifically if in that case the Defendant is being detained, while it is not possible to extend his detention period again during this pandemic. However, in cases where it is legally possible for the defendant to have his detention period extended, the trial will be postponed until the end of the pandemic period. Specifically regarding cases whose examination period is limited by the provisions of the applicable legislation, Judges are authorized by SEMA RI Number 1 of 2020 to be able to postpone their examination hearings even though they have exceeded the examination grace period regulated by statutory provisions. The judge issued an order to the Substitute Registrar to record in the Minutes of the Session the extraordinary circumstances, namely the COVID-19 Pandemic.

¹¹ Wahyu Iswantoro, Online Criminal Trials, MA's Quick Response to the Covid-19 Pandemic, SELISIK Journal, Volume 6, Number 1, June 2020, p. 59

Based on SEMA RI Number 1 of 2020, the e-Litigation application is only intended for trials of civil cases in the District Court, Civil Religion in the Religious Courts and State Administration in the State Administrative Court. This is because these cases do not involve the accused who is being detained. Therefore, the Supreme Court does not apply e-Litigation only to criminal cases, because it involves defendants who are currently in detention. Criminal cases will continue to be held conventionally by presenting the parties in the courtroom in accordance with the COVID-19 prevention health protocol procedures.

Based on data released by the Supreme Court, currently (until 18 May 2020) a total of 824 cases have been conducted using the e-Litigation application. General Courts throughout Indonesia are currently serving 382 active cases through the e-Litigation application, or about 47% of the total active cases in the Supreme Court's e-Litigation service. Meanwhile, Religious Courts throughout Indonesia are currently serving 412 active cases through the e-Litigation application, or about 50% of the total active cases in the Supreme Court's e-litigation service. The State Administrative Court only served 30 active cases or about 3% of all active cases in the Supreme Court's e-litigation service.¹²

The lack of application of e-litigation is directly proportional to the regulations governing e-litigation itself. Based on a search conducted by the author, the regulations governing e-litigation only exist in the Supreme Court Regulation Number 1 of 2020 and SEMA Number 1 of 2020. Even the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2020 concerning changes to the SEMA Number 1 of 2020, does not regulate or mention e-Litigation.

Two months after the promulgation of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19) and after the issuance of Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency Corona Virus Disease 2019 (COVID-19) -19) as of March 31, 2020, the implementation of the online trial has not been fully implemented. Internal constraints within the judiciary are human resources, infrastructure, financing and the provision of an adequate internet network. From external factors, namely from the community, mentally the people in Indonesia are still not ready and able to face the digitalization process. The use of smartphones, and social media applications is already massively used in various circles of society.

On April 13, 2020, the Supreme Court was represented by Dr. Prim Haryadi, SH, MH (Director General of the General Judiciary Agency), the Attorney General's Office represented by Sunarta (Young Attorney General for General Crimes) and KEMENKUMHAM RI represented by Nugroho (Plt. Director General of Corrections, Ministry of Law and Human Rights) signed the Cooperation Agreement Number 402/DJU /HM.01.1/4/2020, Number KEP.17/E/Ejp/4/2020 and Number Pas-06.HH.05.05 of 2020 concerning the Implementation of Trials Through Teleconference,

¹² Tim Pokja Laporan Tahunan Mahkamah Agung Republik Indonesia, 2018, Laporan Tahunan 2018 Mahkamah Agung Republik Indonesia: Era Baru Peradilan Modern Berbasis Teknologi Informasi, Jakarta, Mahkamah Agung, p. 73

in response to the COVID-19 outbreak which is from day to day increasingly worrying. This is done so that the legal process can continue. If criminal cases are still limited not to be carried out through e-litigation, it will hamper the completion of criminal cases this year. With the signing of this Cooperation agreement, the implementation.

However, the implementation of the trial via teleconference in the future will cause problems of legal harmonization. With the amendment of Act No. 8 of 1981 concerning the Criminal Procedure Code (referred to as the Criminal Procedure Code) which regulates the Criminal Justice System in Indonesia, it is difficult to hold trials through Teleconference. The Cooperation Agreement between the three institutions does not have a strong enough legal basis and even contradicts higher legislation in this case is the Criminal Procedure Code, PP No. 27 of 1983 jo. PP No. 58 of 2010 jo. PP Number 92 of 2015 concerning the Implementation of the Criminal Procedure Code. Article 154 of the Criminal Procedure Code although it is not explicitly stated that the defendant must be present at the trial. However, from the seven paragraphs in Article 154 of the Criminal Procedure Code, it is stated that the Defendant should be present and not allowed to be represented in the trial based on a summons by the Public Prosecutor (Article 152 paragraph (2) of the Criminal Procedure Code). KUHAP does not allow judicial proceedings in absentia in ordinary examinations and brief examinations, this can be seen in Article 154 paragraph (4) of the Criminal Procedure Code.¹³

The principle of the presence of the accused is commonly known in special crimes such as corruption and economic crimes. The principle of the presence of the accused has other names, namely *ius singular*, *ius speciale*, or *bizonder strafrecht*.¹⁴ In addition, the principle of the presence of the defendant is related to the principle of direct and oral examination of judges through teleconference, financed by each institution that signed the agreement.¹⁵

The application of video conferencing in the examination of cases in court (especially criminal cases) in Indonesia is actually not a new thing. Before the COVID-19 pandemic the use of video conferencing had been used in several cases.

