



The Legality of Virtual Trials in the Indonesian Criminal Law System

Arief Budiono; Bagus Fakhri Utomo

Universitas Muhammadiyah Surakarta, Indonesia

Email: ab368@ums.ac.id, c100211091@student.ums.ac.id

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Abstract

The existence of this pandemic certainly has an impact on several things, one of which is in the legal realm, namely trials that are conducted virtually or online. Therefore, in this paper, we will discuss the implementation of virtual trials in Indonesian criminal law with several problem formulations, namely how the mechanism is carried out in the application of virtual court law in overcoming all criminal problems that exist in Indonesia, then in this study will discuss about What legal basis underlies the implementation of this virtual trial in Indonesia when examined in the Indonesian criminal law system. This research uses a qualitative normative legal research type. Normative legal research is a legal research conducted in a way such as conducting research on library materials or secondary data. In this research, law is often conceptualized as something that is written in legislation or as a norm which is a benchmark for human activities that are considered appropriate. The results of this study are first, trial activities are also influenced by various problems due to the Covid-19 pandemic, namely in the criminal process on the grounds that the limited period of detention is the basis for the Supreme Court of the Republic of Indonesia to establish a virtual trial in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 Year 2019 on trial procedures but not in criminal justice.

Keywords: *Virtual Criminal Court; Online Trial; Judicial System*

Introduction

Indonesia as one of the countries that has gone through a slump. However, Indonesia is currently experiencing a lot of progress both in various fields, one of which is advances in technology and information. Information technology is growing, therefore its use to facilitate judicial tasks is increasingly massive through electronic courts (e-court). Now there is also a regulation, namely the existence of Law Number 19 of 2016¹ regarding Amendments to Law Number 11 of 2008 concerning Information and

¹ Undang-Undang Nomor 19 Tahun 2016, *Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008*.

Electronic Transactions² where the law has explained and mandated the government to encourage and provide support for information technology through enforcement and development of laws and regulations so that in using technology safely that is useful for preventing all forms of abuse, namely by paying attention to all aspects such as social religious values based on social community.

The openness of the judicial process is one of the conditions in supporting the rights of the creation of a judiciary. The existence of this will be an answer in answering the anxiety contained in bureaucratic procedures which are not infrequently tortuous where it will cause people to be reluctant to fight for their rights in obtaining justice through law enforcement officials.³ Based on the report contained in the Ombudsman of the Republic of Indonesia in the 2020 period, the district court as one of the judicial institutions with the most complaints amounted to approximately 394 complaints, namely the type of administrative maladministration that was most frequently conflicted by the public, namely cases that had dragged on as many as 215 complaints, where the case is not processed by the court. And there were 115 complaints about procedural deviations and there was ambiguity and incompetence in carrying out work in the justice system as many as 117 complaints.⁴ Then the development of information and communication technology, can be a new chapter to erode these things.

Covid-19 or known as the Corona Virus has become the center of attention by various countries, especially Indonesia. The virus first appeared in Wuhan, China in early 2020. This virus is included in a dangerous virus because it can easily infect someone. The virus is transmitted through droplets of people who are infected with the covid virus. Transmission can be transmitted through sneezing, mucus, saliva, and so on. The disease caused many deaths because according to the latest data, the virus caused quite a large number of deaths. The virus has spread to various countries including Indonesia. With the existence of covid, a new thought has emerged, one of which is the judiciary that seeks to innovate and carry out reforms from conventional to virtual trials. Indonesia has started implementing virtual criminal justice based on the policy, namely "Work from Home" as an effort to prevent the spread of the Corona Covid-19 virus. The Covid-19 pandemic has caused various problems in various fields of life, including in the law enforcement sector. On the one hand, the Public Prosecutor is obliged to complete the handling of criminal cases, but on the other hand there is concern that trials that gather large numbers of people will cause the spread of Covid-19. Therefore, courts in Indonesia have now implemented virtual courts. On the one hand, the Public Prosecutor is obliged to complete the handling of criminal cases, but on the other hand there is concern that trials that gather large numbers of people will cause the spread of Covid-19. Therefore, courts in Indonesia have now implemented virtual courts. On the one hand, the Public Prosecutor is obliged to complete the handling of criminal cases, but on the other hand there is concern that trials that gather large numbers of people will cause the spread of Covid-19. Therefore, courts in Indonesia have now implemented virtual courts⁵. The problem with virtual criminal justice in Indonesia is that there is no legality in implementing virtual criminal justice. Virtual criminal justice is only based on circulars from the Indonesian Supreme Court and cooperation agreements between judicial institutions, while the civil law system in Indonesia must have legality in the form of law. The legality of virtual courts in Indonesia only applies to civil courts, but virtual criminal justice does not yet exist.

