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Implementation of a Judge beyond Reasonable Doubt in Electronic Trials in Indonesia during the Covid 19 Pandemic

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Abstract

This research is being conducted in response to the necessity for law enforcement in the event of a Covid-19 pandemic. Additionally, this is a reaction to the rules outlined in Supreme Court Regulation No. 1 of 2019 governing the operation of electronic courts. The electronic trial is regarded as a viable option in the present Covid-19 pandemic since it aims to protect citizens' safety and health while also enforcing law and justice in the community. This study employs a qualitative descriptive research design, incorporating a literature review and an examination of Indonesia's current laws and regulations. According to the study's findings, the electronic trial was conducted to halt the spread of the Covid-19 epidemic. This is consistent with the government's policy of social and physical estrangement. However, the online justice system still has flaws and frequently violates the Criminal Procedure Code's standard requirements. However, if standard procedural law procedures are followed, law enforcement, particularly in the judicial sector, will be impossible; hence, contextual efforts in procedural law, including the examination and trial process, are required.

Keywords: E-Court, Beyond Reasonable Doubt, Pandemic Covid-19.

Introduction

Legal understanding progressively explains that law is not created as a final scheme, but can move according to the needs of society (social order). Law at the implementation level must be able to be dissected and explored through a progressive pattern to reach the light of truth and justice. Such a postulate emphasizes that the law must be able to act as an institution that continues to build and change itself towards a better level of perfection as the adage "law as a process, law in the making." Thus the concept that develops is the law for society, not

society for law. This paradigm is the antithesis of the positivist thought pattern which views the law as something rigid that cannot be negated.

Whereas as a political product, the law requires breaking the law, considering the changing nature of society, the legal needs will also change. Legal reconstruction is needed to create good regulations by taking into account the legal needs of the community (living law) and the values of justice (Satjipto, 2007, p. ix). By investigating social factors, based on this approach, the law works according to the basis of ideas and facts of social life. All of that is directed so that the law can work more effectively (Darmodiharjo et al., 2008, p. 136).

The spread of the Covid-19 outbreak has led to the judicial process of seeking justice being put on hold. This seems to cause a lot of confusion in the judicial process. To get around this, it's important to make arrangements so that law enforcement can still be done even if there is a pandemic. As a result, during COVID-19, all of the activities in Indonesia were done online. COVID-19 has spread all over Indonesia, and this has had a big impact on how law enforcement works there. COVID-19 has spread more and more in the judiciary, which has led to the temporary suspension of judicial services.

As a solution to the law enforcement needs during the pandemic, a policy called a "electronic trail" was chosen. These rules are set out in the Supreme Court's Regulation Number 1 of 2019 on Procedures for Electronic Trials. However, it is still only used for judicial administration services. In order to make sure that judicial services were as efficient as possible during the Covid-19 pandemic, the Supreme Court issued Supreme Court Circular Number 1 of 2020. This was later changed to Supreme Court Circular Number 2 of 2020, and it was changed again by Supreme Court Circular No. 3 of 2020 about how to do your job. It controls the activities of judges and the people who work for the courts when they work from home. This includes setting up the agenda for the case examination trial, which is done through a teleconference. Implementing virtual trials through teleconference facilities is thought to be necessary in order to slow down the spread of the Covid-19 pandemic. This is in line with the government's health protocol policies, which say that social and physical distance should be kept in order to slow down the spread of the virus.

Rules are being broken by the presence of the online judicial system. If only procedural law is used, law enforcement, especially in the field of justice, will not be achieved. So, efforts are needed to contextualize procedural law, including the examination process, when old legal provisions are needed that can't be used effectively in certain social situations (Nugroho, 2014, p. 73). The reason for this is that the use of electronic courts actually causes new problems. The judiciary wasn't ready for electronic trials, so there were a lot of technical problems, like no security system for sending electronic documents, internet network problems, unprepared facilities and infrastructure, limited access to advocates, and the public prosecutor having a hard time getting defendants to give their statements. Thus, the evidentiary process carried out in the electronic trial seems to override the applicable procedural law. Examination of evidence conducted electronically causes doubts in the validity of the evidence and the quality of the trial for justice seekers. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that judicial power is an independent power to administer the judiciary in order to uphold law and justice. Thus, the judge as the holder of the constitutional mandate for the embodiment of law and justice becomes blurred if there are doubts in the evidence and judge's assessment in the electronic trial. In fact, in the context of the judicial process, judges have an essential role as peacekeepers who decide a case fairly (Novick, n.d., p. 703).

Methodology

The descriptive approach was utilized in this study, with the goal of describing the nature of anything that is now occurring at the time the research is conducted and investigating the reasons of the current social phenomenon. This means that the research was undertaken out in the context of the Covid-19 epidemic, which necessitated the use of electronic technology for the trial's administration. Sociological normative juridical research is being conducted in this study. The information is gathered from a variety of sources, including laws and regulations, judicial decisions, Supreme Court regulations, and so on. In addition, the author makes use of both primary and secondary data sources in his work. Various data gathering strategies, such as documentation and analytical studies, were used to gather information. It is necessary to process the data that has been collected by drawing boundaries, before it can be concluded and examined. The analysis begins with the creation of categories relevant to the problem and the determination of the optimal solution based on the rules already in place. The content analysis method was used to analyze the data, which was then presented in a qualitative descriptive manner.

