



© Copyright Kemala Publisher
All rights reserved

Science, Engineering and Social Science Series
ISSN/e-ISSN: 2541 – 0369/2613 – 988X
DOI: -
Vol. 5, No. 2, 2021, Printed in the Indonesia

Criminal Procedures on Online Application During Covid-19 Pandemic

Ferdian Togi Sinurat^{1,*}, Markoni¹, Wasis Susetio¹
¹Faculty of Law, Esa Unggul University, Jakarta

The spread of the Covid-19 (Corona Virus Disease-2019) outbreak has paralyzed community activities in the various aspects. Here, the field of law itself, spread of Covid-19 was greatly influenced the course of the law enforcement process. The trial activities that were most affected by the problem due to the Covid-19 pandemic, namely in criminal proceedings. This study uses a comparative approach supported by literature study. This study aims to determine the comparison of the application of online and offline criminal trials in Indonesia and other countries, especially in the United States. Online criminal trial in Indonesia is regulated in PERMA No. 4 of 2020, while in the United States it is regulated in the CARES Act and many things arise from the application of online criminal proceedings, in Indonesia, including inconsistencies in the Criminal Procedure Code with, legality of the proof system, psychological impact on the parties, also technological constraints as a new breakthrough. Based on the theory of justice, the legal certainty, and comparative benefits of online criminal justice (e-courts / e-litigation) and offline criminal justice should be done offline because it fulfils the theory of justice and legal certainty. In this study, we also obtain the strengths and weaknesses to compare, the results whether the application of the online criminal trial is effective and efficient.

Keywords: Application of Online Criminal Court in Indonesia and America, Effective and Efficient Online Criminal Court, Comparative Approach.

1. INTRODUCTION

Since the beginning of 2020, the world has changed. Here, the hustle and bustle of human activity is forced to change from what has become a habit. Changes in all lines also occurred. caused by aliens that came from outer space. Nor is it caused by the greed of a few human beings for one another, a kind of war over resources. Rather, this change is caused by a small, invisible creature called Coronavirus disease 2019 (Covid-19). The spread of the Covid-19 outbreak has paralyzed community activities in various aspects. Starting from the aspects of education, social, economic, even though the law. In field of law itself, the massive spread of Covid-19 has affected the course of law enforcement. One of them is trial activity, which did not escape the emergence of a dilemma due to the Covid-19 pandemic. The trial activities that were most affected by the problem due to the Covid-19 pandemic, namely in criminal proceedings. The reason that the detention period is limited, it becomes the basis for the -

*Email Address: togi.sinurat@gmail.com

Supreme Court (MA) to establish online trials based on the Supreme Court Regulation (PERMA) Number 1 of 2019 concerning Electronic Trial Procedures [1, 2]. An MoU (Memorandum of Understanding) agreement between the Supreme Court, the Indonesian Attorney General's Office and the Ministry of Law and Human Rights, in this case the Directorate General of Corrections, was ratified. The MoU is related to an agreement to hold trials during the Covid-19 pandemic which will be carried out until the end of the Covid-19 outbreak in Indonesia. In the MoU, one of the agreements was stipulated to carry out criminal case trials online. For more details, this is also in accordance with the Attorney General's instructions, namely to prevent the spread and transmission of Covid 19 so that criminal cases can be heard online. This instruction is contained in the Supreme Court Circular (SEMA) Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of the Spread of Covid-19 in the Supreme Court and the Judicial Bodies under it, SEMA Number 2 of

