

# The Substantial Form of Legal Products for the Implementation of Criminal Justice during the Covid-19 Pandemic

Tri Margono Budisusilo\*) Amin Purnawan\*\*) and Siti Ummu Adillah\*\*\*)

\*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [trimargono3@gmail.com](mailto:trimargono3@gmail.com)

\*\*) & \*\*\*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

## Abstract.

*The purpose of this paper is to examine and analyze the study and analysis of the substantial form of legal products for the implementation of criminal justice during the Covid-19 pandemic. This research used a normative juridical method. The conclusion of this research is the Supreme Court issued Circular Letter 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. 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 within the Supreme Court of the Republic of Indonesia and the Judicial Bodies Below, which was issued on March 17, 2020.*

*Keywords: Criminal; Justice; Pandemic; Substantial.*

## 1. Introduction

The 1945 Constitution of the Republic of Indonesia affirms that the Republic of Indonesia is a state based on law. As a state of law, Indonesia always upholds human rights. Always guarantee that every citizen has the same position in law and the government is obliged to uphold the law with no exceptions.<sup>1</sup> The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes applicable legal provisions. The rule of positive law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.<sup>2</sup> One of the fields of law in order to maintain order and security for Indonesian citizens is criminal law.<sup>3</sup>

Criminal law reform is an effort to orientate and reform criminal law in accordance with the central sociopolitical, socio-philosophical and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia.<sup>4</sup> In life there are norms that are very influential in determining the behavior of members of the community. These norms are made

---

<sup>1</sup>Bambang Waluyo. (2002). *Pidana dan Pemidanaan*. Jakarta, Sinar Grafika, p.33.

<sup>2</sup>Nur Dwi Edie W and Gunarto. (2020). *Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>

<sup>3</sup>Saviera Chntyara. (2018). *Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan*. Surakarta, Fakultas Hukum, UMS, p.2

<sup>4</sup>Barda Nawawi Arief. (2010). *Anthology of Criminal Law Policy*, Jakarta: Kencana, p.29.

for the sake of order and harmony in common life, and among these norms there are legal norms.<sup>5</sup>

Law is divided into two, namely private law and public law. Private law regulates individual interests, while public law regulates public interests. In 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.<sup>6</sup> And the function of criminal law in general is to regulate and organize people's lives so that public order can be created and maintained.<sup>7</sup>

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 them as an integrated unit in the e-court system. Apart from Indonesia, there are also many countries in the world that have also experienced developments in the field of law, where they have implemented digitalization in their judicial systems, which includes the United States of America. Long before entering the Industrial Revolution Era 4.0, the United States had been familiar with Virtual Civil Courts since 1998, where trials had used video conference media and were familiar with electronic filling and case management software.<sup>8</sup> So for the United States, the Courts process which is carried out online is no longer a foreign thing to them.

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.<sup>9</sup> More than that, the development of the use of technology to the Internet of Things (IoT) era has also dragged all dimensions of people's lives from trade, transportation, industry, health, education to social fields.<sup>10</sup> This also seems to be symptomatic of

---

<sup>5</sup>Supriyono. (2020). *Criminology Study of Crime of Fencing the Stolen Goods*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

<sup>6</sup>Sumaryono and Sri Kusriyah. (2020). *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

<sup>7</sup>Haris Wahyu Sunarno and Akhmad Khisni. (2020). *Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court)*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>

<sup>8</sup>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, p.800-801

<sup>9</sup>Tien Y.Ting, Daniel Shu Wei, Lawrence Carin, Victor Dzau & Wong. (2020), *Digital Technology and COVID-19*, Nature medicine, 26 (4), p. 459-461.

<sup>10</sup>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, p.471- 476

the dimension of law enforcement (*rechoepassing or rechtshandhaving*) that appears in the virtual courtroom through teleconference facilities.

For the sake of implementing social distancing, it is not possible for the Court Institution to hold a trial according to pre-arranged standards, because it can cause crowds of people, which causes the risk of spreading the COVID-19 virus to be higher. This causes court institutions to have to rely on technology to support the continuity of legal services to justice seekers. Maximizing the utilization of the e-court system that has been running since the issuance of Perma No. 1 of 2019 has now become a solution for court institutions under the Supreme Court to continue to provide legal services even though justice seekers are not present in court directly.<sup>11</sup>

To prevent Covid-19, the Supreme Court (MA) has issued Circular No. 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease (Covid-19) in 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 apparatus can carry out their official duties by working from 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.

Based on this background, the purpose of this paper is to examine and analyze the substantial form of legal products for the implementation of criminal justice during the Covid-19 pandemic.

