

Management of Criminal Cases Online Trials to Realize the Principles of Fast and Low Cost Justice System at the Tangerang District Court

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ABSTRACT. Covid-19 pandemic did not only affected the Indonesian economy but also another area of justice was also affected. The period of understanding of the defendant which is limited by regulations becomes a challenge for the court so that the trial continues without violating the law. This study aims to determine the management of criminal case trials online. The method used in this research was empirical juridical by combining the field of criminal procedure law with management. The sample used was the Tangerang District Court, with supporting data from the District Prosecutor's Office in Tangerang and Penitentiary in Tangerang. The results showed that the criminal case trial in Tangerang District Court had used an online application through Zoom Meeting by way of Judges, Legal Counsels, Prosecutors, witnesses in court while the defendant was in Penitentiary. This system is less effective because if the network is hampered in one place, the process of weeding is very disturbed.

Keywords: management, online trials, court.

1. INTRODUCTION

Since the Covid-19 pandemic began to spread around the world in the beginning of 2020, many countries in the world have implemented large-scale social restrictions and even territorial quarantines. Indonesia is one of countries not implementing this. But, that does not mean it has no impact on the world of legal practice. Even though it does not impose a regional quarantine, Indonesia continues to implement social restrictions, making it impossible for the Court Institution to hold trials according to predetermined standards, because it can cause crowds of people, which causes the risk of spreading the covid-19 virus to be higher. This problem causes the judiciary to rely on technology to support the sustainability of legal services for justice seekers. Maximum 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 courts under the Supreme Court to continue to provide legal services even though justice seekers are not present in live courts. The use of this e-court ultimately leads to the importance of implementing an online Virtual Court without the need to bring parties in the judge's room.

Through the e-Court and e-Litigation policies, the court has implemented electronic hearings before the Covid-19 pandemic. It's just that, this electronic trial only applies to civil, religious, civil administration cases. Meanwhile, there are no rules in criminal cases. Problems that arise in criminal proceedings during the pandemic are the lack of fulfillment of the rights of

the parties and the trial process is hampered and there is a concern that the transmission of Covid-19 in court and the mechanism has to change until an emergency policy is established. In this case, there is indeed an MoU with the prosecutor's office and the Directorate General of Corrections regarding video conferencing for criminal cases, especially for examining witnesses. However, there were obstacles to the availability of electronic devices, the position of the accused, the existence of other parties.

In Article 2 paragraph (4) of the Law on Judicial Powers, the International Consortium for Court Excellence (ICCE) states that the administration of justice must be carried out effectively and efficiently. International Framework for Court Excellence This is a guide prepared by ICCE. Effective and efficient justice is an indicator of a superior court system. This is very much influenced by various factors that have a major impact on information technology facilities, including courts.

In Indonesia, the Law on Judicial Power, Law Number 48 Year 2009, LN No 157 Year 2009, TLN No 5076 Article 4 paragraph (2) outlines a provision that courts must assist justice seekers and strive to overcome all obstacles and obstacles to a simple, fast and low cost trial can be achieved. This provision of judicial administration system has been implemented (effective and effective case management). Supreme Court of the Republic of Indonesia Judicial reform plan underway in 2010-2035 agenda for reform program is an excellent view on the power of justice (read: Supreme Court). Modernization of case

management is closely related to information technology renovation, one of the features of the help domain recovery. Since stepping into the era of the Industrial Revolution 4.0, regulatory products regulating the application of digitalization have not yet experienced significant developments, especially in the aspects of the criminal justice system. The existing laws and regulations have not been able to accommodate the latest legal issues and data security issues that occur in society. This is due to the slow manufacturing process of regulatory products which requires a long time and a fairly tough process, while on the other hand, legal issues and data security issues, that occur due to the application of digitization, develop so rapidly every day and require good regulation by law. Here the role of the Government, the DPR and the Supreme Court is very much needed to address this backwardness in order to maintain order, security and welfare of society amid the rapid development of legal problems.

Therefore, in this case the researcher is related to the development of the criminal justice system in the online realm or previously known in the private realm, namely E-Court, considering that criminal justice has entered an era and era where the justice system is in challenge with the COVID-19 pandemic so that the justice system scheme must follow and anticipate these developments. So that the problem formulations raised in this article are 1) Why should the Criminal Justice System adapt to the Online system? 2) What is the form of implementation of the online criminal justice system?

2. RESEARCH METHOD

This journal uses juridical and empirical by using secondary data in the form of primary and secondary materials, namely conducting literature studies. In this case the primary legal material used in this journal is a law which regulates the online judicial system after the Covid 19 outbreak. In this journal secondary legal material is also used including books, journal articles and other academic scientific works that discuss related to the online justice system.