2020 concerning Amendments to the Circular of the Supreme Court Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of the Spread of Corona Virus Disease 2019 (Covid-19) in the Supreme Court and the Judicial Bodies under it, SEMA Number 3 of 2020 concerning the Second Amendment to the Supreme Court Circular Letter Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of the Spread of Corona Virus Disease 2019 (Covid-19) Within the Supreme Court and the Judicial Bodies under it, SEMA Number 4 of 2020 concerning the Third Amendment to the Supreme Court Circular Letter 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 Environment The Supreme Court and the Judiciary Bodies Under it, SEMA Number 5 of 2020 concerning the Fourth Amendment to the Supreme Court Circular Letter Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of the Spread of Corona Virus Disease 2019 (Covid-19) in the Supreme Court and Bodies The Judiciary Under it, SEMA Number 6 of 2020 concerning the Work System within the Supreme Court and Judicial Bodies Under it in the New Normal Order, Cooperation Agreement between the Supreme Court Number: 402 / DJU / HM.01.1 / 4/2020 and Ministry of Law and Human Rights Number: PAS-08.HH.05.05 Year 2020 concerning the Implementation of Trials through Teleconference and Attorney General Circular Letter (SEJA) Number B-049 / A / SUJA / 03/20 2020 dated March 27, 2020 concerning Optimization of Implementation of Tasks, Functions and the Authority of the Prosecutor's Office in the midst of the Covid 19 pandemic. Thus, the SEJA optimization was affected in several conditions, as follows [3, 4]:

- a) Behind the implementation of online criminal proceedings, which are considered as an idea
- b) Innovation in the field of law, it turns out that it has encountered obstacles
- c) Obstacles include technical constraints such as the availability of electronic devices, the position of the defendant, the presence of other parties, limited mastery of technology by judges, poor coordination between parties, then legal advisors are not side by side with the defendant, and cannot ensure that witnesses and defendants.
- d) Not to mention, there are still many people who have not been able to use information technology even though they have used Android phones and the availability of internet networks in certain areas when they want to conduct electronic trials.
- e) Legally, there are several different interpretations of the trial electronically
- f) Online with the Criminal Procedure Code, one of which is where the defendant is in a correctional facility that is participating in a trial by teleconference. This contradicts Article 145 and Article 154 of Law

No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Article 145 states, "The notification to come to court is legally carried out, if it is delivered by summons to the accused at his or her address of residence or residence or if his residence is unknown, it shall be delivered at the last residence". So, the rules in the Criminal Procedure Code require the examination of the accused at trial in court and do not regulate the examination electronically. By law, in the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 1 of 2019 concerning Administration of Cases and Trials electronically online. Article 3 states, "The administration of cases and trials electronically in this Supreme Court Regulation applies to types of cases in civil, religious, religious, military administration and state administration cases".

- g) In the law of proof, to protect public interests, the Attorney General's Office as an instrument of the state is assigned to carry out the burden of proof at the same time to carry out criminal charges. Meanwhile, judges in criminal cases are obliged to seek material truth. The essence of proof in criminal proceedings is very urgent. Evidence is a process for determining and stating a person's guilt can be punished. From the results of the trial, it can be proven valid and convincing someone to have committed a criminal act or then it can also be released from the indictment if it is not proven to have committed a criminal act. It can be released from all lawsuits if what is being accused is proven, but it is not a criminal act.

Problems related to evidence before the trial at this time, when criminal proceedings are conducted online or via teleconference on the grounds of the Covid-19 pandemic. This has actually raised a number of issues related to the validity of evidence carried out by the public prosecutor to prove the defendant's guilt as well as the judge's conviction on the evidence the public prosecutor makes [5]. The current problem with the application of online trials or via teleconference, which is actually in practice, the defendant is undergoing trial while remaining in the correctional facility, while the judge is in the courtroom and the public prosecutor is in the prosecutor's office or in the courtroom together with the judge, has affected proof in court. For criminal cases where the proof is easy, this actually does not really matter. However, for cases where the evidence is complicated and requires specific evidence, the application of the trial online or via teleconference in the opinion of the author cannot be carried out. Instead, it must be done directly [6]. The direct meaning here is that the defendant confronts the judge in person to directly assess the evidence made by the public prosecutor and the facts revealed in the trial. In addition, with regard to online trials, it is also necessary to agree on SOPs (Standard Operating Procedures) and clear regulations in the implementation of online trials, to ensure the feasibility of conducting online trials, both in

terms of facilities and infrastructure as well as the security of trial administration, so that online trial is not detrimental and reduce the rights of the parties, both the defendant and the victim and the community [7, 8].