Reform is a must, including the renewal of the legal system. The legal system according to the theory of Lawrence M. Friedman, namely substance, structure, culture and infrastructure, all subsystems must be updated along with the times. Because it is impossible for justice to be achieved if only one

² Undang-Undang Nomor 11 Tahun 2008, *Tentang Informasi Dan Transaksi Elektronik*.

³ F. P. Alviolita and B. N. Arief, "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia," *Law Reform* 15, no. 1 (2019)..

⁴ www.ombudsman.go.id, "Ombudsman Terima 1.120 Laporan Terkait Lembaga Penegak Hukum Di Tahun 2020," last modified 2021, <https://ombudsman.go.id/news/r/ombudsman-terima-1120-laporan-terkait-lembaga-penegak-hukum-di-tahun-2020>.

⁵ D. R. Nugroho and S. Suteki, "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 291–304.

system is improved, such as justice will be difficult to achieve if the regulations are not good, on the contrary, at most the regulations will not be useful if law enforcement is not professional, then it becomes a causal relationship in the application of the law.⁶ To achieve quality law enforcement, the legal system must also be in line with the goals of the Indonesian state, namely Pancasila. The presence of the virtual court is a sign of the start of a new era of modern justice in Indonesia.

Conventional criminal justice in Indonesia requires all parties to be present in court, while in the virtual criminal justice system it can be carried out without the presence of the parties. The parties can do justice in their respective places. Therefore, it is necessary to reform the criminal procedure law in Indonesia. If you look at other countries such as America, the Netherlands, Australia and the UK, they have implemented virtual courts in their countries to support the era of technology 4.0 and prevent the transmission of Covid-19. above background, it can be seen that in fact virtual criminal justice is a must in the presence of an unusual situation in the era of the global Pandemic threat, in addition, without a pandemic situation or condition, it is in fact the era of the technology industry. 4.0 is also a challenge for modern justice in Indonesia, where justice in the world has used virtual courts in their respective countries.⁷

Based on previous research, the trial, which was conducted virtually or online, has been stated in a circular wherein the letter is accompanied by important points to support the implementation of the online trial. The transition of the trial system which initially immediately became virtual certainly caused many differences and various impacts. Based on these, Researchers are interested in studying a problem formulation, namely discussing the legal basis of virtual courts in Indonesia and the advantages of implementing virtual courts in Indonesia. The purpose of this study is to know clearly about the legal basis for the implementation of virtual courts in Indonesia.

Method

The research methodology used in this paper is a qualitative normative legal research⁸. Normative legal research is a legal research carried out in a way such as conducting research on library materials or secondary data⁹. According to Peter Mahmud Marzuki, what is meant by normative legal research is a process used to find a rule of law, legal principles or doctrine that is used to answer an issue or legal problem being faced.¹⁰

In this research, law is often conceptualized as something that is written in legislation or as a norm which is a benchmark for human activities that are considered appropriate.¹¹ In normative legal research, several approaches are used, namely the legal approach, the conceptual approach, and the comparative approach. By using this qualitative normative method in this study related to the legal approach and approach to the problem. The qualitative normative analysis in this study is based on descriptive and predictive analysis¹².

⁶ L. M. Friedman, *Sistem Hukum : Perspektif Ilmu Sosial (Cetakan VI)* (Bandung: Nusa Media, 2018).

⁷ Nurjihad Nurjihad, Ariyanto Ariyanto. Electronic Trial At The Supreme Court: Needs, Challenges And Arrangement. *Jurnal Jurisprudence UMS*. Vol 11, No 2 (2021): Vol. 11, No.2, 2021. Pp 170-186
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⁸ Khudzaifah Dimiyati, Kelik Wardiono. *Metode Penelitian Hukum*. 2004. UMS Press. Surakarta

⁹ S. S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2003).

¹⁰ P. M. Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010).

¹¹ A. D. Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2006).

¹² wildan arif, Suci Kamilah, Renaldy Afriyanto. The Legality of Debt Agreement Via Whatsapp Messages. *Vol 11, No 2 (2021): Vol. 11, No.2, 2021. Pp 253-266*

Discussion and Analysis

Analysis of Virtual Court Arrangements in Indonesia

Virtual Courts as a New Culture for Future Courts in Indonesia The Covid-19 outbreak has paralyzed community activities in various sectors, including from a legal perspective. The trial activities were also influenced by various problems due to the Covid-19 pandemic, namely in the criminal process on the grounds that the limited period of detention became the basis for the Supreme Court of the Republic of Indonesia to establish a virtual trial in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2019¹³ about court proceedings. but not in criminal justice¹⁴. Regarding the administration of criminal justice, the Supreme Court (MA) established a regulation on the administration and trial of criminal cases electronically in court, namely Supreme Court Regulation no. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically (Perma Online Criminal Court)¹⁵. The trial that used to be held in person but is now being held virtually due to the COVID-19 pandemic.

