

# Legality of Criminal Court through Teleconferences

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**Abstract:** Covid-19 Pandemic era now has brought fundamental changes in the order of human life, including in the matter of criminal law enforcement. The principle of the presence of the accused or witnesses or experts and the parties physically involved in the trial to realize material truth must be changed by an electronic system. However, it raises problems related to its validity. In this paper, a research using the qualitatively normative juridical approach by analyzing the concept of law in relation to real conditions is proposed. To overcome this problem a strong legal umbrella is needed so that the electronic system in criminal court can be applied in certain situations. Stronger and more detailed regulations in the form of technical guidelines and their implementation for law enforcement officers are urgently needed. Moreover, it is necessary to change the way of thinking that is more honest and constructive for law enforcement officials in its implementation.

## 1 INTRODUCTION

Technology is something that cannot be separated from life in the current era of globalization. World civilization is related to the advancement of information technology covering all elements of life. Globalization since the beginning of the 20th century, marked when there was a transportation and electronic revolution that spread and accelerated trade between nations, in addition to the increase and speed of traffic of goods and services[1]. This condition makes distance, space and time no longer a significant obstacle.

The information technology revolution began since the invention of the computer in its development is a world of its own commonly known as cyberspace. The progress and development of technology, especially telecommunications, multi media and information technology (telematics) will ultimately change the organizational structure and social relations [2]. Telematics convergence is in the form of organizing an electronic system based on digital technology known as the net [3].

In the practice of an integrated criminal justice system in Indonesia, each subsystem makes efforts to trace evidence and evidence to carry out court decisions in law enforcement where the authority of the investigator performs an investigative function, the public prosecutor prosecutes, the Judge hears

and drops the verdict / criminal as well as the Correctional Institution carry out the decision / criminal. The flow of the law enforcement process has the same goal, namely how material truth can be obtained to realize the legal goals, namely justice, certainty and legal benefit.

The successful prosecution of criminal cases is inseparable from the quality of the investigation by the investigator. A case can be proven in a court of law that is inseparable from the ability of the prosecutor as the public prosecutor to understand and scrutinize the results of investigating investigators. The public prosecutor must be able to state the problem in a good, high quality and describe the material actions of the criminal offender. In the trial process the Prosecutor as the Public Prosecutor can submit any evidence and evidence presented at the hearing to convince the judge and obtain material truth.

If judging from the mode of legal thought, the integrated criminal justice system in Indonesia is part of the civil law system that is different from the common law system. Civil law starts from one general principle to another general principle while common law starts from case to case. Cases are the main source of common law, while codified laws and laws are the parts that make up civil law. Common law lawyers think within the scope of their particular groups and legal relationships, while civil law practitioners think within the scope of the

regulations that are enforced at the time, which have been codified or which are based on laws that can be applied to the situation at hand [4].

The electronic system becomes a global legal realism that goes to all the pluralist world legal system families. There is a basic dilemma that is exposed in a pluralist perspective: the law is likely to never fully satisfy all expectations [5].

Indonesian criminal law regulates the limitations of evidence that can be submitted in court as stated in article 184 of the Criminal Procedure Code and evidence outside of the Criminal Procedure Code, namely Law No. 11 of 2008 as amended by No. 19 of 2016 concerning Information and Electronic Transactions ("IET law"). In the general provisions of the IET law it is known that the types of electronic data such as writing, photos, sounds, images are electronic information while the types of electronic information such as writing, photos, sounds, images stored on flash disks that can be opened through computer devices are electronic documents [6].

In its development, many laws governing criminal procedural law also regulate electronic evidence, although they differ substantially in their categorization. Corruption criminal acts, for example, categorize electronic evidence as evidence of evidence, while laws on money laundering, eradication of terrorism, place electronic evidence as independent evidence. Recognition of electronic evidence as legal evidence is not only the court's obligation to realize it but also constitutional rights of the community [7].

What has been described above can certainly be done in normal circumstances and situations while the world in particular law enforcement is shaken by the Covid-19 pandemic situation. This has consequences when everyone is required to do physical and social distancing. All human activities are advised to be carried out indirectly (undirect connecting) but through technological means including criminal trials in court.

