



Law In The Era Of Digitalization And Covid-19 Pandemic

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ABSTRACT

Legal developments in Indonesia have an impact on changes in various aspects of the law, such as changes in the form of settlement in the judiciary. Some judicial institutions have indeed implemented a modernization process, but not a few judicial institutions have still used the same litigation method for decades. In the midst of the Covid-19 pandemic, some parts of the justice system experienced an increase in workload, while other parts experienced a decline where there was an increase in requests in the criminal justice sector to consider the repatriation of prisoners in order to reduce the population in prisons. The method used in making the paper entitled "Law in the Era of Digitalization and the Covid-19 Pandemic" is the historical method. This method relies on four activity steps, namely: Data collection (Heuristics), Source criticism (Verification), Interpretation (Interpretation), and Historical Writing (Historyography). The purpose of this journal's research method is to find out the development and application of law in the digitalization era and after the Covid-19 pandemic. The result of the conclusion of this method is that the Covid-19 pandemic cannot prevent the fairest enforcement of laws. In this digitalization era, remote trials can still be carried out despite the Covid-19 pandemic. In this era of digitalization, it is easier to implement legal processes in Indonesia.

1. Introduction

Humans in general have a new lifestyle that cannot be separated from technology. With technology, it can make it easier for humans to find information and do whatever they want.¹ Technological progress is also influenced by the emergence of the Covid-19 pandemic which has made changes in various sectors, such as the education sector, the economy, and especially the legal sector in Indonesia. All forms of activity are now assisted by technology, it can even be said that people are currently

¹ Hanik Chumairoh. (2020). Ancaman Berita Bohong di Tengah Pandemi Covid-10. *VOX POPULI*. 3(1). 22.

dependent on technology, especially since the government has implemented social distancing and work from home.

As Covid-19 spread to less developed countries, policymakers there largely followed suit with similar policies. But it quickly became clear that policy responses in developing countries could not simply replicate the actions of western countries.² The development of law in Indonesia has an impact on changes in various aspects of the law.³ In the midst of the Covid-19 pandemic, some parts of the justice system experienced an increase in workload, while other parts experienced a decline where there was an increase in requests in the criminal justice sector to consider the repatriation of prisoners in order to reduce the population in prisons.

The development of law with a modern character can contain all provisions that are adapted to the current situation and conditions. In response to the changes and developments of the current era, there is also the presence of information technology which has an impact on the emergence of new problems in social life, the development of science and technology which has had an impact on the problem of acts that lead to cybercrimes.

The use of technology today is like a double-edged sword, because it can be an effective means to commit acts against the law, but on the other hand it can also contribute to the improvement Digitalization and the Covid-19 Pandemic" aimed at knowing the development of law in the era of digitalization and the Covid-19 pandemic, because current of welfare, progress, and human civilization. We created a paper entitled "Law in the Era of digitalization technology has an impact on all aspects of life, especially on the development of law in Indonesia.

2. Method

The method used in making the paper entitled "Law in the Era of Digitalization and the Covid- 19 Pandemic" is the historical method. There is a step method as follows : Data collection (Heuristics), Source criticism (Verification), Interpretation (Interpretation), and Historical Writing (Historyography). These steps will be explained as follows :

1. Heuristics (data collection)

Heuristics is an arrangement of techniques or art and not a science, therefore heuristics do not have general rules. Heuristics is often a skill in

² Dirkareshza, R., Azura, D. M., & Pradana, R. (2021). Kebijakan Pemerintah di Masa Pandemi Covid-19: Antara Negara Sejahtera dan Negara Sehat. *Jurnal Mercatoria*, 14(1), 46-55.

³ Mery Christian Putri, dkk. (2021). Disrupsi Digital dalam Proses Penegakan Hukum Pada Masa Pandemi Covid-19. *Jurnal Recthsvinding*. 10 (1). 80.

finding, recognizing, and detailing bibliographies or classifying and maintaining records.

