

Transformation Of Law Paradigm: Representation Of "Salus Populi Suprema Lex" In The Implementation Of Virtual Civil Court

Transformasi Paradigma Hukum: Representasi Asas "Salus Populi Suprema Lex" Pada Implementasi Virtual Civil Court

Rina Elsa Rizkiana¹

¹ Department of Law, Social, and Political Sciences, Universitas Terbuka Jalan Pondok Cabe Raya, Pd. Cabe Udik, Kec. Ciputat, Kota Tangerang Selatan, Banten 15418
e-mail: xxx.elsa1357@gmail.com

Article Info

Article history:

Received Apr 12th2021
Revised Apr 12th2021
Accepted May 26th2021
Published Agst 15th2021

Article of OSC 2021

Abstract

The Covid-19 as a global pandemic has changed the social interactions. Indonesia is facing a political agenda for the Regional Head General Elections. Also a wave of demonstrations in the middle of an increase the Covid-19 cases. The emergency situations of Covid-19 make people's safety was a guarantee. This is accordance with the legal principle of the Salus Populi Suprema Lex Esto. Several law enforcement agencies applied this principle to support government policies of Covid-19. Covid-19 has an impact that affects democracy, justice, and the law enforcement system. Virtual Courts with teleconference systems was the one of law digitization transformation. The Virtual Court remains the provisions of the trial set out the Criminal Procedure Code (KUHP). This paper aims to find out the relevant policy of Covid-19 which related the legal Principle. Besides that, this paper described the implementation of virtual courts in Indonesia. This study is normative legal research through literature studies. The research analyzed using descriptive analysis methods. The research results is "Salus Populi Suprema Lex" becomes the highest hierarchy with other laws or regulations. The implementation of political activities that have regulated by the related laws limited. Virtual courts is a solution for the ongoing criminal justice system. This is an effort to prevent the spread of the Covid-19 virus because of the people's safety is the highest.

Keywords: Legal Principles, Legal Perspective, Virtual Court



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Abstrak

Covid-19 sebagai global pandemic telah mengubah interaksi sosial. Indonesia menghadapi agenda politik pemilihan umum kepala daerah, gelombang aksi unjuk rasa, ditengah meningkatnya kasus Covid-19. Situasi darurat Covid-19 menjadikan keselamatan rakyat sebagai jaminannya. Hal ini sesuai asas hukum Salus Populi Suprema Lex Esto. Beberapa lembaga penegak hukum seperti menerapkan prinsip ini untuk mendukung kebijakan pemerintah dalam penanganan Covid-19. Covid-19 memberikan dampak yang mempengaruhi demokrasi, keadilan, dan sistem penegakan hukum. Pengadilan Virtual dengan sistem telekonferensi menjadi salah satu transformasi digitalisasi penegakan hukum dalam upaya pencegahan Covid-19. Pengadilan Virtual tetap berdasarkan ketentuan persidangan dalam Kitab Undang-Undang Hukum Acara Pidana (KUHP). Kajian ini bertujuan untuk mengetahui kebijakan terkait Covid-19 yang terkait dengan asas tersebut. Selain itu, kajian ini memaparkan penyelenggaraan pengadilan virtual di Indonesia. Penelitian merupakan penelitian yuridis normatif yang dikumpulkan melalui studi pustaka. Analisis penelitian menggunakan metode deskriptif analisis. Hasil penelitian menunjukkan bahwa suatu asas hukum "Salus Populi Suprema Lex" menjadi hirarki tertinggi dengan undang-undang atau peraturan lain. Pelaksanaan kegiatan politik yang diatur undang-undang terkait dapat dibatasi pelaksanaannya. Pengadilan virtual menjadi solusi berlangsungnya sistem peradilan pidana. Hal ini sebagai upaya pencegahan penyebaran virus Covid-19 karena keselamatan rakyat paling tinggi.

Kata kunci: Asas Hukum, Perspektif Hukum, Pengadilan Virtual

INTRODUCTION

The Covid-19 pandemic has "turned off" the world's movement. The lockdown policy used to suppress the spread of the Coronavirus. This enhancement was a very complex problem. Several countries released some of new regulations. These efforts used to stop the spread of the virus. Also, deal with outbreaks. Indonesia obliged to prevent the occurrence of the Public Health Emergency. This aims correlated with International Concern of International Health Regulations 2005.¹

The Indonesian government took swift steps. The government appointed the Head of the National Disaster Management Agency (BNPB) as the Chair of the Covid-19 Handling Task Force. This stipulated in the Decree of the Head of the National Disaster Management Agency. This stated in Article 10 of Law Number 6 of 2018 on Health Quarantine. Large-scale social restrictions (PSBB) in article 59 paragraph (2) contained entertainment in schools and workplaces, restrictions on religious activities, and in public facilities. In legal aid and legal issues during the Covid-19 pandemic, policies must pay attention to human rights and the fulfillment of citizens' rights. Policies made by the Government, both the Central.