3. RESULT AND DISCUSSION

3.1 Online Needs in Practicing the Criminal Justice System During the Covid-19 Pandemic.

The Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 regulates Court Trials during the COVID-19 pandemic. Although the Supreme Court implements e-Litigation to replace conventional trials that present parties in the courtroom, not all trials can be carried out by e-

Litigation. In this case, such as criminal case trials at the District Courts, military crimes at the Military Courts and jinayat at the Religious Courts are still carried out specifically if in that case the Defendant is being detained, while his detention period is not possible to be extended again during this pandemic period. However, in cases where the defendant is legally allowed to extend his detention period, the trial is postponed until the end of the pandemic period. Especially with regard to cases where the period of examination is limited by the provisions of the prevailing laws, Judges are given the authority by the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 to be able to postpone the examination session even though the examination period has exceeded the time limit regulated by statutory provisions. . The judge issued an order to the Substitute Registrar to record in the Minutes of the trial that there was an extraordinary situation, namely the COVID-19 Pandemic.

As is well known, the e-Litigation application is only intended for Civil case trials in the District Courts, Civil Religions in the Religious Courts and State Administration in the State Administrative Courts. This is because the cases did not involve the accused who was being detained [1].

Therefore, the Supreme Court did not apply e-Litigation only to criminal cases, because it involved defendants who were currently in detention. Criminal Cases are still held conventionally by presenting parties in the courtroom according to the COVID-19 prevention health protocol.

The question is how to implement the online justice system in criminal cases, as we know that the Covid 19 pandemic has given us many lessons, not only from economic segmentation but also from the law enforcement system in this case the criminal justice system where previously the online justice system was used. know E-Court does not facilitate criminal justice in it [2].

As the author quotes from that the Attorney General's Office, starting from 30 March to 6 July 2020, revealed that there have been 176,912 general criminal proceedings. This refers to the Attorney General's instruction Number 5 of 2020 on March 23 regarding policies for the Implementation of Tasks and Handling of Cases during the Prevention Period for the Spread of Covid 19 within the Republic of Indonesia Prosecutor's Office, as well as the Attorney General's Circular Number B-049 / A / SUJA / 03 / 2020 dated 27 March 2020 concerning Optimizing the Implementation of the Duties, Functions and Authorities of the Prosecutor's Office in the midst of the Covid 19 pandemic. From the two instructions, Attorney General Sanitiar Burhanuddin ordered all prosecutors in Indonesia to conduct hearings via teleconference media.

This policy was strengthened by the formation of a Cooperation Agreement (PKS) between the Supreme Court, Attorney General's Office and the Ministry of Law and Human Rights, which agreed on online trials for crimes carried out during the COVID-19 epidemic. Which previously the Ministry of Law and Human Rights has published. Letter Number M.HH.PK.01.01.01.03 addressed to the Supreme Court containing a request for an online trial to the Supreme Court. live streaming) or conduct a trial via video conference.

Although some parties claim that the online criminal justice system or teleconference is an embodiment of the principle of fast, simple and low cost justice, because with the online criminal justice system it must be admitted that time efficiency is the most visible positive thing. However, the absence of a Supreme Court Regulation that specifically regulates online criminal proceedings makes this online criminal trial without a strong legal basis for implementation, even though it has been claimed that online criminal trials have used the principles in the Criminal Procedure Code (KUHP), it is considered not strong. Until now, the legal basis related to the implementation of Online Criminal proceedings has only been built based on Supreme Court circular letters which are of course not strong enough, especially in terms of addressing the obstacles that occur in the online criminal justice system, such as limited courtrooms with equipment to hold online trial, in this case the technical implementation including budget and human resources cannot arbitrarily appoint but there must be a flow of supply so as to create justice, lack of coordination between law enforcement agencies and the timing of the trial.

The implementation of online trials at a later date will cause legal problems. Without the amendment of Law Number 8 of 1981 concerning Criminal Procedure Law (referred to as KUHP) which regulates the Criminal Justice System in Indonesia, it is difficult to hold trials through teleconferences. The cooperation agreement between the three institutions does not have a sufficiently strong legal basis and even contradicts the higher laws and regulations, in this case the Criminal Procedure Code, PP No. 27 of 1983 jo. PP Number 58 Year 2010 jo. Government Regulation Number 92 of 2015 concerning Implementation of the Criminal Procedure Code. In article 154 of the Criminal Procedure Code, although it does not explicitly state that the Defendant is obliged to attend the trial. However, the seven paragraphs in Article 154 of the Criminal Procedure Code confirm that the Defendant should be present and not allowed to be represented in court based on a summons by the Public Prosecutor (Article 152 paragraph (2) KUHP). The Criminal Procedure Code does not allow in absentia judicial proceedings

in ordinary examination procedures and this brief examination can be seen in Article 154 paragraph (4) of the Criminal Procedure Code. The principle of the presence of a defendant is commonly known in special crimes such as corruption and economic crimes. The principle of the defendant's presence has other names, namely *ius singular*, *ius speciale*, or *bizonder strafrecht* [3].

3.2 Online Criminal Justice System and Legality.

As discussed in the previous discussion that there are several problems related to the implementation of the online criminal justice system, if we want to target in the aspect of justice, the main question that will arise is whether the instrument of judicial implementation reflects a sense of justice.

As previously explained, in the context of the implementation of the online criminal justice system, it does not yet have a strong legal basis, however, it can be seen that in the scheme of implementing online witness examinations or teleconferences has been regulated in relation to these procedures.