2. METHODOLOGY

This study uses a comparative approach method, which means the approach is carried out by comparing legal regulations or court decisions in a country with legal regulations in other countries (can be 1 country or more) but must be about the same thing.

When associated with this study, this study will be analyzed using a comparative analysis, which is comparing online criminal trials in Indonesia with online criminal trials in the United States. Here, we collect secondary data in the form of primary legal materials and secondary legal materials by conducting literature studies. The primary legal materials used in this study include laws and regulations in Indonesia that regulate online court regulations in Indonesia both before and after the Covid-19 pandemic, and compared to regulations governing Virtual Civil Courts in the United States. In this study, secondary legal materials were also used including books, articles, journals that discuss online court practices in Indonesia and in the United States. These materials are then collected and analyzed to find comparative results regarding developments in the implementation and regulation of online trials in Indonesia and in the United States. From these results it will also be known the effectiveness and efficiency of the online criminal trial.

3. RESULT AND DISCUSSION

A. Comparison of the Application of Online Criminal Trials in Indonesia and the United States

The spread of the Covid-19 outbreak, especially in Indonesia, has also had many effects. Included in the field of law, especially in the context of judicial service activities, which have been running routinely, must be limited to the safety of court employees and justice seekers. This is in accordance with the principle of the *Salus Populi Suprema Lex Esto* (people's safety is the highest law). In addition, many countries in the world have imposed social / physical distancing (social / physical restrictions) and even lockdown (regional quarantine). Indonesia (adopting the Civil Law system) and the United States (adopting the Common Law system) are among the countries that do not impose lockdowns, but that does not mean that this does not have an impact on the world of legal practice. Even though they did not impose a lockdown, Indonesia and the United States continued to impose social distancing in their countries which made it impossible for a trial to be carried out properly (in normal situations) in accordance with applicable regulations. For the sake of implementing

social distancing, it is not possible for the Court Institution to hold trials according to pre-set standards, because it can cause crowds of people, which causes the risk of spreading the Covid-19 virus even higher. This causes the judiciary to rely on technology to support the continuity of legal services to justice seekers.

B. Application of Online Criminal Session in Indonesia

In connection with providing the defendant's testimony online, referring to Article 189 paragraph (2) of the Criminal Procedure Code, the statement of the defendant which is stated outside the trial cannot be considered as evidence. However, it is only used to "help" find evidence in court. Article 189 paragraph (2) of the Criminal Procedure Code states, "The statement of a defendant that is given outside the trial can be used to help find evidence at trial, provided that the information is supported by a valid evidence as long as it concerns the matter that is being accused of him". So, it can be interpreted that the giving of testimony of witnesses and defendants outside the court can be done with the permission of a judge with certain conditions. This is due to the covid-19 pandemic which is very worrying for the parties involved in the criminal proceedings.

Thus, the State must stand on laws that guarantee justice to its citizens. Justice is a condition for achieving happiness in life for its citizens. The rule of law in general does not mean the purpose and content of the state, but the means of making it happen. Following this, the rule of law must contain 3 (three) elements of legal theory, namely:

- a) The theory of justice, according to Fence M. Wantu, said that "fairness is essentially putting something in its place and giving everyone what is their right, which is based on the principle that all people are equal before the law (equality before the law).
- b) The theory of legal certainty, normatively, is when a statutory regulation is made and promulgated with certainty, because it regulates clearly and logically, it does not clash or create a conflict of norms. Laws containing general rules serve as guidelines for individuals behaving in society, both in relationships with fellow individuals and in relation to society. These rules become a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules created legal certainty.
- c) Benefit Theory, is a theory that accompanies the theory of justice and legal certainty. In implementing the theory of legal certainty and the theory of justice, consider the theory of benefit.

In the discussion of equality before the law or Equality before the Law, in Indonesia, for example, there are several judicial circles as stipulated in Article 18 of Law

Number 48 of 2009 concerning Judicial Power which states: "Judicial power is exercised by a Supreme Court and judicial bodies. Under it in the environment of general courts, religious courts, military courts, state administrative courts, and by a Constitutional Court."

