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RESEARCH ARTICLE

Virtual Criminal Court: A Paradigm Shift in Indonesian Criminal Procedure

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Abstract: The effects of the pandemic made digital technology into the courtroom. In connection with this research, the thing that wants to be studied is, firstly for the mechanism of applying event law to online trials in criminal cases in Indonesia, secondly how online trials accommodate the process of proof in criminal cases in Indonesia. The research method used in this research is to use a type of normative legal research, namely research that in its study refers to and bases on the norms and rules of law, applicable laws and regulations, legal theories and doctrines, jurisprudence, and other literature materials relevant to the research topic discussed. The result of this study is, the first mechanism for the application of event law in online trials in criminal cases as stipulated in Supreme Court Regulation No. 4 of 2020 on Administration and Criminal Trial in The Court Electronically provides 2 (two) alternatives to conduct trials in criminal cases, namely offline and online. This is not previously regulated in the Criminal Procedure Law (KUHAP) or other legal regulations. Second, with regard to the process of proving in criminal cases at online trials basically still follow the provisions in the criminal event law and have the same value or power of proof as trials conducted offline.

Keywords: Criminal Justice System, Virtual, Online Trials

1. Introduction

Information technology is increasingly developing, therefore its utilization to facilitate judicial tasks is increasingly massive through electronic courts (e-courts). Moreover, Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions has mandated the government to support the development of information technology through legal infrastructure and regulation so as to safely utilize information technology to prevent its misuse by taking into account the religious and socio-cultural values of Indonesian society. Information disclosure in the judiciary is one of the issues that is often highlighted as it relates to the right to a fair trial. This is the answer to anxiety about bureaucratic procedures that are often tortuous, which makes people reluctant to fight for their rights through formal law enforcement institutions (Alviolita & Arief, 2019).

In the Ombudsman Report of the Republic of Indonesia for the 2020 period, the District Court is the judicial institution that has received the most complaints, namely 394 complaints with the type of mal administration that the public complains about the most, namely protracted case delays of 215 complaints, incompetence in carrying out performance in the justice system 117 complaints, and procedural deviations 115 complaints (www.ombudsman.go.id/, 2021). So the development of information and communication technology, can be a new round to erode these things.



Including the judiciary that seeks to innovate and reform from conventional to virtual trials. Indonesia has started implementing virtual criminal justice based on a 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 areas 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 a large number of people will cause the spread of Covid-19. Therefore, courts in Indonesia have now implemented virtual courts (Nugroho & Suteki, 2020). 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 a circular letter 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. Renewal is a must, including renewal of the legal system. The legal system according to Lawrence M. Friedman's theory, namely substance, structure, culture and infrastructure, all subsystems must be updated along with the times. Since it is impossible for justice to be achieved if only one system is repaired, (Friedman, 2018). 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 a 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 appear in court, whereas in a 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 procedural 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 technology 4.0 era and prevent the transmission of Covid-19. background above, it can be seen that in fact virtual criminal justice is a necessity in the presence of an unusual situation in the era of the threat of a global epidemic, in addition, without a pandemic situation or condition, 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.

2. Literature Review

2.1. Virtual Court

Virtual court, also known as e-court or digital court, refers to the use of digital technology and electronic communication to conduct judicial proceedings online. It allows parties involved in legal proceedings, such as judges, lawyers, defendants, witnesses, and other parties, to participate in the proceedings without having to be in the same physical courtroom. The definition of virtual court includes the use of various technologies, such as video conferencing, web applications, online platforms, and digital security systems, to conduct proceedings virtually (Fauzi et al., 2023; Rossner et al., 2021). Through the use of these technologies, various judicial activities can be conducted online, including the examination of cases, reading of charges, examination of witnesses, submission of electronic evidence, statements of law, and announcement of decisions. Virtual court aims to improve the accessibility, efficiency, and effectiveness of the justice system. It can reduce the cost and travel time required by parties involved in legal proceedings. In addition, virtual courts can also provide solutions in emergency situations, natural disasters, or when conditions limit physical mobility (Rossner & Tait, 2023).

