

The Impact of Virtual Criminal Trial Implementation Towards Judge's Sentencing Decision in West Jakarta District Court

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ABSTRACT

The coronavirus disease (COVID-19) outbreak has affected the world in many aspects, including how the penal justice system might run in the era of movement restriction. Many countries around the globe are now shifting their judicial process to virtual space using video conferencing platform as an effort to prevent the spread of the virus. However, some parties are concerned about the issue of fairness that might arise, since the defendants will be seated in a separate facility from the judges, prosecutors, and their solicitors. This research aims to investigate whether the implementation of virtual criminal trial in West Jakarta District Court has a significant effect on the judge's sentencing decision. A quantitative approach using comparison study was used as the research method. The data were extracted from the verdict sheets retrieved from supreme court's online repository. Judge's sentencing decision was measured by prison term in months. We compare the judge's sentence for the drug dealer trials before the implementation of virtual criminal trial (June – December 2019, N = 68, M = 69.53, SD = 8.563) and after the implementation of virtual criminal trial (June – December 2020, N = 66, M = 67.52, SD = 6.884). Statistical analysis using independent sample t-test showed that there are no significant differences in the judge's sentencing decision before and after the implementation of virtual criminal trial ($t(132) = 1.498, p = > .05$). In addition, we also found that there is no significant difference between the duration of the trial before the implementation of virtual criminal trial (2019) and after the implementation of virtual criminal trial (2020) ($t(132) = 0.444, p = > 0.05$). These results indicate that the judge's sentencing decision in West Jakarta District Court remain stable throughout the given period time and arguably not affected by the virtual trial circumstances.

Keywords: virtual criminal trial, West Jakarta District Court, COVID-19, lockdown.

1. INTRODUCTION

1.1. Background

The pandemic caused by corona virus disease (COVID-19) has been affecting the world since early of 2020. As the results, many crowd-inducing activities all around the world had to be cancelled in order to prevent the spread of the virus. As an alternative, any in-person meetings are transformed from physical interaction to virtual realm.

The law enforcement field is one of the areas that is severely affected by the pandemic, specifically in Indonesia. Because of the imposing of physical distancing that applied in order to contain the transmission of the virus, many trial proceedings had been postponed. However, after couple weeks of

assessing situation, eventually the judicial institution along with other law enforcement officials were able to adapt with the circumstances by the Memorandum of Understanding between Supreme Court, General Attorney, and Ministry of Law and Human Rights on behalf of Directorate General of Corrections that regulates the implementation of criminal trial proceedings via teleconference [1]. In short, the agreement hereto enabled all courts, attorney, and correctional facilities across Indonesia to conduct criminal trial using teleconference medium in response of COVID-19 pandemic. Several weeks later, additional regulation published by the Supreme Court in the form of Supreme Court Number 4 of 2020 of The Administration of Virtual Criminal Trial Proceedings that heretofore becomes the highest constitution that regulates the administration of virtual criminal trial [2].

According to Article 2 of The Supreme Court Regulation No. 4 of 2020, The Supreme Court Regulation aspires to assist justice seekers by attempting to overcome all hurdles and obstacles in order to achieve justice in a simplest, fastest, and low cost mannered. [2] Furthermore, one of the most compelling reasons to conduct the session online is to avoid delays in the trial, which could result in the defendant's detention being terminated and his or her release being granted without a trial. Furthermore, litigants can acquire legal certainty without the limits of a pandemic at this point due to the online trial of the parties.

Based on The Supreme Court Regulation Number 4 of 2020, all judiciary facilities across the nation are expected to establish the infrastructures and human resources so that the online trial can be conducted in a professional manner while respecting the rights of the defendant. In addition, associated institutions such as courts, the prosecutor's office, and the detention center must adjust to the defendant's online hearing soon so that the detention cannot be extended again. The investigator, public prosecutor, judge, defendant, solicitor, expert witnesses, parties, prisons, and correctional facilities must all have verified accounts in order to follow the proceedings online. Administrative documents are filed online and controlled by the court's computer system.

In the implementation of electronic trial in criminal cases, the defendant will be able to obtain legal clarity on the case without worry about the trial being delayed. The defendants do not have to wait until the pandemic is over to receive a decision upon their case. [3] However, there are still some concerns among public about the electronic trial, especially for the defendant. According to The Supreme Court Regulation No. 4 of 2020, there is no obligation for the solicitor to remain side by side with the defendant during the virtual trial. This matter may cause significant issue because solicitor will not be able to ensure whether the confessions that comes out from witness and defendant are under duress or not. It is a violation of the criminal procedure code's principles of the right to legal assistance, which provide the defendant with the opportunity to defend themselves [4]. It will be exceedingly detrimental to the defendant if there is no easy communication between the defendant and their solicitor during the virtual trial.