The implementation of Virtual Criminal Justice is something that can be seen as progressive for the judiciary in Indonesia which has now begun to be established at the time of the threat of the Covid 19 outbreak. This is certainly in accordance with the principle of "fast, simple, and low-cost justice", this is a very positive concept for the future ". Another thing that can be learned from digital trials is that it can save time because you don't have to wait for the defendant to come to court. The virtual system policy in the judiciary embodies the advancement of the principle of fast, simple and low cost. This cuts unnecessary red tape. and prevent deviant practices in the judiciary¹⁶. This virtual trial avoids crowds which can then facilitate the transmission of the Covid-19 virus.

This electronic justice is an adaptation change that must be accepted and carried out, because the world of information technology has developed. Adaptation to the digitization of justice is needed in the new normal conditions that will come in the pattern of working relationships between humans for the life to come. The development of a virtual-based modern justice system, it is hoped that transparent and accountable courts will be created¹⁷. There are three main problems faced by judicial institutions around the world, namely the delay in handling cases (delay), difficulties in public facilities and access (access), and the integrity of the judicial apparatus (judicial integrity).¹⁸. Thus the use of technology in the judiciary will solve problems in conventional justice¹⁹.

In the implementation of the virtual court, infrastructure is also an important discussion because if it is not adequate, it will clearly have implications because it does not fulfill justice for the community. Virtual courts as the application of law require reform in terms of infrastructure. Judicial response to fulfill public justice is the main thing. This is intended so that access to justice can be wide open for

¹³ Peraturan Mahkamah Agung RI Nomor 1 Tahun 2019, *Tentang Tata Cara Persidangan Tetapi Tidak Dalam Peradilan Pidana*.

¹⁴ A. Irawan, "Peranan Kejaksaan Dalam Implementasi Penegakan Hukum Peraturan Mahkamah Agung Ri Nomor: 02 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam Kuhp Terhadap Penyelesaian Tindak Pidana Harta Kekayaan," *Jurnal Panji Keadilan : Jurnal Ilmiah Nasional Mahasiswa Hukum* 2, no. 2 (2019): 155–169.

¹⁵ Peraturan Mahkamah Agung No. 4 Tahun 2020, *Tentang Administrasi Dan Persidangan Perkara Pidana Di Pengadilan Secara Elektronik (Perma Sidang Pidana Online)*.

¹⁶ L. J. M. Cornet and J.-L. Van Gelder, "Virtual Reality: A Use Case for Criminal Justice Practice," *Psychology, Crime & Law* 26, no. 7 (2020): 631–647.

¹⁷ A. Anand, "Virtual Courts: The Changing Face of Indian Judicial System," *SSRN Electronic Journal. Elsevier BV* (2021).

¹⁸ A. Caligiuri, "Cooperation in Judicial, Legal, Security, and Socioeconomic Matters: The Legal Basis of the Principle of Ne Bis In Idem in the Italian Criminal System (Note by Andrea Caligiuri)," *The Italian Yearbook of International Law Online* 29, no. 1 (2020): 456–459.

¹⁹ Ibid.

fulfillment for the whole community²⁰. In carrying out the judicial function, law enforcement in this case also has the main task, namely justice (gerechtigheit), benefits (zwochmatigheit) and certainty (rechsecherheit). Law enforcement as the main organ in court and as judicial executor such as demanding, receiving, examining, and adjudicating a case must have the concept of professionalism, namely in terms of creativity, innovation, and responsiveness. The presence of virtual criminal justice, will improve the user experience for justice seekers. Virtual criminal justice is also an opportunity for self-defense (audi et alteram partem).

The use of this online-based system certainly makes it easy for various parties to carry out justice and fight for their rights so as to be able to provide legal protection for the parties. The existence of this virtual judicial application provides a digital footprint which is of course very difficult to remove so that all documents can be stored safely without the loss of a document. The existence of this e-court is expected to provide convenience for various parties in obtaining and knowing the extent of the cases being faced so as to increase trust in the community and public access to the judiciary and law enforcement officials are also growing and of high quality.²¹ This is in line with what was conveyed by Stephan, if a very important element in the judicial process itself is the existence of a formal legal institution which then becomes a place where the public can hold their trust as a neutral, effective, and professional institution. Meanwhile, according to Gollub, a satisfaction and public trust itself is an important element in the creation of justice and is very important for formal institutions.²² Therefore, the existence of this virtual trial shows a new culture in the judiciary as an ease in providing access to various parties, a form of public service and justice seekers, so as to make the courts more trustworthy, with integrity, accountable, transparent, effective and efficient. The existence of technological developments that are increasingly developing are expected to have a positive influence and impact on usability.

