



Fulfillment of the defendant's rights in the implementation of the trial electronically at the Jantio district court

Deddi Maryadi¹, Dahlan², Azhari²

¹Studen Law Faculty, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

²Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

This research is to explain the fulfillment of the defendant's rights in conducting electronic trials and obstacles faced by the Panel of Judges, Public Prosecutors, Lawyers and Defendants in the electronic trial process. This research is included in empirical juridical research using primary data sources obtained through interviews and documents. The results show that electronic trials have not been able to fulfill the provisions stipulated in the Criminal Procedure Code (KUHP) which is a guarantee for the realization of the principle *due process of law*. In the provisions of Perma Number 4, 2020 concerning the Administration and Trial of Criminal Cases in Electronic Courts, the Supreme Court redefined the concept of the presence of litigants at trial, the concept of pronouncing decisions or decisions, and the concept of courtrooms in electronic trials. In the implementation of electronic trials, there are still various problems such as the absence of laws to regulate electronic trials, the principle of due process of law in electronic trials has not been fulfilled and the implementation of electronic trials is still not optimal, especially due to technological and human resource constraints which play a major role in conducting electronic trials.

Keywords: Legal protection, electronic trial, defendant's rights

Introduction

The integration between institutions in the Integrated Criminal Justice System (*Integrated Criminal Justice System*) is through trials of criminal cases in which the Prosecutor's Office, Courts and Detention Centers / Correctional Institutions synergize in realizing an orderly trial and fulfilling a sense of justice for the parties. Obviously, the fulfillment of a sense of justice for the parties cannot be separated from the role of the Panel of Judges, the Public Prosecutor and the parties involved so that the trial of criminal acts has clear stages for creating order and fulfilling the defendant's rights. Examination of criminal cases in court by presenting the parties can certainly maximize each stage that is passed as is the case with proof by the Public Prosecutor,

One of the breakthroughs made by the Supreme Court is to present an electronic trial system through the e-court system (Civil law and Tun) and e-consolidation (Criminal law) which are regulated in Supreme Court Regulation Number 4, 2020 concerning Electronic Administration of Cases and Trials in Courts. The existence of an electronic court system is a solution for court institutions to provide legal services even though they are not present in person at court. Through the use of e-court and e-merge applications as an embodiment of electronic trials that are carried out virtually without the need to bring parties into the courtroom, thus requiring judges, prosecutors and lawyers to quickly make adjustments, especially in the trial and evidence process.^[1]

The electronic trial process which includes the process of receiving case files, submitting summons or hearing notices, requests for objection notes (exceptions), rebuttal, resistance, intervention, answer, replica, duplik, conclusion, receipt of payment, acceptance of legal remedies, management, submission, storage of civil/civil documents, Religion/Military administration/State Administration,

general crimes and corruption crimes. In order to streamline the electronic trial process, the Attorney General's Office has issued a Prosecutor's Instruction through the Attorney General's Circular Letter (SEJA) Number B-049/A/SUJA/03/2020 dated 27 March 2020 concerning Optimizing the Implementation of the Duties, Functions and Authorities of the Attorney General's Office in the midst of the Covid-19 pandemic.

Various regulations that were formed in the context of supporting the implementation of Electronic trials are currently still causing various problems both from a juridical, empirical and technical aspect. In addition, arrangements regarding electronic trials have also led to legal disharmony, bearing in mind that the provisions of Law Number 8 of 1981 concerning Criminal Procedure Code as the formal law governing the Criminal Justice System in Indonesia have not accommodated the implementation of electronic trials. Article 154 paragraph (4) of the Criminal Procedure Code does not yet regulate proceedings in absentia in ordinary hearings and brief examinations.^[2] In criminal procedural law, it is known as the principle of the presence of the accused, which is also known as the principle *ius singular, ius speciale, or bijzonder strafrecht*. This principle is commonly known in special crimes such as corruption and economic crimes related to the principle of direct and verbal examination of judges.^[3]

