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PROBLEMS OF VIRTUAL CRIMINAL TRIALS IN INDONESIA'S CRIMINAL JUSTICE SYSTEM

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Abstract

The purpose of writing this article is to examine criminal trials conducted virtually, especially during the mass Covid-19 pandemic in Indonesia. These changes have implications for the implementation of the principles and norms of criminal procedural law. The results show that virtual criminal trials face problems of legitimacy and communication to find material truth. Virtual trials are not regulated in Indonesian criminal procedural law so that there is a legal vacuum. The legality of virtual trials is regulated by Supreme Court Regulation Number 4 of 2020 concerning Electronic Trial of Criminal Cases. Substantially, this regulation contradicts many principles and norms of criminal procedural law. The virtual trial of criminal cases requires the readiness of facilities and human resources in mastering technology. This readiness is very important in relation to efforts to find material truth. Communication between judges, prosecutors, lawyers, defendants and witnesses through virtual space in the trial stages is closely related to the principles of good justice. Therefore, it requires the readiness and ability of the parties to use technology as well as a strong regulatory framework.

Keywords: *Challenges, Trial, Criminal Cases, Virtual, Criminal justice system.*

Introduction

The blueprint of the 2010-2035 strategic plan of the Supreme Court of Indonesia, places the function of information technology in Judicial Reform. The strategic role of technology as an instrument in realizing modern judicial services. One form of service is the organization of trials conducted with technology. Virtual trials are a necessity in line with technological developments. Technological advances have implications for the dimension of space which has become wider. The dimension of space no longer has a physical sense only, but extends to include virtual space. The virtual reality demands its own culture, behavior and understanding. Virtual reality can unite the various dimensions of the trial process in a virtual space. Virtual trials are a demand and the conditions of the Covid-19 pandemic are a factor accelerating the process of modernizing judicial institutions. The judicial process is often faced with emergency conditions, both health, disaster and various other forms of urgency.

Emergency conditions that often occur in the trial process cannot be an excuse to delay the judicial process. In the context of handling criminal cases, the utilization of technology by judicial

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bodies also has implications for criminal law reform related to criminal policy. The utilization of technology requires the renewal of legal instruments that must accommodate values and various interests that pay attention to the psychological and political aspects of the state (Berry, 2023) related to legal reform. The implementation of virtual criminal trials is regulated in Supreme Court Regulation (Perma) No. 4 of 2020. The regulation has substantially changed the trial process of criminal cases regulated in the Criminal Procedure Code as a procedural law that must not be violated. Based on the description above, this research will examine the problems and legality of virtual criminal trials. The discussion is conducted within the framework of a criminal justice system that ensures the criminal justice process is civilized, progressive and truly democratic (Armstrong, 2009). This framework faces legal challenges associated with the regulation of justice within the framework of an integrated criminal justice system. Therefore, the challenges are not only faced by the courts, but also other justice subsystems, namely the police, prosecutors, correctional institutions and the community.

Virtual Trial of Criminal Cases

Virtual trial of criminal cases is a form of judicial innovation to facilitate justice-seeking parties in litigating in court. During the Covid-19 pandemic, 379 district courts or 99.21% implemented virtual criminal trials. The use of technology is able to break through the limitations and obstacles of the trial. The parties communicate via video conference Rowden, Wallace, Tait, Hanson, and Jones (2013) from other places/regions and even across countries (McGoldrick, Rowe, & Donnelly, 2004). The trial process is conducted through video conferencing and the parties meet in a virtual room. Communication between judges, prosecutors, police, defendants and other parties communicate through the virtual court room in a trial process. Terry, Johnson, and Thompson (2010) In the context of virtual trials, it is very important to define procedural legal processes so that criminal objectives can be realized. These criminal objectives are related to the rights and legal rules of the criminal justice system and justice procedures (Galligan & Process, 1996).