What makes the principle of Equality before the law one of the first and foremost principles in criminal procedural law is Article 4 paragraph (1) of Law Number 48 of 2009 which reads, "The court shall judge according to the law without discriminating against people". The position of a legal regulation is very important in the study of the laws of the Republic of Indonesia, where every law that is formed must have the basis of a higher regulation or statute. Regulations or laws whose position are lower in the hierarchy of positions of lower statutory regulations must not conflict with higher-level regulations which are non-negotiable principles. Law-implementing agencies that are given the authority to set internal regulations such as the Supreme Court stipulating the Supreme Court Regulations (PERMA), the Constitutional Court ratifying the Constitutional Court Regulations (PMK), the Supreme Audit Agency as well as others. The establishment of PERMA to solve legal impasse or the vacuum of procedural law, apart from having a legal basis, also provides benefits for law enforcers. However, the legal breakthrough made by the Supreme Court has an important note. First, the arrangement in PERMA becomes substantial material. It's position to overcome the shortcomings of the law. The authority to form PERMA is the authority of attribution, namely the authority that is institutionally attached to the Supreme Court. PERMA has the scope to regulate procedural law showing that the Supreme Court and its judiciary are one of the implementers of this regulation. The formers and implementers of regulations are the same, meanwhile the Supreme Court has the authority to conduct a material review of regulations under the law against laws. Because of this, it is necessary to further study the normative juridical position of PERMA in the hierarchy of the laws and regulations of the Republic of Indonesia where the position of PERMA is to determine whether the Supreme Court will act as maker, implementer and examiner of the regulations it makes.

Based on the research conducted by the author, the latest regulations governing criminal trials online are regulated in PERMA Number 4 of 2020. However, this PERMA only regulates the administration. It can be said that the regulations implemented for online criminal trials are still too weak. In addition, regarding the legality of electronic evidence as evidence, which is an important role in criminal procedural law, is currently still a significant debate if it is brought to court. Evidence that is regulated under the Criminal Procedure Code has significantly expanded with the introduction of electronic evidence, especially after the promulgation of Law No. 11

of 2008 concerning Electronic Information and Transactions (ITE Law). From these provisions, using Electronic Documents as evidence that is considered valid if using an Electronic System in accordance with the applicable provisions.

Furthermore, the enactment of the ITE Law, there is a new regulation regarding evidence in the form of electronic documents. Based on the provisions of Article 5 paragraph (1) of the ITE Law, it is determined that Electronic Information and / or Electronic Documents and / or their printouts are valid legal evidence. Here, in the provisions of Article 5 paragraph (2) of the ITE Law, it is determined that Electronic Information or Electronic Documents and / or their printouts as referred to in paragraph (1) constitute an extension of legal evidence and in accordance with the applicable procedural law in Indonesia. Thus, the ITE (Electronic Information and Transactions) Law has determined that Electronic Information and / or Electronic Documents and / or their printouts are valid evidence, and this is an extension of valid evidence in accordance with the procedural law that has been in force in Indonesia, so that it can be used as a means of evidence. evidence before the trial. Based on the explanation above, the authors compare online criminal justice (e-courts / e-litigation) with offline criminal justice based on the theory of justice, the theory of legal certainty, and the theory of expediency, so in the opinion of the author, the following comparison table for online criminal proceedings should be done offline:

Table I. Comparison of online criminal justice (e-courts / e-litigation) and offline criminal justice

Legal Theory	Online Criminal Justice (e-courts / e-litigation)	Offline Criminal Justice
Justice	No, because not all parties have the same rights	Yes, everyone has the same rights
Legal certainty	No, because it is only regulated in PERMA No. 4 of 2020 and has not been regulated in the Criminal Procedure Code	Yes, because it is regulated in the Criminal Procedure Code
Benefit	Yes, during the pandemic the trial continued even though virtually according to the principle of <i>Salus Populi Supreme Lex Esto</i>	Not when a pandemic is afraid of a crowd

C. Application of Online Criminal Hearing in the United States

State justice systems are generally simpler and of course vary from state to state. The following is an example of the flow of the criminal justice system in the state of California, as one of the states with the largest territory in America. In essence, the criminal justice system in the United States is divided into three stages, namely the stage before the trial examination, the stage for trial examination and finally the stage after the trial

examination as follows.

