

# An Electronic Court in the Perspective Criminal Law Reform

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## ABSTRACT

The Corona Virus Disease-2019 (Covid-19) pandemic that hit Indonesia and the world demands changes in behavior and habits in life. The education, economic, social, and even legal sectors are affected to immediately implement new patterns in carrying out their activities. Including in the court process which was originally conducted face to face or presenting all parties in the same room, efforts must be made to implement a new pattern to minimize the spread of Covid-19. The electronic court has emerged as a new concept in the examination of criminal cases. With the pattern of examinations carried out in separate rooms that are connected through the media with information technology facilities, whose implementation mechanism is regulated by taking into account the principles of criminal procedural law, it is hoped that it can fulfill a sense of justice for litigants. In this study, we will examine how an electronic court can create a modern criminal justice system following the concept of reforming the national criminal law. This research is normative legal research using a conceptual approach and legislation. From this research, it can be seen that the electronic court is not appropriate if it is said to be a momentary reaction due to the pandemic but is a challenge of globalization for the future of Indonesian criminal law where criminal law reform must always be responsive to the development of science and technology to increase the effectiveness of its functions in society, namely law enforcement.

**Keywords:** Covid-19, Electonic Court, Criminal Law Reformed

## 1. INTRODUCTION

The outbreak of Corona Virus Disease-2019 (Covid-19) that hit the world and Indonesia has caused a tremendous impact in various sectors such as the education, economic, social sectors, including in the judiciary. Every day the positive cases of Covid-19 in Indonesia are increasing. The latest data accessed on June 6, 2021, noted that in Indonesia there were 1,856,038 positive cases of Covid-19, while the recovery reached 1,705,971 people, and 51,612 people died [1].

As a preventive effort to minimize the spread of Covid-19, the Indonesian government applies the 5M provisions, namely maintaining distance, washing hands, wearing masks, staying away from crowds, minimizing mobility, and also making efforts with vaccinations. With the high spread of Covid-19, of course, this affects the law enforcement process, especially in carrying out activities in court. Efforts to limit social interaction caused judges and court officials to carry out their official duties from their respective homes in turn. The court practice which was originally carried out conventionally

or face-to-face in court must switch to a virtual or online court process.

An electronic or virtual court is an innovation carried out by the Supreme Court of the Republic of Indonesia. Based on Supreme Court Regulation (PERMA) Number 1 of 2019 concerning Administration of Cases and Courts in Courts Electronically and Supreme Court Circular Letter (SEMA) Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Covid-19 in the Supreme Court and Lower Judicial Body, as last amended by SEMA Number 6 of 2020. SEMA instructs civil, religious, and state administrative cases to be tried through e-litigation, while for criminal cases, jinayat, and military crimes, the Supreme Court instructs them to continue to be carried out in court for cases where the accused is being detained and the period of detention is not being extended any longer.

During the Covid-19 pandemic, the Public Prosecutor had difficulty presenting defendants due to the policy of the Minister of Law and Human Rights not allowing detainees to leave the detention house. And considering

the time limit for detention which is closely related to human rights and to guarantee the rights of the accused to obtain legal certainty for the criminal act accused, the Supreme Court stipulates PERMA Number 4 of 2020 concerning Administration and Court of Criminal Cases in Courts Electronically. The PERMA regulates the use of case administration through e-court applications and the conduct of courts through e-litigation applications for criminal cases which include examination of evidence, defendants, witnesses, and experts. The PERMA does not mention any limitations regarding what criminal cases can be done electronically [2]. In addition, to strengthen the policy of conducting electronic courts, the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights ratified the cooperation agreement number 402/DJU/KM.01.1/4/2020; KEP-17/E/Ejp/04/2020; PAS-08.HH.05.05.Tahun 2020 April 13, 2020, Regarding the Implementation of Courts Through Teleconference. In the cooperation agreement, it is stated that the Supreme Court, the Prosecutor's Office, the Ministry of Law and Human Rights are each authorized and responsible for holding trials following statutory regulations and providing adequate supporting facilities and infrastructure for teleconference trials.