The trial policy of criminal cases must virtually comply with the legal principles and norms of criminal procedure law. These legal principles and norms are related to the operation of the functions of criminal procedure law which includes three functions namely; (a) seeking and finding the truth; (b) giving decisions by judges and (c) implementing decisions (Hamzah, 2010). The ultimate goal of these three functions is the realization of order, peace, justice and welfare in society (Supriyono, Sholichah, & Irawan, 2022) The role of information technology must be able to realize the main values of the judiciary as stipulated in the constitution and judicial power law, which include independence of judicial power, integrity and honesty, accountability, responsibility, openness, impartiality, and equal treatment before the law. The trial of criminal cases is virtually regulated in Perma No. 4 of 2020. The criminal procedure law does not yet

regulate virtual criminal trials. The regulation was issued within the framework of a special situation, namely the Covid-19 Pandemic. In the Perma, it is formulated through the diction of "certain circumstances". This is formulated in the provisions of the general provisions of Article 1 number 16

"Certain circumstances are circumstances that do not allow the process of case submission, case administration or trial to be carried out in accordance with the procedures and procedures stipulated in the Procedural Law due to distance, natural disasters, disease outbreaks, other circumstances determined by the government as a state of emergency, or other circumstances that according to the Panel of Judges by stipulation need to conduct Electronic Trials."

Certain circumstances as formulated in the Perma should be regulated in the Criminal Code so as not to cause juridical debate. Substantially, the existence of the regulation will change the trial process which should be subject to the provisions of the criminal procedural law. The Perma is an emergency procedure that functions as a trial guideline procedure to overcome the emergency conditions of the Covid-19 pandemic. The aim is to prevent or reduce further or greater losses. Therefore, when the Covid-19 pandemic ends, the regulation will lose its binding force.

The substance of the Perma regulation changes the trial procedures regulated by the Criminal Procedure Law (Law No. 1 of 1981). The changes include: a) court information; b) electronic courtroom; c) electronic domicile; d) electronic case administration; e) electronic trial; f) definition of trial; g) witness testimony and h) electronic documents. These changes have legal consequences and require an adjustment process for the human resources involved in a trial. The definition of a virtual criminal trial is a series of processes to examine, try and decide the case of the defendant by the court which is carried out with the support of information and communication technology, audio visual and other electronic means. ^[1]This definition is different from the definition formulated in the Criminal Procedure Code. Broadly speaking, it can be stated that the parties are located in different places and are connected to the court's electronic system. In court practice, the position of the parties can be explained as follows;

(1) Judges, substitute clerks, and prosecutors shall convene in the courtroom. Meanwhile, the defendant shall attend the hearing from the detention center where the defendant is detained, accompanied by/without legal counsel.

(2) The judge, substitute clerk shall convene in the courtroom, while the public prosecutor shall attend the hearing from the Office of the Public Prosecutor, and the defendant, accompanied/without being accompanied by his/her legal counsel, shall attend the hearing from the detention center where the defendant is detained. This implies physical separation between the parties and has an impact on the communication process in exploring the material truth of the legal events being examined. In addition, virtual trials face vulnerability and interference with

psychology and individual inability to master/operate technology. trust (2006) In organizing online trials, Susskind (2019) argues that every step towards online courts must ensure that the justice system remains accessible, transparent, adequately resourced, and appropriately balanced. In this regard, facilities and infrastructure are needed, both in quality and quantity. The availability of the aforementioned facilities and infrastructure has an impact on the guarantee and protection of rights, especially the right to a fair and proper trial (Susskind, 2019).

The implementation of virtual criminal trials faces crucial problems related to facilities and infrastructure. The availability and adequacy of facilities, both in quantity and quality, have an impact on the communication process of the examination. The results of research in the district courts of Lampung Province show that the answers of respondents, including judges, prosecutors, clerks, lawyers, and detention officers, mostly stated that the availability of facilities and infrastructure for criminal trials was not good as presented in the following table;

Table Respondents' assessment of the availability of virtual trial facilities and infrastructure (N=60)

No	Instance	Respondents' condition and assessment		
		Very good	Good enough	Not good
1	District court	9	18	33
2	prosecutor	5	19	36
3	Detention centers/ prisons	1	20	39
4	Police Detention Center	0	17	43

