

Development of Regulations And Procedures And Constraints In The Process of Criminal Procedures In The Corona Virus Pandemic (Covid-19)

Didit Agung Nugroho*¹, Denny Iswanto², Masrun³, Oula Dewi Nurlailly⁴

Faculty of Law, Airlangga University, Surabaya

E-mail: *¹nugrohodiditagung@gmail.com dennyiswanto39@gmail.com, masrun381@gmail.com,

ouladewinurlailly@gmail.com

ABSTRACT

The first case of Covid-19 was in March 2020, the government continues to make efforts to take mitigative steps and handle them as optimally as possible so that this virus does not spread further and brings fatalities. Various policy options were adopted to block the rate of spread, starting from the application of physical distancing, to Large-Scale Social Restrictions in various areas mapped as the epicenter of the spread. The impact of the COVID-19 corona virus pandemic has changed the pattern of human life from conventional to online. This also occurs in the criminal court trial process in Indonesia, with the issuance of Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Courts (online criminal court) so that criminal proceedings were initially conducted face-to-face but are now being carried out online / electronically. With this writing, it is hoped that it can provide benefits to legal practitioners and the general public regarding the mechanisms for online / electronic criminal case proceedings. The research method used is a normative juridical approach to legislation and a conceptual approach. Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Court (online criminal trial) guarantees the proceedings of the case without being constrained by forced or emergency situations so that it can better ensure the rights of the defendant with due process of law certainty laws are fulfilled. Since the holding of an electronic criminal trial, several obstacles have been identified, particularly regarding the uneven and unstable internet connection throughout Indonesia; the ability and knowledge of court officials of electronic trial support technology; as well as the uneven court equipment and equipment with adequate technology that can support the holding of electronic trials. Advocates and legal aid organizations also voiced objections to the existence of regulations that allow defendants to attend electronic hearings without being accompanied by lawyers, as well as questioning how the guarantee of fulfilling the right to a fair trial can be adopted in electronic trials.

Keyword : Regulations, Procedures, Resistance, Online Trial, Corona Virus

1. INTRODUCTION

In early March 2020, the first COVID-19 patient was found in Indonesia. Since then the number of daily findings for COVID-19 has continued to grow. To prevent the increasing number of infections, since April 2020 the Government has implemented Large-Scale Social Restrictions in various regions in Indonesia which are still ongoing today. However, the daily finding of COVID-19 patients has still reached 1,078,314 positive people. (Nuryanti, 2021). In trend, the number of positive COVID-19 findings at the national level is still increasing every day.

As is well known recently, the corona virus (COVID-19) forces all human life to change or in other words, an unusual lifestyle. Humans are required to change quickly and adapt in any case. This forces human activities that were initially carried out offline (conventional) to become online

(online). The more rapid development of technology towards being completely digital at this time has led to a new human lifestyle. Technology is a tool that can help most human needs so that it is considered capable of making tasks and jobs easier. The importance of the role of technology is the entry point for the digital era that brings new habitual civilizations (Rudianto & Roesli, 2019). Of course every change can always bring positivity where new habits in this digital era can replace old habits that are still conventional. But at the same time, this digital era also brings many negative impacts, so that it becomes a new challenge in human habits in this digital era. The challenges in the digital era and the existence of the corona virus (COVID-19) pandemic with this new habit have entered into various fields, including the criminal justice process in Indonesia.

In law, the material criminal law (material strafrecht) contained in the Criminal Code is very old but still valid until the Criminal Code Bill is passed, as well as formal criminal law (formeel strafrecht) which is 39 years old through Law Number 8 1981 concerning the Criminal Procedure Code (KUHAP). If you look at its history, internet services through the world wide web (WWW) were discovered and developed in 1989 by a scientist named Tim Berners-Lee who works for the European Organization for Nuclear Research (CERN), it cannot be denied and it must be understood that our Criminal Procedure Code does not follow developments era and do not recognize electronic systems. Although Indonesia already has Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), the ITE Law does not accommodate the procedural law provisions at the trial. (Karo, 2020).