2. Verification (source criticism)

After the historical sources in various categories have been collected, the next stage is verification or commonly referred to as source criticism to obtain the validity of the sources. In this case, what must also be tested is the validity of the authenticity of the source (authenticity) which is carried out through external criticism and the validity of the source's validity (credibility) which is traced through internal criticism.

3. Interpretation

In this third step, what will be done is to analyze and synthesize the data that has been obtained. Then they are compiled into facts related to the theme to be discussed.

4. Historiography

As the final stage in this research process, the writing is done in a descriptive analysis and based on the systematics that have been set in this research plan.

3. Results & Analysis

3.1 Implementation Of Digitalization In Law Enforcement By Judicial Institutions During The Covid-19 Pandemic

The Covid-19 pandemic must not prevent the fairest enforcement of the law. According to Lawrence M. Friedman⁴ the effectiveness of law enforcement in the context of judicial institutions can be grouped into five factors, namely: factors of legal instruments or regulations, factors of law enforcement officials, factors of availability of facilities and infrastructure, factors of community social conditions and cultural factors. In Indonesia, the developed doctrine states that law enforcement elements consist of law enforcement officers, namely judges, advocates, prosecutors and the police, plus other institutions that have law enforcement authority⁵ Submissions of cases by the judiciary to the judiciary are increasing along with the increasing awareness of citizens on the protection of human rights and constitutional rights that can be obtained through the judicial process. Government policies in the context of dealing with Covid-19 have indirectly become an obstacle to the process of realizing justice. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus

⁴ Lawrence M. Friedman. (1975). *Legal System, Social Science Perspective*, Russel Sage Foundation, , yang diterjemahkan oleh Khozim. (2018). dalam buku *Sistem Hukum: Perspektif Ilmu Sosial*. Bandung: Nusa Media. 33.

⁵ Hikmahanto Juwana. (2005). Penegakan Hukum dalam Kajian Law and Development: Problem dan Fundamen bagi Solusi di Indonesia. *Indonesian Journal of International Law*. 3(2). 212.

Disease 2019 (Covid-19) which was signed on March 31, 2020 (hereinafter referred to as PSBB policy).⁶ Judge Andrew Napolitano described a question related to this situation “...if liberty can be taken away in times of crisis, then is it really liberty, or is it just a license, via a temporary government permission slip, subject to the whims of politicians in power?”⁷ In a difficult situation, where working from home (Work From Home, WFH) and studying from home are becoming the new normal, the law enforcement process also faces challenges in order to continue to achieve justice in the midst of a crisis situation. The PSBB includes the closure of schools and workplaces, restrictions on religious activities and restrictions on activities in public facilities. This certainly has an impact on the closing of judicial services to the public with a certain time limit as a form of compliance with government policies.⁸ In a difficult situation, where working from home (Work From Home, WFH) and studying from home are becoming the new normal, the law enforcement process also faces challenges in order to continue to achieve justice in the midst of a crisis situation.

One of the pillars that makes everything possible, including law enforcement during a pandemic, is the existence of digital disruption that is applied in the law enforcement process in the judiciary. Ethan Katsh stated “conceived in the Dark Ages and reformed in the nineteenth century, these court systems became unfit for many purposes in the late twentieth century. Now they seem destined, if unchanged, to be inappropriate for most disputes of the twenty-first”.⁹ Therefore, judicial institutions must be able to embrace digital disruption to achieve substantial justice, especially during a pandemic, where government policies force every citizen to to “stay quiet” at home even in the process of seeking justice. Digital disruption in the law enforcement process in the judiciary is realized through the support of information, communication, and technology (ICT) in the case settlement process. ICT is often regarded

⁶ Humas Sekretariat Kabinet. Inilah PP pembatasan Sosial Berskala Besar untuk Percepatan Penanganan Covid-19. Sekretariat Kabinet Republik Indonesia. Retrived Februari 11 2021. <https://setkab.go.id/inilah-pp-pembatasan-sosial-berskala-besar-untuk-percepatan-penanganan-covid-19/> .