Virtual Court Arrangements in Several Countries

The upcoming virtual criminal court will also fulfill the sense of justice of all parties, which according to Richard Susskins consists of 7 (seven) principles of justice, namely substantive justice, which contains fair decisions, procedural justice, which contains a fair process for all parties, Justice open, namely transparent and open to everyone, distributive justice, which is a system that can be accessed by all parties without exception, proportional justice, which is a proportional sense of justice that is proportional to all parties appropriately, justice that can be enforced, supported by all parties, especially in state law, sustainable justice, i.e. containing sufficient resources in sustainable change so that it continues to be the best²³. There is a legal comparison which is one of the studies of legal science to find new things in the current system, so a comparison is needed to become a benchmark for the formation of a new system that is in accordance with expectations and needs. There are several countries that have used an online justice system, namely:

²⁰ S. Handika and M. I. F. Rahim, "Virtual Court' in the Perspective of Criminal Procedure Code," *International Journal of Innovative Research and Development* 9, no. 6 (2020).

²¹ S. Handika, M. I. F. Rahim, and R. P. Sudirdja, "Virtual Court Policy For Criminal Justice on Corona Virus Disease Pandemic," *Substantive Justice International Journal of Law* 3, no. 1 (2020).

²² A. Witasari and M. S. Arif, "Implementasi Diversi Guna Mewujudkan Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum* 35, no. 2 (2019).

²³ V. Ariyanti, "Equity Sebagai Dasar Pertimbangan Putusan Hakim Dalam Menyelesaikan Perkara Pidana Perempuan," *Jurnal Ilmu Hukum* 5, no. 1 (2020): 63–84.

Table 1. Some Countries with Virtual Justice System

Country	Legal basis	Terms Used
America	Public Act 262 of 2001 America	Cyber Court
Australia	High Court Bulletins 1996	E-Justice
Dutch	Act 78a and 131a Straafvoerderung	Remote Justice
English	Criminal Justice 1988 act 32 and Rome Statute act 68 (2).	Digital Court
Singapore	The Evidence Act 97	Virtual Court

Source: Barlian & Herista, 2020²⁴

Based on the table above, several countries have included virtual courts as their legal system. With the existing conditions and supported by technological developments, the judiciary has been able to explore, reconstruct, and capture the substance of justice that is growing in society and then return it to the community in the form of court decisions that focus on justice, certainty and legal benefits. Guaranteed protection of human rights in the Constitution, development of international human rights norms and democratic values, are important factors in influencing the criminal law policy of a country. Therefore, to realize an Indonesia virtual court, effective and efficient steps are needed from the beginning of the entry of cases into the criminal justice system so that the courts, especially at the first level, able to serve the interests of the community, which is characterized by low-cost judicial processes, simple trials, and trials with time to settle cases. Because in general, time standards are measures of efficiency and effectiveness set by courts and other institutions to support performance standards and indicators aimed at ensuring efficient processes and accountability.²⁵

Advantages of Implementing Virtual Court

The application of courts that are carried out online or virtual will certainly have consequences or effects on their implementation, such as in the case of judicial administration and the existence of transparency in the process of obtaining justice which provides encouragement to law enforcement behavior that is professional, transparent, accountable, effective, and efficient.²⁶ The modernization and reform of the judiciary has resulted in a delay in the settlement of cases and an increase in integrity and professionalism between law enforcement agencies. The immediate impact of a person fighting for justice itself is through the implementation of their own virtual court system which really makes it easier for the justice seeking community to access and control the ongoing process and save on court costs. Information technology is an undeniable necessity, however, in the author's view; must continue to comply with the legality of Indonesian criminal procedural law, such as in the substantial and procedural aspects.

The novelty in the Substantial aspect is to create legal norms in virtual criminal courts such as Supreme Court regulations or laws and regulations that at least explain in "certain circumstances" can choose or use virtual courts. Then regarding the novelty of the procedural aspect, namely in the form of guidelines for implementing virtual courts in criminal cases based on procedural law that accommodates the interests of the parties starting from judges, public prosecutors, legal advisors, defendants, and witnesses/experts as well as other procedural law principles. The goal of judicial modernization in Indonesia is to provide quality, effective and efficient services to justice seekers. To achieve quality legal

²⁴ A. Barlian and A. Herista, "Virtual Court as Alternative On the Future Criminal Justice System in Indonesia," *Proceedings of The International Conference on Environmental and Technology of Law, Business and Education on Post Covid 19, ICETLAWBE 2020* (2020).