## 2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. This study uses a writing specification with a descriptive method with the process of solving a problem investigated by describing or describing the current state of the subject or object of research based on the facts that appear or as they are.<sup>12</sup> The data used for this research is secondary data. To obtain data in this paper, secondary data collection methods were used which were obtained from literature books, laws, presidential decrees, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

## 3. Results and Discussion

*The criminal justice system* basically an open system. An open system is a system in which the Movement achieves goals both in the short-term (resocialization), medium-term (crime prevention) and long-term (social welfare) goals are influenced by the community environment and fields of human life, the

---

<sup>11</sup>Anggita Doramia Lumbanraja. (2020). *Perkembangan Regulasi dan Pelaksanaan Persidangan Online di Indonesia dan Amerika Serikat Selama Covid-19*. Jurnal Crepido, Fakultas Hukum, Universitas Diponegoro, 2 (1), p.47

<sup>12</sup>Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24

criminal justice system in its movement will always experience interfaces (interactions, interconnections, interdependencies) with their environment in levels, society, economy, politics, education and technology, as well as the subsystems of the criminal justice system itself.<sup>13</sup>

The State of Indonesia is a State of Law, this is regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the affirmation of the contents of this constitution means that all aspects of life in society, state and government must be based on law. Human relations with humans are also regulated by law, everyone who commits a crime will be punished according to the rules of criminal law. In its implementation, before being sentenced or sentenced, the person suspected of committing a crime will be tried in court. The trial process is based on applicable legal principles such as: "Examinations are carried out directly and verbally, the defendant is obliged to be present at the trial and so on.<sup>14</sup>The stages and procedures for trial of criminal cases in district courts are generally regulated in the Criminal Procedure Code (Act No. 8 of 1981 concerning Criminal Procedure Code)".

The administration of justice in Indonesia is under the direct supervision of the Supreme Court of the Republic of Indonesia, which already has the authority regulated by laws and regulations. Legislation itself according to M. Solly Lubis is the process of making state regulations, in other words the procedure starts from planning, discussing, ratifying and determining and finally promulgation of the relevant regulations.<sup>15</sup>

According to A. Hamid S. Attamimi quoting Juridish woordenboek, the word statutory (*wetgeving*) has two meanings. First, the process of forming state regulations from the highest type, namely laws (*wet*) to the lowest ones generated by attribution or delegation of statutory power (*wetgevendemacht*). Second, the whole product of the state regulations, therefore, the legislation is the whole regulation related to the law and is sourced from the legislative power. According to Bagir Manan, if it is related to its content, the statutory regulations are the entire written legal rules made by the authorized institution which contain rules of behavior that are abstract and binding in general.<sup>16</sup>

According to Ni'matul Huda, if a lower statutory regulation contradicts the one above, then the said regulation can be demanded to be canceled or null and void (*van rechtswege nietig*). Act No. 15 of 2019 concerning Amendments to Act No. 12 of 2011 concerning the Establishment of Legislations states in the explanation of Article 7 paragraph (2) that in this provision what is meant by "hierarchy" is the hierarchy of each type of Legislation which is based on the

---

<sup>13</sup> Romli Atmasmita. (1996). *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*, Jakarta, Bina Cipta, p. 9

<sup>14</sup> Rasyid Ariman, Syarifuddin Pettanase dan Fahmi Raghieb. (2007). *Sistem Peradilan Pidana Indonesia*. Palembang: Unsri Press, p. 7.

<sup>15</sup> M. Solly Lubis. (1995). *Landasan dan Teknik Perundang-Undangan*. Bandung: PT. Mandar Maju, p. 31

<sup>16</sup> Winata. (2018), *Rekonstruksi Hierarki Peraturan Perundang-undangan di Indonesia*. Negara Hukum, 9 (1), p. 237

principle that lower laws and regulations must not conflict with higher laws and regulations.<sup>17</sup>

In addition to having the main function of adjudicating cases, the Supreme Court also has several other functions including regulating functions. The regulating function is attributed to the Supreme Court by Article 79 of Act No. 3 of 2009 concerning the Second Amendment to Act No. 14 of 1985 concerning the Supreme Court. Based on this function, the Supreme Court can further regulate matters needed for the smooth running of the judiciary if there are matters that have not been sufficiently regulated in the law as a complement to fill in legal deficiencies or vacancies needed for the smooth administration of justice.

However, at this time (the Covid-19 pandemic period) causes trials cannot be carried out directly but by way of trial of criminal cases electronically (online). As we know the world is facing the Corona virus or also known as COVID-19 which is the cause of diseases ranging from the common cold to more severe diseases such as respiratory syndrome (MERS-CoV) and severe acute respiratory syndrome (SARS-CoV) which can cause death. The National Disaster Management Agency (BNPB) has decided to extend the status of a certain state of emergency for an outbreak of a disease caused by the Corona virus in Indonesia based on BNPB Decree No. 13.A of 2020.

