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**ONLINE CRIMINAL CASE TRIALS FROM A NORMATIVE PERSPECTIVE AND SUBSTANTIVE JUSTICE**

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**ABSTRACT**

In 2020, the Covid19 pandemic outbreak has affected not only Indonesia but has contaminated all countries throughout the world and has had an impact on all aspects of life, including the judicial aspect or the legal services of judicial institutions. This situation also forced the Supreme Court to move to implement policies to realize official duties from home, which also applies to judges and court officials. Due to the dire situation, courts which are generally held conventionally have shifted to online justice, i.e. carried out over long distances. This research article applies normative juridical research methods by examining library materials, namely primary and secondary legal materials. The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This research applies data analysis techniques using deductive logic. This conclusion is based on an analysis of the problems of online trials viewed from a normative legal perspective accompanied by the rules. This online trial is clear evidence of the Supreme Court's responsibility to the public to provide fast, simple and accurate services without delaying or hindering the public in achieving benefits and access to justice. Because, for the Supreme Court "Justice Delayed, Justice Denied" means that if justice is delayed, there is no justice.

**Keywords:** Trial, Online, Criminal.

**INTRODUCTION**

In 2020, the Covid19 pandemic outbreak has affected not only Indonesia but has contaminated all countries throughout the world and has had an impact on all aspects of life, including the judicial aspect or the legal services of judicial institutions.

This situation also forced the Supreme Court to move to implement policies to realize official duties from home, which also applies to judges and court officials. Due to the dire situation, courts which are generally held conventionally have shifted to online justice, i.e. carried out over long distances.

Followed by current developments at the stage of the 4.0 revolution era, where progress in this era has been rapid and significant in the world of information. In reality, developments in using technology towards the internet of things era are also attracting all aspects of life dimensions.

One policy regarding the effects of the Covid19 pandemic outbreak is the issuance of social restrictions (social distancing), so that the policy of limiting areas and carrying out court activities is not only slow but also stops as usual because it does not allow judicial institutions to carry out trials in accordance with court regulations before the arrival of the Covid19 pandemic outbreak. . Changing the trial system from conventional to online also changes all dimensions of the trial field.

The implementation of the virtual trial via teleconference means in accordance with the implementation of social distancing and physical distancing regulations, in order to encourage the direction of the development of the Covid19 pandemic. According to the Attorney General's Instructions policy, trials via teleconference have been carried out within the prosecutor's office. This order was followed in the circular letter of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning Adjustments to Employee Work Systems in Efforts to Prevent the Spread of Coronavirus Disease in the work environment of the Prosecutor's Office of the Republic of Indonesia.

In this condition, the Attorney General has determined several important steps that must be complied with and paid attention to when handling criminal cases during the Covid-19 period. This chapter is devoted to the Circular Letter of the Attorney General of the Republic of Indonesia Number B-049/A/Suja/03/2020 regarding Optimizing the implementation of duties, functions and authorities amidst efforts to prevent the spread of Covid 19 (then abbreviated as SEJA).

The steps in the circular letter: First, complete it The ongoing trial is primarily a case with the defendant in prison detention status and extension is no longer possible detention; Second, seek a trial of the case criminal offenses via video conference / *live streaming that is in implementation* coordinated with the Chairman of the District Court and Head of Detention Center/Prison; and Third, delay pending criminal proceedings his detention is still possible extended, as well as the implementation of phase II for cases for which detention is not carried out or cases that have a time limit detention by paying attention to the response period COVID-19 emergency in their respective regions as consideration.

Looking at the policies of the criminal justice system in Indonesia, this chapter can also be classified as a form of legal breakthrough in the sense of positive law, considering that based on online trial data calculations from March 30 to July 6 2020, 176,912 general criminal trials have taken place. (Kompas.com, 2020.)

In legal practice, the fundamental (grounded dogmatic) cultural dimension should precede other dimensions, because in that cultural dimension a set of values (value system) is embedded. Then this value system becomes the basis for policy formulation and is then followed by the formation of laws (law making) into juridical signs and codes of conduct in the daily lives of society, which are mandated to describe the noble judgments held by the nation concerned. then Friedman refers to the three elements of forming a legal system, "legal culture is what starts the other two elements" (Lubis, 2000).

In the end, if abstracted, virtual trials still leave problems. Therefore, in this paper, the formulation of the problem is firstly, what is the legality of online trials in criminal case trials from a normative perspective, and secondly, what is the substantive justice in online trials.

The way to handle this problem is to look at the various literature that has been written by several parties before this article was written, various rules regarding criminal case trials accompanied by careful study.