Result

Beyond Reasonable Doubt is in the Proof Process

In the OJ murder trial, a jury said that OJ was not guilty. Simpson, who surprised most of the people in the United States. Courts have said many times that states must prove every part of a crime without a reasonable doubt in order to convict someone. This is because of the Due Process Clause in the Fourteenth Amendment to the United States Constitution. However, standards of evidence have been important in the history of the Anglo-American justice system. This possession did not change anything (Soediro, 2019, p. 19).

Over time, the "beyond reasonable doubt" standard came from the jury trial system that first came to life in England in the 12th century. Early trials with the role of British jurors aren't clear, but jurors in the thirteenth and fourteenth centuries most likely collected and weighed evidence. Witnesses weren't part of the process at that time. It is made up of people who live in the same neighborhood as the defendant. They are thought to know the facts of the case and are supposed to make a decision based on their own personal knowledge. The jury decides whether or not someone is guilty or not based on their own intuition, common sense, and general knowledge of the facts in the case, as well as what they know about the case. Because witnesses became important in the judicial process in the 16th century, some people in court were no longer personally familiar with what was going on when people were being tried. Courts are now in charge of weighing and deciding on facts that they don't know personally (Sutarto, 1982, p. 40). So, some rules must be used to judge the credibility of the evidence. An argument about how to prove something that isn't 100% sure, but is more precise than an opinion comes from both religious and scientific arguments about proof.

It's because the goal of civil litigation is to get things done quickly and fairly. Criminal justice processes have a higher verification burden because the goal is to get things done quickly and fairly in civil courts. Because of this, it is thought that the defendant did not do any more harm than the plaintiff did. Civil evidence is based on probability, which is why written evidence is more important than other types of evidence in these types of cases. The social cost of punishing someone who isn't guilty is not the same as freeing someone who is guilty. Thus, the problem in criminal courts is not about getting a fair deal, but about justifying the use of state power to punish people who do wrong. Because there is a lot more risk of losing money

in criminal cases than in civil cases, there should be less risk of factual errors in those cases, too. Prosecutors have to show that the defendant is guilty of the crime they're charged with without a reasonable doubt. This rule is based on efforts to keep the chance of this mistake as low as possible.

These two thinkers' axis of thinking is very much in line with this theory. Among other things, Shapiro points out that standards of proof began to emerge in American trials in the early 19th century. However it came about, the concept of proof beyond a reasonable doubt was "widely acknowledged as an accurate statement of the amount of evidence required in criminal justice cases" by the mid-nineteenth century. Even in recent legal instances, the threshold of proof beyond a reasonable doubt has been an important factor. Experts in the field of law work to establish that the standard of proof used by courts should be "beyond a reasonable doubt." After analyzing the idea of reasonable doubt, Barbara Shapiro finds that it is important for courts to comprehend two essential concepts: reasonable doubt and probable clause (Barbara, 1991, pp. 40–41). One must first realize that human knowledge can be divided into two distinct kinds. There are a few categories in which you can be absolutely sure of the outcome. As an example, we know for a fact that 2 + 2 = 4. Additional categories of empirical data cannot be regarded as absolutely certain. Even while total certainty in the empirical category is impossible, there is nevertheless a way in which evidence can be analyzed in a trial and a conclusion drawn. It was considered "beyond reasonable doubt" by mid-nineteenth-century historians who classified this level of knowledge as an empirical "moral certainty." As a result, courts have adopted the idea that "moral certainty" and "beyond a reasonable doubt" have the same relationship.

It's not just a single "complex factor" that makes up the concept of guilt in criminal actions (Candra, 2013, p. 45). The public prosecutor must therefore prove each and every factual aspect of the offense by applying the criterion of beyond reasonable doubt to assess the guilt of the accused. As a result, the alleged fact cannot be demonstrated to be distinct from other facts that comprise a crime when proof of the crime is supported by presumption. This is a major fallacy in the idea of guilt and evidence if courts conclude that an element of the crime has not been proven beyond a reasonable doubt, but pass a guilty verdict because they were influenced by presumptions that are not founded on evidence. The United States Supreme Court stated:

“No authority in any relevant context has ever suggested that the statutory inference was intended, or may properly serve, to lighten the prosecution's burden of proof beyond a reasonable doubt. On the contrary, it is routine and standard practice... to instruct the jury (or to hold at a bench trial) that no conviction may be had unless the prosecution has proved each element of the offense… beyond a reasonable doubt… And so when we allow the drawing of inference like the type herein [sic] issue, we must be telling juries (or ourselves as triers of fact) that the inference is one sustained by substantially more than a preponderance of the evidence, that the probability is far in excess of 50-50, that is sufficient to warrant a reasonable man's being convinced "to a moral certainty" of the correctness of the inference.” (Amerika Serikat v. Adams. 293 F. Supp. 776, 1968)