⁷ Andrew Napolitano. Coronavirus fears lets government assault our freedom inviolation of Constitution. FoxNews. Retrived Februari 10 2021. <https://www.foxnews.com/opinion/judge-andrew-napolitano-liberty-coronavirus> .

⁸ Mery. (2020). Berdamai dengan Kenormalan Baru pasca Pandemi Covid-19. Majalah Konstitusi.

⁹ Ethan Katsh, Orna RE. (2017). *Digital Justice : Technology and the Internet of Dispute*. Oxford: Oxford University. XIII.

as a linear catalyst for administrative and organizational transformation.¹⁰

The adjustment of the judiciary during the pandemic period with digital disruption must at least be able to fulfill several aspects. First, the potential to increase public access to litigation in the judiciary. With the support of ICT, it is hoped that the community will no longer be limited by distance and time to seek justice. Second, reduce court costs. Although litigation at the Constitutional Court is free of charge, with an offline trial, the justitiabelen must at least spend money for travel expenses and accommodation transportation. Third, realizing justice as wide as possible for all people in all corners of the region. Fourth, digital disruption is highly expected to maintain justice, neutrality and transparency of the judicial process in judicial institutions.

3.2 Facing Challenges And Problems In Implementing Remote Trials

Facing challenges and problems in conducting remote trials In terms of criminal procedural law, the mechanism for remote online trials or teleconferences is not regulated in the Criminal Procedure Code, however, this is nothing new in the practice of criminal procedural law in Indonesia. In the Buloggate corruption case, at the initiative of the South Jakarta District Court Panel of Judges who examined and tried the case of Defendant Rahardi Ramelan, the agenda for the evidentiary hearing was to hear witness testimony, namely Prof. B.J. Habibie held a long distance online or teleconference from Hamburg. In fact, at that time, there was no legal umbrella such as the Circular Letter of the Supreme Court.¹¹ One comparison that can be made is by looking at the practice of conducting criminal trials during the Covid-19 pandemic in the United States where according to the 6th amendment to the United States constitution, trials should be conducted physically and directly in the courtroom. This is done so that the parties can directly confront the witnesses and experts who are presented, the jury can see and directly assess the statements of the witnesses and experts directly and fulfill the defendant's right to be able to consult directly with his legal advisor during the trial. However, because this practice is difficult to implement during the Covid-19 pandemic, the United States Government stipulates that the trial can be conducted electronically, which is one of the materials in the special rules regarding the handling of Covid-19 in the United States, namely *The Coronavirus Aid*,

¹⁰ Cordella, A. & N. Tempini. (2015). E-government and Organizational Change: Reappraising the Role of ICT and bureaucracy in Public Service Delivery. *Government information Quarterly*. 32

¹¹ Manthovani Reda. Menelisik Landasan Hukum Persidangan Perkara Pidana Secara Daring. *Hukum Online*. Retrived Februari 10 2021. <https://www.hukumonline.com/berita/baca/1t5f0ed2e58d0d9/menelisik-landasan-hukum-persidangan-perkara-pidana-secara-daring-oleh-reda-manthovani/> .

Relief, and Economic Security (CARES) Act. This provision stipulates that the trial can only be conducted electronically if it meets the requirements, namely:¹²

- 1) There is an emergency situation determined by the community;
- 2) There is a decision by the Chairperson of the Court to implement an electronic trial;
- 3) There is the defendant's consent.

Trial electronically can only be conducted in a trial:¹³

- 1) Initial appearances, namely the initial trial to fulfill the defendant's right to be immediately brought before the judge, or speedy trial;
- 2) Detention hearings, namely trials to determine whether the defendant will be detained or not;
- 3) Arraignments, namely hearing the reading of the indictment;
Preliminary hearings, namely hearings related to the initial examination in each criminal case, such as the presentation of the arguments of the public prosecutor and legal counsel, selection of the jury Trials related to parole;
- 4) Trials for cases of minor crimes.

