

ELECTRONIC CRIMINAL TRIAL REFORM THAT GUARANTEES DUE PROCESS OF LAW

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Abstract:

This study examines how the reformulation of electronic criminal trials in Indonesia ensures the correct legal process. The research approach used is normative juridical law research, namely by analyzing several primary kinds of literature such as legislation and legal theory to the views of scholars. The results of this study are that Indonesia, as a state of law certainly in its judicial system, must obey the law. Indonesia is currently trying to impose electronic trials in resolving several court cases through electronic media such as teleconferences. This activity is based on the legislation governing electronic criminal trials, such as PERMA Number 1 of 2019, PERMA Number 4 of 2020, the Criminal Code, and other related regulations. This regulation forms the basis for the implementation of electronic trials in Indonesia with the primary objective of creating fast, simple, and inexpensive trials. However, the facts on the ground show that the problems related to the implementation of this activity are not only technical problems or facilities and infrastructure but also public doubts about the quality of the trial results. This phenomenon also occurs in countries that enforce electronic courts, such as the United States and the Netherlands. Therefore, there is a need to reformulate statements in legislation so that it not only focuses on creating a fast, simple and inexpensive judiciary but also needs to be emphasized to ensure the proper legal process occurs.

Keywords: Reformulation, Electronic Courts, Proper Legal Process

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INTRODUCTION

The use of technology for justice is now a necessity. In Indonesia, information technology is used to administer justice to realize a fast, simple, and low-cost trial. Like state law, the government has an important role in administering government to citizens. Governance must be based on regulations and oversight from internal and external agencies. Along with the increasing prominence of information technology (IT), digitalization, globalization, and modernization also make it borderless for several purposes (Latifiani, 2021).

The outbreak of the Covid-19 pandemic since the end of 2019 has had not only a high death rate but also caused various other problems, both economic and social. Facing this, governments in various countries are trying with all their efforts to minimize losses, both by reducing the number of casualties and overcoming economic problems in society (Kristanti, 2022). The Covid-19 pandemic has also affected the law enforcement process in Indonesia, including the law enforcement process in courts. This is because the country is trying its best to overcome the Covid-19 pandemic to save people's lives and reduce the spread of the pandemic. It is also feared that the courts can become a means of spreading this pandemic so that the Cooperation Agreement between the Supreme Court of the Republic of Indonesia is held via teleconference or using electronic media (Rahman, 2021).

Access to justice must emphasize an accessible legal system that can create justice for all parties, individuals and groups. The legal system itself conforms to social justice and is available to citizens regardless of any social status (Narrasati et al., 2021). The settlement of cases in Indonesian courts has not gone according to expectations because the parties involved in the courts lack the capacity, consistency, and integrity to provide legal services seriously. One of the bad criteria can be

measured from some people's opinion that court services are still not optimal. This is shown by knowing the slow completion of cases, illegal levies, and the number of pending cases (Putra, 2020).

Electronic or virtual courts are innovations made by the Supreme Court of the Republic of Indonesia. Based on PERMA Number 1 of 2019 and SEMA Number 1 of 2020 in Preventing the Spread of Covid-19 in the Supreme Court and Lower Judicial Body, as last amended by SEMA Number 6 of 2020. SEMA orders civil, religious, and state administrative cases to be tried through e-litigation, while for criminal cases, jinayat, and military crimes, the Supreme Court of the Court ordered that it be carried out in court for cases where the defendant was detained and the period of detention was not extended again (Mahardhika, 2022).

The Supreme Court (MA) is also PERMA Number 4 of 2020, which regulates how the implementation of the criminal process in criminal cases in the general court, military, and court environment using digital technology with electronic media (Pidada, 2021). In the online trial, the problem is how the position/presence of the judge, who should be able to control the trial process, is not in the same room as the defendant. It is feared that this difference in location will weaken the judge's decision-making to be able to explore in-depth the hidden truth in a case. Operational constraints in the availability of internet connections also have the potential to become obstacles in the implementation of criminal processes that are needed (Putrijanti & Wibawa, 2021). Therefore, based on this background, it is very important to reformulate Indonesia's existing electronic court policy to ensure a proper and correct legal process. Based on this background, the researcher raised the research title, Reformulation of Electronic Criminal Courts that Guarantees Due Process Of Law.

METHODS

This type of research is normative juridical law research. The normative juridical approach is research that examines the study of documents using various secondary data such as legislation, court decisions, and legal theory. It can be in the form of opinions of scholars. This research is built based on secondary data in the form of theory, meaning, and substance from various literature and laws and regulations, then analyzed by law and normative theory. Descriptive analysis was chosen to be the analysis used in this study. By using this analysis, researchers can describe and analyze the problems that occur and the solutions that can be done at this time. The approach used is qualitative, so this research is a qualitative descriptive study. The aim is to obtain data about facts and issues that have occurred. This study will describe and explain the energy tax gap in Indonesia and how predictive solutions can be used.