An analysis known as "the theory of permissible inference" was used by the Supreme Court to reject this claim. Using the cases of United States v. Gainey and Turner v. the United States, the Supreme Court made it clear that the statutory criminal presumption only allows for inferences to be drawn from operative evidence about the presence of a supposed fact. As a result, if the court determines that the presumption cannot be shown beyond a reasonable doubt by the evidence of the crime, it may free the defendant. The flaw in this reasoning is that the

defendant has the right to an acquittal if there is insufficient evidence to prove his guilt beyond a reasonable doubt. It can be concluded that a criminal defendant must be found not guilty by reason of insufficient evidence. Even if the accused did commit a crime, the presumption of innocence still stands. In circumstances where the evidence is insufficient to support the idea that a crime must be proven beyond a reasonable doubt, the standard allows courts to accept cases and render a finding of not guilty.

The Development of Online Courts in Indonesia

The court's long-winded approach to cases runs counter to the ideals of a straightforward, speedy, and inexpensive trial. If a lawsuit drags on without a resolution, it tarnishes the concept of fairness in society. Aside from that, it has an effect on the division of administrative responsibilities for managing cases. In addition to the General Bureau and the Directorate of Institutions and Procedures, the Registrar's Office is also on the long line. Because of this, establishing administrative accountability and reaching a resolution of a dispute are made more difficult. As a result, cases that aren't being monitored properly will benefit from it. When cases take a long time to resolve, it has an effect on how the case handling process is recorded, even if it isn't entirely reliant on technology. As a result, the case handling procedure is prone to delays because case registers are typically started from the beginning of each stage. In the face of the industrial revolution, it is critical to record judicial administration utilizing information technology. 4.0. Ombudsman Report of Indonesia indicated that from 2014 to 2016, the District Court received 394 complaints, with administrative maladministration being a common issue. A total of 215 complaints were filed, 117 of which were based on the ineptitude of the court system and 115 of which were based on procedural violations. Cases received (registered) grew by 10.65%, the number of caseloads climbed by 3.82 percent, the number of cases decided increased by 7.077%, while the residual number of cases fell by 34, 73% prior to e-court use.

Supreme Court Regulation No. 3 of 2018 on Electronic Case Administration is based on this. If you're looking for a legal framework for e-court administration, you'll find it here in Article 2, which states that the Supreme Court Regulation is designed to serve as a legal basis for the administration of electronic matters. Cases involving civil, religious, military, or state administrative issues are all eligible for electronic hearings under this new legal framework. In order to achieve a simple, fast, and low-cost judiciary, these regulations were put in place to address issues in the judicial administration process. It's also designed to stay up with the times, which need efficient case management services in the courtroom. "Judgment is carried out simply, quickly, and inexpensively," says Article 2 paragraph (4) of Law No. 48 of 2009 respecting Judicial Power, which mandates an efficient and effective judiciary.

Cases filed in electronic courts have a legal basis in Supreme Court Regulation No. 3 of 2018 on Guidelines for the Procedure of Cases in Electronic Courts, but as the author points out, E-Court is a claim that is changing with the times and as a form of modern justice it still faces several obstacles (Purnama & Nelson, 2021, p. 100). Electronic case registration, electronic court summons, and electronic copies of decisions/stipulations are all covered by Supreme Court Regulation No. 3 of 2018. To put it another way, the use of technology is good for the community as well as for the government. Improved performance in terms of accuracy and accountability Initially only used in civil, religious, and state administration cases, electronic justice is now being used in criminal courts as well. According to Presidential Decree No. 11 of 2020 on the Determination of the Covid-19 Public Health Emergency, this is the case because of the anomalous conditions it specifies. As a result of the resulting delays in the legal process, the problem's complexity increases. Due to the rapid spread of the pandemic, legal proceedings have been halted.

Such conditions are the main reason why the Supreme Court approved Regulation Number 4 of 2020, which is about how to run and try criminal cases in court electronically. In April 2020, the Supreme Court signed a Memorandum of Understanding with the Supreme Court, the Attorney General's Office, and the Police. This Memorandum of Understanding was about how to use teleconferences to hold trials in the case of Covid-19, and this regulation is the Supreme Court's way of following up.

Electronic Court Policy in Indonesia

According to Supreme Court Regulation No. 1 of 2019 concerning Case Administration and Electronic Trial, the discussion of electronic trials cannot be separated from the implementation of trials using electronic devices and methods; in particular, successes and problems that arise based on the distribution of Supreme Court Regulation No. 4 of 2020 concerning Administration and Trial in Criminal Courts Electronically. Cases governed by Supreme Court Regulation No. 1, 2019 include civil and religious civil, military and state administration. It was relatively easy to put into practice the types of cases outlined in Supreme Court Regulation Number 1 of 2019 because the majority of the e-litigation trial stages involved actions to circulate trial files (replicas, duplicates, and conclusions) between the parties and in particular on the entire examination agenda. Conventional/physical trials are carried out by relevant parties. Documentary evidence has a distinct advantage over oral testimony in this regard, which is why it's critical that all sides be given the chance to weigh in on it face-to-face.