- a) Detention is an early procedure in the justice system in America. The criminal justice system in America establishes two basic types of detention, detention by detention warrant; and detention without a detention warrant.
- b) Attendance before the Judge (Initial Appearance) is the most important process in the American criminal justice system. In this process the suspect was informed about the charges to be filed and informed about his rights.
- c) Preliminary Hearing is a Supreme Court ruled in 1975 that the initial hearing should be held for a variety of reasons as specified in the Fourth Amendment.
- d) Grand Jury Process is a process of the Grand Jury is *ex parte* (one party), which means that neither the suspect nor his legal adviser is allowed to attend during the grand jury process.
- e) Summons of the Accused (Arrest) is a process whereby the defendant is presented to trial facing the prosecutor's indictment after going through a grand jury process.
- f) Statement of Guilt (Plead Guilty / Plea Bargaining) is a process, the law is passive by not participating in this process, however the judge plays a role in ensuring that proper legal and constitutional procedures are followed.

Furthermore, the trial examination stage was studied to obtain the result. Here, the defendant has constitutional matters during the court examination. These rights are including many factors as follows:

- a) Defendants have the right to receive an open and expedited trial as regulated in the Sixth Amendment;
- b) Defendants have the right to be examined by an impartial jury as stipulated in the Sixth Amendment;
- c) The defendant has the right to be tried at the place where the crime was committed;
- d) Defendants have the right to be informed about the contents of the charges submitted by the prosecutor;
- e) Defendants have the right to be confronted with witnesses against them;
- f) Defendants are entitled to legal assistance at all levels of examination;
- g) Defendants have the right not to be tried in the same case as stipulated in the Fifth Amendment;
- h) Defendants have the right not to be forced as witnesses incriminating themselves;
- i) Defendants have the right to protection over evidence obtained illegally to be used against themselves.

After the judge decides to conduct a trial in a formal court, the stages of the process are as follows:

- a. Selection of the jury is a right of the defendant to use the jury in this trial is stated in Article 3 paragraph 2 of the United States Constitution which states, the trial for all criminal acts, except in cases of impeachment will be conducted by a jury.
- b. Opening Statement is a formal court hearing begins with an opening statement by the prosecutor. Defendants' attorneys are given the same right to give opening statements. The purpose of this opening statement is to provide an overview.
- c. The Prosecutor's Legal Rationale has two kinds of evidence, namely physical evidence and witness testimony evidence. Physical evidence can include elements such as fingerprints, blood tests, documents or other items related to criminal acts.
- d. Legal Reasons for the Defendant / Legal Counsel is a defendant / his attorney is given the right to present witnesses and evidence that is prepared to deny or oppose the prosecutor's argument. The difference with the prosecutor's legal reasoning process is that the defendant / his attorney is not required by law to present new evidence or additional witnesses at all.
- e. Jury Instructions, it's plays an important role, the judge only functions to decide the objections of each party regarding the types of evidence presented or the questions raised. Judges are expected to play a neutral role.
- f. Jury's Decision is process, the judges are sterilized from all disturbances, including being prohibited from reading news related to the case. In very important cases, the jury may be quarantined by the judge and not receive public scrutiny in the hope that the decision is neutral from any influence.

D. Stage After Trial Examination (SATE)

Was found guilty by the jury, the defendant still had several more processes to go through before everything actually ended. Here, the SATE has a many factor as follows:

- a. Punishment Decisions it is an official statement from the court about the decision of the defendant that contains what sentence was given. The lightest punishment that can be given is probation and the harshest is the death penalty.
- b. Request for Appeal is a state or federal level, at least everyone has the right to appeal the decisions handed down by the judge. The appeal is based on the opinion that there has been a legal error in the trial process.

c. Execution is four purposes for imposing a sentence on a convicted person, namely Prevention, Limiting the movement of the convicted person, Rehabilitation, and Punishment or simply retaliation. The court has four options for the imposition of punishment after examining the evidence, the defendant can receive: a fine, a sentence of imprisonment, several forms of conviction, and probation or a combination of these.