Government, Regional Governments, Ministry Officials, and Law enforcement officers which related to the widespread of the COVID-19 pandemic.² The Indonesian government set 3 (three) regulations to overcome the Covid-19 pandemic. The three regulations were:

1. Government Regulation Number 1 of 2020 on Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic. The context were resolved the threats of the national economy or Financial System Stability.
2. Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions to accelerate the handling of Covid-19.
3. Presidential Decree Number 11 of 2020 on the Determination of the Covid-10 Public Health Emergency.

The Large-Scale Social Restriction Policy (PSBB) met with panic buying. It causes a temporary shortage of goods. The prices of necessities have skyrocketed. The COVID-19 pandemic raises some problems. The economy experienced a significant shock. Some companies forced to lay off, and some were "out of business."

Besides, crime in Indonesia was enhance. Crime statistics recorded by the Police, there was 7.04 percent cases enhacement. These in happened the 19th-20th weeks of 2021.³

¹ Tambahan Lembaran Negara RI No. 6236 KESRA. Kesehatan. Kekarantinaaan. Pencabutan. (Penjelasan atas Lembaran Negara Republik Indonesia Tahun 2018 Nomor 128) Penjelasan Atas Undang-Undang Republik Indonesia Nomor 6 Tahun 2018 Tentang Kekarantinaaan Kesehatan

² LBH Jakarta, "Penanganan Wabah Pandemi Virus Covid-19 dan Penerapan PSBB di Jabodetabek Harus Memperhatikan Hak Asasi Manusia dan Pemenuhan Hak Warga", Position Paper, 28 April 2020. Retrieved from <https://www.bantuanhukum.or.id/web/penanganan-wabah-pandemi-virus-covid19-dan-penerapan-psbb-di-jabodetabek-harus-memperhatikan-hak-asasi-manusiadan-pemenuhan-hak-warga/>. Even further, it was stressed that the legal aid process experienced several challenges in a pandemic situation. In fact, many legal issues have arisen in this situation, ranging from termination of employment, payment of salaries, distribution of community assistance, health insurance, the right to information disclosure and so on. See also, Cara E. Davies and Randi Zlotnik Shaul. "Physicians' legal duty of care and legal right to refuse to work during a pandemic." *Cmaj* 182(2), 2010, pp. 167-170; Bradley J. Condon, and Tapen Sinha. *Global lessons from the AIDS pandemic: Economic, financial, legal and political implications*, London, Springer Science & Business Media, 2008; Kenneth De Ville, "Legal preparation and pandemic influenza." *Journal of Public Health Management and Practice* 13(3), 2007, pp. 314-317.

³ BPS. 2020. "Statistik Kriminal 2020." Jakarta: Badan Pusat Statistik

Meanwhile, the Police recorded an enhancement from the first week to the second week of 2021. The crime cases rose to 236 incidents or 5.08 percent. The number of crimes handled by the police in the first week of 2021 reached 4,650 incidents. Meanwhile, the second week increased to 4,886 cases.⁴ Besides, demonstrations became a serious problem in the security sector while the pandemic. This outbreak will pose a potential health threat. The masses will speed up the process of transmitting disease outbreaks. In the current condition, people safety is the highest value to guard together. It suited with the principles of “*Salus Populi Suprema Lex Esto.*” Besides, associated with law enforcement, policy implementation, and equality of every citizen in the public sphere.

The criminal law enforcement sector transformed to find the right formulation. Social distancing and physical distance expected to break the Covid-19 distribution. It applied in criminal proceeding too. The criminal justice practices forced to flex the perspective of procedural law. This flexibility allows for the virtual presence of judicial apparatus. Judges, Registrars, Prosecutors, Witnesses, Experts, Defendants, and Legal Counsels replace physical presence in court.

Several units of the District Attorney's Office and District Courts in Indonesia implemented virtual criminal courts using video teleconferencing. Thus, from 30 to 31 March 2020, 1,509 criminal cases tried in Indonesia.⁵ The teleconference composition was Judges, Registrars, Prosecutors, Witnesses, Experts, Defendants and Legal Counsels. They were not involved in direct contact because they were in a different place. The panel of Judges and Registrar at the District Court. Attorney at the Judiciary Office. Defendants and Legal Advisors at the State Detention Center. This composition may differ according to previous agreements between fellow law enforcers. The goal is that the principles of social distancing and physical distancing implemented. The law enforcement officers actions proven “*Fiat Justitia ruat caelum*”. It will imprint in law enforcement officer who has the potential to contract COVID-19. Teleconferencing trials means to synergize criminal law enforcement efforts with COVID-19 prevention.⁶ On cyber justice, the criminal procedure law has not been clear and firm.⁷ The new law accommodated the examination of witnesses who were not present in court. It used an audio-visual facilities like video conferencing or teleconferencing. It regulated in some jurisprudence and some laws. This can lead to legal problems in the form of “leemten” if it is not addressed by finding solutions.⁸ Law Number 8 of 1981 on the Criminal Procedure Code (KUHP) only regulates trials carried out by judicial officers, judges, clerks, prosecutors, witnesses, experts, defendants, and legal