Using video teleconferencing, the parties can now cross-examine witnesses and experts through video teleconference, as encouraged by Supreme Court Regulation No. 1 of 2019 (the spirit of the regulation). The problem is that in some courts, the internet network is still too slow to apply this condition correctly. E-litigation or electronic courts, in particular, are being used excessively, which is becoming a concern. On the other hand, according to SEMA Number 1 of 2020, a drug in the trial might be tested electronically if the available equipment allowed for it. According to interviews done by the author in a number of courts, the panel of judges has taken a number of steps to encourage defendants to adopt the electronic trial option (S. Sabila, personal communication, Desember 2021). Since the case registration was done online and according to SEMA No. 4 of 2019, it is presumed that Plaintiff accepted, the burden of obtaining his or her permission to proceed has been slightly lowered.

No one should blame the panel of judges for their numerous efforts to persuade people to use electronic courts during the pandemic. In the end, the panel of judges must take into account the willingness and competence of the litigants while deciding whether or not to execute an electronic trial, since most of the parties have weak technology skills even though they already own gadgets (A. Cholil, personal communication, Desember 2021). Many parties do not have internet-enabled devices, therefore legal aid services are not available to everyone, and many do not have equipment that can access the internet. Indonesian Internet Service Provider Association (APJII) data shows that by 2020 the country's 266.9 million population will be 73.7 percent internet users, or 70.1 million people would still be unable to use the internet (Izza, 2020).

According to Supreme Court Regulation Number 4 and Circular Number 1 of 2020, which indicate that trial activities be done electronically, many criminal courts have made adaptations by conducting trials online based on the conditions and demands of the case (M. Z. R. Prayoga, personal communication, Desember 2021).

Criminal cases have numerous variations of venues utilized as a space for trials based on the considerations of judges in their capacity of office or at the request of the public prosecutor and the defendant and his legal advisor, as mentioned in the previous electronic trial regulations (M. Z. R. Prayoga, personal communication, Desember 2021). When conducting electronic criminal case trials, the judge and prosecutor are stationed in a separate courthouse, while both the defendant and his attorney are housed in a detention facility. As a result, the court is present for every stage of the trial, including the questioning of witnesses and the presentation of expert testimony (Annisa, n.d.). Nevertheless, if the parties are in danger, such as during the peak of active Covid-19 cases in Indonesia in June-July 2021, the judge will consider using the trial room variant, which places the panel of judges in the court building, while the public prosecutor is in his or her office and the defendant is in the defendant's room (M. Z. R. Prayoga, personal communication, Desember 2021).

Despite the fact that the pandemic continues to pose a threat and is classified as a non-natural disaster, most electronic trials still use a variant that merely places the defendant in the detention center/prison during the trial. In order to keep the trial atmosphere alive, especially at the examination stage, by controlling witnesses and experts' attitudes and personalities who tend to be uncooperative by judges (H. I. Mumtaz, personal communication, Desember 2021), while the public prosecutor cannot use methods and methods that can only be applied when the trial is conducted face-to-face advance, it is well-known (M. Z. R. Prayoga, personal communication, Desember 2021).

As a result, not only was it impossible for family members or friends to visit the defendant in prison because of the Ministry of Law and Human Rights' policy to restrict access and entry for prisoners but the defendant was also given top priority in court via video teleconference due to his refusal to appear in person. Due to overcrowding in the detention center/prison (despite the fact that 300 percent of the total capacity was used), the maximum number of inmates allowed to be housed was surpassed (T. Prasetyo, personal communication, n.d.). When it came to examining the defendant's statements during the trial, it had issues that made it more difficult for the parties and the judges, especially when it was discovered that the defendant frequently ignored the trial process and rarely interacted with those around him. This was a major problem. It is well-known that prison/prison officers with a limited number of staff are to blame for these conditions (H. I. Mumtaz, personal communication, Desember 2021).

Due to the judge's inability to coerce and control the defendant's attitude and behavior given the limitations of officer supervision, the trial conducted via teleconference method suffers from a loss of proper atmosphere due to the problem of neglect and appearing not serious in attending the trial. When compared to witnesses and specialists who use teleconference services, yet remain focused on their actions during the trial owing to a relatively conducive setting, this is a very different situation (Effendi & Alfauzi, 2021, p. 39).