In addition, the disharmony of regulations related to holding virtual trials has created problems in practice, namely the following. First, the implementation of electronic trials has the potential for maladministration, namely delays without certainty caused by a lack of information and technology officer resources. Second, it is difficult for detainees who are still detained in detention centers to participate in virtual trials because many areas do not yet have the facilities to

properly attend electronic trials, so detainees must be temporarily moved to detention centers that have adequate Electronic Trial facilities. Third, not all correctional institutions (Lapas) have adequate facilities to carry out electronic trials. Fourth, the lack of counseling related to the implementation of electronic trials both to relevant law enforcers and to the public, causing various technical problems to occur. Apart from that, in practice there are still many obstacles related to e-integrated e-integrated and e-litigation. Even though there are various obstacles, the electronic trial process must still be carried out without anything that is optional so that the judicial process can run in an orderly manner and has legal certainty. Fifth, in criminal cases the validity of proof can be seen based on two things, namely first from the theoretical side of the validity of proof in criminal cases through legal teleconferences because Indonesia adheres to the theory of a negative proof system where in addition to evidence referring to the law but also placing the judge's belief in seeking material truth. In connection with the problems in conducting electronic trials, various obstacles were still found which resulted in the reduction of the defendant's rights before the law.

Research methods

This research is included in empirical juridical research, namely legal research regarding the enactment or implementation of normative legal provisions in action in every particular legal event that occurs in society.^[4] In this study, the primary data source was obtained directly from the main source, namely people's behavior through research. The data obtained were in the form of interviews with people related to this research, namely judges, prosecutors and lawyers who were sitting at the Jantho District Court. The data that has been obtained through interviews and documentation methods is then analyzed through the stages of editing, classification, verification and analysis. The data analysis process was carried out through the Miles and Huberman data analysis model. Data analysis was also carried out in a qualitative descriptive manner, namely describing a situation or status phenomenon obtained from the results of interviews with respondents during the data collection period, using words or sentences, which are then separated and classified according to their categories for comparison, as well as further analysis and verification.

Results and Discussion

Obstacles and Obstacles in the Implementation of Trials Electronically

The Supreme Court has innovated in providing fast, simple and low-cost services to justice seekers. The Supreme Court has launched the application *E-Court* for civil court, and *E-Chime* for criminal courts that serve electronic case administration for justice seekers, including case registration (*e-filing*), payment (*e-payment*) and calls/notifications (*e-summons*) electronically (online). Electronic case administration services have made it easy for justice seekers. Through this application, the Supreme Court has attempted to answer 3 (three) main issues that have been faced by litigants in court, namely delays (*delayed*), affordability (*access*) and integrity (*integrity*). The use of information technology can reduce case handling time, reduce the intensity of parties coming to court and canalize the way parties interact with court officials and

prevent the public from lacking information and knowledge about courts.^[5]

Various innovations made by the Supreme Court then gave birth to an electronic trial system. In the implementation of electronic trials, there are various obstacles encountered, including juridical obstacles where the electronic trial system has not been regulated in law as mandated by Article 28 of Law Number 48 of 2009 concerning Judicial Power. Provisions regarding electronic trials are only regulated in SEMA No. 1 of 2020 and Perma No. 1 of 2019 for Civil and State Administrative cases and Perma No. 4 of 2020 for Criminal cases. This can lead to problems of harmonization of law because electronic trials have not been regulated in procedural law provisions, both in Civil, Criminal, Religious, Military, and State Administrative Procedures.

Soerjono Soekanto and Purnadi Purbacaraka define procedural law as law that provides guidelines for enforcing or maintaining substantive law in practice.^[6] Sudikno Mertokusumo stated that procedural law is a legal regulation that regulates how material law can be obeyed through the mediation of a judge, which concretely regulates how to apply for rights, examine and decide on them and implement the decision. So procedural law is not just a complement, but has an important position in implementing or enforcing material law.^[7]