⁴ Medcom. 2021. “*Angka Kriminal Naik pada 2021.*” <https://www.medcom.id/nasional/hukum/VNnlwyak-angka-kriminalitas-naik-pada-awal-2021#:~:text=Ramadhan%20menyebut%20jumlah%20kejahatan%20yang.meningkat%20menjadi%20sebanyak%204.886%20kejadian>. accessed on May, 03 2021

⁵ Khoiri, Masdarul. 2020. “*1.509 Perkara disidangkan di Online, Didik Farkhan: Rekor Dunia*” <https://jatim.sindonews.com/read/28561/1/1509-perkara-disidangkan-online-didik-farkhan-rekor-dunia1585731847>, (Accessed on May 6, 2021).

⁶ Ticknor, B., & Tillinghast, S. (2011). Virtual reality and the criminal justice system: new possibilities for research, training, and rehabilitation. *Journal For Virtual Worlds Research*, 4(2). p.32

⁷ Faisal, F. (2019). Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan. *Gorontalo Law Review*, 2(1), 33-48. p. 35

⁸ Yusipa, D. (2011) Tinjauan hukum Islam terhadap perkawinan teleconference. p.81

advisors, with a physical presence in the room trial. Law Number 19 of 2016 on Information and Electronic Transactions, Law Number 35 of 2009 on Narcotics, Law Number 20 of 2001 on Eradication of Corruption and Law Number 25 of 2002 on the Crime of Money Laundering and other related laws only accommodated electronic evidence and do not regulate the virtual presence of judicial instruments in courtrooms.

This study discussed the emergence of virtual courts as an emergency in the widespread of COVID-19 dealing with the urgency of people's safety in Indonesia. This study aims to find out policies related to Covid-19. Also, the relation of "*Salus Populi Suprema Lex Esto*" principle.

METHODOLOGY

The research used a library research. Literature research was a research by collecting data and information. The research contained various materials in the library room. So, library research used library materials as the main data source.⁹ As the consequence of legal issues, this research was a normative juridical research. The legal research oriented to normative legal phenomena. It sourced from library data collection.¹⁰ Normative juridical research focused on positive law inventory, legal principles and doctrines. Also, legal findings in koreto cases, legal systematics, levels of synchronization, legal comparisons, and legal history.¹¹ According to Peter Mahmud Marzuki, legal research has several approaches. These approaches included the statute, case, historical, comparative, and conceptual approach.¹² So, this paper used the statute approach and comparative approach. The hierarchy of laws and regulations and legal principles contained in statute approach. The comparative approach compared the laws between some countries for same matter. This study focuses on secondary data. Secondary data obtained the original source, obtained from library materials. The primary legal materials consisted legislation, official records, and judges decisions. The secondary legal materials used books, papers, legal journals, expert opinions, mass media, and the internet. Data analysis is an attempt to explain and interpret the data, by using a tool in the form of theory. The data analysis were:

1. Classifying and categorizing data based on emerge from field notes and research findings.¹³
2. Confirm between the theory and data.
3. Drawing conclusions of the analysis by interpreting, correlating, and comparing legal materials and comparisons of legal constructions that are relevant to this research study.¹⁴

⁹ Mardalis, *Metode Penelitian (Suatu Pendekatan Proposal)*, Bumi Aksara, Jakarta, 2009, hlm. 28.

¹⁰ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Bayu Media, Surabaya, 2005, hlm.145-146.

¹¹ Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Jakarta, Citra Aditya Bakti, hlm 52.

¹² Peter Mahmud Marzuki, 2014, *Penelitian Hukum*, Jakarta, Kencana, hlm 133.

¹³ Sulistyowati Irianto, 2011, *Praktek Penelitian Hukum: Perspeftif Sosiolegal dalam Bettina Yahya*, dkk, 2017, *Urgensi dan Mekanisme Pengembalian Aset Hasil Tindak Pidana Korupsi*, Puslitbang Hukum dan Peradilan Badan Diklat Kumdil Mahkamah Agung Republik Indonesia, Jakarta, Puslitbang Hukum dan Peradilan Mahkamah Agung RI, hlm 35.

¹⁴ Ibid.

RESULTS AND DISCUSSION

A. Virtual Courts in Several Countries

Virtual Court was a virtual concept of the plaintiffs or lawyers in courts, and case decisions.¹⁵ Several countries have implemented this online trial system. The Information Technology development helped the public access for effective justice. So, it was not limited to physical presence in the courtroom. Some countries used virtual courts:

1) The United Kingdom

The first Virtual courts used in May 2009 in the UK. The virtual court used by North Kent Police Station and Chester Court. At that time, the suspect arrested by the police. They could hear the accusation from the police station through a video conference. This connected with the judge in court. This virtual trial was efficient. It saved hundreds of hours for traveling between the police station and the court. It also used by the police to protect and better serve the public. This virtual court initiation established a close digital partnership. This refers between law enforcement intending to streamline the criminal justice system. Since 2012, the entire Criminal Justice System in North Kent required to install a digital system.¹⁶ This system transferred cases files between the Police, the Prosecutor's Office, the Court, and the actual court. Furthermore, the first virtual court case involved an interstate trial by teleconference.