If seen from an extensive interpretation, information outside the court should be carried out provided the information provided is live and not delayed broadcast. E-court proceedings are rather difficult to implement because there are certain things where the parties must be formed by meeting in person and in order to strengthen the beliefs of judges [8].

This view is very reasonable and realistic if it is related to Article 154 paragraph (1) of the Criminal Procedure Code which states that the presiding judge orders that the defendant be summoned and if he is

in custody, he is confronted in a free state. The words "called in" mean that the defendant must be physically present before the trial or court. In addition, Article 185 paragraph (1) of the Criminal Procedure Code says witness statements as evidence are statements made at court hearings. The question is what is meant by a "court hearing". In judicial practice, that which is carried out daily by law enforcers, primarily prosecutors and judges and legal advisors (where the parties do not allow to be physically present before the trial) is very reasonable to be carried out and continued. In this paper, trials through teleconferences in the criminal justice system and their validity from the point of proof of a criminal act need to be regulated in a legal umbrella.

## 2 METHOD

This study uses a normative juridical approach that is qualitative by analyzing legal concepts related to real conditions in the field. As an illustration of how the court practice continues even though in a Covid-19 pandemic situation by means of teleconference as in Table 1 in the form of an online recapitulation of court and phase II related to general criminal cases from 30 March to 29 June 2020. Recapitulation of criminal proceedings in the field of criminal acts online at the high prosecutor's office in southern Sumatra from 30 March 2020 to 30 June 2020 given in Table 2.

Table 1: Online List of Common Crimes Cases.

No.	Month	Kejari/Cabjar	Online Court	Prosecutor	Phase II
1	March - April	4.062	57.736	12.984	305
2	May	3.502	46.295	13.622	328
3	June	4.974	62.686	18.525	620
4	July	824	10.195	3.075	114
	total	13.362	176.912	48.206	1.37

Table 2: Online Court at Kejaksaan Tinggi Sumatera Selatan.

NO	District Attorney's Office	Media				Total	Prosecutors
		Video Conference	ZOOM Application	Skype Application	Cisco Webex Application		

1.	Palembang	3473	-	-	-	3473	44
2.	Lubuklinggau	68	1458	-	-	1526	10
3.	Lahat	-	67	346	-	413	6
4.	Muarajaya	195	520	-	-	715	11
5.	Musi Banyuasin	-	1370	-	-	1370	12
6.	Ogan Ilir (Oi)	26	597	-	-	623	16
7.	Ogan Komering Ilir (Oki)	-	1204	17	-	1221	10
8.	Ogan Komering Ulu (Okus)	-	-	510	-	510	10
9.	Ogan Komering Ulu Selatan (Okus)	34	-	246	-	280	5
10.	Ogan Komering Ulu Timur	-	-	628	-	628	7
11.	Pangkalbalak	59	-	122	-	181	7
12.	Empat Lawang	-	-	175	-	175	3
13.	Pagar Alam	174	-	27	-	201	5
14.	Banyuasin	20	654	32	897	1603	12
15.	Prabumulih	-	111	634	-	745	10
		4049	5981	2737	897	13.664	168

This research took place in the legal area of the High Prosecutor's Office in South Sumatra by using a normative juridical approach by photographing how court regulations in legislation to technical

regulations in relation to literature and regulatory studies. This research is qualitative in nature by conducting interviews, asking for the views of law enforcement officials in the field including the defendants to test the validity of trials conducted by means of teleconference.

### 3 RESULTS AND DISCUSSIONS

#### 3.1 Criminal Court

The co-19 pandemic that is happening now has brought about a change in the order of human life, be it political, economic, social, cultural, including law. Habits that occur in society totally change. As social beings, humans always live together in social relationships by meeting or face to face, but the pandemic has broken the habit and created new habits for human safety.

Criminal law policy as part of legal politics aims to realize good regulations in accordance with the conditions and situations in society through the authorized institution to establish desired regulations that are expected to be used to express what is contained in society and to achieve what is desired. - tell [9]. The use of criminal law policy can be interpreted as the politics of criminal law in an effort to create criminal law in order to function, play a role or work in realizing law enforcement in overcoming crimes, especially crimes in the electronic field.