RESULT AND DISCUSSION

Implementation of Electronic Criminal Trials in Indonesia

Digitization, powered by new information and communication technologies (ICTs) embracing systems such as virtualized mobility and analytics systems, promises to revolutionize how business is conducted in industrial value chains through the internet and technology. Digitization has brought new perspectives to the government, especially using the internet to connect easily and provide fast information to the public. The conventional style of governance has been slowly diminishing but is still being applied for several reasons in government offices (Safiranita et al., 2021). It refers to administrative procedures in all sectors when people can submit applications by filling in from anywhere to government offices. All offices are connected and integrated, making it easy to govern. This system requires proper administrative arrangements to support information exchange and collaboration in the e-government era. The government must provide and support the implementation of modernization in the justice system, especially for those seeking justice (Mulyana, 2021).

Apart from the development of this evidence which arises as a result of the impact of technological developments, as well as developments in terms of service and settlement of cases in court, In 2018, there was an idea from the prosecutor's office to implement case digitization using the e-Court application. E-court is part of the court's efforts to provide easy access to the public and

justice seekers while also saving the plaintiffs' time, costs, and energy and making the courts more transparent, effective, and efficient (Perbawa, 2021). This electronic trial has a legal umbrella as regulated in PERMA Number 3 of 2018 concerning Case Management in Electronic Courts, and this is motivated by Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that: seek justice and try to overcome all challenges and obstacles to achieve it. Justice is simple, fast, and low cost. To realize a simple, fast, and low-cost judiciary, reforms are needed both in the field of administrative services and judicial administration (Listyawati, 2020).

This reform is expected to result in the implementation of law enforcement that provides satisfaction for justice seekers. This application has a positive impact on justice in Indonesia. With this application, meetings between litigants and court employees are limited to minimize bribery crimes that are rampant in court. In addition, the application of this electronic trial can also minimize deficiencies in the judicial process in Indonesia, such as acts of harassment against the court (Contempt of court). The adoption of electronic courts is a good step toward modernizing the administration of justice in Indonesia. However, there are still many challenges and problems to be faced. The government and law enforcement officers must take appropriate steps to provide the public and legal professionals with an understanding of electronic trials (Pratiwi et al., 2020). The following is an image of a pyramid for implementing electronic-based criminal cases.

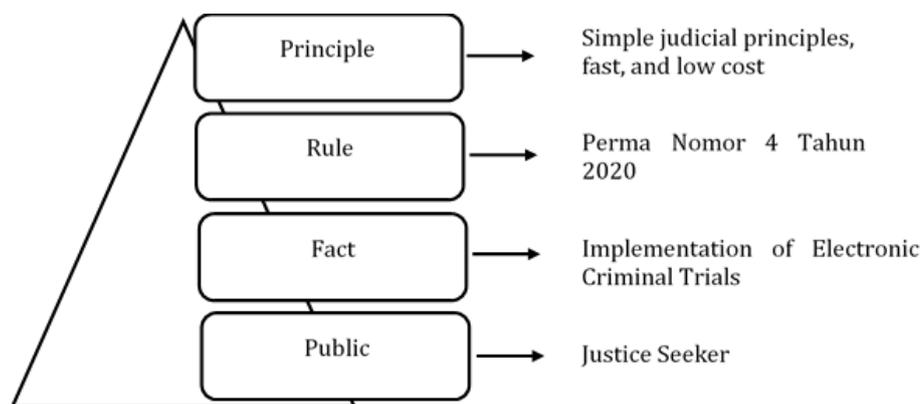


Figure 1. Pyramid of Enforcement of Electronic-Based Criminal Case Trials. S
Source: (Rahman, 2021)

In an electronic trial, evidence is required in every trial, even in a Civil or Criminal trial. This is necessary to prove whether or not the suspect in the trial is guilty. The Criminal Procedure Code uses the Criminal Procedure Code as a guideline for conducting trials. Therefore every step from the Investigation to the Adjudication is in accordance with the Criminal Procedure Code, including looking for Evidence (Rahman, 2021). According to Article 184 (1) of the Criminal Procedure Code, legal evidence is: Witness testimony; Expert Statement; Letter; instructions; or Defendant's Statement. According to Article 185 of the Criminal Procedure Code, Witness testimony is evidence presented by a witness in court or vice versa. Article 1, number 27 of the Criminal Procedure Code states that: Witness testimony is one of the evidence in a criminal case in the form of witness testimony regarding an event that he heard, saw, and experienced himself by stating the reasons for his knowledge (Perbawa, 2021).