It took place in 2018 where the plaintiff was at his home in London, England. Meanwhile, the Judge is at the Court of London, England. Lawyers submit evidence from Belfast, Ireland North. Although this is not a criminal case, the method or way it works is the same. This program launched by the Ministry of Justice to expand operated trials ranging from tax disputes, civil law to criminal law.¹⁷

2) China

Virtual courts held in China in the form of Internet Courts. There are three internet courts in Hangzhou, Beijing, and Guangzhou. The first internet court established in 2017-2018. The entire court process conducted online. The process were archiving and document services. Also, pre-trial mediation, collection and presentation of evidence. The asset security, trial, sentencing, legal remedies, and other processes were include in. Each process was offline at the request of the relevant parties or the needs of the court. The mobile court application downloaded on the WeChat Application. It was a social media application in China. Facial recognition technology used to authenticate the judiciary involved in the trial. Cases submitted in person and communicated with the jury via text and audio messages. Besides, it can submit evidence on the application. This judicial device application conducted trials, electronic signing, and judges. They gave decisions through the mobile court application.¹⁸

3) New South Wales

¹⁵ eCommittee Supreme Court of India, <http://vcourts.gov.in/virtualcourt/> (Accessed, May 11, 2021)

¹⁶ Jonathan Djanogly, MP, and The Rt Hon Nick Herbert, "Virtual Courts Brings Swifter Justice", <http://www.gov.uk/government/news/virtual-courts-brings-swifter-justice>, (Accessed May 3, 2021)

¹⁷ Owen Bowcott, "First Virtual Court Case Held Using Claimant's Laptop Camera", <https://www.theguardian.com/law/2018/mar/26/first-virtual-court-case-held-using-claimant-laptop-camera>, (Accessed May 3, 2021)

¹⁸ Mimi Zou, "Virtual Justice In The Time Of COVID-19", <https://www.law.ox.ac.uk/businesslawblog/blog/2010/03/virtual-justice-time-covid-19>, (Accessed May 1, 2021).

New South Wales district court issued a Virtual Court Practitioners User Guide. It also called a Virtual Court Protocol for Legal Practitioners. A Virtual Courtroom brings a physical courtroom to a virtual space. It was a digital method for advanced court cases. This method wasn't need for participants to present in person. Parties accessed the Virtual Meeting Room using the application's video conferencing. The virtual courtroom is still a formal courtroom. All usual court etiquette, protocols, procedures and restrictions apply.¹⁹

4) New York District Court (America)

On March 25, 2020, criminal courts in New York, America, Suffolk County, Seventh and Fifth Judicial Districts switched to virtual court operations due to the Covid-19 pandemic. The trial conducted through video conferencing facilities. All parties in the trial use video tools conference using Skype for Business. All trials held by the Jury, Public Prosecutor, Lawyers and Defendants at different locations. The trial was open to the public.²⁰ Courts was monitor and restrict access to courtrooms in social distancing under public health authority guidelines.²¹ The virtual courts in several countries carried out the video conferencing. They were presenting various courtroom tools in virtual mode. The criminal justice system in America (New York) used court decisions as the main source of law. This was accommodating the virtual court more flexible. But, this was obstacling in the implementation of virtual courts in Indonesia. This obstacle based on Indonesian Criminal Procedure Code. However, there was a common goal. It used the virtual courts for the criminal acts during the Covid-19 pandemic.²²

B. History of Virtual Courts in Indonesia

Based on Article 64 of the Criminal Procedure Code (KUHP), the accused has the right for tried in a "trial court."²³ This "trial court" opened to the public. A "trial court" was a trial process held in a courthouse and is open to the public. The accused has the right to come before the court by the Public Prosecutor. It based on the order of the Panel of Judges examined, tried, and pursued the right to his defense. KUHP does not explicit define the form and mechanism of court proceedings. However, several provisions of Criminal Procedure Code conducted a court building, or outside the court building. It was for certain crimes or circumstances. According to the provisions of the Criminal Procedure Code, the trials could carried out classical or face-to-face. The trial chaired by the Panel of Judges assisted by the Substitute Registrar. It attended by the Public Prosecutor and the Defendant and their Legal Advisors. In an urgent circumstances or a natural disaster (force majeure), the trial may postponed for a period. Especial for criminal cases, the defendant is bound by a limited period of detention. Although the detention period can extend, the defendant or his legal advisor often demands that the prosecution process carried out quickly

¹⁹ District Court of New South Wales, "Virtual Court Practitioner User Guide", <http://www.districtcourt.justice.nsw.gov.au/>, (Accessed May 1, 2021).

²⁰ Unified Court System New York State, "Virtual Arraignments Start in New York City Criminal Court New York County Criminal Court, 100 Centre Street, NY City" <http://www.nycourts.gov>, (Accessed May 1, 2021).