In terms of legislation policy up to now there has not been any explicit regulation in the legislation regarding trials which are carried out through teleconferences. In Law No. 8 of 1981 concerning the Criminal Procedure Code has not found rules about the portion of the trial that is run online with an electronic system but only manually where the parties are physically present at the trial. In the criminal justice system Indonesia does not recognize what is called a criminal trial through teleconference, but in its development this is done in court practice. The judges still use their respective interpretations related to the examination of witnesses through the means of teleconference.

In 2002 for the first time the Indonesian Supreme Court granted permission to examine witnesses by means of teleconference, namely when BJ. Habibie gave testimony to the suspect Akbar Tanjung in the corruption case of Bulog's misappropriation of non-budgetary funds. If you look at the provisions in the Criminal Procedure Code both in article 185 and article 160, witnesses must be present in court to

provide information, but in its development there are always obstacles such as the distance of the witness so far, security and health factors of the witness. This condition is certainly contrary to the Criminal Procedure Code which requires a witness: Facing himself in court, being sworn in or promising, Providing information based on what he saw, heard or experienced before the court. Witness examinations conducted by teleconference are increasingly common, such as in the case of Abu Bakar Ba'asyir.

Although the Criminal Procedure Code has not yet regulated the use of teleconferences (electronic means), there are regulations that can be used as a basis, namely: Article 9 paragraph (3) of Law no. 13 of 2006 concerning witness and victim protection which says that witnesses and / or victims as referred to in paragraph (1) can also hear their testimony directly through electronic means accompanied by an authorized official. This provision certainly has a condition that witnesses and / or victims feel that they are in a very big threat and must be heard directly (live) not in the form of delayed broadcasts. In addition, Article 27 of Law No. 1 of 2002 concerning the eradication of criminal acts of terrorism has set evidence other than those stipulated in the Criminal Procedure Code also provides an extension of the existence of electronic evidence.

Thus, the trial by means of teleconference both in practice and legislation also exists but is still partial and limited because it is only related to witness and / or victim information.

### 3.2 Legality of Criminal Trials

If in practice the trial examination has been carried out through teleconference and has also been given space in the provisions of the legislation partially, but it is still limited to examining witnesses and / or victims. The question is what about the examination of the defendant. The current situation in the Covid-19 pandemic conditions is very very different from the trial conditions as stated above because in a pandemic condition physical and social distancing is required so that both witnesses and victims including defendants and law enforcement officials may not meet in a room as required in normal trial.

The big issue is how the trial will take place, whether it should be paused until the government announcement about the condition of the pandemic ends, how the detention period for the defendants detained, etc. These questions arise and become a separate dilemma because what if the trial were conducted online both at the examination of

witnesses and victims as well as defendants in a different and virtual room, would it be considered legal without legal basis.

In practice there is a debate related to online trials via teleconference because Article 160 paragraph (1) of the Criminal Procedure Code requires that witness examinations be carried out in court proceedings while online examinations have not been regulated. In addition, Article 153 paragraph (1) of the Criminal Procedure Code stipulates that trials in court must be open to the public except for certain cases as well as debates on the potential lack of objectivity of judges in deciding cases.

The above debates and arguments are reasonable, but the trial must continue because social dynamics and the emergence of crimes and legal violations persist even after following health protocols during a pandemic.

To overcome this vacancy, law enforcement officials have entered into a cooperation agreement between the Supreme Court, Attorney General's Office, and the Ministry of Law and Human Rights of the Republic of Indonesia on Monday, April 13, 2020 with Number: 402 / DJU / HM.01.1 / 4/2020, Number: KEP-17 / E / Ejp / 04/2020, Number: PAS-08.HH.05.05 of 2020 concerning the implementation of the trial by teleconference. Article 5 which regulates the conduct of proceedings by teleconference states:

- The parties conduct socialization in their respective ranks to carry out the terms of the cooperation agreement;
- The parties prepare the completeness of the trial by teleconference at their respective positions;
- In terms of the technical implementation of the trial by teleconference, the parties coordinate with one another for the smooth running of the trial while still observing the principle of justice which is fast, simple and low cost and open to the public;
- In handling certain cases, a closed trial can be conducted according to the provisions of the applicable laws and regulations;
- During the trial, taking into account the rights of the accused, the victim and witness as well as the trial of the child, the identity and face of the child may be known by those who have the authority in accordance with the laws and regulations;
- Teleconference hearings take into account the situation and conditions of the place, including

the time difference if the trials are held in different areas.