Electronic criminal trials can also be used to carry out an indirect goal of examining evidence, such as by showing pictures of evidence through a video teleconference. This means that so far, there haven't been any big problems with examining the existing evidence. Criminal trials have been used to think of evidence submissions as pictures of evidence. When someone is charged with a crime, there is often a lot of evidence that can't and doesn't need to be shown in court, like cars or a lot of agricultural products. When evidence is looked at, there are a lot of technical problems that make it hard to solve (Akbar & Sabri, 2021, p. 130). Network infrastructure hasn't been built in a lot of places, especially outside of the island of Java. This causes a bad internet connection and a lot of problems with the availability of electricity. This is based on previous data from the Association of Indonesian Internet Service Providers

(APJII). The percentage of people who have internet service outside of Java was 3% for the provinces of Maluku-Papua and Papua 5.2% for the provinces of Bali-Nusa and Sulawesi and 6.3% for Kalimantan. This condition makes the images of the evidence shown in a video teleconference look bad (Asosiasi Penyelenggara Internet Indonesia, 2020, p. 1).

People who live outside of Java have a lot of problems with the internet, especially when it comes to signal availability and internet speed. In some ways, these problems have slowed down or even halted the trial because it takes a long time for the internet to be available, which has an effect on how long the trial can go on. If there are technical problems that make the trial impossible to go on in less than an hour, then by law, all of the trial's events must be stopped (Peraturan Mahkamah Agung Nomor 4 Tahun 2020 Tentang Administrasi Dan Persidangan Perkara Pidana Di Pengadilan Secara Elektronik, 2020). In addition, witnesses and experts, as well as defendants, have to deal with problems with internet network connections that make it hard for them to give clear and easy-to-understand information (H. I. Mumtaz, personal communication, Desember 2021). This means that the length of the trial must be longer than in traditional/physical trials because the submission of questions and answers is done over and over again (M. Z. R. Prayoga, personal communication, Desember 2021).

In general, the Indonesian Ombudsman and other groups have been able to describe technical and human resources problems in 20 provinces in Indonesia. Internet problems are the main issue because of infrastructure problems and unpaid accounts. Furthermore, this obstacle causes problems with connections and with the audio device itself, which has poor audio quality. There are still areas that don't have enough electricity. When there is no backup power source machine in case of a power outage, this makes things even worse. Not many people were happy about the delay and the ambiguity of the trial's timetable because of this condition. Last but not least, there are only a few people who know how to use IT, which means that if there are problems and disturbances in the courts, prosecutors' offices, and prisons, they won't be able to quickly and accurately deal with the situation (Ombudsman RI, n.d.).

Even in criminal cases where the defendant isn't in the courtroom, electronic trial arrangements are thought to be against the Book of Law No. 8 of 1981 Criminal Procedure Code (KUHAP), which says that the defendant is still considered to be in court, even though he or she isn't in the courtroom. Article 64 of the Criminal Procedure Code says that the defendant has the right to be tried in front of the public. This means that the presence of the defendant seems to have been very well thought out. Apparently, Wahyu Iswantoro thinks that the trial is one where the trial is held in front of everyone in the court building (Iswantoro, n.d.). If someone is charged with a crime, they must be brought before a judge and a jury in a courtroom. They must also be given an opportunity to defend themselves, either alone or with help from a lawyer.

Legally, it is possible to say that there is a limit on what it means to be "presented at a trial" when the defendant is in court with the public prosecutor, and a judge and the defendant are both presents at that time. KUHAP as formal law is supposed to have rules that aren't very broad so that law enforcement doesn't get thrown off by them (Iswantoro, n.d.). This is especially important to protect the rights of suspects and defendants when they're in trouble with the law. The fact that the Criminal Procedure Code is a formal law also helps people understand that law enforcement can't do anything that isn't forbidden by the Criminal Procedure Code. Constitutional Court Decision Number 33/PUU-XIV/2016 says that submitting a judicial review by the prosecutor is against the principles of the Criminal Procedure Code, which is why it is unconstitutional for the prosecutor to do so. There is also a

lot of talk about conflicting norms in how the trial is run because Article 153 of the Criminal Procedure Code says that the trial must be open to the public. For example, Kamri and Hardianto say that the examination trial is open to everyone, which allows everyone to be able to see what is going on. This way, the judge can make an objective decision based on the evidence and arguments that were shown in front of everyone at the trial (Ahmad & Djanggih, 2017, p. 490).

Article 70 paragraph 1 of Law Number 5 of 1986 about State Administrative Courts says that when there is an open trial for state administrative cases, this law says what can be looked at. When the presiding judge of the trial opened the trial and said it was open to the public, everyone could watch. The fact that the public is there and can watch the trial in person is a way for the community to control the Court. In general, everyone has the right to be a part of the process of the trial, except for cases that have been excluded by law and must be closed (Sonbai, 2019, p. 60). However, the rules that are open to the public also apply when the verdict is read in court. Article 13 of Law No. 48 of 2009 about Judicial Powers says that court decisions must be made in front of people who can see them. 108 of Law Number 5 of 1986 about the State Administrative Court says that the decision must be made in front of everyone. This shows that being open to the public is an important part of making a decision. If this isn't done, the decision is thrown out (Rogahang, 2012, p. 111).