²¹ Brendan J. Lyons, "New York City Implements Virtual Courts Proceedings", <https://www.timesunion.com/news/article/New-York-City-implements-virtual-court-proceedings-15153010.php>, (Accessed May 1, 2021)

²² New York State Unified Court System, "Press Release: Virtual Court Operations To Commence This Week In Suffolk County, Seventh and Fifth Judicial Districts" www.nycourts.gov/press, (Accessed May 1, 2021).

²³ Pasal 64 Kitab Undang-undang Hukum Acara Pidana (KUHP)

Regardless of the concept of e-court civil cases launched by the Supreme Court. A trial of witnesses, expert examiner used video teleconference at the Constitutional Court. Virtual courts were not new in Indonesia. Some examples of cases were:

1) Investigation of the Witness of Former President BJ Habibie

The investigation used video teleconferencing facilities in Indonesia was first conducted in 2002. The Supreme Court through the South Jakarta District Court made a legal breakthrough. They were accepting the Application of Law Seeing Defendant. It was conducting an investigation of Former President BJ Habibie using video teleconferencing. In this case, the irregularities of Bulog's non-budgetary funds charged two ministers. The ministers were Defendant Akbar Tandjung as former Minister of State Secretary, and Defendant Rahardi Rammelan as former Minister of Industry and Trade.²⁴ In 2003, the Public Prosecutor submitted 32 witnesses, and 7 people. They were providing an information via video conference. The reason was the witness could not brought to trial. They detained by the Malaysian Government and the Singaporean Government. So, it was impossible for brought to court.

2) Investigation of Witnesses in Abu Bakar Ba'asyir Case²⁵

courtroom with the location of the judiciary, be it Judges, Registrars, Prosecutors, Witnesses, Experts, Defendants, and Legal Counsels. These have been determining firm and clear. But, there were exceptioning to hold a trial outside the court building wherever possible to arrange the courtroom. It referred Article 230 paragraph (3) of the Criminal Procedure Code. If the provision was not possible, then it must be on at least the National flag. From the description, it implied that the trial carried out the physical presence of the judiciary, whether it was the Judge, Registrar, Public Prosecutor, Witness, Expert, Defendant, and Legal Counsel. They could in one room even if not in the court building. This situation poses a dilemma because of an emergency pandemic.

In the Draft Criminal Procedure Code 2012, teleconference as a form of witnesses investigations. It applies to experts too. Article 180 paragraph (2) of the Draft Criminal Procedure Code, stated that witnesses who cannot attend the investigation at the trial, witness statements given through an audio-visual communication devices with the presence of legal advisors and public prosecutors. In paragraph (10) the provisions on the procedures and provisions for providing information as referred to in paragraph (2) regulated by a Government Regulation. Although not on a large scale like virtual courts, the use of video conferencing/teleconferencing in testifying from outside the court has the same essence as the implementation of a virtual court that involves all judicial instruments. In current conditions, the juridical substance of the judiciary needed.

3) Investigation of witnesses in the case of Ali Gufron²⁶

The Public Prosecutor presented 35 witnesses. One of the witnesses gave information via video teleconference. He detained in Malaysia. Before the witness testified, the investigator was sworn in.

²⁴ Wathan, H. (2004). Kajian Kritis Terhadap Kesaksian Dengan Menggunakan Video Teleconference Di Persidangan Dalam Perkara Pidana Suatu Tinjauan Terhadap Kesaksian Prof Dr Ir Bacharuddin Jusuf Habibie dalam Perkara Penyalahgunaan Dana Non Budgeter Bulog (Doctoral dissertation, University of Muhammadiyah Malang).

²⁵ Vide Putusan Pengadilan Negeri Denpasar Nomor : 224/Pid.B/2003/PN.DPS.

²⁶ Vide Putusan Pengadilan Negeri Denpasar Nomor : 224/Pid.B/2003/PN.DPS.

4) Investigation of Witnesses of Serious Human Rights Violations in East Timor²⁷

The case of gross human rights violations in East Timor. It held at the Ad Hoc Human Rights Court in Central Jakarta. The request of witness investigations using video teleconference from Dili Timor Leste. The reasons were security and efficiency.

5) Jakarta International School Case Investigations²⁸

In 2010, the Public Prosecutor requested for an investigation. One of the witness was a child aged 6 years. The investigations used a video teleconference. The child was at the Witness and Victim Protection Agency.

From some virtual court practices in criminal proceedings, they used video teleconference. During the investigations of witnesses, we found information such as:

1. Criminal courts in Indonesia have conducted witness investigations using video teleconference facilities.
2. Witnesses investigation by video teleconference carried out if the witness was abroad. This aimed to maintain the security of witnesses. So, the witnesses were free to provide information.
3. During the investigation, the Panel of Judges asked the witness. The question about who was around the witness. It was ensuring that the witness provides information without limitation.
4. Investigation of children as witnesses was freer to use video teleconference facilities;
5. Although the virtual courts in Indonesia limited to the investigations. This precedent established by jurisprudence as a source of law. It was submitting the concept of a virtual court to criminal courts in Indonesia.

