

Conference Paper

Online Court Problems During the Covid-19 Pandemic and Its Impact on Advocates in Providing Legal Assistance to Clients

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Abstract.

The World Health Organization (WHO), declared the outbreak of the spread of Covid-19 as the first and foremost health crisis pandemic in the world. Due to the pandemic, human life has changed including legal services provided by advocates where there are rules regarding online trials during the Covid-19 pandemic. This study uses empirical juridical research methods or field research, namely examining applicable legal provisions and what is happening in reality in society. The problems in this study are: 1. What are the advantages of online trials during the pandemic according to advocates in providing legal assistance to clients? 2. What are the shortcomings of online trials during the pandemic according to advocates in providing legal assistance to the clients? The results show that the advantages of online trials according to advocates include: 1. More practical and easier for the trial because it does not have to be present in court. 2. It is more efficient because case information is in one account. 3. More cost-effective while the disadvantages of online trials according to advocates include: 1. Signal interference and technological devices. 2. Lack of effective law enforcement. 3. Violating the provisions of procedural law in proving. So far, the law has always been far behind in the development of community needs, so progressive law is more open and responsive to changes and is not bound by written law. In this case, the law must be placed in the whole of humanity. Thus, the role of judges is more to ensure the fulfillment of community needs for justice and welfare. This means that the existence of the law should reflect the standard of what is good and bad, fair and unfair.

Keywords: online courts, advocates, pandemic Covid-19

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1. INTRODUCTION

A pandemic is a disease outbreak that spreads simultaneously everywhere, covering a wide geographical area. A pandemic is an epidemic that spreads to almost all countries or continents and usually affects many people. An increase in the number of diseases above normal usually occurs, this disease also occurs suddenly in the population of a certain geographic area.

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Coronavirus is a virus that is generally found in animals and can cause animal or human disease, people who have been infected with this virus will easily spread it to other people, this disease is an infection that occurs in the respiratory tract ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).[1]

Coronavirus Disease 2019 (COVID-19) is an infectious disease caused by a new type of coronavirus. This disease began with the emergence of a pneumonia case of unknown etiology in Wuhan, China at the end of December 2019. Based on the output of an epidemiological investigation, the case was suspected to be related to the Seafood Market in Wuhan. On January 7, 2020, the Chinese government later announced that the cause of the case was a new type of coronavirus which was later named SARS-CoV-2 (Severe Acute Respiratory Syndrome Coronavirus 2). This virus belongs to the same family as the viruses that cause SARS and MERS. Even though they come from the same family, SARS-CoV-2 is more infectious than SARS-CoV and MERS-CoV (CDC China 2020). Crude mortality rates vary by country and depend on the population affected by the development of the outbreak in a country, and the availability of laboratory tests (Riadi, 2019).

The World Health Organization (WHO), declared the outbreak of the spread of Covid-19 as the first and foremost health crisis pandemic in the world. Corona Virus is a family of viruses found in humans and animals. Some of the viruses can infect humans and cause various diseases, ranging from common illnesses such as the flu, to more fatal diseases such as middle east respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS). Covid-19 can cause mild and even severe phenomena as well as a transmission that can occur between humans. The coronavirus is sensitive to ultraviolet light and heat, and can be inactivated (effectively with almost any disinfectant except chlorhexidine). Therefore, hand sanitizers containing chlorhexidine are not recommended for use in this outbreak.[2]

Therefore, hand sanitizers containing chlorhexidine are not recommended for use in this outbreak. Coronavirus is zoonotic, which means it is a virus that first developed in animals before finally infecting humans. When it infects humans, the spread of the Corona Virus can be through breathing. Splashes of stones or sneezes from people infected with the coronavirus will stick to the surface of objects or human skin. So that the virus will move when humans touch objects or make physical contact with other humans. Then, the virus will infect humans when hands contaminated by the virus touch the face, such as the mouth, nose, and eyes.[3]

Advocates in Article 1 paragraph (1) of Law Number 18 of 2003 concerning Advocates define Advocates are people who have the profession of providing legal services, both inside and outside the court who meet the requirements based on the provisions of this Law. Advocate comes from the word Advocaat (Dutch) which is someone who is officially appointed to carry out his profession after obtaining a Meester in de Rechten (Mr) degree. If we draw it further, the word comes from the Latin word advocates. Therefore, it is not surprising that in almost every language in the world the term is recognized. Advocates have the status as law enforcers, free and independent guaranteed by law and legislation which we can see in Article 5 paragraph (1) of Law Number 18 of 2003 concerning Advocates because Advocates as one of the instruments in the judicial process have an equal position with other law enforcers in upholding law and justice. Then it is equipped with an Advocate's work area covering the entire territory of the Republic of Indonesia as stated in Article 5 paragraph (2).