To ensure that procedural law has binding force, arrangements regarding procedural law may not be in the form of statutory regulations under the law. The Supreme Court Regulations may contain procedural law provisions if any attributie/delegatie van wetgeving from law or formed based on the authority of the Supreme Court to fill legal voids.^[8] It is better if electronic trials need to be regulated by a separate law or by updating the procedural law for the sake of legal harmonization. Electronic trials are also constrained by problems of proof because evidence and evidence have a very important meaning in trials. From a formal juridical perspective, evidentiary law in Indonesia (in this case procedural law as formal law) has not accommodated electronic documents as evidence, while several new material laws have regulated and recognized electronic evidence as valid evidence.^[9]

As for the practice of electronic trials at the Jantho District Court, various obstacles were found. According to the Judge of the Jantho District Court, Syara Fitriani, SH, the implementation of the trial at the Jantho District Court, has not been equipped with IT personnel who are expected to be able to properly control the trial process, from the beginning to the end of the trial. The technical constraints encountered during the trial ranged from infrastructure to networks. At the beginning of the trial process, not only the completeness and presence of the parties in the trial, but also the completeness that supports teleconference equipment, namely infrastructure such as screens, microphones, projectors, cameras and loudspeakers. Inadequate, for example color sharpness, sound clarity from speakers and microphone, and a stable internet network.^[10]

In addition, at the Jantho District Court there are 4 (four) courtrooms with only 2 (two) rooms supporting teleconference devices. The other 2 (two) rooms are only equipped with 50 (fifty) inch monitor screens and cell phones respectively by Judges, Prosecutors, Lawyers, and defendants who are in Correctional Institutions. The application most often used in electronic trials is zoom. During trials at the Jantho District Court, it is not

uncommon to use the video call feature from the WhatsApp application from each personal cell phone of the Prosecutor, Legal Counsel, Judge and Detention Officer from the Prosecutor's Office who are in charge of accompanying the Defendant at Class II B Detention Center Jantho. This is one of the obstacles in electronic trials, considering the Jantho City connection, which has quite low mobility and unstable internet connectivity. According to Fadhli, SH, MH, as a Judge at the Jantho District Court, who stated that technical constraints and public access often cause electronic trials to be postponed.^[11]

In addition, electronic trials can affect the evidentiary process because the accused cannot be confronted face-to-face, making it difficult for public prosecutors, judges and legal advisers to dig up facts through asking questions to the defendant. This was conveyed by Tarmizi Karim, SH, as an Advocate who practices at the Jantho District Court who stated that electronic trials are often constrained by the network which causes attempts to dig up facts through questions submitted by Judges, Public Prosecutors, Lawyers to the defendant. On the one hand, the position of the accused who is in a penitentiary who does not meet face to face with witnesses is considered difficult because the network causes a lack of clarity in witness statements, sometimes the connection is slow and often intermittent.^[12]

In carrying out criminal proceedings, generally they are always accompanied by legal advisers, but in electronic trials, legal advisers are not directly side by side with the defendant. According to Tarmizi Karim SH, MH this is considered to be detrimental to the defendant because the legal assistance obtained is not optimal as the trial is held in person. In addition, the parties' lack of understanding of the mechanism for conducting electronic trials raises doubts. They argue that if the trial is held electronically they will not receive protection for their rights. The parties thought that they might not be able to freely express and voice their opinions like a direct trial.

Fulfillment of the Defendant's Rights through Electronic Trial Facilities

Trials of criminal cases which are usually held in courtrooms attended by parties can now be held virtually or online, especially since the issuance of Perma No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically. The trial of this online criminal trial has an impact on the fulfillment of the rights of the defendant. Minimum standard of fair trial according to *International Covenant on Civil and Political Rights* (ICCPR) there are several things. First, justice is held in a fair and open manner by a competent, independent and impartial court. Second, to be tried without unreasonable delay. Third, the parties attend the trial and are given adequate time and facilities to defend themselves. Fourth, obtain and communicate with legal counsel. Fifth, present witnesses and ask questions to witnesses. Sixth, not forced to admit his guilt or testify for himself.^[13]

Since the existence of Perma Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Courts, it has made it possible for trials to be held electronically/online or teleconferenced in certain circumstances. Such as disasters, emergency conditions, and distance constraints. Then the trial process is similar to an ordinary trial, except that the defendant and legal counsel, public prosecutor and witnesses do not have to be physically

present in the courtroom. In addition, trial documents are submitted electronically. In practice, there were several problems that resulted in some of the defendant's rights not being fulfilled optimally, in particular due to external conditions beyond the court's control. An open trial (face to face) can actually still be held like a trial in a normal situation. The public or the media can still be present at the trial. The difference is, the number of trial visitors is limited by prioritizing health protocols.