Prior to the corona virus pandemic (COVID-19), the Supreme Court made a breakthrough in the procedural law system, namely online trials which are regulated in Supreme Court Regulation No.3 of 2018 but have been revoked and replaced by Supreme Court Regulation No.1 of 2019 concerning Case Administration and Trial in Court Electronic but e-court (e-filing; e-payment; e-summons; e-litigation). However, this rule is still limited to the settlement of civil cases, cases of religious courts, military administration and state administration. This is reinforced by Number 2 letter e Circular of the Supreme Court Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period for the Spread of Corona Virus Disease 2019 (COVID-19) in the Supreme Court and the Judiciary Bodies that are under it, it is stated that justice seekers are recommended to take advantage of the e-litigation application for trials in civil, religious, and state administrative cases while criminal case trials are still carried out specifically for cases where the defendant is being detained or whose detention cannot be extended again during the corona virus prevention period.

Then the Supreme Court reissued the Supreme Court Regulation Number 4 of 2020

concerning the Administration and Trial of Criminal Cases in an Electronic Court (online criminal trial). This Supreme Court Regulation the procedures for conducting criminal proceedings, both criminal cases within the general court, military, and online jurisdictions (Rudianto & Roesli, 2019). That Supreme Court Regulation Number 4 of 2020 is basically a legal umbrella for the implementation of electronic criminal proceedings which binds all relevant law enforcement officials. However, what needs to be paid attention is that Supreme Court Regulation Number 4 of 2020 does not only regulate the trial process, but also the process of delegating cases and administering the cases. With the resolution of cases that are constrained by certain circumstances (including the COVID-19 pandemic) it requires quick resolution and still respects human rights.(Supreme Court Regulation Number 4 of 2020, 2020). It is undeniable that during the current covid-19 pandemic there are indeed several differences and obstacles when conducting electronic hearings, with the issuance of Supreme Court Regulation Number 4 of 2020 it is hoped that there will be a uniform understanding of the criteria and procedures. It is undeniable that during the current covid-19 pandemic there are indeed several differences and obstacles when conducting electronic hearings, with the issuance of Supreme Court Regulation Number 4 of 2020 it is hoped that there will be a uniform understanding of the criteria and implementation procedures. (Sekayu, 2021).

This research aims to provide a more detailed explanation or elaboration of the proceedings in criminal proceedings during the corona virus pandemic (COVID-19) so that this research is expected to provide benefits to practitioners and the public regarding the online judicial process mechanism in accordance with the regulations applies after the Supreme Court has reissued Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases at the Court Electronically (online criminal trial). It should also be borne in mind that Indonesia has a very large area to remote villages which sometimes has not been facilitated by an adequate internet network so that sometimes this condition is an obstacle in conducting criminal proceedings in court electronically.

2. RESEARCH METHOD

Research methodology is a way to solve existing problems by collecting, compiling and interpreting data in order to find, develop or test the truth of a scientific research, because the quality of the validity value of the results of scientific research is largely determined by the accuracy of selecting the appropriate method so the research can be carried out. well and with satisfactory results. The methods used in this study are as follows:

Type And Research Approaches

The type of legal research used is normative juridical research, which is the type of research by reviewing or analyzing laws and regulations as well as from various other literature sources that can explain and provide a juridical basis (Soekanto, 1985), related to issues related to the provisions of the enforcement of the legal umbrella for the implementation of electronic criminal cases through the Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases at Court Electronically (online criminal trial). Therefore, this research includes normative legal research, namely legal research carried out by examining various bibliographies using deductive thinking methods. As for what is meant by the deductive thinking method is a way of thinking in drawing conclusions drawn from something that is general in nature that has been proven correct and the conclusion is aimed at something specific in nature. (Sedarmayanti and Syarifudin Hidayat, 2002).

The approach used in this research is the statute approach and the conceptual approach (Ibrahim, 2005). What is meant by the statute approach is an approach that is carried out on various legal rules relating to the online trial process of criminal cases. Meanwhile, what is meant by a conceptual approach is an approach aimed at understanding the concept of legal concepts and legal principles that can be applied in solving problems related to the online criminal court process.

Sources Of Law

The sources of legal materials used in this doctrinal research consists of primary and secondary legal. (Soemitro, 1990).

a. Primary Legal Material

Primary legal materials are binding legal materials in the form of statutory regulations that will be used as the basis for analysis in this research, including Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Courts (online criminal trial)

b. Secondary Legal Material

Secondary legal materials are materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, such as books, research result, legal journals, scientific articles, mass media and so on.