Article 2 paragraph (1) of Law Number 18 of 2003 concerning Advocates who can be appointed as Advocates are graduates with a legal higher education background and after attending special professional education as an Advocate carried out by an Advocates Organization, then in paragraph (2) Advocates are appointed by the Advocates Organization. His legal higher education background is a graduate of the law faculty, sharia faculty, military law college, and police science college. Due to the presence of the Covid-19 pandemic that has hit all sides of human life, including the law enforcement process[4]. Many lines of the legal sector are very disturbed by the Covid-19 pandemic. Disruption of services and the fulfillment of the legal rights of the community make it collective homework to give birth to true justice. Advocates will also feel the impact of the Covid-19 pandemic in Indonesia in assisting their clients in fighting for their rights. Advocates' anxiety in assisting the legal rights of their clients were finally greeted by the birth of a decision from the Supreme Court of the Republic of Indonesia by issuing a policy on online or online trials. Legal problems regarding the use of electronics in Indonesia began with a marriage case via the telephone of Baharuudin Harahap's family in the 1980s which had become a controversy in the country; then the South Jakarta Religious Court issued Decision Number 1751/P/1989 which contained the ratification of the marriage contract via the telephone. Furthermore, in 2002 in the Buloggate case with the defendants Akbar Tanjung and Rahardi Ramelan, which was decided by the panel of judges at the South Jakarta District Court, B.J. Habibie, who was in Hamburg-Germany at that time, gave testimony as a witness via teleconference (Syahlan, 2021:5).

In 2003, the defendant Ustadz Abu Bakar Ba'asyir, who at that time was charged with committing treason and immigration violations, was decided by a panel of judges at the Central Jakarta District Court (which consisted of: H. Muhammad Saleh as the presiding judge of the panel, H. Andi Samsan Nganro, Rukmini, Muhammad Daming Sanusi, and Panusunan Harahap respectively as member judges) also used teleconference to hear witnesses who were in Singapore and Malaysia; After that, the Central Jakarta Human Rights Court in the case of violations of Human Rights (HAM) in East Timor also used teleconference (Syahlan, 2021:5).

Long before, the Supreme Court experienced success in making breakthroughs since two years ago for civil cases, religious civil matters, military administration and state administration using technology for trials. For justice seekers with this type of case, the courthouse is not the only one to go to, but can also access an electronic judicial application or e-Court. Even more recently, the Supreme Court has added a feature for appeals. Following the breakthrough in the administrative field, the Supreme Court a year later launched the first e-Litigation applied to the general courts, religion, and state administration.[5]

The use of technology is increasingly urgent to be used in courts [6], especially in criminal cases whose implementation cannot be postponed until the pandemic is over. Perma Number 4 regulates the electronic courtroom is the courtroom in the court which includes the prosecutor's office, prison/prison, or other place determined by the panel of judges with the provision that all trial participants must be seen on the monitor screen with a bright and clear voice. The defendant's room in attending the trial may only be attended by the defendant, legal counsel, prison/prison officers, and IT officers. Meanwhile, witnesses and experts can be examined at the prosecutor's office, court, or embassy/consulate if they are abroad.

The use of teleconference media in the trial of these cases is a form of the facility for the use of information technology[7], including information technology governance and safe, ethical, intelligent, creative, productive, and innovative electronic transactions which were used before the enactment of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) to implement one of the principles in criminal procedural law, namely the principle of a simple, fast and low-cost trial. The principle of fast, simple, and low-cost justice has been around since the Herziene Inlands Reglement (HIR) has implied this principle with more concrete words than those used in the Criminal Procedure Code (KUHP). To denote a speedy justice system, many provisions in the Criminal Procedure Code use the term "immediately". In Article 71 of the HIR, it is stated

that if the help magistrate makes an arrest, then within twenty-four hours it will notify the prosecutor. The inclusion of a quick trial (content justice; speedy trial) in the Criminal Procedure Code is quite a lot which is manifested by the term "immediately". The principle of fast, simple, and low-cost justice adopted in the Criminal Procedure Code (Andi Hamzah, 2013:12-13) is an elaboration of Law Number Year on Judicial Power.