²⁵ Muhammad Rafi Urrutab, "Konsep Keadilan Restoratif Dalam Penegakan Hukum Pidana Di Masa Pandemi Covid 19," *Syntax Idea* 3, no. 7 (2021).

²⁶ Nugroho and Suteki, "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)."

services, every legal system must be in accordance with the times, because it is impossible for the legal process to be achieved properly if only one system is improved such as law enforcement will have difficulty achieving justice and enforcing the law if the legislation is still inadequate, and vice versa. as best as possible the legal regulations that are stipulated will not be useful if law enforcers are not professional, then it becomes a causal relationship in the application of law to build a legal system that is in line with the needs and developments of the times.

In reforming criminal law, Indonesia recognizes the development of sub-systems in criminal law, namely the development of structure, substance and culture. The construction of the structure is by updating the online model for law enforcement and also all related parties such as judges, prosecutors, advocates, witnesses, experts, victims, defendants and other parties. Meanwhile, the development of substance is the renewal of norms or regulations such as loose generals, namely criminal procedural law and implementing regulations such as the Supreme Court Regulation. Then in the development of culture in the virtual court is the renewal of infrastructure and renewal that follows the current cultural conditions and habits of the people, finally it is necessary to update the infrastructure which will also support the running of the virtual court in the future. This is what must be resolved in Indonesia's future national legal system. Virtual sessions must be reformed according to the needs of the current era which cannot be avoided and can be followed by all parties, but because they are aware of many weaknesses and shortcomings, virtual sessions are actually an alternative form of judicial implementation that can be carried out online if there are certain circumstances and its importance. agreement of all parties in this case going forward.

The existence of virtual criminal justice can at least fulfill substantially to be carried out properly if it is formulated in a Supreme Court Regulation or Legislation. With clear regulations in the implementation of virtual crimes, virtual criminal justice will not be a problem and anxiety in the community and justice seekers. In addition, the concept of virtual crime will be in accordance with the values contained in Pancasila, especially in accordance with the 5th precept, namely social justice for all Indonesian people, with a system that can accommodate all the wishes of the community. It is said that in accordance with the values of Pancasila, criminal justice courts in Indonesia will be more pious, humane, united, democratic and socially just.

It can be judged that in the future the implementation of the virtual criminal system will also make a fast trial without any obstacles, disturbances and delays in any form. The virtual court will also be simpler, easier, more sophisticated, less complicated by bureaucracy and can be followed by all Indonesian people. Then the virtual court will also not cost much and will not take up much time for justice seekers. The goal of judicial modernization in Indonesia is to provide quality, effective and efficient services to justice seekers. To achieve quality legal services, every legal system must be in line with the times. Philosophically, the existence of virtual criminal justice will improve justice and provide protection for the rights of the parties as well as significant convenience in the judicial process. Sociologically, the existence of virtual criminal justice is a form of presence that has been eagerly awaited in meeting the needs of society in this technological era through virtual criminal justice. Juridically, the existence of virtual criminal justice is as a *lex generalist*, namely the principle of judicial power and as a *lex priori* in the current judicial regulations, which will be immediately obeyed and implemented without any disturbance from any party.

Conclusion

The existence of the COVID-19 pandemic has caused all activities to be suspended, one of which is that the trial was immediately replaced with a virtual trial. This virtual trial is one of the real evidences carried out by the government, especially the Supreme Court against all elements of society and other

parties, namely by providing public services quickly, simply, and accurately without any delays or obstacles to the community in obtaining and fighting for justice. . Because the Supreme Court itself has a principle of "Justice Delayed, Justice Denied" which means that if a justice is delayed, it is the same as the absence of justice.

Regarding the administration of criminal justice, the Supreme Court (MA) established a regulation on the administration and trial of criminal cases electronically in court, namely Supreme Court Regulation no. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically (Perma Online Criminal Session). Meanwhile, the Supreme Court has only established a rule, namely establishing a virtual trial in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2019 concerning trial procedures. There are several countries that have carried out online trials as an effort to prevent the spread of the COVID-19 virus, including America, Australia, the Netherlands, Singapore and the UK, which have also used the Virtual criminal justice system. With the presence or absence of Covid 19 in Indonesia,

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