The criminal justice system in America at the federal level, which may not be exactly the same from one state to another, but in terms of rice there is no significant difference. Early 2000, the legal system in the United States underwent changes. The judiciary in the United States has used word processing, electronic legal research, billing programs, case management software. In 1998 the Administrative Office of the United States Courts reported that dozens of courts in various states had used video conferencing for a variety of purposes, including testimony, judicial hearings and counseling conducted at different locations. Video conferencing technology is what gave rise to Virtual Courts or Virtual Courtrooms or Virtual Courthouses. The existence of dissatisfaction with justice seekers with the existing legal system, where seeking justice requires high costs and a long time. The Federal Civil Justice Reform Act of 1990 finally reformed the world of justice in the United States by implementing digitalization. From year to year, the use of digitization in the world of justice is growing, and the number of its use is getting higher.

Since the spread of the COVID-19 pandemic, on March 27, 2020 the United States implemented The Coronavirus Aid, Relief and Economic Security Act (CARES Act) as a result of the 116th Congress of The United States of America which was held on January 3, 2020 in Washington DC. The CARES Act regulates that a trial can only be conducted electronically if it meets 3 (three) requirements, namely:

- a. There is an emergency situation determined by the community;
- b. There was a decision by the Chairman of the Court to apply the trial electronically; and
- c. The defendant's consent.

Furthermore, electronic trials can only be conducted in the following trials as follows:

- a) Initial Appearances, namely preliminary trials to fulfill the defendant's right to be brought before a judge, or speedy trial;
- b) Detention hearings, namely a trial to determine whether the defendant will be detained or not;
- c) Arraignments, namely the trial for reading the charges;

- d) Preliminary hearings, namely trials related to preliminary examinations in every criminal case, such as presenting arguments for prosecutors and legal advisers, selection of juries. etc.;
- e) Trial related to parole; and
- f) Trials for minor criminal cases.

In practice, the electronic trial was held in which the Judge, Public Prosecutor and Legal Counsel attended the trial from their respective homes, while the Defendant attended the trial from the place where he was detained. Meanwhile, for certain areas where it is possible to travel by private vehicle, such as for example Texas, USA the Judges can attend trials from the courtroom in the court. This practice is different from the courts in Manhattan where the access to transportation that is often used is public transportation so that the Judge follows the trial from his home. The CARES Act is a public legal instrument that implements a fiscal stimulus policy and allows the use of video conferencing in certain cases in court during the emergency period established since the President of the United States declared a National Emergency Declaration through the National Emergencies Act up to 30 days after the National Emergency Statement is withdrawn. The application of the use of video conference or telephone conference media is used in certain criminal cases and juvenile delivery cases. The United States Government has also prepared a Judiciary Preparedness for Coronavirus (COVID-19) website which is accessed at <https://www.uscourts.gov> where this website provides information for users of Court legal services to continue accessing legal services online for the duration. this pandemic. Here, the CARES Act, the US Supreme Court suspended all trials held in court during the emergency period. Before using video conferencing in oral arguments, the parties must fill out agreements that determine what media or platform to use or apply.

Currently, the most frequently used platform for oral arguments (hearing) is the Zoom application. There have been many courts in various states in the United States that have used the Zoom application to hold hearings, where previously this was usually done in courtrooms. In addition, the judicial institutions, of American Arbitration Association is a non-profit organization that provides services for settlement of cases through Alternative Dispute Resolution (ADR) including Arbitration and Mediation. To provide legal services, this institution implements Virtual Hearings with a meeting platform chosen by the parties. The obstacles encountered in regulating Virtual Courts in the United States are more or less similar to regulatory practices in Indonesia.

The regulations regarding Virtual Courts in the Federal Rule of Criminal Procedure are often incompatible with the Supreme Court Decision. Therefore, it often raises the question of whether Virtual Courts are against the constitution / Basic Law or not. As well as the need to standardize the application of the same Virtual Courts in the fifty states with the same technology standards.