Trials through teleconference media have experienced the development of information technology with the use of online court media, which is better known as an electronic trial (E-Litigation). So that the online trial or the electronic trial is considered the right breakthrough to be carried out within the framework of bridging several problems, including:[8]

1. To continue to realize the fulfillment of the principle of fast, simple, and low-cost justice;
2. To overcome the increase in the volume of cases in the courts of the first instance every year;
3. The number of human resources (HR) in the courts, facilities, and infrastructure is very limited;
4. There is an arrangement to limit the detention of the accused (regarding the defendant's human rights);
5. There are restrictions on the time limit for case settlement in the court of the first instance (within 5 months the case must be decided in the district court) and the level of appeal (within 3 months the case must be decided in the high court);
6. The state of emergency in Indonesia is facing the Corona Virus Disease (covid-19) pandemic. Therefore, an effective and efficient court trial is necessary through an online trial or an electronic trial.

Solus Populi Suprema Lex Esto, which means people's safety is the highest law (Cicero), this adage is very appropriate if it is linked as the basis for taking a policy during the Covid-19 outbreak because the law that will be applied must truly protect its people. As a quick response to the Supreme Court in ensuring the protection of judicial apparatus, justice seekers, and court users including defendants who conflict with the law, the Supreme Court has issued a Supreme Court Circular (SEMA) Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Covid-19 within the Supreme Court and the Judicial Bodies Under it.[9]

2. METHODOLOGY/ MATERIALS

This study uses an empirical juridical method called field research, which is to examine the applicable legal provisions and what happens in reality in society.[10] Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action on every particular legal event that occurs in society.[11] Or in other words, that is research conducted on the actual situation or real conditions that occur in the community intending to know and find the facts and data needed, after the data needed is collected then leads to problem identification which ultimately leads to problem-solving.[12] In this study, the approach used in solving the problem is by using an empirical juridical approach. The juridical approach that is meant is that law is seen as a norm or wick is expected because in discussing the problem in this study, legal materials are used (both written law and unwritten law or both primary, secondary and tertiary legal materials.[13] While the empirical approach is to look at the law as a social, cultural, or reality because in this research the data used are primary data obtained directly from the research location.

3. RESULTS AND DISCUSSIONS

The electronic trial has not been regulated in various regulations regarding procedural law, including Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHP) and the Civil Procedure Code. This is understandable because the technology used at that time was not as advanced as it is today. However, the trial arrangements for electronic devices had been regulated before the Covid-19 pandemic, namely with the issuance of Supreme Court Regulation No. 1 of 2019 concerning Electronic Case Administration and Trial in Courts (Perma No. 1 of 2019). Perma No. 1 of 2019 to replace and improve Perma No. 3 of 2018 concerning Electronic Court Case Administration. However, based on Article 3 paragraph (1) Perma No. 1 of 2019, the electronic trial in Perma No. 1 of 2019 only applies to types of civil cases, religious civil cases, military administration, and state administration.

Advantages of Online Sessions during the Covid-19 pandemic.

Based on SEMA No. 1 of 2020, all leaders, judges, and judicial apparatus at the Supreme Court and judicial bodies below are asked to make adjustments to the work system based on the Circular Letter of the Minister for Empowerment of State Apparatus and Bureaucratic Reform No. 19 of 2020 concerning Adjustment of the Work System of State Civil Apparatus in Efforts to Prevent the Spread of Covid-19 in government

agencies. The adjustment to the work system includes, among others, judges and judicial officers who can carry out their official duties with WFH, including the conduct of trials that can be conducted electronically.

The advantages of online courts include.

1. It is more practical and facilitates the trial because it does not have to be present in court. Online trials are more practical in the case handling process because they do not have to be present in court. By not having to be present in court, all our other activities and work do not have to be rescheduled because we have to go court. All activities and work in the lawyer's office can run together without anyone being left behind.
2. More efficient because case information is in one account. Online trials require advocates to have e-courts and or e-litigation accounts in the case handling process. With the presence of this case handling application, we can handle all of our cases or be handled only through our gadgets or smartphones. The use of the e-courts application issued by the Supreme Court greatly facilitates the proceedings. The application makes time more effective and efficient.
3. More cost-effective An online trial that does not require an advocate to appear in court has a very good impact or benefit because it saves more costs. If during an offline trial, an advocate must incur significant costs during the trial because of several expenses, including transportation, accommodation, and consumption using an online trial, these costs can be reduced significantly, especially if the trial is outside the city.

