

## Problematics Of The Legality Online Trial Provisions In The Time Of The Covid-19 Pandemic In Criminal Crime

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#### Abstract

*The Covid-19 outbreak that hit has paralyzed all community activities in various fields, this is also included in the field of law. Trial activities at the Court caused problems due to the Covid-19 pandemic, the Supreme Court (MA) with Supreme Court Regulation No.1 of 2019 concerning Electronic Court Procedures. The problem with online trials is proof. This has created problems related to the validity of evidence carried out by the Public Prosecutor in proving the defendant's guilt and the Judge's belief in the evidence made by the Public Prosecutor. In addition, the problem in online trials is the need for a Standard Operating Procedure (SOP) for the implementation of online trials, this is to ensure the feasibility of implementing online trials, both from the readiness of facilities and infrastructure and security of implementation. This is done so that the online trial does not harm and reduce the rights of the parties, including the defendant, victim and public prosecutor. In order not to cause many problems in the implementation of the online trial process, the Government can issue a Government Regulation in lieu of a Law or revise the Criminal Procedure Code by adding the handling of criminal cases in certain situations, especially in online trials, so that it will strengthen the implementation of criminal procedural law.*



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**Keywords:** Legality of Evidence, Online Trials, Covid-19 Pandemic

## INTRODUCTION

The widespread spread of the Covid-19 outbreak (Corona Virus Disease-2019) has resulted in the death of all community activities in various aspects, this ranging from education, social, economic and legal also experienced the consequences.. In this area of law, the spread of Covid-19 has massively affected law enforcement mechanisms, in this case the activities of the trial did not escape the covid-19 pandemic. The trial activities that greatly impacted the Covid-19 pandemic are criminal trials.

The quick reaction was carried out by the Supreme Court, the Attorney General of the Republic of Indonesia and the Ministry of Law and Human Rights by conducting a Memorandum of Understanding (MoU).. This is done to achieve togetherness in the implementation of the trial during the Covid-19 Pandemic until the end of Covid-19 in Indonesia. In the Memorandum of Understanding (MoU) one of them is stipulated an agreement in conducting criminal trials online.

The public prosecutor is obliged to handle the case immediately, but on the other hand there are concerns that if the trial continues to be held because of gathering many people in the courtroom, it will cause the rapid spread of Covid-19. The Attorney General of the Republic of Indonesia, finally issued The Attorney General's Instruction No. 5 of 2020, dated March 23, 2020 concerning the Policy of Implementation of Duties and Handling of Cases during the Covid-19 Spread Prevention Period, where this policy instructs prosecutors throughout Indonesia to conduct hearings via teleconference.

The problems caused by the Covid-19 pandemic are very pronounced at criminal court. On the grounds of limited detention period, which is used as the basis by the Supreme Court (MA) immediately establishes online trials based on Supreme Court Regulation No. 1 of 2019 concerning The Administration of Cases and Proceedings in The Court electronically. Supreme Court Circular Letter No. 1 of 2020 concerning Guidelines for The Implementation of Duties during the Period of Prevention of the Spread of Covid-19 in the Supreme Court and the Judiciary Under It.

The readiness of the Supreme Court in conducting trials online and remotely (teleconference) is not new, because the Supreme Court is the first State Higher Institution in utilizing technology in every aspect and service of its judiciary. Technology applications that have been applied between SIPP, e-court, and e-litigation all serve only civil cases. This shows that the Supreme Court is always quick and responsive in responding to technological advances in improving the modernization and digitization of the judicial world, this leads to easy access to justice for every justice seeker and courtuser<sup>1</sup>.

The problems faced in the application of online trials or teleconferences in practice where the accused undergoes trial remains in the Correctional Institution, while the judge is in the courtroom and the public prosecutor is in the prosecutor's office or the judge and the prosecutor together are in the courtroom, this has influenced the evidence in the trial to decide whether the accused is guilty or not.

## METHODOLOGY

The methods used in this study were juridical normative. Normative research is

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<sup>1</sup> Wahyu Iswantoro, Online Criminal Trial, Ma's Rapid Response to the Covid-19 Pandemic, Selisik Journal, Volume 6 Number 1, June 2020, p. 62

where the law is conceptualized as what is written in a law is books or the law is conceptualized as a rule or rule of norms that serve as a basis in human behavior is used as a benchmark for good or bad<sup>2</sup>.

## **RESULTS AND DISCUSSION**

### **1. Proof of Criminal Case Of Online Trial during the Covid 19 Pandemic**

In very urgent conditions or the occurrence of a natural disaster (force majeure), the trial can be postponed for a certain period of time. This is different for criminal cases, because the defendant is bound by a limited period of detention, although the period of detention can be extended, however, the defendant or his legal advisors still demand that the prosecution be conducted immediately and immediately, this is guaranteed by the law and the constitution, so the court must continue to conduct the trial online or teleconference<sup>3</sup>.