C. Virtual Courts from Indonesian Criminal Procedure Code Perspective

KUHAP is a manifestation of the Criminal Justice System in Indonesia. The Criminal Procedure Code contained provisions on criminal justice procedures. It also contained all the rights and obligations of those who were in the criminal process. The procedure and location of a court session regulated in Article 230 of the Criminal Procedure Code.²⁹ This provision implied a court hearing takes place in a court building in a The application of social

²⁷ Hermansyah, Laporan Penelitian Perlindungan Saksi Dan Korban Dalam Integrated Criminal Justice System (Analisis Terhadap Undang-Undang Nomor 13 Tahun 2006), (Fakultas Hukum Universitas Tanjungpura, 2008), hlm. 16.

²⁸ <https://www.medcom.id/nasional/metro/wkBz9Yqk-sidang-kasus-di-jis-korban-beri-keterangan-viateleconference> (Accesse May, 1, 2021).

²⁹ Article 230 Paragraph (1) of the Criminal Procedure Code states "A court hearing takes place in a court building in a courtroom". Furthermore, Article 230 paragraph (2) of the Criminal Procedure Code states "In a courtroom, judges, public prosecutors, legal counsel and clerks wear court clothes and their respective attributes". In Article 230 paragraph (3) of the Criminal Procedure Code states "The courtroom referred to in paragraph (1) is arranged according to the following conditions: a. The table and seat of the judge are higher than the place of the public prosecutor, defendant, legal advisor and visitors. b. The place of the court clerk is behind the right side of the presiding judge's court. c. The public prosecutor's place is located on the right front of the judge's place. d. The place of the defendant and legal counsel is located on the left side in front of the place of the judge and the place of the defendant to the right of the place of legal counsel. e. The examination seat for the defendant and the witness is located in front of the judge's place. f. The witness or expert place that has been heard is located behind the examination chair. g. The visitor's place is located behind the witness location that has been heard. h. The National Flag is placed to the right of the judges' table and the Penanaman banner is placed to the left of the judges' table while the state symbol is placed on the upper wall behind the judges' table. i. The clerk's place is to the left of the clerk's place. j. The places referred to in letters a through letter i shall be given identification. k. Place a security officer on the inside of the main entrance to the courtroom and elsewhere as deemed necessary. Furthermore, Article 230 paragraph (4) of the Criminal Procedure Code states "If a court session is held outside a court building, the layout of the place as far as possible is adjusted to the provisions of paragraph (3) above". Finally, Article 230 paragraph (5) of the Criminal Procedure Code states "In the event that the provisions of paragraph (3) cannot be fulfilled, at least there must be a national flag".

distancing and physical distancing was an absolute thing. Thus, virtual courts must be a solution if there is an explicit statutory regulation. The virtual legitimacy of teleconference was a pseudo court which was an abnormal emergency.³⁰ Based on the understanding of criminal procedural law, the material was not strict bound by formal and material rules.³¹ Other doctrines and jurisprudence have legitimacy for the use of video conference teleconferencing. It was examining the witnesses from outside the court. Even though the Criminal Procedure Code does not set this up.³²

The court accommodated the rights of victims, representatives, and defendants. It was making a fair trial and not physical involvement in the courtroom. Determination of health emergency status based on the law Number 6 of 2018 on Health Quarantine and Publication Government Regulation of the Republic of Indonesia Number 21 of 2020 on Scale-Social Restrictions (PSBB) by the President of the Republic Indonesia were overcome the growing COVID-19 pandemic. The government has set a goal. It was limiting the space for people through social distancing and physical distancing. Thus, the law protected the goals of the state by responding and adapting to social changes.

D. Legal Basis Virtual Court

The legal principle of *Salus populi suprema lex esto* was the foundation of the fourth paragraph of the Indonesia Constitution (UUD 1945) which stated that "Furthermore, to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed... the independence of the Indonesian nationality is formulated in a Law The basis of the Indonesian state, which is formed in a state structure of the Republic of Indonesia which is sovereign by the people based on ..."

This sacred alinea became the goal of the formation of the Republic Indonesia. The entire nation and Indonesia homeland protection were the highest law. These purpose stated in the Preamble to the Indonesian Constitution as the highest law.

Restrictions on social interaction caused most of the State Civil Apparatus (ASN) including Judges and Judicial Apparatus carry out their official duties in a Work from Home and alternate manner. Thus, the Supreme Court issued a breakthrough on the change of the trial pattern in court. Criminal cases carried out classical or face-to-face to online or by teleconference. The legal basis governing virtual courts in Indonesia are:

1. Perma No. 3 Year 2018 on Electronic Court Administration

This Supreme Court regulation regulated court information system services. It registered users (lawyers/advocates). It aimed to register cases online (e- filling), gets information, estimate the down-payment of court fees and online payments (e-payments). It was getting court summons letters online (e- summons).