Method Of Collection

In order to be able to collect some legal materials systematically, comprehensively and in-depth, this research used data collection methods in the form of literature and documentation (library and documentation research). In this library research and documentation, it is intended

to collect, identify and analyze various sources of legal material originating from several laws and regulations, scientific writings and various other legal documents relating to the issues to be discussed in this study.

3. RESULT AND DISCUSSION

It is well known that the Supreme Court issued the Supreme Court to reissue the Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases in Electronic Court (online criminal trial), this accommodates the situation of social restrictions to reduce the spread of the corona virus (COVID- 19). The procedure for the trial is divided into several stages, namely as follows:

Preparation of The Court

Article 7 paragraph (1) Supreme Court Regulation 4/2020 : Before the trial begins, the substitute clerk / clerk checks the readiness of the participants and the trial and reports to the judge / panel of judges.

Article 7 paragraph (2) Supreme Court Regulation 4/2020 : In a trial conducted electronically, the defendant who is accompanied by a legal advisor must physically be in the same room as the legal advisor.

Article 7 paragraph (3) Supreme Court Regulation 4/2020 : The room where the defendant participates in an electronic trial which is attended by the defendant, legal advisers, prison / prison officers, and IT officers, except for officers / other parties determined by statutory regulations.

Article 7 paragraph (4) Supreme Court Regulation 4/2020 : In addition, the room must also be equipped with a recording device / camera / CCTV that can show the overall condition of the room.

Indictments And Objections

Article 8 ayat (2) jo. Article 3 paragraph (1), (2), dan (3) Supreme Court Regulation 4/2020 : The objection / exception documents are sent to the judge / panel of judges and the file is forwarded to the prosecutor provided that the file is in form *portable document format* (PDF), to the court's e-mail address before reading, and must be verified between read and downloaded.

Article 8 paragraph (3) Supreme Court Regulation 4/2020 : The prosecutor's opinion regarding the defendant's objection / exception is sent to the judge / panel of judges in the same manner as above.

Examination And Expert

Article 11 paragraph (2) Supreme Court Regulation 4/2020 : The examination of witnesses and / or experts is carried out in the courtroom, even though the trial is conducted electronically.

Article 11 paragraph (3) Supreme Court Regulation 4/2020 : However, for certain provisions, the judge / panel of judges can determine the examination of witnesses / or experts who are present at:

- a. The prosecutor's office in his jurisdiction;
- b. The court where the witness / expert is located if the person concerned is located inside and outside the jurisdiction of the court hearing the case;
- c. The embassy / consulate general of Indonesia with the approval / recommendation of the minister of foreign affairs, in the event that the witness / expert is abroad;
- d. Tempat lain yang ditentukan oleh hakim/majelis hakim.

Examination of The Accused

- Article 13 paragraph (2) Supreme Court Regulation 4/2020 : In the examination of the accused which was carried out electronically :
 - a. The statement of the defendant who is in detention can be heard from the place where ID is being held accompanied / not accompanied by a legal advisor.
 - b. The defendant was in detention, but the place where the defendant was detained did not have facilities for electronic trial. The statement was heard from the prosecutor's office; or
 - c. If the defendant is not detained, his testimony will be heard at the court, prosecutor's office, or other places determined by the judge / panel of judges through a ruling.
- Article 13 paragraph (3) Supreme Court Regulation 4/2020 : For defendants who are not detained, the head / head of the court where the defendant's testimony was heard provides electronic trial facilities and appoints 1 judge and 1 substitute clerk / clerk of the court without using trial attributes to oversee the proceedings of the defendant's examination.

Examination of Evidence

- Article 14 paragraph (1) Supreme Court Regulation 4/2020 : In a trial conducted electronically, the evidence to be examined will remain at the prosecutor's office
- Article 14 paragraph (2) Supreme Court Regulation 4/2020 : where the prosecutor of evidence to the judge / panel of judges electronically.
- Article 14 paragraph (3) Supreme Court Regulation 4/2020 : the evidence is a printed document, the judge / panel of judges will match the scanned document in the case file with the original document shown by the prosecutor electronically.
- Article 14 paragraph (4) Supreme Court Regulation 4/2020 : But if the evidence is not a printed document, it can be photographed / videotaped and sent to the court's e-mail address before being submitted as evidence.