Source; questionnaire data processed

This answer can be understood because the covid-19 situation was beyond expectations. The availability of facilities and infrastructure both in quantity and quality cannot be met in a sudden situation. Procurement of goods requires a budget that must be carried out through a planning process. Changing the form of the courtroom requires a transformation process that involves the readiness of the parties involved in the virtual trial. The courtroom is related to the trial protocol and security. These two things are sub-parts of the judicial system that are related to public trust, authority and dignity of the judiciary. Public perception of the judiciary and the authority of the judiciary is a tangible manifestation of the state and services of the judiciary as a place to realize legal certainty and justice. Judicial authority begins when a person enters the court area. In court, judges, court clerks, prosecutors and legal counsels use their respective court attributes in accordance with the applicable procedural law. Article 2 Paragraph (3) of Perma no. 20 of 2020, stipulates that in the trial all participants must be seen on the screen brightly and clearly and with

a clear voice. All parties must comply with the trial and security protocols in Perma 5 of 2020 concerning Trial Protocols and Security in the Court Environment.

The process of a virtual-based trial must pay attention to the formal and material principles of criminal procedure law. Violation of the flow of the trial has the consequence of "null and void". Virtual-based criminal justice must be constructed in accordance with the criminal procedure law with the composition of the trial starting from the reading of the indictment, exception, response, proof, prosecution, defense process and decision. Examinations conducted before a judge in a court room with the authority and sacredness of the court room are very different when conducted in front of a monitor screen. Therefore, not all stages of the trial can be conducted virtually. Based on interviews with judges, prosecutors, court clerks, lawyers and detention center staff, the stages of the trial that can be conducted virtually/online or offline are presented in the following table.

Table 2: Stages of Criminal Case Hearings That Can Be Conducted Virtually

No	Stages	Online	Offline
1	Reading of the indictment	+	
2	Exception	+	
3	Interlocutory ruling	+	
4	Witness examination		+
5	Expert witness examination	+	
6	proof		+
7	Examination of the defendant		+
8	prosecution	+	
9	Memorandum of Defense	+	
10	prosecutor's answer	+	
11	The defendant's answer	+	
12	Verdict		+

Source: Questioner data

The trial stages of criminal cases must be able to realize quality decisions through the process of upholding law and justice by the judicial body. The trial stage must be able to guarantee and

protect the parties in line with the values of certainty, expediency and justice. The trial stage must guarantee the right to a fair and proper trial in full/optimum enjoyment). (Anisah & which occurred during the Order regime, 2020) The implementation of virtual trials must not have an impact on the fulfillment of the right to a fair trial.

Problems of legality in criminal trials

The use of technology in criminal trials has been debated. The main arguments in favor of video conferencing technology in court proceedings are time and cost savings (Ward, 2015). Arguments against virtual trials include the removal of the personal element of a court appearance, the weakening of the relationship between the accused and his or her counsel (Dean, 2010). Claims have been made by counsel that arrangements to communicate with clients via video conferencing jeopardize the privacy of counsel's conversations, and have removed the important element of in-person meetings and discussions as well as the mental element of the offender. While virtual presence can overcome distance, it undermines the conversational and organizational processes that occur in the courthouse between defendants and probation staff (Ridout, 2010).

Online criminal trials have the potential to cause juridical problems, due to conflicts with articles of legislation such as Article 11 and Article 12 of Law Number 48 of 2009 concerning Judicial Power which states that all parties must be present in person where the trial must be attended by 3 Judges assisted by a Registrar, then it is stated that the Public Prosecutor and the Defendant are also required to be present:

Table 1. Juridical issues of party attendance in online trials

No.	Legislation	Substance	Problematic
1.	Article 11 and Article 12 of Law No. 48/2009 on Judicial Power.	The trial was attended by 3 judges assisted by a court clerk, the public prosecutor was obliged to attend and the defendant was obliged to attend.	All Parties must be present in person.
2.	Article 154 of Law Number 8 Year 1981 of the Criminal Procedure Code	requires the physical presence of the defendant in the courtroom	<ul style="list-style-type: none"> ▪ Whether virtual attendance is acceptable. ▪ What if there are objections from the parties
3	Article 196 paragraph (1) of Law	In principle, the decision hearing of a criminal	<ul style="list-style-type: none"> ▪ Whether virtual attendance is acceptable.