E. Effective and Efficient Online Application of Criminal Sessions

The application of online criminal trials has several advantages and disadvantages of each. Among them are shown in the following table.

Table II. Strengths and Weaknesses of Online Criminal Trials in Indonesia

Advantages	Weakness
The achievement of the <i>Salus Populi Suprema Lex Esto</i> principle	The principle of Equality before the law was not achieved
As a positive innovation / new breakthrough	The regulations for online criminal trials are still weak
Save time by not queuing for e-court / e-litigation registrations	Not running optimally due to connectivity / internet problems
Require to have sophisticated technological means	Not evenly the judiciary has sophisticated technology
Documents / electronic evidence is valid evidence	Not all documents / evidence can be displayed in detail / not optimally
So that there is no legal vacuum, it is regulated in PERMA No. 4 of 2020	Not yet regulated in the Criminal Procedure Code

The judicial system is an important component in achieving legal objectives. However, during Covid-19 pandemic courts throughout Indonesia and in other countries are required to implement online criminal trials. Pros and cons also happened because some parties wanted to implement it, but on the other hand there were also many parties who were not ready to implement online criminal trials. Many preparations have to be put in place to fulfill the requirements of an online criminal trial. Not only facilities and infrastructure, but files, documents, evidence must also be in non-physical form or in other words electronic evidence. In order to avoid touching each other between the give and the receiver.

Thus, there are several advantages and disadvantages of implementing online criminal trials, so we can see how effective and efficient online criminal trials are. The author explains in advance the difference between effective and efficient. According to the writer, effective is the achievement of a goal maximally from what has been previously expected without thinking about costs and energy. Meanwhile, efficient is a work process that saves energy, time and costs to get maximum results.

Judging from the meaning of effectiveness, for example, the Indonesian state has already conducted online criminal trials. However, because it does not have strong regulations for implementing online criminal trials, according to the author, it can be said that it is not yet effective. On the one hand, conducting online criminal trials at the time of the Covid-19 pandemic will save many lives because those attending are limited and there are no crowds. Therefore, the *Salus Populi Suprema Lex Esto* was achieved. Namely, people's safety is the highest law. Meanwhile, based on the definition of efficient, it cannot actually be said to be efficient, if it is seen from a cost point of view because online criminal proceedings require supporting technology. For example, when conducting an online criminal trial, it will cost more to have a dedicated virtual room, which is equipped with adequate facilities and a fast internet network. In terms of time, the application of online criminal trials can be said to be efficient because the trial will continue to run even during the Covid-19 pandemic.

In addition, the sociological and psychological impacts on Judges, Public Prosecutors, Defendants, and witnesses are also very worrying. Where the Defendants who will carry out an online criminal trial will feel uncomfortable and depressed. Because we do not know what pressure or pressure the Judges, Public Prosecutors, Defendants and witnesses felt during the online criminal trial. This means that the judge will find it difficult to impose a sentence because he does not directly see the gesture or expression of the defendant and witnesses. Meanwhile, the defendant, as an example of a perpetrator of a crime of persecution, running an online criminal trial would be more comfortable and freer because he did not see directly the Judges, Public Prosecutors, the families of the victims, and those who attended the trial. It is different from witnesses, for example, witnesses who are incriminating, where these witnesses will be more comfortable in undergoing a criminal trial directly. Because the witness will be tasked with giving testimony directly in front of the Judges, Public Prosecutors, and the Defendant to defend the victim. When conducting an online criminal trial, it seemed that the witness was not maximal in giving his testimony so that it might make it difficult for the Judges and Public Prosecutors to believe it or not.