The defendant's rights to communicate with legal counsel and ask witnesses in practice cannot work properly due to various limitations such as interference due to an unstable internet connection. This happens because the quality of the internet connection between various regions varies. In addition, the Correctional Institutions (Lapas) facilities managed by the Directorate General of Corrections are also inadequate for conducting electronic trials. Not to mention, there is a policy in Correctional Institutions that is not uniform about allowing legal advisers to attend because some are not allowed to attend.

With the formation of Perma Number 4 of 2020 which is considered a way out that provides a solution to fulfilling the rights of the accused in conducting electronic trials. Fulfillment of the rights of the accused in Perma Number 4 of 2020 which requires guarantees for a fair and impartial trial process as well as guarantees for the rights of other defendants. Among the rights of the defendant are the right to obtain legal certainty regarding the criminal act he is accused of through an orderly judicial process without delay as referred to in Article 14 paragraph (3) letter c of Law Number 12 of 2005 concerning Ratification of *International Covenant On Civil And Political Rights* (International Covenant on Civil and Political Rights) which states that "In determining a crime, everyone is entitled to the minimum guarantees below in full, namely c) To be tried without undue delay". In practice, the rights of the accused in giving their statements before the Panel of Judges at the Jantho District Court still face various obstacles that can harm the defendant. This was conveyed by the Legal Counsel for Posbakum PN Jantho, M. Taufik, SH who revealed the result of technical constraints such as inadequate electronic equipment, not to mention the internal rules at the Jantho Class II B Detention Center which did not allow Legal Counsel to meet with the Defendant. Furthermore, M. Taufik, SH also stated that legal advisers have problems in assisting their clients, if legal advisers are not given easy access to meet the accused.^[14]

The same view was expressed by the defendant involved in the pornography case who said that he could not provide a complete statement because the information he conveyed was not clear during the trial process. In addition, the statements submitted by witnesses through the electronic means of the Zoom Meeting application were also not heard clearly and the images shown were also not clear. The defendant also experienced difficulties and obstacles in meeting and communicating with his legal counsel, so that he could only find out a little through explanations from his family who had communicated with legal advisers outside the trial ^[15]. Even so, according to him, the case that ensnared him was a case of alleged pornography, in which case the verification process must be clear because it relates to electronic means, whether in the form of sound recordings, videos, or images that are distributed via cyberspace. The existence of these limitations caused him as

a defendant to feel aggrieved considering that in the trial process he was unable to convey his full statement and defense due to various obstacles that should not have disrupted the judicial process.

Conclusion

Electronic trials have also not been able to fulfill the provisions stipulated in the Criminal Procedure Code (KUHP) which guarantees the realization of the principle due *process of law*. With the establishment of Perma Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically, the Supreme Court has redefined the concept of the presence of litigants at trial, the concept of pronouncing decisions or decisions, and the concept of courtrooms in electronic trials. The existence of electronic trials is an update in the field of law to keep up with technological developments, bearing in mind that in the future trials will continue to be conducted electronically to fulfill the principle of a simple, fast and low-cost trial. In the implementation of electronic trials, various problems were found, especially at the Jantho District Court. These obstacles consist of 3 (three) aspects, namely: 1) Juridical-procedural issues, due to the absence of a law that regulates electronic trials; 2) Juridical-substantive issues focus on the principles of due process of law which have not been fulfilled in online trials; 3) Technical-empirical problems related to the practice of electronic trials in the field. In fact, online trials at the Jantho District Court are still not optimal, for example the internet network is unstable, the quality of electronic devices is not evenly distributed, and there are not many human resources who master information technology. Thus, it is necessary to increase facilities to support online trials at the Jantho District Court, the Aceh Besar District Prosecutor's Office, and the Jantho Class II B Detention Center.

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