As a matter of fact, Indonesian court had actually acknowledged the virtual trial through electronic court (e-court) and electronic litigation (e-litigation) system. However, such practice only applied exclusively to civil lawsuits, civil religion, and state administration as stipulated by The Supreme Court Regulation Number 1 of 2019. Criminal cases are excluded from the list, assuming that criminal offenses might have greater impact to the society compared to civil and private cases

and henceforth every sentencing decision must be held accountable to the greater public.

Even before the pandemic hit the nation, there is already a notion regarding the virtual criminal trial. Fajriana in her 2008 study stated that virtual criminal trial is actually beneficial in many ways. It already complied with the basic principles of trial namely prompt, modest, and low-cost litigation [5]. Furthermore, she also implied that the virtual criminal trial is technically able to present the defendants in front of the judges. In fact, the supreme court is looking forward to permanently implements the practice of virtual criminal trial in Indonesia [6].

However, the virtual criminal trial also had its own shortcomings. The virtual criminal trial was held without the presence of the judge, clerk, prosecutor, defendant, solicitor, and witness in the same courtroom. Teleconferences or internet communication were used to link all of the parties. Due to the judge, the prosecutor, the defendant, solicitor, and witnesses not being in the same room, the judges are not able to pay attention to the accused and witness motion and body language while giving a description due to not being in the courtroom. This could potentially interfere with the principle of a fair trial. A principle of proof is applied in the hearing of others by online method. Physical evidence will not be prioritized in the agenda of the proof of the examination of witnesses or present evidence. The physical evidence submitted in the online trial is not visible to the judges.

Other than that, numerous researches have shown the negative impact of virtual criminal proceedings. For instance, virtual criminal trial tends to reduce the quality of communications between the defendants and other trial participants [7]. Defendants who appear virtually in trials also are more likely to have higher bail set, plead guilty, and receive longer sentences than those who appear physically in courtroom [8]. For juvenile, the testimonies spoken in traditional face-to-face hearings are perceived as more vivid and credible [9].

The implementation of the convention online should be based on the outcome of the decision quality, not merely on the pursuit of justice being speedy, simple, and low-cost. The judge is expected to be fair and demonstrate the character of good law in deciding cases heard online. Despite the fact that the truth is material in a criminal case, failure to meet the parties' rights will have an impact on the disclosure. Based on the issues raised above, the researcher wishes for the author to compare and analyze the judge's sentencing decision before and after the trial's online enactment. We hypothesize that there will be differences in regards of judge's sentencing decision before the implementation of virtual criminal trial in 2019 and after the implementation of virtual criminal trial 2020 due to difference of the medium that the trial being held upon.

1.2. Novelty of The Research

This research is conducted using comparative study through quantitative approach, by comparing the outcome before and after certain policy implementation in a given period of time. Up to this date, there are very limited number of legal researches that are conducted using quantitative approach, despite the fact that many of the legal aspects can be translated into numerical data. In addition, although there are several studies that already address the implementation of virtual criminal trial within Indonesian jurisdiction, almost all of them reach this matter using normative legal approach. In addition, quantitative framework allows researcher to generate a more generalized results since it involved a greater number of samples or subjects [10]. Other than that, subjectivity and personal bias might be avoided in quantitative framework and hence will make the results more objective and accurate.

2. RESEARCH METHOD

2.1. Data and Sampling

The main data in this research are the judge's sentencing decision measured by the length of prison term sentenced by the judge for each defendant. The data were extracted from the sentence sheets from each individual case retrieved from supreme court online repository website from 21st – 28th March 2021. The sentence sheets must be registered under the jurisdiction of West Jakarta District Court from June to December, both in 2019 before the implementation of virtual criminal trial and in 2020 after the implementation of virtual criminal trial.

Purposive sampling technique were used to screen the data in order to fit with the chosen criteria as follows: (1) charged with drug trafficking offenses for methamphetamine as written in article 114 Law No 35 of 2009 of Drugs; (2) Charged with only single article without conjunction; (3) Amount of drugs possessed weighted less than five grams; (4) Individually committed offense. As a result, 134 cases that match with the criteria were found. 68 cases are registered in 2019, whereas the following 66 cases are registered in 2020.