2.2. Criminal Justice System

The criminal justice system is a legal system that regulates law enforcement against criminal acts or violations of criminal law. The main objective of the criminal justice system is to maintain justice and deal with criminal cases in a fair and objective manner. The criminal justice system involves several interacting components (Zimring, 2022). First, there is the criminal law, which is a collection of rules and regulations that define the actions that are

considered crimes and determine the sanctions or punishments that will be given to criminals (Patterson, 2019; Rofiq et al., 2019). In the criminal justice process, advocates or lawyers play an important role. Advocates or lawyers represent the interests of defendants or victims in court. They provide legal advice, defend the interests of their clients, and prepare strong legal arguments to present before the court.

3. Research Method and Materials

The research methodology in this paper is qualitative normative legal research. 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. Qualitative normative analysis in this study is based on descriptive and predictive analysis.

4. Results and Discussion

Virtual Court 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. Trial activities were also affected by various problems due to the Covid-19 pandemic, namely in the criminal process on the grounds that the limited period of detention was the basis for the Indonesian Supreme Court to establish a virtual trial in accordance with RI Supreme Court Regulation Number 1 of 2019 regarding trial procedures. but not in criminal justice (Irawan, 2019). The implementation of Virtual Criminal Court 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. In accordance with the principle of justice "fast, simple and low cost, this is a very positive concept for the future. Another thing that can be learned from digital trials is that they can save time because you don't have to wait for the accused 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 bureaucratic chains and prevents deviant practices in court (Cornet & Gelder, 2020). 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 digitalization of justice is needed in the new normal conditions that will come in the pattern of working relations between humans for the future. With the development of a modern virtual justice system, it is hoped that transparent and accountable courts will be created (Anand, 2021). Caligiuri (2020) says that there are three main problems faced by judicial institutions throughout the world, namely the slow handling of cases (delay), difficulties in public facilities and access (access), and the integrity of the judicial apparatus (judicial integrity). Thus the use of technology in the world of justice will solve problems in conventional justice (Caligiuri, 2020). In the implementation of virtual courts, infrastructure is also an important discussion because if it is not adequate then it will clearly have implications because it does not fulfill justice for the community. Virtual courts as an application of law require renewal in terms of infrastructure. The response of the judiciary to fulfill public justice is the main thing. This is intended so that access to justice can be wide open for fulfillment for the whole community (Handika & Rahim, 2020).

In carrying out the functions of the judiciary, law enforcers in this case also have the main tasks, namely justice (*gerechtigheit*), benefits (*zwachmatigheit*) and certainty (*rechsecherheit*). Law enforcers as the main organ in court and as court executors such as prosecuting, 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 enhance the user experience for justice seekers. Virtual criminal justice is also an opportunity to defend oneself (*audi et alteram partem*). The application of the online system provides broad access for the Parties to submit their defense so as to provide more protection for the parties. Likewise, the application of electronic case administration will leave a digital trail that is stored forever so that apart from being controlled by the public, it can also prevent files from being lost or damaged. Through the implementation of virtual courts, it is hoped

that in the future public trust and access to all court institutions and law enforcement officers will continue to increase (Handika et al., 2020). This is in line with what Stephan Golub stated, that a very important element in access to justice is that the existence of a formal legal institution must be a place that is most trusted by the public as an efficient, neutral and professional institution. According to Gollub, public satisfaction and trust in formal institutions is very important (Witasari & Arif, 2019). Thus the presence of the virtual court system as a new culture is part of the court's efforts to provide easy access to the public and justice seekers as well as efforts to make the courts more integrated, accountable, transparent, effective and efficient. In line with the development of digital technology, the expected transformation of the field into a modern court by utilizing digital information technology will be achieved. The upcoming virtual criminal court will also fulfill the sense of justice for 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 that is transparent and open to everyone, distributive justice, (Ariyanti, 2020). 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 the online justice system, namely:

Table 1. Several Countries with Virtual Justice Systems

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

Source: (Barlian & Herista, 2020)

Based on the table 1, several countries have included virtual trials 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. The guarantee of human rights protection in the Constitution, the development of international human rights norms and democratic values, are important factors in influencing a country's criminal law policy. Therefore, in order to realize the Indonesian virtual court, effective and efficient steps are needed from the start of the case's entry into the criminal justice system so that the court, especially at the first level, able to serve the interests of the community, which is characterized by low-cost trial processes, simple trials, and trials with time to resolve cases. Because in general, time standards are measures of efficiency and effectiveness established by courts and other agencies to support performance standards and indicators aimed at ensuring efficient processes and accountability (Urrutab, 2021).

The implementation of virtual courts has a direct impact on the efficiency of the administration of justice and the transparency of the process of seeking justice which encourages professional, transparent, accountable, effective and efficient law enforcement behavior (Nugroho & Suteki, 2020). Modernization and reform of the judiciary have resulted in delays in the completion of case handling and increased integrity and professionalism of law enforcement officials. The direct impact felt by the justice seekers themselves is through the implementation of their own virtual court system which really makes it easier for the justice seeker community to access and control the ongoing process and save on court costs. Information technology is an undeniable necessity, however, in the view of the author; must still comply with the legality of Indonesian criminal procedural law, such as in the substantive 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" one 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 which 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 modernizing the judiciary in Indonesia is to provide quality, effective and efficient services to justice seekers. To achieve quality legal 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 laws and regulations are still inadequate, and vice versa. as best as possible the legal regulations that are set will not be useful if the 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 as well as all related parties such as Judges, Prosecutors, Advocates, Witnesses, Experts, victims, defendants and other parties. Meanwhile, the development of substance is the reform of norms or regulations such as loose generals, namely criminal procedural law and implementing regulations such as Supreme Court Regulations. Then in the development of culture in the virtual court is infrastructure renewal and renewal that follows the current cultural conditions and habits of society, finally it is necessary to renew the infrastructure which will also support the running of virtual courts in the future. This is what must be resolved in the Indonesian national legal system in the future. Virtual sessions must be reformed according to the needs of the current era which are unavoidable and can be attended by all parties, but because they are aware of the many weaknesses and shortcomings, virtual session is actually an alternative form of judicial implementation which can be carried out online if there are certain circumstances and the importance of agreement of all parties in this case going forward. The existence of virtual criminal justice can at least substantially fulfill the right 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 become a problem and anxieties in society and justice seekers. In addition, the concept of virtual punishment 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 society. It is said that in accordance with Pancasila values, criminal justice courts in Indonesia will be more pious, humane, united, democratic and socially just. Referring to the upcoming virtual criminal justice will also increasingly realize the principle of speedy, simple low cost justice, this principle is also in line with the values of Pancasila in Indonesia. It can be assessed that later the implementation of the virtual criminal system will also make trials speedy without any obstacles, interruptions and delays of any kind. Virtual courts will also be simpler, easier, more sophisticated, less complicated by bureaucracy and can be attended by all Indonesian people. Then virtual courts will also not cost much and will not take justice seekers much time. The goal of modernizing the judiciary in Indonesia is to provide quality, effective and efficient services to justice seekers. To achieve quality legal services, every legal system must be in harmony 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.

5. Conclusion

This online trial is clear evidence of the government's responsibility, especially the Supreme Court, to the public regarding the provision of fast, simple and accurate services without delaying or hampering the public in obtaining and accessing justice. Because, for the Supreme Court "Justice Delayed, Justice Denied" which means that if a justice is delayed, it is the same



as the absence of justice. Currently, laws in other countries, such as America, Australia, the Netherlands, Singapore and the UK have also used the Virtual criminal justice system. With the presence or absence of Covid 19 in Indonesia, virtual criminal trials must still be prepared as an alternative effort in certain circumstances, so as to realize modern justice for the future of Criminal Justice in Indonesia.

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