Disadvantages of Online Sessions during the Covid-19 pandemic

Although the trial was conducted online, this was not matched by adequate electronic devices, so the proceedings did not run according to the provisions.

Disadvantages of Online Trials include:

1. Signal interference and technological devices. A very serious problem during the conduct of online trials is signal interference and technological devices. When undergoing an online trial, sometimes we get signal interference which greatly disrupts the course of the trial. Inadequate technological equipment in the advocate's office and the court also seems to be a weakness that is quite disturbing to the implementation of online trials because often in a trial technology devices do not function properly so it breaks the concentration of advocates in carrying out their duties

2. Lack of effective law enforcement. Law enforcement during online trials tends to be ineffective. The process of conducting online trials also gives birth to the fact that law enforcement in the community is often ineffective because the parties involved or interested parties do not take online trials seriously so the dignity of law enforcement and law enforcement is reduced.
3. Violating the provisions of the procedural law in the evidentiary process. The proof is an important step in a trial to show whether the defendant is guilty or not. In the law of evidence, to protect the public interest, the Prosecutor's Office as a state instrument is assigned to carry out the burden of proof as well as to carry out criminal charges. Meanwhile, judges in criminal cases are required to seek material truth.

From the results of the trial, it can be proven legal and convincing that someone has committed a crime (veroodeling), or can also be released from charges (Vrispraak) if it is not proven to have committed a crime. Or it can be released from all lawsuits (anslaag van allerchtvervolging) if what is being accused is proven, but it is not a criminal act. Problems related to the evidence before the current trial, when criminal case trials are carried out online or via teleconference on the grounds of the Covid-19 pandemic. This has sparked many issues related to the validity of the evidence carried out by the public prosecutor to prove the guilt of the defendant and the judge's belief in the evidence made by the public prosecutor. Article 183 of the Criminal Procedure Code explains "A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the belief that a criminal act has occurred and that the defendant is guilty of committing it. If you pay attention to the explanation of Article 183 of the Criminal Procedure Code, the purpose of the article is to guarantee the establishment of truth, justice, and legal certainty for a person.

The current problem with the implementation of online hearings or via teleconference which is actually in practice, the defendant undergoes the trial while remaining in the Correctional Institution, while the judge is in the trial room and the public prosecutor is in the prosecutor's office or the courtroom together with the judge, has affected evidence in court.

4. CONCLUSION AND RECOMMENDATION

PERMA No. 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 (Covid-19) in the Supreme Court

and Judicial Bodies Under It (SEMA No. 1 of 2020). Based on SEMA No. 1 of 2020, all leaders, judges, and judicial apparatus at the Supreme Court and judicial bodies under it are asked to make adjustments to the work system based on the Circular Letter of the Minister of Administrative Reform and Bureaucratic Reform No. 19 of 2020 concerning Adjustment of the Work System of State Civil Apparatus in Efforts to Prevent the Spread of Covid-19 in government agencies. System customization Such work includes, among others, judges and judicial officers who can carry out their official duties with WFH, including in the conduct of trials that can be conducted electronically. Thus the trial of criminal cases, and military crimes, can also be conducted electronically.

The online trial process during the Covid-19 pandemic gave rise to several significant problems in the context of law enforcement in Indonesia. Apart from various problems, at least there are several advantages of Online Court hearings during the Covid-19 pandemic, including: More practical and easier for the trial because it does not have to be present in court, is more efficient because case information is in one account, and is more cost-effective. In addition to the advantages, online trials also have several disadvantages, including signal interference and technological devices, lack of effectiveness in law enforcement, and violating the provisions of procedural law in the evidentiary process.

The use of teleconference in examining cases in court is only as a means to obtain the truth of a problem, even though there is no regulation in the procedural law, but to achieve the truth as desired by law, it can be justified if in a trial the judge proves by using a teleconference facility so that the principle of justice fast, simple and low cost can be realized. Although the principle is a strong foundation in the formation of laws relating to procedural law, if it is no longer following the values that grow and develop in society, it is only natural that this principle has deviated, so that a sense of justice in society can be fulfilled.

So far, the law has always been far behind in the development of community needs, so progressive law is more open and responsive to changes and is not bound by written law. In this case, the law must be placed in the whole of humanity. Thus, the role of judges is more to ensure the fulfillment of community needs for justice and welfare. It means the existence of the law should reflect the standard of what is good and bad, fair and unfair.

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