In practice, this electronic trial was carried out where the Judge, Public Prosecutor and Legal Counsel attended the trial from their respective homes, while the Defendant attended the trial from where he was detained. However, for certain areas that allow easy mobility by private vehicle, such as Texas, Judges can follow the trial from the courtroom in court. This practice is different from the court in Manhattan where the most frequently used transportation access is public transportation so the Judge attends the trial from his home. The guarantee of the accessibility of the trial to the public is carried out through information on the list of trials to be held on the court's website and providing a special court telephone number that can be contacted by the public who wish to participate in the trial. In addition, United States courts provide a stenographer, which is a person who records the proceedings and transcripts of the trial based on the recording of the trial that will be provided to the parties.¹⁴ At this time,

¹² Peter Halpern . Diskusi Tentang Pelaksanaan Persidangan Pidana Selama Masa Pandemi Covid-19 - Mahkamah Agung dengan OPDAT Amerika Serikat <https://leip.or.id/diskusi-tentang-pelaksanaan-persidangan-pidana-selama-masa-pandemi-covid-19-mahkamah-agung-dengan-opdat-amerika-serikat/>

¹³ *Ibid.*

¹⁴ Jum'at, 10 Juli 2020, Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP) mengadakan diskusi bersama Mahkamah Agung dan Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) Amerika Serikat terkait pelaksanaan persidangan pidana selama masa pandemi Corona Virus Disease 2019 (Covid-19)

the application of virtual courts with ICT and the latest equipment is the most realistic choice, but it must also be supported by the readiness to apply modern information technology tools with all supporting resources to hold virtual courts. There are several challenges faced in conducting virtual trials, including:

a. Application

An architecture or internet facility development is needed that can facilitate flexibility, convenience and support a speedy trial without face to face. The use of algorithms, capacity building at a low cost (to the parties), a good level of consistency associated with automated systems can be a good basis for improving access to justice.¹⁵

b. The power of proof

Online trials can affect the evidentiary process because defendants cannot be confronted directly, making it difficult for public prosecutors, judges and legal counsel to explore facts through questions to the defendant. The implementation of the electronic trial is still relatively closed because access to participate in the electronic trial process is only given to the litigants and is not yet open to be accessed by the public.

The trial is also constrained by the problem of proof even though proof has a very important meaning to prove the defendant is guilty or not. Related to this, Article 183 of the Criminal Procedure Code stipulates that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, the judge obtains the conviction that a criminal act has actually occurred and that the defendant is guilty of committing it. However, in practice, the evidence submitted is often not clearly accessible. In addition, the defendant cannot be presented or confronted directly in the trial, but undergo trial while remaining in the correctional institution. As a result, it is difficult for public prosecutors, judges and legal advisors to dig up facts through questions to the defendant.¹⁶

c. Limited Facilities and Infrastructure

Such as the Limitation of Courtrooms Having Teleconferencing

<https://leip.or.id/diskusi-tentang-pelaksanaan-persidangan-pidana-selama-masa-pandemi-covid-19-mahkamah-agung-dengan-opdat-amerika-serikat/>

¹⁵ Ronald W Staudt. (2009). All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice. *Loyola of Los Angeles Law Review*. 42. 101.

¹⁶ Dian Cahyaningrum. Electronic Hearing During Covid-19 Pandemic, Info Singkat, Pusat Penelitian Badan Keahlian DPR RI. 4.