In 2020, the number of cases registered through e-court reached 186,987 cases, or an increase of 295% compared to 2019 as many as 47,244 cases. Of that number, 8,560 cases have been tried by e-litigation [3]. By looking at the increase in the number of cases, it indicates that the application of technology in the legal field, especially in handling criminal cases, is considered to be able to improve the performance of productive judicial institutions.

However, there are various problems and records in the implementation of this electronic criminal case court. Regarding the legal basis being pro and contra in society, this is related to the application of the principle of "lex superior derogat legi inferior", where the law with a higher position overrides the law below it, so the rejection is because PERMA is contrary to the law above which in this is the Criminal Procedure Code [4]. The implementation of this online court has the potential to disrupt the principle of the fair court (honest and impartial justice) if the supporting infrastructure is inadequate which results in a lack of validity in the evidentiary process[5]. Other obstacles according to the Ombudsman are the limited control of technology by judges, poor coordination between parties, legal advisors are not sided by side with the defendant, and cannot ensuring that witnesses and defendants are under pressure/lying [6].

From the thoughts above, this study will discuss how electronic courts can create a modern criminal justice system following the concept of reforming the national criminal law.

## 2. RESEARCH METHOD

This research uses a normative legal research methodology. The data used are secondary data that is data obtained through library research. The data is in the form of primary legal materials, namely materials that have legal force; secondary legal material in the form of books related to criminal proceedings electronically and the concept of criminal law reform; tertiary legal material in the form of a legal research journal that reviews the court electronically.

To get the right conclusions, the legal materials are analyzed using a statute approach by examining several laws and regulations related to criminal procedural law and criminal proceedings electronically in Indonesia as well as a conceptual approach moving from the doctrines and views in the science of law [7].

## 3. FINDINGS AND DISCUSSION

The Criminal Procedure Code (KUHAP) distinguishes three types of court hearings, first, briefcase examinations; second, quick check; and third, regular inspection[8]. The brief examination procedure as in Articles 203 to 204 of the Criminal Procedure Code explains that it is intended for criminal acts whose proof is easy and the nature of the offense is simple. Meanwhile, the quick examination is divided into the examination of minor crimes and cases of road traffic violations. The law does not provide restrictions on which cases fall into the category of ordinary examinations. However, articles 152 to 202 of the Criminal Procedure Code, provide signs that the criminal acts examined by ordinary examination procedures are criminal acts whose proof and application of the law are not easy and the nature of violating the law is not simple. In the ordinary examination procedure, it includes the summons stage, the stage of opening and examining the identity of the defendant, the stage of reading the indictment, exception, proof stage, reading the claim, defense (pledoi), replik and duplication stage, decision [9].

In carrying out the court process or in carrying out criminal procedures, judges adhere to the principles or principles of examining criminal cases, including the principles of fast, simple, and low-cost justice, where this principle is to respect human rights, especially regarding the period of detention. Furthermore, the principle of court examination is open to the public, that in accordance with Article 153 paragraph (3) and paragraph (4) of the Criminal Procedure Code which reads "for examination of the judge, the chairman of the court, the chairman of the court opens the court and declares the court open to the public, except in cases concerning the morality or the defendant is a child -children" non-fulfillment of this provision will result in the decision being null and void. As well as the principle of direct and

oral examination of the judge, meaning directly to the defendant and the witnesses, these provisions are contained in articles 154 and 155 of the Criminal Procedure Code. However, there are exceptions to the *verstek* decision or in *absentia* where the defendant can appoint someone with a letter to represent him at the court, this is in the case of examining traffic violations or in special criminal procedural laws such as economic crimes and corruption crimes[8].

At the beginning of 2020, where the world and Indonesia were faced with the Covid-19 pandemic situation, which required implementing new patterns in every line of life, including social restrictions, this had an impact on the law enforcement process in order to fulfill the needs of justice for the community. Examination of criminal cases in courts which were previously carried out conventionally by presenting directly the defendant and witnesses in the same room, now cannot be done to minimize the presence of crowds which resulted in the spread of Covid-19 increasing.