The implementation of criminal trials conducted by teleconference during the current Covid-19 pandemic is a very precise breakthrough and must be perfected by the Supreme Court, with the slow process of legal renewal in Indonesia (expired law) can cause violations in the fulfillment of legal rights of any individual who is in trouble with the law. The mechanism of online proceedings or teleconferences must be arranged in detail and regularly, so that the proceedings will run ideally and not harm the rights of the parties in the proceedings.

Online or teleconference trials have been conducted several times, but there are no rules or laws governing them. The rules expressly govern teleconference in the Jurisprudence of the Supreme Court No. 112PK/Pid/2006 concerning Schapelle Leigh Corby, but in this case requesting witness examination via teleconference is unacceptable to the Supreme Court on the grounds that in the civil lawsystem, jurisprudence is persuasive, so there is no obligation for judges to use teleconference and is not a necessity under the applicable criminal procedural law in Indonesia to be able to use teleconference in examining witnesses<sup>4</sup>.

In criminal cases the trial is an attempt to find out if there has been a criminal act in a particular event. Therefore, proof in criminal trials has a very important role. Evidentiary is central to the examination of cases in court proceedings. Proof is a guidelines and guidelines on how to justify by law to prove wrongdoing to the accused. In the evidentiary plays an important role in the process of examination of the trial that determines the fate of the accused<sup>5</sup>.

The evidentiary system is the procedure of how the forms of evidence can be used, the decomposition of evidence and how to use the evidence and in what way the judge can establish his belief in the trial incourt<sup>6</sup>.

Proof is a mechanism for the use of evidence tools to be submitted, used and maintained in accordance with applicable rules. Broadly speaking the proof is<sup>7</sup>:

1. Rules that restrict court hearings to seek and maintain the truth. The involvement

<sup>2</sup> Amirudin and H. Zainal Asikin, Introduction to Legal Research Methods, PT. Raja Grafindo Persada : Jakarta, 2006, p. 118

<sup>3</sup> Wahyu Iswantoro, Op.cit,p. 59

<sup>4</sup> Norika Fajriana, Teleconference on Criminal Cases Examination in Court,Badamai Law Journal, Volume 3 Issues 1, March 2018, p. 62

<sup>5</sup> Bustianto Nugroho, Role of Evidence in Criminal Cases in Judge's Decision according to KUHAP, Yuridika Journal, Volume 32 Number 1, January 2017, p. 26

<sup>6</sup> Alfitra, Law of Proof in Criminal, Civil and Corruption Proceedings in Indonesia, Raih Asa Sukses, Jakarta, 2011, p. 28.

<sup>7</sup> M. Yahya Harahap, Discussion of Problems and Application of KUHAP, Examination of Court Hearings, Appeals, Cassation and Review,Sinar Grafika, Jakarta, 2005, p. 274

- of judges, litigants and legal counsel is bound by the mechanisms and rules regarding the assessment of evidence tools determined by law;
2. The panel of judges in deciding the case is influenced by how to find and put the truth based on the evidence that has been established by the law.

Proof in the criminal procedural law is a system of proof before the court, in order for a criminal offence to be decided by a judge, must be able to meet 2 (two) absolute conditions that have been determined in the Criminal Procedure Law (KUHP) is a sufficient and valid evidence and the conviction of the judge.

With the use of teleconference or online trial, the provisions that can be used as guidelines in measuring the strength and assessment of evidence tools, including Article 183-189, Article 3, Article 284 paragraph (2) of the Criminal Procedure Law (KUHP) and Article 5 paragraph (1), Article 10 paragraph (1) law No. 48 of 2009 on The Power of Justice<sup>8</sup>.

The development of technology and law has tried to pursue legislation that uses electronic evidence in criminal acts with the following provisions:

1. Article 26 letter a law Number 20 of 2001 concerning the Eradication of Corruption;
2. Article 29 and 30 of Law No. 21 of 2007 concerning the Eradication of People Trafficking Crimes;
3. Article 9 paragraphs (1), (2) and (3) of Law No. 13 of 2006 concerning The Protection of Witnesses and Victims;
4. Article 44 of Law No. 11 of 2008 concerning Information and Electronic Transaction.

In relation to the issue of achieving material truth, online trials do not substantially change the position of the parties in a trial, In the process of conducting an online trial, law enforcement officers remain in the same position, namely the element of claimant represented by the public prosecutor with the orientation of thinking prosecution minded, element of legal counsel with the orientation of defender minded and the element of breaker represented by the judge with the orientation of problem solver or decisionmaker<sup>9</sup>.