2.2. Statistical Analysis

The data were analyzed with two different statistical method, namely independent sample t-test and bivariate correlation using SPSS software for windows. Independent sample t-test were used to compare a pair of data, whereas correlation were used to analyze trends in the data. The results then will be described and discussed

in accordance with previous research and related literature.

3. FINDINGS AND DISCUSSION

3.1. Preliminary Analysis

The main purpose of preliminary analysis is to ensure proposed hypothesis, in which the difference between sentencing decision before and after the implementation of virtual criminal trial, is solely caused by the implementation of virtual criminal trial itself and no other factors.

According to the literature review, there are at least three important factors that determined the degree of harm caused by drug related offense. These factors are as follows: 1) type of drug offense; 2) type of drug; and 3) quantity of the drug [11]. Generally, drug offenses can be divided into two main categories, namely drug possession and drug trafficking or transaction. Offenses related to transaction of the drugs are seen as more serious crime mainly because the harm were said would impact more people on a large scale compared to offenses related to individual drug possession. The second factor, drug type, can be seen by the degree of how particular type of drugs may affect the user. The more dangerous and addictive drug, the more harmful it would become for the user. As for the drug quantity, the higher amount of drugs possessed or supplied may determine the seriousness of the crime, assuming a large amount of drugs were meant to be distributed further and thus would harm a lot more people.

This research identified three factors of harm through the sampling method. The researcher pick only cases that involves drug transaction (not drug possession) and charged with only single article of 114 Indonesian Law of Drugs of 2009 [12] without conjunction to other related article (type of drug offense). The researcher also proceed the case that involves only methamphetamine substance (type of drug). As for the factor of drug quantity, the researcher enlist the amount of methamphetamine possessed in each case as exhibited in front of the trial and isolate them through preliminary analysis.

The preliminary analysis target specifically on the quantity of the evidence. There is significant positive correlation between quantity of the evidence possessed by the defendants and their sentence ($r = 0.334$; $p = < 0.01$), whereas higher amount of drugs possessed by the defendants will result in longer prison terms. This would mean that the quantity of the evidence may had significant role for the judges to consider the length of prison term sentenced.

After discovered that the quantity of the evidence had significant impact on judge's sentencing decision, the next step would be comparing the quantity of the evidence between two sets of data: before the implementation of virtual criminal trial in 2019 ($N = 68$; $M = 0.879$; $SD = 1.262$) and after the implementation of virtual criminal trial in 2020 ($N = 66$, $M = 1.181$; $SD = 1.342$).

As the result, there is no significant difference on the quantity of the evidence between the 2019 and 2020 data ($t(132) = -1.343$; $p = > 0.05$). This might mean although the quantity of evidence is proven to affect judge's sentencing, decision; both sets of data had equally same quantity of the evidence. Therefore, this may conclude if any differences appear in the judge's sentencing decision will not be the cause of the differences that might occur in the main analysis.

3.2. Main Findings

According to the analysis, there is no significant difference between the length of prison term sentenced by the judge before the implementation of virtual criminal trial (2019) and after the implementation of virtual criminal trial (2020) ($t(132) = 1.498$, $p = > 0.05$).

3.3. Additional Analysis

an additional analysis were conducted in order to explore other possible factors related to the judge's sentencing decision during the implementation of virtual trial. As the result, there is no significant difference between the duration of the trial before the implementation of virtual criminal trial (2019) and after the implementation of virtual criminal trial (2020) ($t(132) = 0.444$, $p = > 0.05$).

3.4. Discussion

The aim of this research is to investigate whether the implementation of virtual criminal trial in West Jakarta District Court has any significant effect on the judge's sentencing decision towards the defendants. Based on analysis, there is no significant effect on the implementation of virtual criminal trial towards judge's sentencing decision. No differences occur between the length of prison term sentenced by the judge before the implementation of virtual criminal trial in 2019 and after the implementation of virtual criminal trial in 2020. This could mean that judge's sentencing decision remains stable regardless of the implementation of virtual criminal trial in West Jakarta District Court.

The findings contradicts previous research conducted in Boyolali District Court which claimed that hearing outcome from a virtually conducted trial is not

adequate enough compared to conventional trial [13]. The authors also suggest that the implementation of virtual criminal is susceptible to signal disruption in which might affect the quality of the video conference and eventually will affect the trial outcome itself. Moreover, they also concerned about the lack of technology literacy among the court officer.