Although until now the online justice system scheme through teleconference has not been regulated in the Criminal Procedure Code (KUHP), several state institutions have issued a Cooperation Agreement (PKS) in implementing the implementation of the criminal justice system through the teleconference. There has been a conflict related to the examination in the teleconference system, which until now the Criminal Procedure Code has not regulated it, if it uses the context of the simple, fast and low cost court principles that have been explained previously, of course the things related to the teleconference examination will fulfill this. In his opinion, Andi Hamzah stated that giving witness testimony via teleconference was not wrong because in the Criminal Procedure Code itself there was no prohibition, but what was noted was that both the lawyer and the prosecutor had to be present at the place where the witness was to testify [4]. Synchronization is certainly an important topic in an effort to adjust society and technological phenomena in the criminal justice system with existing regulations so as to seek to change or create new regulations.

If seen from the side of the advantages in the online criminal justice system using teleconference in addition to fulfilling the principles of simple, fast and low cost justice, the use of audio-visual teleconference will also help justice seekers in finding material truth. The context of proof using teleconference means if seen from the case of corruption is the context "... in cases of criminal acts of corruption are carried out based on the applicable criminal procedural law, unless otherwise stipulated

in this law" this is contained in the provisions of article 26 of the Republic of Indonesia Law Number 31 Of 1999 concerning the Eradication of Corruption when the scope of evidence was expanded to Article 26A in the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes that the scope of evidence was not only limited to the statement of the letter and n witnesses but also other evidence in the form of electronic information and submitted with or without the assistance of a means. Actually the implementation of teleconference trials in Indonesia had previously been carried out in Criminal Case Number 354 / Pid.B / 2002 / PN. South Jakarta, on behalf of the defendant Rahadi Ramelaan.

The use of teleconferences that present detailed pictures and connections from a supportive network will certainly produce clear voice quality so that judges can observe and see directly the eyes, faces, and gestures shown by witnesses in the trial. It can be said that at that time the witness was virtually present in the courtroom. Therefore, in principle, the presence of a witness in the trial as referred to physically has been fulfilled by means of a teleconference [5].

As has been confirmed in the Decision of the Supreme Court of the Republic of Indonesia Number 661K / Pid / 1988 dated July 19, 1991, the witness testimony given at the examination stage of the investigation and when giving his testimony the witness was sworn in. However, for a valid reason and obstacle he cannot appear in person at the trial and his statement is read out, so the value of his testimony is the same as the testimony of a witness who is sworn in at trial. In this case, in the provisions in paragraph 161 ayat (1) and (2) KUHAP, it is stated that an oath is an absolute condition [6]. So that for the conditions of the teleconference trial, the witness must take an oath in line with their respective convictions, with this, the value of his testimony is considered the same as that of a witness who was presented in person at the trial.

However, there is no obligation for judges to use teleconferences in examining witness evidence because based on the Criminal Procedure Code, namely in article 167 paragraph (1), a witness is required to be present to testify at trial. However, if we look closely at the provisions of Article 187 paragraph (1) it is clear that the information given by a witness as evidence is the information stated in court. The sentence "declared in court" is obscure or unclear because the Criminal Procedure Code does not confirm whether a witness can testify directly or not, so that it is an opening for interpretation.

4. CONCLUSION

Adjustment of the Criminal Justice System during this pandemic is considered important in order to avoid the potential accumulation of cases caused by delays in the examination process by judges due to large- scale social barriers (PSBB). The Covid 19 pandemic has provided us with many lessons, not only from economic segmentation but also from the law enforcement system, in this case the criminal justice system, where previously the online justice system known as E-Court did not facilitate criminal justice. The absence of a Supreme Court Regulation which regulates the specifics of online criminal proceedings makes this online criminal trial without a strong legal basis for implementation, although it has been claimed that online criminal trials have used the principles in the Criminal Procedure Code (KUHP), p. is considered not strong. Until now, the legal basis related to the implementation of Online Criminal proceedings has only been built based on Supreme Court circular letters which are of course not strong enough, especially in terms of addressing the obstacles that occur in the online criminal justice system, such as limited courtrooms with equipment to hold online trial, in this case the technical implementation including budget and human resources cannot arbitrarily appoint but there must be a flow of supply so as to create justice, lack of coordination between law enforcement agencies and the timing of the trial.

The teleconference system, which until now the Criminal Procedure Code has not regulated it, if it uses the context of the simple, fast and low cost court principles that have been explained previously, of course the matters related to the teleconference examination will fulfill this. The online criminal justice system uses teleconference in addition to fulfilling the principles of simple, fast and low cost justice, the use of audio-visual teleconference will also help justice seekers in finding material truth. The context of proof using teleconference means when viewed from a criminal case of corruption is the context ".

In a criminal case of corruption is carried out based on the applicable criminal procedural law, unless otherwise stipulated in this law" this is contained in the provisions of article 26 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption. when the scope of evidence is expanded in Article 26A in the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime, that the

scope of evidence is not only limited to letter and witness statements but also other evidence form of electronic information.

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