The use of teleconference in criminal court proceedings, based on Article 5 paragraph (1) of Law No. 48 of 2009 concerning The Power of Justice, states that:

“Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society”

Therefore, it is necessary for the role of the judge in the discovery of new laws (*rechtfinding*) to achieve material truth and provide justice in accordance with the expectations of the seeker of justice.

It is time for the Indonesian criminal procedural legal system, especially the evidentiary system and/or its evidentiary law to be revised in anticipation of the use of teleconference in order to have certainty and legal force without ignoring the important principles that apply in it. Teleconference technology as a breakthrough, its use in the future is already considered as a legal need in the Indonesian criminal procedural legal system

<sup>8</sup> Dewi Rohayati, Legal Force teleconference in Criminal Case Evidentiary Event, p. 14, <https://adoc.pub/kekuatan-hukum-teleconference-dalam-acara-pembuktian-perkara.html>, accessed on March 11, 2021

<sup>9</sup> Gusri, Sonia Septiana, Jatmiko, Gunawan and Husin Budi Rizki, Implementation of Suspect/Defendant Rights according to Article 52 of the Criminal Code in Order to Seek Material Truth, *Poenale Journal*, Volume 7 Number 2, 2019, pp. 1-10

## 2. Obstacles in The Online Trial of Criminal Cases

In the online trial criminal cases face several obstacles in their application, including:

### 1. Substantive barriers

- a. The conference is generally open to the public, unless specified in the legislation. This is important in the efforts of transparency so that the public can supervise the course of the trial, listen and observe the facts in the trial presented and prevent the occurrence of the judicial mafia<sup>10</sup>;
- b. Evidentiary issues, proof has an important role in proving the accused guilty or not. In addition, the parties are not in the courtroom at the same time, so it will be difficult to find, dig up the legal facts in the trial.

Problems related to the evidence in advance of the current trial, while criminal trials are conducted online or through teleconference on the grounds of the Covid-19 pandemic. It has actually raised a number of issues related to the validity of the evidence made by the public prosecutor to prove the defendant's guilt as well as the judge's belief, of the evidence done by the public prosecutor.

Article 183 kuhap explains:

“The judge shall not sentence a person unless with at least two valid evidence he obtains the belief that a crime actually occurred and that the accused is guilty of doing so.”

Complex evidence, which requires more than the public prosecutor's ability to parse the testimony of witnesses, evidence, instructions and other evidence, as well as confront the testimony of witnesses, defendants and evidence presented by the public prosecutor, cannot be done simply through teleconferences or virtual meetings. Because it will affect the rights of the litigants, be it defendants, victims, or the public in general that can not be reduced or stored in order to find material truth in the implementation of criminal trials.

As is known, a number of parties found there were several problems in the online criminal trial during the pandemic. Such as, the lack of fulfillment of the rights of the parties; the proceedings were hampered; concerns about the transmission of Covid-19 in court; the mechanism (the law of the event) was forced to change<sup>11</sup>.

### 2. technical barriers

There are still many parties who have not been able to use information technology and the availability of internet networks in certain areas when they want to conduct electronic trials. Although there is already a memorandum of understanding among law enforcement officials regarding the use of video conference criminal cases, especially for the examination of witnesses. However, there are barriers to the availability of electronic devices in each agency, the position of the accused, and the existence of related parties (witnesses)

To overcome substantive and technical barriers there needs to be a solution in an online trial or teleconference. To overcome substantive barriers immediately published

<sup>10</sup> LBH Jakarta, Court Proceedings must Remain Open to the Public Despite being conducted Online Due to the Covid-19 Pandemic Virus Outbreak, May 13, 2020, <https://www.bantuanhukum.or.id/web/proses-persidanganpengadilan-harus-tetap-terbukauntuk-umum-meskipun-dilaksanakan-secara-onlineakibat-abah-pandemi-viruscovid-19/>, accessed 05 March 2021,

<sup>11</sup> <https://www.hukumonline.com/berita/baca/lt5ee39ea112c02/sidang-pidana-online-dinilai-sulit-menemukan-kebenaran-materi?page=all>, retrieved 05 March 2021

legislation governing online trials, especially criminal cases. To overcome technical barriers in order to provide human resources that understand and understand Information Technology adequately, increase the ability of law enforcement officials about technology and provide stable and robust internet support infrastructure in online trials.

## CONCLUSION

Based on the description submitted, it can be drawn a conclusion that the proof of online trials against criminal cases must remain guided by the rules in the Criminal Procedural Law and Law No. 48 of 2009 on The Power of Justice, therefore there needs to be clear rules in the examination of online trials, especially in evidentiary, and infrastructure in the internet network to support online trials must be stable and strong , so that it can run lancer.

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