Legislation doesn't cover the direction of the electronic trial, especially in Article 26 of the Supreme Court Regulation Number 1 of 2019, which says that if a copy of the court's decision is sent to the public, it is considered to be a decision that was made on an open trial. Because the public was able to watch a previous trial, it can be seen that community involvement is important for the trial to go forward. In the context of the agenda, the decision can be thought of as a decision that the public can't see or hear because the process is over. This makes the decision invalid and void. People have tried to solve this problem with Article 27 of the PERMA, which says the court can use public networks to keep the case open.

Various problems that arise in the regulatory aspect are unavoidable, because after all, the competent judicial authority must continue to pursue policies that can always provide justice to the community, therefore the judicial process should not stagnate and surrender to circumstances. However, apart from that, people must also pay attention to the safety of the people as the highest law (salus populi suprema lex esto) (Santosa, 2020, p. 128). As a result, Chief Justice Roberts maintains that the COVID-19 pandemic is an obvious threat to human health and safety that impacts all aspects of society, including law enforcement and the justice system. This means that not only must the government take steps to stop the virus from spreading, but the courts as a judicial institution must be able to present a process of law enforcement and justice while also maintaining the right to health and safety. This is a shared responsibility among all elements of the nation and state. protection of life and property, particularly of those involved in legal disputes (Syarifuddin, 2020, p. 4).

Taking into account social reality and human rights as a framework for thinking is in line with the way law enforcement in Indonesia is now evolving. The judge must have the courage to tackle this, even if there are uncertainties regarding the presence of competing laws and regulations. However, if this does not happen, the law enforcement process will be harmed, resulting in the injustice that everyone deserves in a pandemic state. There is a Post-Factum in enforcement arrangements where the law is always on an unstable and ever-changing boundary that does not adhere to a single legal system, as demonstrated by this. In the law, "becoming" is considered as a process. The law doesn't end when a regulation is finished expressing a notion. As a result, efforts to improve the country's legal system necessitate a sustained effort

by the country's legal community. According to a growing understanding of legal reasoning, laws are never set in stone but rather evolve to meet the changing demands of society (social order) (Rahardjo, 2003, p. 15).

Quality of Evidence in Online Trials

It is a syllogism in which the laws and regulations now in effect are the major premise and the evidence gathered during the trial process is the minor premise that leads to a decision or verdict in court. As a result, the evidentiary process concludes when the judge's judgment of the facts of the trial determines whether or not what is accused against the defendant in a criminal case and how to settle a fair dispute in a civil court is true (Hamzah, 2014, p. 245). There is a role for a judicial process that is enhanced through the evidential process in boosting the judge's faith in it. Every judge who hears a case is required by Article 5 paragraph (1) of Law Number 48 of 2009 about Judicial Power to investigate, follow, and grasp the legal ideals and sense of justice that exist in society. Furthermore, the evidentiary procedure is critical in a trial to verify that the decision is "a justice" issued by a panel of judges (Djazuli, 1995, p. 56).

The computerized judicial process is forcing the current judicial system to adapt to the changing times. According to Presidential Decree Number 11 of 2020 about the Determination of the Covid-19 Public Health Emergency, these symptoms are suspected of being abnormal. As a result of the disease, which has affected 4.26 million people since March 2020, numerous government rules have been implemented to restrict activities and space in all areas of the country, including the judicial system. This is done in order to uphold the Republic of Indonesia's 1945 Constitutional guarantee of life and health for all its citizens.

There were problems with the judicial search process. This made the judicial process go awry. A person who can't be found guilty before a court decision (presumption of innocence) with a trial process that is still going on seems to be overriding the legal certainty that should be in the criminal justice process. This is in line with what William E. Gladstone said: "Justice delayed is justice denied." (Burstyner & Sourdin, 2014, p. 44)

One way the government is trying to speed up the judicial process during the COVID-19 pandemic is to use an electronic system to run the judicial process. First, they were used only in civil courts and religious civil courts, but now they are also used in the criminal justice system because of the pandemic. This is because the Supreme Court ratified Regulation Number 4 of 2020 on the Administration and Trial of Criminal Cases in Court Electronically (Peraturan Mahkamah Agung Nomor 4 Tahun 2020 Tentang Administrasi Dan Persidangan Perkara Pidana Di Pengadilan Secara Elektronik, 2020).

In the COVID-19 pandemic condition, Novelti's criminal justice system provides a means of ensuring that the court process functions. To reduce the transmission of the COVID-19 virus and to guarantee legal certainty for the defendant's judicial process, an electronic (online) trial should be held in a different location from judges, witnesses, experts, and defendants. Satjipto Rahardjo opined that no law is flawless from the outset; rather, the law is created to serve as a tool for critiquing norms and their execution (Rahardjo, 2003, p. 121). It is impossible to separate the good implications of the electronic trial from the public's skepticism and critical voice who want the electronic trial process to run smoothly in order to attain both material and formal truth. A direct trial and an electronic trial both use different methods for proving a defendant's guilt or innocence (Fakhriah, 2013, p. 40). In pandemic settings, examinations in criminal case trials must differ from those conducted under regular circumstances due to the requirement of social limitations. Examining witnesses, experts, and defendants, which formerly required a face-to-face encounter with the court, is now possible

without it (Paridah, 2020, p. 43). The validity and legal force of electronic trial evidence is therefore a topic of discussion in the society.