To strengthen the legal umbrella for the trial of criminal cases electronically, the Supreme Court (MA) has issued Supreme Court Regulation No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically (Perma Online Criminal Session). This regulation regulates the procedures for conducting trials of criminal cases, both criminal cases within the scope of the general court, the military, and online *jinayat*.

This Supreme Court regulation was prepared by the Pokja based on SK KMA No. 108/KMA/IV/2020 concerning the Administrative Working Group and the Trial of Criminal Cases in Courts Electronically. This online criminal trial regulation is a follow-up to the Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Police, the Directorate General of Corrections at the Ministry of Law and Human Rights regarding the Implementation of Trials through Teleconference in the Context of Preventing Covid-19 on April 13, 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 No. 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

---

<sup>17</sup>Husma. (2017). *Kewenangan Pengaturan Mahkamah Agung (Kajian Yuridis Terhadap Peraturan Mahkamah Agung Nomor 4 Tahun 2016 Tentang Larangan Peninjauan Kembali Putusan Praperadilan)*. Syiah Kuala Law Journal, 1 (1), p.122



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 No. 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 existence of extraordinary circumstances, namely the COVID-19 Pandemic.

Based on SEMA No. 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 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 preventive health protocol procedures.

Case administration and trial are carried out in accordance with the procedures and procedures regulated in procedural law due to distance, natural disasters, disease outbreaks, other conditions determined by the government as an emergency, or other conditions determined by the panel of judges with a determination that it is necessary to conduct an electronic trial. The Supreme Court regulation has regulated the procedure for its implementation, so that a higher legal umbrella has been created and is expected to provide justice, with the regulations that underlie the implementation of online criminal case trials during this pandemic.

#### **4. Conclusion**

The Supreme Court regulations still try to prioritize the implementation of face-to-face criminal cases as usual according to the applicable laws and regulations, but in certain circumstances, the trial must be conducted online, Article 1 paragraph (16) of Supreme Court Regulation Number 4 of 2020 concerning Administration and the Electronic Trial of Criminal Cases in Courts explains that certain conditions are conditions that do not allow the process of delegating cases, administration of cases and trials to be carried out in accordance with the procedures and procedures stipulated in procedural law due to distance, natural disasters, disease outbreaks, other circumstances determined by the government as a state of emergency, or other conditions determined by the panel of judges with a determination that it is necessary to conduct an electronic trial. In an effort to realize an effective electronic trial process, the government needs to distribute infrastructure facilities equally to judicial institutions and other institutions that participate in adequate electronic court hearings in order to reduce obstacles that may occur during the trial. As the realization of a fast, simple and low-cost judiciary as well as making it easier for justice seekers in the post-Covid-19 period, the electronic (online) trial process can still be carried out for

regular examinations, but with infrastructure improvements, especially the network.

## 5. References

### Journals:

- [1] Anggita Doramia Lumbanraja. (2020). *Perkembangan Regulasi dan Pelaksanaan Persidangan Online di Indonesia dan Amerika Serikat Selama Covid-19*. Jurnal Crepido, Fakultas Hukum, Universitas Diponegoro, 2 (1)
- [2] Haris Wahyu Sunarno and Akhmad Khisni. (2020). *Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court)*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>
- [3] Husma. (2017). *Kewenangan Pengaturan Mahkamah Agung (Kajian Yuridis Terhadap Peraturan Mahkamah Agung Nomor 4 Tahun 2016 Tentang Larangan Peninjauan Kembali Putusan Praperadilan)*. Syiah Kuala Law Journal, 1 (1)
- [4] Nur Dwi Edie W and Gunarto. (2020). *Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>
- [5] Supriyono. (2020). *Criminology Study of Crime of Fencing the Stolen Goods*. Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>
- [6] Sumaryono and Sri Kusriyah. (2020). *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>
- [7] Tien Y.Ting, Daniel Shu Wei, Lawrence Carin, Victor Dzau & Wong. (2020), *Digital Technology and COVID-19*, Nature medicine, 26 (4)
- [8] Winata. (2018), *Rekonstruksi Hierarki Peraturan Perundang-undangan di Indonesia*. Negara Hukum, 9 (1)

### Books:

- [1] Bambang Waluyo. (2002). *Pidana dan Pemidanaan*. Jakarta, Sinar Grafika
- [2] Barda Nawawi Arief. (2010). *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana
- [3] 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
- [4] M.Solly Lubis. (1995). *Landasan dan Teknik Perundang-Undangan*. Bandung: PT. Mandar Maju
- [5] Rasyid Ariman, Syarifuddin Pettanase dan Fahmi Raghieb. (2007). *Sistem Peradilan Pidana Indonesia*. Palembang: Unsri Press
- [6] Romli Atmasasmita. (1996). *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*, Jakarta, Bina Cipta

- [7] Saviera Chntyara. (2018). *Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan*. Surakarta, Fakultas Hukum, UMS
- [8] Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia
- [9] 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