An electronic or virtual court is an innovation or breakthrough made by the Supreme Court in the situation of the covid-19 pandemic. The use of teleconference facilities in courts in Indonesia is not new, the procedure for examining using information technology facilities for the first time occurred and was practiced in the history of the Indonesian judiciary in 2002 when the Supreme Court allowed former President BJ Habibie to testify via teleconference [10]. Further developments in the application of electronic trials are in Article 27 paragraph (3) of the Juvenile Criminal Justice System Law which states that if the victim's child and/or child witness is unable to attend to give testimony in front of a court hearing, the judge may order the victim's child and/or the witness's child is heard through electronic recording or direct remote examination using audiovisual communication tools. Furthermore, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims explains that witnesses/victims can hear their testimonies directly through electronic means accompanied by authorized officials.

Utilizing sophisticated information technology through teleconference is the best choice during the Covid-19 pandemic. As one of the regulations in PERMA Number 4 of 2020, namely the online court mechanism by not presenting the defendant in the same room with the judge as regulated in the Criminal Procedure Code. Here are the differences:

By looking at the provisions in PERMA Number 4 of 2020, it can be analyzed that this electronic court mechanism is an option, which means it does not have to be done. However, it is further explained that if in certain circumstances the meaning of which is a situation that

**Table 1.** Short cut keys for the template

| KUHAP  | PERMA Number 4 of 2020   |
|--|--|
| Judge, Prosecutor, Legal Counsel, Registrar, Defendant, Witness, Expert are in the same room | <ul style="list-style-type: none"> <li>a. Judges/Judges, Registrars/Substitute Registrars, Prosecutors meet in the courtroom while the defendant attends the court from the detention house where the defendant is detained with or without legal counsel;</li> <li>b. Judges/Judges, Registrars/Substitute Registrars, meet in the courtroom while the prosecutor attends the court from the prosecutor's office and the defendant is accompanied or without legal counsel attending the court from the detention house or correctional institution where the defendant is detained;</li> <li>c. If the place where the defendant is detained does not have special facilities to attend the court electronically, the defendant with or without legal counsel attends the court from the prosecutor's office.;</li> <li>d. Defendants who are not detained may attend a hearing in the courtroom or from the prosecutor's office with or without the assistance of a legal advisor or elsewhere within or outside the jurisdiction of the court adjudicating and approved by the judge/assessment of judges with a stipulation.</li> </ul> |

does not allow the process of delegating cases, administration of cases and courts to be carried out following the procedures and procedures stipulated in procedural law due to distance, natural disasters, disease outbreaks, other conditions determined by the law. government as a state of emergency, or other circumstances that according to the panel of judges by stipulation it is necessary to conduct an electronic court [2]. It is necessary to understand that the electronic trial is not a must that must be carried out. Of course, in certain cases that require complicated examination or evidence, it is possible to hold a trial directly.

For example, the implementation of the electronic court was in the case of criminal acts of defamation and hate speech with the defendant I Gede Ari Astina alias Jerink SID, then in the case of spreading false news and causing trouble which led to chaos in the omnibus law demonstration with the defendant Syahganda Nainggolan, and most recently This is the case with the defendant Habib Rizieq Shihab in the case of scattering

crowds, crowds in Megamendung, and the case of swab tests at the Ummi Hospital in Bogor.

This electronic court is part of a more modern judicial reform in Indonesia, especially during the Covid-19 pandemic, where progressive policies are needed to meet the problem of case accumulation if the court is postponed due to the pandemic[5]. In its development, the regulation of electronic criminal courts is based on the fact that the Covid-19 pandemic is a health and safety issue for the human soul, which affects all aspects of life, including law enforcement. So that the Supreme Court responded based on the principle of "salus populi suprema lex esto" which means that the safety of the people is the highest law [11].

So far, the implementation of the electronic court has been carried out smoothly, but several obstacles need attention and improvement apart from the weak legal umbrella factor, there are also several notes including a) the application of the principle of being open to the public in the electronic court; b) how to prevent witnesses who have not been examined in court from witnessing the court electronically; c) how to ensure that the witnesses examined are not under pressure/threats; d) how to ensure the security of electronic networks[12]. Obstacles or obstacles faced should be used as challenges for improvement so that they can realize criminal law reform that is more effective in law enforcement and realizes future Indonesian criminal law in accordance with the socio-political and socio-cultural values of the community.