As a result of this, the defendant will not be present in court because of his or her prison sentence, which restricts visits and mobility in order to avoid the spread of COVID-19. There was a difficulty in conducting a criminal trial because of this prosecutors often find it difficult to go deeper into the defendant's remarks since there are psychological differences when questioning the defendant personally compared to using electronic media, however (M. Z. R. Prayoga, personal communication, Desember 2021).

As a result, the prosecution must show each and every "fact" of the crime beyond a reasonable doubt in order to convict the defendant. As a result, the public prosecutor's claim that the alleged circumstances have at least a preponderant chance of occurring must be supported by proof. To ensure that no one is punished for mistakes that were not made, evidence is standardized. An analogy might be that freeing 1000 criminal persons is preferable to imprisoning 1 innocent (Kurniawaty, 2017, p. 399). It is impossible to carry out the status of a guilty individual without a substantial amount of evidence that cannot be traced. The electronic criminal trial has some circumstances that are difficult to prove, but the judge is unable to view all of the facts that are difficult to obtain in the implementation of the trial. One of the reasons for this is that judges in the continental European legal system have a full role in studying the facts and values of justice as they are seen in the judicial process itself. The judge's decision of "guilty" or "not guilty" at the end of the judicial procedure is based on a thorough examination of the facts presented at trial. To be admissible, evidence must not only be provided as a trial demand but must also provide perfect assurance that may be considered in conformity with reality.

Although electronic trials in criminal cases are not in conformity with Islamic law because they do not present the defendant prior to their trial, the atmosphere of the trials is not. Such conditions can be observed in the behavior of a defendant who is not preoccupied with his or her defense in a criminal case (M. Z. R. Prayoga, personal communication, Desember 2021). Although the defendant did not take the trial very seriously, in certain situations, the defendant did not pay attention to the trial process itself. The defendant's attention and mentality are not focused when a criminal case is tried electronically, so he is unable to deliver an admissible statement during the trial. There was no differentiation between the indicators of evidence evaluation in criminal proceedings by the judge. Judgments continue to employ Article 185 of the Criminal Procedure Code when evaluating witness testimonies, namely their fitness to one another, their consistency with other evidence, and the reasons witnesses may give for providing certain information.

In the criminal trial process right now, there is a problem with the way evidence is shown. This shows how the judge can make a decision that the crimes alleged by the public prosecutor are proven beyond a reasonable doubt. There are two things that must happen for a judge to find a person guilty of a crime: first, he or she must find that the charge has shown that all of the important parts of the crime have been proven without a doubt. Such a process will have an impact on the quality of electronic criminal court decisions.

Electronic (online) trials aren't just used in criminal cases. They can also be used in other judicial processes. This is what was said in Supreme Court Regulation Number 3 of 2018, which was later changed by Supreme Court Regulation Number 3 of 2019. This regulation is about case administration and trials in court that are done online. Civil, religious, military, and state administration are some of the courts that can handle electronic trials (e-court).

As mandated in Article 4, a number of trial processes can be done electronically, such as when people file their claims and objections and when they object to the court's involvement or make changes. Other than that, the trial process can be done by electronic means for things like replicas, duplications, proofs, conclusions, and reading the verdict. This article expressis verbis allows for electronic trials from the time a lawsuit is filed to the time a court makes a decision (Peraturan Mahkamah Agung Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik, 2019).

On this basis, people talk about the quality of electronic evidence in court. The validity of the main evidence in civil cases, which in this case is a letter, is the most important factor in deciding the outcome of a dispute. Doubts are raised in the community because there is a chance that documents and other evidence could be changed. Doubts like these make trials done by computer seem like they aren't logical. So, the validity of the evidence presented before the trial is very important to the judge's decision because most of the things the judge thinks about are based on the evidence (Sugeng & Sujayadi, 2015, p. 64). Providing and passing on legal tools that can be used in a court case to find fault or the truth is the goal of evidence in civil procedural law. This is where that goal is met (Effendie, 1999, p. 50).

Article 164 HIR, Article 284 RBG, and Article 1866 BW state that evidence from correspondence, witnesses, suspicions, confessions, and oaths can be presented before the trial. If evidence is submitted in the traditional manner via direct trial, the system for doing so is very different in an electronic trial. The clerk in charge of preserving trial papers is generally responsible for reviewing witness and letter evidence during a trial that is being held in front of a live audience during the evidential phase (Peraturan Mahkamah Agung Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik, 2019). Although this differs from an electronic trial's mechanism and procedure of proof, the concept of a double-check system is used. So the validity of the evidence provided must still be determined. It is the judge and clerk who hold the power in this instance (Sutantio & Oeripkartawinata, 1995, p. 55).