In the criminal justice system, Indonesia has a strong commitment to implementing the Miranda Rules principles (Jaya & Wijanarko, 2021). In Indonesia, the principle of Miranda's rule has been accommodated in the Criminal Code, namely the right to obtain and contact legal counsel/advocates, and if not, then the right to provide legal counsel/advocates. The right to obtain legal aid is accommodated in Article 54, Article 55, and Article 114 of the Criminal Procedure Code. Meanwhile, if unable to do so, the suspect has the right to legal advice given by the authorities or investigators (Article 56, paragraph 1 of the Criminal Code) (Kafrawi, 2016).

Electronic Criminal Court Reformulation to Ensure Legal Process

The United States, to be precise, during the COVID-19 pandemic on March 27, 2020, enacted The Coronavirus Aid, Relief and Economic Security Act (CARES Act). The CARES Act is a legal instrument that applies electronic media such as teleconferences to conduct trials of certain cases in court. This makes during the emergency period the US Supreme Court is abolished for a certain period (Lumbanraja, 2020). Some of the problems faced and encountered in implementing the CARES Act are similar to the practice of electronic courts in Indonesia. The problem encountered is the lack of standardization of the application of this electronic cross, which raises many questions among the public who doubt the quality of the CARES Act itself (Sherlock et al., 2020).

Not only in America, but digitizing justice has also been one of the priorities in judicial reform in the Netherlands for several years. This leads, on the one hand, to the need to keep up with the digitization of society in general and, on the other, to a desire to improve the functioning of the judicial process. The Netherlands has traditionally ranked highly internationally in internet and e-commerce penetration. Recognizing the economic and social importance, the government has invested in digitalization in all sectors (Sitompul, 2018).

Although the process at the Dutch Supreme Court has been digitized, and the digital litigation system for civil and criminal cases has also been digitized, the rapid digitization of Dutch courts initiated by the Quality and Innovation Program stalled in 2018. This was due to serious problems related to poor governance. So the Ministry of Justice decided to stop digitization. However, apart from this, the need for electronic justice is increasing given the COVID-19 pandemic (Kramer et al., 2019).

Seeing the two phenomena that have occurred in several countries related to the implementation of electronic trials has brought a new face to the practice of criminal and civil justice in Indonesia. The community also enthusiastically welcomed the implementation of this new regulation. Although electronic courts were created to provide a more effective and efficient court service, the obligation to print all documents regulated by the Chief Justice's Decree appears to hinder that goal from achieving its goals. The challenges faced by internal courts are quite severe, starting from the readiness of human resources, infrastructure, and the mentality of court officials. Despite all that, what has been done by the Supreme Court should be appreciated as an effort to enforce the principles of a simple, fast, and low-cost judiciary, whose main target is the satisfaction of justice seekers and guaranteeing the legal process that occurs (Kharlie & Cholil, 2020).

As is well known, Perma Number 4 of 2020 is the legal basis for conducting electronic trials in Indonesia. Several problems also occurred related to the implementation of this electronic judiciary, such as technical constraints and competence with the existing infrastructure. This is considered to significantly affect the quality of unfair and inappropriate decisions for both the victim and the convict. Therefore, there is a need for reformulation of laws and regulations relating to the implementation and implementation of electronic courts in Indonesia so that they do not only focus on the purpose of the trial, namely a fast, simple, and low-cost trial but must also focus on ensuring the occurrence of a due process of law or proper legal process.

CONCLUSION

Based on the discussion and research results, it is known that implementing electronic trials in Indonesia, both criminal and civil trials is a must that needs to be done. This is even more urgent considering the COVID-19 pandemic has changed the lifestyle of people around the world to continue to practice social distancing to break the chain of spreading new cluster viruses. However, in implementing the electronic criminal trial, several problems were found, such as the lack of competence, infrastructure, and technical problems that occurred. In fact, based on the principle of the implementation of electronic trials, namely Perma Number 4 of 2020, it is stated that this activity aims to produce fast, simple, and low-cost justice. However, the fact is that this fast, simple, and inexpensive trial is not enough to guide the implementation of this electronic judiciary in Indonesia. Reflecting on the electronic judiciary in America and the Netherlands, Indonesia has the same

problem: the emergence of public concern about the quality of court decisions so that the reformulation of the statement based on the electronic trial is very much needed, namely by adding a focused goal, namely to ensure the occurrence of due process of law or the proper legal process.

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