But the use limited only for hear testimony from witnesses. This is as regulated in Article 9 Paragraph (3) of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims, where a witness can hear his testimony directly through electronic means accompanied by an authorized official. . The use of video conferencing aims to protect the security of witnesses from various threats or to facilitate the provision of information without having to be present in the courtroom. Meanwhile, other parties such as judges, public prosecutors, defendants and their lawyers are still required to be present in the courtroom based on the provisions of the legislation on the use of video conferencing.

¹³ Aristo MA Pangaribuan, Arsa Mufti, and Ichsan Zikry, 2017, Pengantar Hukum Acara Pidana Di Indonesia, Jakarta: Raja Grafindo, p. 245

¹⁴ Lilik Mulyadi, 2012, Hukum Acara Pidana Indonesia: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, dan Putusan Pengadilan, Bandung: PT. Citra. Aditya Bakti, p. 16

¹⁵ Andi Hamzah, 2009, Hukum Acara Pidana, Jakarta: Sinar Grafika, p. 25

4. Closing

The practice of Online Trial, known within the Supreme Court as e-Litigation, will not be effective if Act No. 8 of 1981 concerning the Criminal Procedure Code (KUHP) does not change. The principle of the presence of the defendant (in absentia) in the Criminal Procedure Code is contrary to the practice of e-litigation, if e-litigation is applied to criminal cases. Meanwhile, the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 does not allow criminal cases to be examined through the e-Litigation application. These things cause the implementation of online court proceedings in Indonesia to not be effective, where regulatory developments are stagnant and there is disharmony between regulations. If the stakeholders do not immediately address, then this problem will cause quite complicated and complex problems in the future. With the issuance of Circular No. 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 (Covid-19) within the Supreme Court of the Republic of Indonesia and the Judicial Bodies Under it, Cooperation Agreement No. 402/DJU/HM. 01.1/4/2020, No. KEP.17/E/Ejp/4/2020 and No. Pas-06.HH. 05.05 of 2020 concerning the Implementation of Trials Through Teleconference, it is hoped that the government will also immediately revise Act No. 8 of 1981 concerning the Criminal Procedure Code by adjusting current and future conditions.

5. References

Books

- [1] Adam Chazawi, 2002, *Pelajaran Hukum Pidana Bagian 1*, Jakarta: PT. Raja Grafindo Persada
- [2] Andi Hamzah, 2009, *Hukum Acara Pidana*, Jakarta: Sinar Grafika
- [3] Aristo M.A. Pangaribuan, Arsa Mufti, dan Ichsan Zikry, 2017, *Pengantar Hukum Acara Pidana Di Indonesia*, Jakarta: Raja Grafindo
- [4] Barda Nawawi Arief, 2010, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana
- [5] Lederer Fredric I, 1999, *The Road to the Virtual Courtroom? A Consideration of Today's and Tomorrow's, High Technology Courtrooms*, Virginia, Faculty Publications, William and Mary Law School Scholarship Repository
- [6] Lilik Mulyadi, 2012, *Hukum Acara Pidana Indonesia: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, dan Putusan Pengadilan*, Bandung: PT. Citra Aditya Bakti
- [7] Saviera Chntyara, 2018, *Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan*, Fakultas Hukum, UMS, Surakarta
- [8] Winarsih, Maya Indriastuti, & Khoirul Fuad, 2020, *Impact of Covid-19 on Digital Transformation and Sustainability in Small and Medium Enterprises (SMEs): A Conceptual Framework*. CISIS 2020: Complex, Intelligent and Software Intensive Systems

Journal

- [1] Haris Wahyu Sunarno and Akhmad Khisni, Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court), *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>
- [2] Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora), *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>
- [3] Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora), *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>
- [4] Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, *Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>
- [5] Tien Y.Ting, Daniel Shu Wei, Lawrence Carin, Victor Dzau & Wong, Digital Technology and COVID-19, *Nature medicine*, Vol.26 No. 4, 2020
- [6] Tim Pokja Laporan Tahunan Mahkamah Agung Republik Indonesia, 2018, Laporan Tahunan 2018 Mahkamah Agung Republik Indonesia : Era Baru Peradilan Modern Berbasis Teknologi Informasi, Jakarta, Mahkamah Agung
- [7] Wahyu Iswantoro, Persidangan Pidana Secara Online, Respon Cepat MA Hadapi Pandemi Covid-19, *Jurnal SELISIK*, Volume 6, Nomor 1, June 2020