Equipment There are still correctional institutions that do not yet have adequate facilities to conduct virtual trials, such as rooms for detainees to conduct virtual trials. In addition, it is difficult for prisoners who are still in detention to attend virtual trials because they have to be temporarily transferred to prisons that have virtual trial facilities, but in reality there are still prisons that refuse prisoners from outside the prison for fear of being exposed to Covid-19. This is a dilemma because during the pandemic the detention period of a suspect or defendant who is in each detention center continues.

d. Network security and strength

Virtual courts require a secure network to protect data as well as the risk of cybercrime attacks. The strength of the network becomes a challenge and obstacle in the implementation of virtual trials. The implementation of a virtual session requires the host (host) to master the application and the equipment used. Using the Zoom app for online hearings creates the potential for hacking. This is one of the obstacles expressed in the implementation of the online trial during the Covid-19 pandemic. The use of the Zoom application requires patience for various parties because all parties must be able to connect properly during the trial. Of course this will have the potential for the trial to be carried out according to schedule. In addition, the internet connection is not yet stable in a number of areas so that it can interfere with the trial.

e. Human Resources Capabilities

Focusing on the phenomenon of online trials, apart from the substantive and procedural law components, the availability of human resources and the development of human resources related to their competence in the use of virtual court facilities and infrastructure is very important. Human error is often an obstacle in the implementation of virtual trials. Therefore, to support the optimization of the implementation of the virtual session, it must be supported by IT staff resources. Limited IT personnel cause virtual court preparation to be slow, especially if there are technical obstacles in the middle of the trial. The Ombudsman found the potential for maladministration, namely the protracted delay in conducting the electronic trial. This is indicated by the finding of a lack of IT staff resources. As a result, electronic trial preparation becomes slow, especially if there are technical obstacles in the middle of the trial. The Ombudsman also found unclear timing of the trial, limited facilities and infrastructure such as limited courtrooms with teleconference equipment and an unstable internet network so that the electronic trial process was delayed and not on time. Other technical obstacles are the limited mastery of technology by judges, poor coordination between parties, legal advisors are not side by side with the defendant and it is difficult to ensure that

witnesses and defendants are under pressure or lies.¹⁷

The Supreme Court also noted 5 (five) obstacles in conducting virtual trials via teleconference in various district courts throughout Indonesia, including:¹⁸

- 1) From the defendant's side, during the trial by teleconference, the defendant was unable to fully convey and express everything that was in his mind. Correctional institutions do not want to accept prisoners from outside for fear of being exposed to Covid-19. As a result, detainees are still being held at the Polres, Polsek and Polda. On the other hand, while Covid-19 was running, the detention period of a defendant who was in each detention center, including at the Resort Police, Polsek and Polda continued.
- 2) Correctional institutions (prisons) do not yet have adequate facilities for online hearings via teleconference.
- 3) Virtual court proceedings from the Sector Police, Resort Police and Regional Police. However, the trial will still be held by teleconference regardless of its limitations.

The phenomenon of the development of virtual courts is impossible to see only based on the development of the regulations behind it. There are non-legal factors that make a regulation can be said to work well or not. Against the components in law enforcement which if ignored, has the potential to cause the law to be ineffective and seem useless. Components that must be met in law enforcement include: personnel, information, budget, facilities, substantive law, procedural law, decision rules and decision habits.¹⁹ In the trial, the public prosecutor and judge conduct evidence by teleconference. Teleconference is a legal discovery made by judges to enforce law and justice, this is the main goal of progressive law. Progressive legal theory, sees the law not only using the lens of the law itself but also the social goals to be achieved. Consequently, judges are given a high degree of freedom to make decisions. The author admits that

¹⁷ Gosanna Oktavia. Ombudsman Temukan Potensi Maladministrasi di Penyelenggaraan Persidangan Online. <https://www.ombudsman.go.id/news/r/ombudsman-temukan-potensi-maladministrasi-di-penyelenggaraan-persidangan-online> Retrived Februari 16 2021.

¹⁸ Sabir Lulu. Mahkamah Agung Soroti Kendala Sidang Virtual, ini Penjelasannya. Retrived Februari 16 2021. <https://www.inews.id/news/nasional/mahkamah-agung-soroti-kendala-sidang-virtual-ini-penjelasannya>.