From the previous writing, there is attention to the writing that will be carried out now through existing writing. Even though they both discuss the topic of virtual trials, this article focuses more on explaining the legalization of virtual trials, so this article is very important in order to continue this discussion in the next article.

## RESEARCH METHODS

This research article applies normative juridical research methods by examining library materials, namely primary and secondary legal materials.<sup>1</sup>The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This research applies data analysis techniques using deductive logic. This conclusion is based on an analysis of the problems of online trials viewed from a normative legal perspective accompanied by the rules. The situation of this online trial will be analyzed according to existing regulations, from a criminal law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.

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<sup>1</sup> Khudzaiyah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum, Surakarta:Fakultas Hukum UMS*, hal. 4.

## RESULTS AND DISCUSSION

### Legality of Online Criminal Case Trials

The presence of the Covid19 outbreak which is currently occurring, has brought about reforms to a judicial system, namely the implementation of online trials as an update to a judicial process. The teleconference system, as a development of the internet's ability to be used as a medium for holding trials, is a fast way out, an option that can be used as a way out of the problems of the Covid19 outbreak in the justice system, namely the implementation of trials so that trials can consistently take place, unless there are delays, even in an epidemic situation.

The implementation of the virtual trial via teleconference means in accordance with the implementation of social distancing and physical distancing regulations, in order to encourage the direction of the development of the Covid19 pandemic. According to the Attorney General's Instructions policy, trials via teleconference have been carried out within the prosecutor's office. This order was followed in the circular letter of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning Adjustments to Employee Work Systems in Efforts to Prevent the Spread of Coronavirus Disease in the work environment of the Prosecutor's Office of the Republic of Indonesia.

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The first step in the circular is to complete the ongoing trial, essentially the case where the defendant is in prison detention status and it is no longer possible to extend the detention, second is to try to try the criminal case via video conference/live facility, the implementation of which will be arranged together with the Chairman. Courts and Heads of Prisons/Remand Centers, the third is holding trials for criminal cases where the detention time is still possible to be extended, as well as implementing phase II for cases that are not being detained or cases that have a time limit for detention taking into account the Covid19 emergency response period in the respective region. for your own consideration.

In accordance with procedural law rules, namely article 64 of the Criminal Procedure Code, it is stated that the defendant must be tried in a general court session. The Criminal Code also does not interpret and does not clearly specify the court mechanism in question. However, based on the provisions in the articles in the Criminal Code, it can simply be interpreted and understood that trials can be held in the court building but also in certain situations the trial of certain criminal acts or the impact of certain conditions can be carried out outside the court building as well.

In a Covid19 pandemic situation like this, carrying out criminal trials online via teleconference is a significant innovation, but also requires improvement from government officials at the Supreme Court. *Salus Populi Suprema Lex Esto* means that the safety of the people is the highest law (Cicero). This adigium is a very correct adigium if it is involved as a basis for determining a policy in the midst of the Covid-19 outbreak, because a law that is established and passed must be able to really protect the legal aspects. society seeking justice.<sup>2</sup>

Prior to the Covid-19 outbreak, online trials had already been implemented, so the online trials currently being held are not merely a recent innovation. In 2002, there were already long-distance trials, in the judicial department there is a history of holding court hearings for criminal cases with the agenda of examining witnesses which were carried out remotely online or by teleconference, namely in the Buloggate corruption case. At the trial, the defendant, Rahardi Ramelan, was tried, with the witness presented being BJ Habibie from Hamburg, which was carried out by teleconference via National Private

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<sup>2</sup> Hafrida. *Perekaman Proses Persidangan pada Pengadilan Negeri Ditinjau dari Aspek Hukum Acara Pidana. Jurnal Ilmu Hukum.* 1(2014):16-26.

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Currently, the implementation of online hearings is carried out in an effort to reduce the spread of Covid19, this policy is the right policy, because if the hearing is still carried out according to previous policies and standards by meeting directly in the meeting or court building, it will definitely violate the rules regarding social restrictions (social distancing) which is essentially a policy during the Covid19 outbreak, so that even in this case, online implementation is a renewal and a very appropriate policy because public safety is the highest law. Then it means that the health and safety of the community is more important and vital above all else. Referring to the author's perspective, the legality of the trial that took place can be said to be strong, because it is supported by the existence of the Criminal Code, Circular Letters and the Attorney General's orders which are then stated in the SEMA so that other judicial institutions and the Supreme Court must be able to take a positive impact from the enactment and implementation of this decree. The trial which was held online is clear evidence of the Supreme Court's responsibility to the general public regarding providing appropriate services quickly and significantly without any delays preventing the public from obtaining and accessing justice.