Teleconference hearings are based on various provisions of each institution with a temporary nature and in an emergency or force for certain reasons such as the Covid-19 pandemic.

Trials by means of teleconference are a model of the birth of modern justice and can be reached across borders, but it must be limited that criminal justice is aimed at realizing material truth, trials by teleconference must also be aimed at fulfilling these material truths. The validity of a trial by teleconference can be tested based on Article 6 of Law No. 11 of 2008 concerning information and electronic transactions that have confirmed several conditions that must be met in the form of accessible, displayed, guaranteed integrity, and accountability.

These four conditions must be drawn up and implemented at the same time in each trial process. Accessible means it can be published or seen by many people through electronic means. Can be displayed means the process is online and direct, not broadcast delayed. Guaranteed integrity means that the trial process with the electronic system takes place in full from the beginning to the end and not pieces of images or video. Whereas accountability can mean that the trial process is correct and is carried out at the time determined based on the determination of the judge.

Laws are built and created for the benefit of humans, including electronic systems in criminal trials, especially if carried out in a state of coercion and legal proceedings have not been regulated. Actions or legal actions of law enforcement officers can be seen from three aspects, namely position, authority, and procedure. These three aspects in the current co-19 pandemic situation allow the electronic system to be used in the temporary criminal justice system so that the use of electronic media in criminal trials can be justified or legal.

The data used in this study is only a small part that shows how many criminal trials are conducted in Indonesia. For the South Sumatra Prosecutor's Office (168 prosecutors), they have conducted 13,664 online trials in only four months. The trial is conducted in two directions where the Prosecutor, Judge and witness are in court while the defendant and the defendant's legal counsel are in Lapas, three directions where the Prosecutor is in the Prosecutor's Office, the Judge is in the Court and the Defendant is in prison, four directions where the Prosecutor is in the Prosecutor's Office, the Judge is in the Court, the Witness is examined from the Police office and

the defendant is in Lapas and, five directions where the Prosecutor is in the Prosecutor's Office, the Judge is in the court, the Witness is examined from the Police office, the Defendant is in Lapas and the defendant's legal counsel is in his law office. Overall, trials with electronic systems are mostly conducted with three-way systems.

The trial system, which is carried out both manually and electronically, is an evidentiary framework aimed at realizing material truth. Criminal proceedings are part of the verification process. There are several systems of proof theory, among others, based on *Bewijstheorie* positive reality test, evidence based on Conviction Intime, evidence based on Conviction Intime on *Raisonnee Laconviction*, verification based on Negative *Wettelijk Bewijstheorie* [8]. Indonesia adheres to the fourth system in which the accused or defendant is guilty of at least two legal pieces of evidence plus the judge's conviction. The words "two valid pieces of evidence" are usually implemented through the trial to verify whether the evidence obtained by the investigator and brought by the Public Prosecutor to the front of the trial can be judged as evidence and the process mechanism is known as the trial process. If all this time the trial has been conducted face-to-face and manually face to face, with the Covid-19 pandemic conditions carried out electronically through teleconferencing facilities both with video conferencing, zoom applications, cisco webex applications, and skype applications.

## 4 CONCLUSIONS

The existence of an electronic system by means of teleconference in the conduct of criminal proceedings has become a legal necessity due to the demands of dynamics and the situation of the community even though it is not regulated in the existing legal provisions. The position of the electronic system by means of teleconference in criminal law enforcement has been recognized and implemented in the world of judicial practice or trials on the basis of a joint policy between law enforcement officials to meet the needs of the community and overcome the legal vacuum.

Recommendations:

The renewal of the Criminal Procedure Code by utilizing the moment of the planned changes in the Criminal Procedure Code to place the electronic system in criminal trials for certain situations or circumstances as a formal legal umbrella is needed,



including preparing standardization of online trial administration.

Culture set of law enforcement officers in the framework of quality criminal law enforcement and responsibility through teleconference facilities or electronic systems so that legal objectives can be achieved well is needed.

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