Obstacles related to the application of the principle of being open to the public can be overcome by installing a videotron or monitor screen support outside the court where every visitor can watch the court even though it is electronically, of course, this must be strengthened with the support of adequate facilities and infrastructure in every court office. Meanwhile, in the process of proving or examining witnesses, expertise is needed in carrying out the duties of the prosecution, judges, and legal advisors in carrying out the proceedings. In addition to electronic facilities in the form of monitor screens, facilities in the field of information technology related to the network are the key to the smooth running of the court process, for that the support of facilities and qualified human resources in the field of information technology is very necessary.

Criminal law reform is essentially a renewal of the basic concept or idea[13]. Conceptually there are several main ideas or basic ideas that underlie the signs of criminal law reform. Muladi said that there are five signs, namely 1) criminal law reform, apart from being carried out for sociological, political, and practical reasons, must be prepared following the Pancasila framework; 2) criminal law reform must not ignore aspects related to the human condition, nature, and Indonesian traditions while still recognizing the laws that live in society; 3) criminal

law reform must be adapted to the universal trend that grows in civilized society; 4) criminal law reform must consider preventive aspects considering the preventive nature of punishment; 5) criminal law reform must always be responsive to the development of science and technology to increase the effectiveness of its functions in society[14]. While the meaning and nature of criminal law reform can be seen from the policy approach and values approach, namely: 1) criminal law reform is an effort to overcome social problems to achieve national goals; 2) criminal law reform is part of the community's efforts to protect against crime; 3) criminal law reform is part of efforts to update legal substance to make law enforcement more effective[15].

With the implementation of this electronic court, law enforcement efforts have changed the paradigm from textual legal thinking to progressive law. Enforcing the law cannot be done only procedurally. If the law is viewed textually, it will deny the aspect of justice which is its spirit[16]. This electronic court should be used as a solution before the legislation that regulates it explicitly. Moreover, other doctrines and jurisprudence have also given legitimacy to the use of video conferencing in the context of examining witnesses from outside the court even though the Criminal Procedure Code does not regulate it. Furthermore, according to Indriyanto Seno Adji, the Supreme Court regulations have binding legal force, are legitimate, and do not deviate from the principle of *lex superior derogate legi inferiori*[17].

With the spirit of reforming criminal law, improvements to matters that have not been sufficiently regulated in PERMA Number 4 of 2020 are an obligation to perfect them so that electronic courts can achieve material truth while still fulfilling the principles of criminal procedural law that prioritizes human rights. With the implementation of this electronic court, it is hoped that the court will be better prepared to face challenges in the era of digital disruption. Which will later create a court of excellence by using the Framework of Courts Excellence approach, which in the context of court excellence, the main values of the courts can be emphasized more on the use of technology[18].

#### **4. CONCLUSION**

Based on the discussion that has been described, it can be formulated that PERMA Number 4 of 2020 concerning the Administration and Court of Criminal Cases in Courts Electronically is a quick response from the Supreme Court in law enforcement efforts in the Covid-19 pandemic situation. The mechanism in PERMA stipulates that the court can be conducted electronically if in certain circumstances the meaning of which is a situation that does not allow the process of delegating cases, administration of cases and courts to be 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 which according to the panel of judges by stipulation it is necessary to conduct an electronic court.

The use of information technology in law enforcement efforts is undeniable, this is to realize fast, simple, and low-cost justice. Therefore, strengthening qualified human resources and information technology systems supported by reliable facilities and infrastructure is something that must be prepared. In addition, to ensure that there is no maladministration, supervision needs to be carried out by forming an independent team.

As an effort to reform Indonesia's national criminal law, following the principle of criminal law reform, it must always be responsive to the development of science and technology to increase the effectiveness of its functions in society, it is better if the regulation of electronic courts is strengthened by legal products in the form of laws which in this case need to be implemented. revision of the Criminal Procedure Code (KUHAP).

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The title "ACKNOWLEDGMENTS" should be in all caps and should be placed above the references. The references should be consistent within the article and follow the same style. List all the references with full details.

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