Quality of infrastructure might be the reasons why West Jakarta District Court hold the virtual criminal trial better than their counterparts in Boyolali District Court. Thus, this might lead to a further discussion about disparity and inequality that might happen between rural and urban area in Indonesia.

Ookla Speedtest published a list of top-ten city in Indonesia with fastest Internet speed by fixed broadband. As predicted, Jakarta crowned itself in the first place with mean download at 28.86 Mbps and mean upload at 20.28 Mbps followed by Bekasi, Depok, Palembang, and Semarang respectively [14]. In Indonesia, a high-speed and stable Internet connection is obviously a luxury facility. This also supported by the report from Opensignal in 2019 about connectivity gap that exist between rural and urban area in Indonesia [15]. This is perhaps caused by the cost of installation and operational that the providers have to consider before setting up a digital infrastructure in remote areas. Installing digital infrastructure in the countryside would cost 30 percent higher than in cities, let alone the cost for its maintenance and operational that reaches almost two times more expensive due to difficult terrain. Rural areas also had less population density, so the expensive infrastructure installed only used by very few people and in return generates low revenue compared to urban areas [16].

Meanwhile, the additional analysis indicates that there is no difference in terms of the trial duration before the implementation of virtual criminal trial in 2019 and after the implementation of virtual criminal trial in 2020. It means, duration to conduct criminal trial proceedings are roughly the same regardless the medium used, either virtually or conventionally. This finding contradicts previous research, which stated that virtual criminal trial is more efficient and time saving compared to conventional face-to-face trial [17]. This may because the basic regulation of the criminal proceedings in Indonesia is administered by only a single constitution, namely The Criminal Procedural Law Act Number 8 of 1981. In general, the Act emphasizes the rights and obligations of all parties involved in the criminal justice process to ensure that the trial is conducted responsibly based upon the principle of justice, law enforcement, and human rights protection [18]. Henceforth, the administration of virtual criminal trial shall be held in accordance with the Act as well.

4. CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

Virtual criminal trials in Indonesia has been implemented since April 2020 and such practice will likely to continue as the pandemic shows no sign of ease hitherto. Although initially many experts question the legitimacy and effectiveness of this practice, the following regulations and studies that arise consequently started to shed lights upon this matter. In retrospect, this research aims to examine the effectiveness of the criminal trial that held virtually by comparing the outcome, which is the judge's sentencing decision, with the trial that held conventionally in the previous year. As the result, we found no evidence that supports our hypothesis, even after controlling variable such as quantity of the evidence. That means that regardless the medium used in the criminal trial, be it teleconference or face-to-face meetings, the judge's sentencing decision towards the defendants remain the same. In addition, we also found out that the duration of the virtual criminal trial lasts as long as the conventional ones, contrary to previous studies which claimed that virtual trials are generally more efficient and time-saving.

4.2. Limitations

Despite the effort to ensure that this study is conducted in a methodologically sound manner, the researcher want to acknowledge that this study, too, cannot be apart from limitations. First, there will always be other factors that are unable to control in this study. This study only examine variables that are measured in quantitative manner. It is possible, though, that there are any other factors that might affect judge's sentencing decision but impossible to measure them in numbers. Henceforth, it is highly advised for future study to use mixed method and gather data both quantitatively and qualitatively.

Second, it is important to highlight that this study was conducted in West Jakarta, Indonesia. For the record, Jakarta is the capital of the nation and hence had no significant issues with internet connection. Therefore, it is important to replicate this study across other region in Indonesia especially in rural areas to investigate whether other jurisdictions have the same result with this study or not.

4.3. Recommendations

Perhaps it is time to embrace the practice of virtual criminal trial as a part of Indonesian legal culture anytime soon. Considering all the evidence discussed in the previous section, the researcher would like to recommend the supreme court to continue the virtual criminal trial practice for the drug related offenses to all district courts

that already settled sufficient infrastructure and human resources during the pandemic situation.

However, this practice is definitely in need for a more robust legal standing. Thus, the researcher strongly advise to revise the The Criminal Procedural Law Act Number 8 of 1981 to facilitate the administration of virtual criminal trial as an inseparable part of criminal justice proceedings.

AUTHORS' CONTRIBUTIONS

All authors developed the topic and brainstorm the ideas. Fitra H. Wityanto compiled the data, performed the statistical analysis, provided discussions for the results, and contributed to the final manuscript. Amalia Lathifah developed theoretical background and legal standing of the topic, compiled the data, and contributed to the final manuscript.

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