	Number 8 Year 1981 of the Criminal Procedure Code	case must be physically attended by the defendant.	<ul style="list-style-type: none"> What if there are objections from the parties
4	Article 159 jo Article 160 jo Article 167 of Law Number 8 of 1981 on the Criminal Procedure Code.	In principle, it requires the witness to be physically present in the courtroom.	<ul style="list-style-type: none"> Whether virtual attendance is acceptable. What if there are objections from the parties
5	Article 153 of Law Number 8 of 1981 Criminal Procedure Law	In principle, court proceedings must be open to the public and decisions may be null and void if the provisions of this Article are violated.	<ul style="list-style-type: none"> Whether the virtual room can also be open to the public so that everyone can follow along virtually. How does the trial protocol regulate it.
6	Article 85 of Law Number 8 Year 1981 of the Criminal Procedure Code	Local circumstances make it impossible for a district court to hear a case, so that another district court can be designated or appointed to hear the case.	<ul style="list-style-type: none"> What are the limits and benchmarks of conditions that make it impossible to hold a trial. Is there a judge's authority to make a determination?
7	Article 227 paragraph (2) of Law Number 8 Year 1981 of the Criminal Procedure Code	In principle, the officer carrying out the summons and notification must personally meet and speak directly with the person summoned.	Whether the practice of virtual calls (through apps) is acceptable.
8	Article 230 paragraphs (1) and (2) of Law Number 8 Year 1981 of the Criminal Procedure Code	Judges, Public Prosecutors and Legal Counsels Court sessions are held at the courthouse in the courtroom, with the provision of court	<ul style="list-style-type: none"> Whether virtual courtrooms are acceptable. Whether virtual courtroom protocols can support good justice. Whether courtrooms in prosecution, police and

		clothes and their respective attributes.	detention centers are up to standard.
9	Article 181 of Law Number 8 Year 1981 of the Criminal Procedure Code	In principle, the judge is "obliged" to show the defendant all evidence.	Failure to fulfill this obligation due to online trials may reduce the objectivity of judges in deciding cases.
10	Article 184 of Law Number 8 Year 1981 of the Criminal Procedure Code	That valid evidence is witness testimony, expert testimony, letters, instructions and testimony of the defendant	Whether the virtual evidentiary process can be carried out sufficiently to test the tools and evidence.

Virtual examination is vulnerable to rejection from the parties, both the public prosecutor and the defendant represented by an advocate. This rejection is because the Criminal Procedure Code does not regulate the examination / trial of criminal cases can be carried out virtually. The use of audio-visual technology in the criminal trial system can be interpreted as an effort to support and realize the principle of speedy justice. The fundamental question that then arises is whether the trial can realize the value of justice (Raine & Willson, 1993). Changes to the trial system must be subject to procedural law (KUHAP) which contains principles and norms of a legal process that must be obeyed and must not be violated. Violation means denial of the rights of the accused (Galligan & Process, 1996). This model underpins criminal litigation across common law jurisdictions and is seen as a key characteristic of 'rule of law' systems (Bingham, 2011). The question therefore arises as to whether some of the changes that have been made to the criminal trial obligations of lower courts undermine the principles of procedural due process. A virtual trial is a process of examining and adjudicating a case by a court that is conducted with the support of technology. Online trial methods are seen as the future of summary trials (Garside & Ford, 2016). The policy and regulatory framework for criminal justice virtually cannot be separated from the framework of an integrated criminal justice system. Therefore, the regulatory framework governing the trial of criminal cases must pay attention to three layers, namely (a) the layer of society as a sub-system with its position as a seeker of justice. (b) layers related to the determinants of the implementation of judicial functions which include economic aspects; technological aspects; educational aspects and political aspects, and (c) layers of law enforcement institutions consisting of police, prosecutors, courts and correctional institutions.

Conclusion

The organization of criminal trials virtually requires a criminal law reform policy, especially policy procedural law. The policy is then implemented in the legal development agenda, which at least

touches on aspects: (a) improving the substance of criminal procedural law related to juridical problems in regulating the principles of norms for the implementation of virtual justice: (b) resource readiness and availability of facilities and infrastructure that support technology-based virtual trials. The readiness and availability of facilities and infrastructure include court institutions, prosecutors' offices, detention centers and the police. (c) improving affordability and public access to the operation of judicial functions and processes.

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