¹⁹ Dror, Yehezkel. (1971). *Ventures in Policy Sciences*. Amsterdam: Elsevier. Dalam Dewi Rahmaningsih, et.al. (2020). Membangun Budaya Hukum Persidangan Virtual (Studi perkembangan Sidang Tindak Pidana via Telekonferensi). *Jurnal Pembangunan Hukum Indonesia*. 2(3).291-304.

it is still difficult for law enforcement officers to adjust to the virtual trial.²⁰ On the other hand, indeed virtual trials during the pandemic can be an alternative, but it is also necessary to draft regulations or standardization of virtual court facilities and infrastructure for the scope of courts at the first level and at the appeals level throughout Indonesia because there are still many shortcomings in the field to support the trial effectively and efficient.

4. Conclusion

Each country has different legal regulations, including Indonesia. In accordance with article 1 paragraph 3, Indonesia is a state of law and every Indonesian citizen must comply with the applicable laws in Indonesia. The law in each country is a regulation that is customary, officially considered binding and formalized by the state authorities or government. There are many laws in Indonesia, laws, government regulations, presidential decrees, to regional regulations. The development of law with a modern character can contain all provisions that are adapted to the current situation and conditions. In response to the changes and developments of the current era, there is also the presence of information technology which has an impact on the emergence of new problems in social life, the development of science and technology which has had an impact on the problem of acts that lead to cybercrimes.

The Covid-19 pandemic must not prevent the fairest enforcement of the law. According to Lawrence M. Friedman, the effectiveness of law enforcement in the context of judicial institutions can be grouped into five factors, namely: factors of legal instruments or regulations, factors of law enforcement officers, factors of availability of facilities and infrastructure, factors of community social conditions and cultural factors. In Indonesia, the developed doctrine states that law enforcement elements consist of law enforcement officers, namely judges, advocates, prosecutors and the police, plus other institutions that have specific law enforcement authorities in certain fields such as the Directorate General of Taxes, the Directorate General of Customs and Excise and Directorate General of Immigration. One of the pillars that makes everything possible, including law enforcement during a pandemic, is the existence of digital disruption that is applied in the law enforcement process in the judiciary. While no one can guarantee when the crisis will be over and this pandemic will last, the new normal habit will be formed by the convergence of policies that arise as a result of the values that underlie people's life, both in the form of

²⁰ Sajipto Rahardjo. (2009). *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta: Genta Publishing.

habits and unwritten laws but are understood and adhered to together¹³. Ethan Katsh stated “conceived in the Dark Ages and reformed in the nineteenth century, these court systems became unfit for many purposes in the late twentieth century. Now they seem destined, if unchanged, to be inappropriate for most disputes of the twenty–first”¹⁴.

Facing challenges and problems in conducting remote trials In terms of criminal procedural law, the mechanism for remote online trials or teleconferences is not regulated in the Criminal Procedure Code, however, this is nothing new in the practice of criminal procedural law in Indonesia. In 2002, the judiciary made a new history because it was able to carry out criminal case trials with the agenda of examining witnesses online remotely or by teleconference. In the Buloggate corruption case, at the initiative of the South Jakarta District Court Panel of Judges who examined and tried the case of Defendant Rahardi Ramelan, the agenda for the evidentiary hearing was to hear witness testimony, namely Prof. B.J. Habibie was held online remotely or teleconference from Hamburg, Germany with the help of one of the National Private Television. In fact, at that time there was no legal umbrella like the Supreme Court Circular. One comparison that can be made is by looking at the practice of conducting criminal trials during the Covid-19 pandemic in the United States where according to the 6th amendment to the United States constitution, trials should be conducted physically and directly in the courtroom. This is done so that the parties can directly confront the witnesses and experts presented, the jury can see and directly assess the statements of the witnesses and experts directly and fulfill the defendant's right to be able to consult directly with his legal advisor during the trial.

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