The chairman of the panel of judges uses SIPP and the e-court application to send and check documents prior to the examination. A specified day will be set for the parties to appear in court with their original documents to be physically checked (S. Sabila, personal communication, Desember 2021). One of the reasons for this is that in an electronic civil trial, evidence is examined right in front of the jury. To scan and upload papers and evidence into their own account, parties (other than advocates) who are unsure of how to use the e-court application can ask the e-court desk clerk. Judges and disputing parties alike require original document evidence when determining whether or not evidence should be admitted or denied. Additionally, parties must be present in order to hear witness statements, as well as original documents. Before the trial, each side will have the opportunity to question witnesses. If the parties aren't in court, this opportunity will be lost for sure.

With regard to the examination of witness statements, teleconferences may be used if witnesses live outside the courthouse. When the witness is located in another jurisdiction, a judge and a clerk must be appointed by that jurisdiction's chairperson to administer the witness oath and supervise the testimony via video teleconference (Kurniawan, 2020, p. 59). Thus, the use of an electronic trial makes it unnecessary for parties to appear in court to offer information, making it more convenient for them to do so. However, sending information is often hindered by a weak internet connection. There must be a system in place to ensure the quality and legitimacy of the provided documents, and it must be implemented immediately (S. Sabila, personal communication, Desember 2021). According to arguments made by Subekti, the

former head of Indonesia's Supreme Court, the evidence must be submitted as a savior for the parties involved in the dispute. In addition, the evidence must not be inconsistent with the appropriate civil procedure law (Subekti, 1991, p. 7). A local examination may be necessary after the conclusion of a proof, and the parties may attend that hearing, which improves the quality of evidence provided in an electronic trial by allowing the parties to testify immediately before the judge. During the evidentiary hearing, which is open to the parties, the chairman of the panel of judges is chosen and the local examination session fees are paid.

As outlined in the applicable procedural law (see Article 153 HIR), the descent trial method is not governed electronically but rather follows the applicable procedural law (Subekti, 1991, p. 128). As a result, in the online trial, the quality of the evidence submitted is not only presented as a subjective argument but evidence that must provide perfect assurance that can be taken into account in accordance with reality. So that the certainty that is present in the evidentiary process is not just any certainty that appears to be formally presented as a trial demand, but the certainty that is present and grows in the evidentiary process is a certainty based on (Subekti, 1991, p. 129): First, certainty rooted in intuitive feelings and is called conviction intime which can encourage judges' reasoning and confidence in seeking the truth and facts of the issues being handled (Syahrani, 2016, p. 58). Because, as stated in Article 5 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, the judge still considers the values of justice and the benefits that emerge and develop in society while resolving a case. Second, the confidence that comes with a conviction rationale in this instance demands and requires that the certainty that is present and evolves in the evidence process must be based on common sense that can be explained (Syahrani, 2016, p. 58). Judges must be able to explain their reasoning and interpretations clearly, account for them, and use them correctly. Because there is a lot of certainty in the proof, judges can use that as a good reason for making their decisions (Syahrani, 2016, p. 59). In order to make the evidentiary process as efficient as possible, it must stay true to the principle of a fair trial, which is an honest and fair trial (Cahyaningrum, 2020, p. 264).

The fact that online trials nevertheless adhere to the rules of relevant civil procedural law can be attributed to a variety of techniques and concepts used in civil processes performed electronically. In conducting online trials, courts are guided by this proof system, which has a well-established legal basis and is therefore appropriate for online trials. Because the level of public trust in the judiciary is determined by the quality of a good judiciary. A common thread may be formed on the quality of evidence in electronic trials in civil procedural law so that the validity and legal force of evidence conducted through electronic trials are in line with what is said, as long as judges adhere to civil procedural law standards. This procedure has been established by law and does not deviate from civil procedural law's aspirational goals and principles.

Conclusion

The use of electronic trial evidence has sparked a debate in the legal world. People are concerned about the validity of evidence and the legal power of evidence in the midst of the Covid-19 pandemic, and they are concerned about the quality of the evidence process, because it is feared that it will have an impact on the degree of quality of evidence in electronic proceedings. This is due to the fact that the procedure of demonstrating differs between a direct trial and an electronic trial. Several issues have arisen as a result of the examination of evidence and statements of the accused in the criminal justice process, including the spiritual and psychological atmosphere of witness and defendant statements, which cannot be conducted in

the same manner as in the traditional trial process. There were no issues discovered in the civil or religious civil courts, on the other hand. The Supreme Court Regulation Number 1 of 2019 regulates judicial administration, and it has been implemented with a double check mechanism to verify that authentic evidence is presented in a case. Similarly, in cases where judges have total competence, they must nonetheless adhere to current procedural legislation while reviewing evidence to ensure that the quality of rulings is not affected by the use of electronic or non-electronic trials.

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