- Article 14 paragraph (5) Supreme Court Regulation 4/2020 : In the event that the defendant delivers mitigating evidence, whether in the form of printed documents or not, the evidence is treated the same as above.
- Article 14 paragraph (6) Supreme Court Regulation 4/2020 : The judge / panel of judges electronically matches the evidence sent with the original.

Claim, Advocacy, Replik, dan Duplik

Article 5 paragraph (2) jo. Article 3 paragraph (2) and (4) Supreme Court Regulation 4/2020 : In a trial that is held electronically, criminal documents, advocacy, replik, and duplik are sent to the court's e-mail address before they are read out, and after being read, they are sent to the e-mail address of the prosecutor / defendant and / or legal contract.

Verdict and Notification Verdict

- Article 16 paragraph (1) Supreme Court Regulation 4/2020 : In actual fact, the verdict is pronounced by the judge / panel of judges at a trial which is open to the public attended by prosecutors and defendants / legal situations, as determined otherwise by law.
- Article 16 paragraph (2) Supreme Court Regulation 4/2020 : However, in certain circumstances, based on the determination of the judge / panel of judges, a hearing for pronouncement of the verdict can be held electronically.
- Article 16 paragraph (3) Supreme Court Regulation 4/2020 : If the defendant is not present at the reading of the verdict, the court will send a notification of the decision to the defendant via electronic domicile in the form of e-mail, Whatsapp address, or SMS.

Then, other matters that need to be considered in the conduct of an electronic criminal trial are :

1. All trial participants must be seen on the monitor screen with a bright and clear voice.
2. The substitute clerk / clerk of the court reports the readiness of the trial and ensures that it is connected with the trial participants to the judge / panel of judges.
3. Judges, substitute clerks / clerks, prosecutors, legal advisors use their respective trial attributes.
4. Every electronic document submitted by the prosecutor, legal adviser and the defendant must be in a portable document format (PDF).

4. CONCLUSION

Basically, the criminal justice process in Indonesia has been regulated in Law Number 8 of 1981 Concerning the Criminal Procedure Code which has been implemented since December 31, 1981 but with the corona virus pandemic situation (COVID-19). Therefore, the Criminal Procedure

Code is deemed unable to accommodate the online criminal court trial process so that an umbrella is needed.

Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Court (online criminal trial) guarantees the proceedings of the case without being constrained by compelling or emergency situations so that it can better ensure the rights of the defendant with due process. Law of legal certainty is fulfilled. However, on the other hand, there are challenges in holding criminal trials electronically, which can also have an impact on the human rights of defendants, victims of crime and society in general.

Since the holding of an electronic criminal trial, several obstacles have been identified, particularly regarding the uneven and unstable internet connection throughout Indonesia; the ability and knowledge of court officials of electronic trial support technology; as well as the uneven court equipment and equipment with adequate technology that can support the holding of electronic trials. Advocates and legal aid organizations also voiced objections to the existence of regulations that allow defendants to attend electronic hearings without being accompanied by lawyers, as well as questioning how the guarantee of fulfilling the right to a fair trial can be adopted in electronic trials.

REFERENCES

- Ibrahim, J. (2005). *Teori Dan Metode Penelitian Hukum Normatif*. In *Bayumedia Publishing*.
- Karo, R. K. (2020). *Mengisi Kekosongan Hukum Sidang Tindak Pidana Secara Online di Pandemi Covid-19*.
- Nuryanti. (2021). *Update Corona Indonesia 31 Januari 2021: Tambah 12.001 Kasus, Total 1.078.314 Positif*.
- Rudianto, E., & Roesli, M. (2019). Civil Law Review Non-performing Loan Settlement Loans Revolving Funds National Program for Community Empowerment in Urban. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 14(1), 58–73.
- Sedarmayanti and Syarifudin Hidayat. (2002). *Metodologi Penelitian*. In *Mandar Maju*.
- Sekayu, D. C. (2021). *Sosialisasi PERMA Nomor 4 Tahun 2020 tentang Administrasi dan Persidangan Perkara Pidana Di Pengadilan Secara Elektronik*.
- Soekanto, S. dan S. M. (1985). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Rajawali.
- Soemitro, R. H. (1990). *Metodologi penelitian hukum dan jurimetri*. *Ghalia Indonesia, Jakarta*, 167.
- Supreme Court Regulation Number 4 of 2020, (2020).