Regarding 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 March 27 2020 concerning the Trial of Criminal Cases via Teleconference<sup>3</sup>. In the letter, Director General Badilum conveyed to the Head of the Court of Appeal and especially the Court of First Instance, that during the emergency period of the epidemic disaster The disease comes from the corona virus, so criminal case trials can be carried out remotely or by teleconference. Apart from that, Badilum also appealed to court leaders to coordinate with the District Attorney's Office and related detention centers/prisons to organize the mechanism for online, long-distance or teleconference hearings, while still observing the valid provisions of the law.

#### **Substantive Justice in Trials Conducted Online**

The Supreme Court continues to find ways to improve the quality of human resources and technological infrastructure for all levels of Indonesian society so that remote trials can run effectively.

Substantive justice is justice that is related to the content of a judge's decision when adjudicating, examining and deciding a case which must be determined based on considerations of objectivity, impartiality, rationality and honesty without discrimination and based on conscience.

After the objection, objection, defense opinion and duplicate copy have been read, the court forwards the electronic document to the electronic domicile address of the prosecutor or defendant or legal advisor. In this situation, SIP cannot be accessed, sending documents is sent via other electronic means, including downloading and reading.

The Chief Justice of the Supreme Court, M. Syarifuddin, said that electronic justice had been envisioned in the Supreme Court's Blueprint for 2010-2035, which is the Supreme Court's vision for a superior judicial body that is advanced on a technological basis. The Supreme Court then made various reforms to electronic trials in civil, legal, religious and criminal cases. Electronic trials of criminal cases are regulated in Perma No. 4 of 2020.

What is known is that Perma No. 4 of 2020 states that trials in criminal cases can be carried out online, whether from the start of the trial or even when the trial is underway at the request of the public prosecutor, legal advisor or defendant, determined by the panel of judges. This regulation does not mean that trials must be conducted online, but merely provides legal references and guidelines for when trials can be conducted online and how to administer them.

#### **CONCLUSION AND SUGGESTION**

The presence of the Covid19 outbreak which is currently occurring, has brought about reforms to a

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

judicial system, namely the implementation of online trials as an update to a judicial process. The teleconference system, as a development of the internet's ability to be used as a medium for holding trials, is a fast way out, an option that can be used as a way out of the problems of the Covid19 outbreak in the justice system, namely the implementation of trials so that trials can consistently take place, unless there are delays, even in an epidemic situation. The implementation of the virtual trial via teleconference means in accordance with the implementation of social distancing and physical distancing regulations, in order to encourage the direction of the development of the Covid19 pandemic. According to the Attorney General's Instructions policy, trials via teleconference have been carried out within the prosecutor's office. In this condition, the Attorney General has determined several important steps that must be complied with and paid attention to when handling criminal cases during the Covid-19 period. In a Covid19 pandemic situation like this, carrying out criminal trials online via teleconference is a significant innovation, but also requires improvement from government officials at the Supreme Court. Before the Covid-19 outbreak, online trials had already been implemented, so the online trials currently being held are not merely a recent innovation. At the trial, the defendant, Rahardi Ramelan, was tried, with the witness presented being BJ Habibie from Hamburg, which was carried out by teleconference via National Private TV. Currently, the implementation of online hearings is carried out in an effort to reduce the spread of Covid19, this policy is the right policy, because if the hearing is still carried out according to previous policies and standards by meeting directly in the meeting or court building, it will definitely violate the rules regarding social restrictions (social distancing) which is essentially a policy during the Covid19 outbreak, so that even in this case, online implementation is a renewal and a very appropriate policy because public safety is the highest law. Referring to the author's perspective, the legality of the trial that took place can be said to be strong, because it is supported by the existence of the Criminal Code, Circular Letters and the Attorney General's orders which are then stated in the SEMA so that other judicial institutions and the Supreme Court must be able to take a positive impact from the enactment and implementation of this decree. In the letter, Director General Badilum conveyed to the Head of the Court of Appeal and especially the Court of First Instance, that during the emergency period of the disease outbreak originating from the corona virus, criminal case trials could be carried out remotely or by teleconference. Apart from that, Badilum also appealed to court leaders to coordinate with the District Attorney's Office and related detention centers/prisons to organize the mechanism for online, long-distance or teleconference hearings, while still observing the valid provisions of the law.

This online trial is clear evidence of the Supreme Court's responsibility to the public to provide fast, simple and accurate services without delaying or hindering the public in achieving benefits and access to justice. Because, for the Supreme Court "Justice Delayed, Justice Denied" means that if justice is delayed, there is no justice.

The Supreme Court continues to find ways to improve the quality of human resources and technological infrastructure for all levels of Indonesian society so that remote trials can run effectively.

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