³⁰ Billis, E. (2016). The European Court of Justice: A "Quasi-Constitutional Court" in Criminal Matters? The Taricco Judgment and Its Shortcomings. *New Journal of European Criminal Law*, 7(1), 20-38. p.23

³¹ Indriyanto Seno Adji, "Sidang Pidana Secara Online. Prof Dr Indriyanto Seno Adji : Persidangan Online Adalah Quasi Court", http://m.beritahukum.com/detail_berita.php?judul=Sidang+Pidana+Secara+Online.+Prof+Dr.Indriyanto+Seno+Adji%3A+Persidangan+Online+Adalah+Quasi&subjudul=Jaksa, (Accessed, April 21, 2021)

³² Putusan Pengadilan Negeri Jakarta Selatan Nomor : 354/Pid.B/2002/PN.Jak.Sel, Putusan Pengadilan Negeri Jakarta Pusat Nomor : 547/Pid.B/2003/PN.JakartaPusat, Putusan Pengadilan Negeri Jakarta Pusat Nomor: 148/Pid.B/2011/PN.JakartaPusat, dan Putusan Pengadilan Negeri Denpasar Nomor : No.224/Pid.B/2003/PN.DPS.

2. Perma No. 1 Year 2019 on Electronic Case Administration and Trials In Court In this Supreme Court Regulation, acquainted a new method of e-litigation. This method utilized conference or meeting applications with a public internet network.
3. Decree of the Chairman of the Supreme Court No. 129/KMA/SK/VIII/2019 On Technical Guidelines For Electronic Case Administration and Trials
 This decision of the Chief Justice of the Supreme Court aimed to create a common mindset. It was also pattern of action in implementing the electronic court system. It limited application only for civil cases, religious civil cases, military administration, and state administration;
4. Circular Letter of the Secretary of the Supreme Court (SE SESMA) No. 1 Year 2020
 In this circular letter, it permitted to hold trials for criminal cases, military crimes, and jinayat. But, this letter has revoked.
5. Circular Letter of The Supreme Court (SEMA) No. 1 Year 2020 on Guidelines For The Implementation of Tasks During The Prevention of The Spread Of Corona Virus Disease 2019 (Covid-19) in the Supreme Court and Jurisdictions Below. This circular has amended and updated.
6. SEMA No. 1 Year 2020 and SEMA No. 2 Year 202
 This Supreme Court Circular referred to the principle of *Salus Populi Suprema Lex Esto*. It was meaning that the safety of the people was the highest law. The trials of criminal cases, military crimes and jinayat continue carried out for cases. So, the defendant is being detained and the detention cannot extend. Judges limited visitors, the number and safe distance of visitors (social distancing), detection of body temperature, prohibition of physical contact, use of masks, medical gloves, etc. Besides, this circular includes the use of e- litigation applications for trials of civil, religious, and state administrative cases.
7. Cooperation Agreement with the MA, the Prosecutors General, and the Ministry of Law and Human Rights Dated April 13, 2020 No. 402/DJU/KM.01.1/4/2020 JO KEP-17/E/EJP/04/2020 JP. PAS-08.HH.05.05 YEAR 2020 on Implementation of Trials Through Teleconference
8. SEMA No. 6 of 2020 on the Working System in the Supreme Court and Judicial Units Under New Normal Order issued June 5, 2020

E. Application of the principle of *Salus Populi Suprema Lex Esto* in the implementation of Virtual Courts

This was a "*sine quanon*" condition under the legal principle. It coined by Marcus Tullius Cicero. "*Salus populi suprema lex esto*" means that the safety of the people was the highest law. This adage was the basis for taking a policy in the midst of the Covid-19 outbreak. It was because the law must protected its people. The Supreme Court's quick response was ensuring the protection of judicial apparatus, justice seekers, and court users. It was including defendants who are in conflict with the law. The Supreme Court issued Supreme Court Circular (SEMA) Number 1 of 2020 on Guidelines for the Implementation of Duties During the Prevention of the Spread of Covid-19 within the Supreme Court and the

Judicial Units Under it.³³ The Supreme Court regulated the work pattern of judges. Their judicial apparatus was setting the WFH mechanism in turn. Besides, it also regulated the steps taken by the Panel of Judges. It was handle criminal cases, such as criminal cases investigation, military crimes, and jinayat. It was continue carried out, especially in cases where the defendant is being detained and the detention cannot extended. Then the case investigations limited. The judges panel can postpone the trial even though it exceeds the time limit, with an order to the substitute clerk to record any extraordinary circumstances based on this SEMA.