4. CONCLUSION

In Indonesia, the practice of online trial which is known in the Supreme Court as e-courts / e-Litigation will not be effective if Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) does not change. So PERMA was formed to solve legal impasse or the vacuum of procedural law, apart from having a legal basis it also provides benefits for law enforcers. At PERMA No. 4 of

2020 does not regulate procedural law in online criminal proceedings, and this is what causes the implementation of online trial implementation in Indonesia to not be effective where the development of regulations is less strong and there is disharmony between regulations. If the stakeholders do not solve it immediately, then this problem will cause quite complicated problems in the future. Based on the theory of justice, legal certainty, and the comparative benefits of online criminal justice (e-courts / e-litigation) and offline criminal justice, it should be done offline because it better fulfills the theory of justice and legal certainty. On the other hand, the implementation of online trials becomes one. the only way out during the COVID-19 pandemic so that the settlement of criminal cases under the Supreme Court does not stagnate. Because it is impossible for the trial not to be held during the COVID-19 pandemic. Likewise with the United States, although the practice of Virtual Courts in the United States has long been applied in the United States and has experienced developments from year to year. Courts in various states of the United States use Virtual Courts with the video conference method which usually uses the Zoom platform. The application of Virtual Courts is regulated and limited in the CARES Act which came into effect on 27 March 2020. Therefore, it often raises the question of whether Virtual Courts are against the constitution / Basic Law or not.

Some of the advantages and disadvantages of implementing online criminal trials, so we can see the effectiveness and efficiency of online criminal trials. The advantages of online criminal proceedings include the achievement of the *Salus Populi Suprema Lex Esto* Principle, as a positive innovation / new breakthrough, saving time by not queuing for e-court / e-litigation registration, requiring sophisticated technological facilities, documents / electronic evidence constitutes valid evidence, and so that there is no legal vacuum, it is regulated in PERMA No. 4 of 2020. Whereas the weaknesses of online criminal trials are as follows, the principle of equity before the law is not achieved, the regulations for online criminal trials are still weak, they

do not run optimally due to connectivity / internet disruption, judicial institutions have not all documents / evidence can be displayed in detail / not maximally, and have not been regulated in the Criminal Procedure Code. Thus, the application of online criminal trials in Indonesia has not been effective and efficient, due to the many weaknesses that occur in practice. Thus, we recommended from the author, it is good that the highest law institutions, especially in Indonesia, continue to study and establish strong regulations so that online criminal trials in Indonesia are better and evenly distributed throughout Indonesia. So that it is not detrimental to some parties, but in order to achieve the objectives of the trial itself, namely the fairest possible. If the Covid-19 pandemic has ended, it is hoped that online criminal trials will only be applied to certain cases / circumstances. Of course, with strong regulations. For example, if one of the parties or the Defendant or Victim is sick or out of town (long distance), they can still carry out a criminal trial, namely online.

References

- [1]. Dr. H. Sugianto, S.H., M.H. (2018). *Criminal Procedure Law in Practice*, Issue 1. Yogyakarta: Deepublish.
- [2]. Dr. H. Muhammad Syarifuddin, S.H., M.H. (2020). *Digital Transformation of Trials in the New Normal Era: Serving Justice Seekers in the Covid-19 Pandemic*, Printing 1. Jakarta: Imaji.
- [3]. Oly Viana Agustine. (2019). *Criminal Justice System: An Renewal*, Issue 1. Depok: PT. Rajawali Press.
- [4]. Prof. R. Subekti. (2018). *Law of Evidence*, Printing 19. Jakarta: Balai Pustaka.
- [5]. Prof. Dr. Romli Atmasasmita, S.H., LL.M. (2011). *Contemporary Criminal Justice System*, Issue 2. Jakarta: Kencana.
- [6]. Prof. Dr. H.R. Abdussalam, SIK., S.H., M.H., & Adri Desas Furyanto, S.H., M.H. (2012). *Criminal Justice System*, Prints 3. Jakarta: PTIK.
- [7]. Tolib Effendi, S.H., M.H. (2013). *Comparative Criminal Justice System Components and Processes of the Criminal Justice System in Several Countries*, Printing 1. Jakarta: Pustaka Yustisia.
- [8]. Tolib Effendi, S.H., M.H. (2014). *Fundamentals of Criminal Procedure: Its Development and Renewal in Indonesia*, Issue 1. Malang: Setara Press.

Received: 26 February 2021, Accepted: 27 April 2021