SEMA also regulated the steps taken by the panel of judges. It such as limiting the number and social distancing between court visitors. They were also ordered the detection of body temperature and prohibited a physical contact. It such as shake hands for the parties who will attend or presented in court. Besides, justice seekers encouraged to take advantage of the e-Litigation application for the trial of civil cases, civil religion and state administration. In the online criminal case trial mechanism, the Supreme Court through the Director General of Badilum has also issued Letter Number 379/DJU/PS.00/3/2020 dated 27 March 2020 on Teleconference Criminal Case Trials.³⁴ In the letter, the Director General of Badilum conveyed to the Head of the Court of Appeal and in particular the First Level Court, that during the emergency period of the disease outbreak caused by the corona virus. The trial of criminal cases conducted or by teleconference. Besides, he also urged the leadership of the court to coordinate with the District Attorney and the relevant. Detention Center/Lapas. It regulated the mechanism for remote online hearings or teleconferences. While its still taking into account the provisions of the applicable law. Actually, it was not new for the Supreme Court to hold an online trials or teleconferences. It was because the Supreme Court has become the first State High Institution which applied a technology in every aspect and line of its judicial services. Starting from SIPP application, e-Court, and e-Litigation which specialized in civil cases. The Supreme Court able to be at the forefront. They always have a quick responds to every technological development. It was for the modernization and digitization of the judiciary. So, it can accesses to justice for justice seekers and court users. The Supreme Court's readiness to order the district court to implement a remote online criminal case trial or teleconference during the Covid-19 pandemic also received support from related parties. The Attorney General's Office of the Republic Indonesia has also appealed to District Attorneys throughout Indonesia to coordinate with local District Courts so that trials conducted online or by teleconference. Besides, the same thing also came from the Ministry of Law and Human Rights, through its letter Number M.HH.PK.01.01.01.03 dated March 24, 2020, in a letter addressed to the Supreme Court, the Ministry of Law and Human Rights requested that if an extension of detention was not possible, the trial of the case Criminal acts carried out in detention centers/prisons, open to the public through internet media (live streaming) or conduct trials through video conferences. The Supreme Court's quick response by implementing a remote online criminal case trial policy or teleconference during the prevention of the spread

³³ Surat Edaran Mahkamah Agung (SEMA) Nomor 1 Tahun 2020 tentang Pedoman Pelaksanaan Tugas Selama Masa Pencegahan Penyebaran Covid-19 di Lingkungan Mahkamah Agung dan Badan Peradilan yang Berada Di Bawahnya

³⁴ Surat Dirjen Badilum Nomor 379/DJU/PS.00/3/2020 tanggal 27 Maret 2020 tentang Persidangan Perkara Pidana Secara Teleconference

of Covid-19 is a form of safety protection for judicial apparatus, justice seekers, and also court users (defendant, public prosecutor, advocate, witness, expert, visitor). trial etc.). Besides, so that the Supreme Court and the judicial bodies under it can continue to provide case handling services to relevant stakeholders without any significant obstacles, and especially for the defendants, they will still get the fulfillment of their legal rights during the investigation process at the court level.

F. Challenges and Recommendations

Based on the description in this study, virtual courts have the following challenges:

1. Virtual courts need a legal umbrella that can provide legality for the implementation of online trials. Through the Draft Criminal Procedure Code, this matter can regulated (ius constituendum).
2. The entire process of the investigation conducted online must be 'as close as possible to' or 'equal' to the practice of trials conducted in conventional ways. This includes:
 - a. Certainty that the parties and witnesses understand who is in the courtroom, what are the various roles of each party, due to minimal legal literacy or society.
 - b. Rules for guaranteeing the authenticity of documents and documentary evidence used in e-court or e-litigation.
 - c. Special arrangements on electronic evidence accepted as evidence as well as arrangements for submitting objections to evidence and electronic letters/documents
 - d. Setting special provisions on how to show evidence, so that all parties can see the evidence
 - e. Setting definite provisions on the ways and administration of taking oaths for the parties/witnesses
 - f. Provisions to whom or to whom the internet network usage fee and equipment availability charged
 - g. Setting the provisions of the time zoning used due to differences in three (3) time zones in Indonesia
 - h. Provisions for the availability of space (both real and virtual) that are adequate & technical for their provision that allows community members to attend the trial, because the principle of the trial declared 'open to the public'
 - i. Setting provisions on how the results of the trial accessed by the public (including the media) for transparency and accountability of the court

Recommendation

Recommendations for the implementation of virtual courts based on the challenges faced are:

1. Requires standard protocols, SOPs for regulating matters of a more technical nature, common perception, etc as accountability (Feasibility Standards for the Implementation of Trials) for the Judiciary to provide guarantees for protection and human rights

2. Requires the provision of technical training related to the implementation of virtual courts so that they can be "as close as possible to" conventional courts (physical)

CONCLUSION

Several countries have implemented virtual courts in the justice system in various forms use teleconferencing in the implementation of law enforcement. It aims to meet and facilitate public access to justice needs. Besides, it is not limited to mere physical presence in the courtroom.

The trial conducted using the virtual court method or via teleconference as a quick response to the Supreme Court during the Covid-19 pandemic. The policy of remote online criminal case trial or teleconference is a form of safety protection for judicial apparatus, justice seekers, and also court users (defendant, public prosecutor, advocate, witness, expert, court visitor, etc.). This policy has implemented the principle of *Salus Populi Suprema Lex Esto* in the implementation of Virtual Courts.

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