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Evidence Problems in Criminal Cases Online Trials during the Covid-19 Pandemic

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Abstract

This study aims to find out the problems and ways of solving problems regarding the implementation of online trials in criminal cases during the Covid-19 Pandemic. This research uses normative or doctrinal legal research. Normative legal research is meant to study and examine legal norms in the Criminal Procedure Code and other statutory regulations the norms contained in it. The results showed that the drafting of regulations on the standardization of court facilities and infrastructure in the district court was to improve the quality of the implementation of courageous trials. Limited facilities and infrastructure, such as limited courtrooms with video teleconferencing devices and unstable internet networks, have caused delays in the trial process because the postponement of the trial could be potential maladministration in the implementation of the virtual trial

INTRODUCTION

Every human act that is suspected to have fulfilled the element of an offense or a criminal act must be able to be proven by the state.[1] Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), valid evidence includes. First, witness testimony, namely by Article 1 number 27 KUHAP states, witness testimony is one of the evidence in a criminal case in the form of information from witnesses regarding a criminal event that he heard, saw and experienced himself by mentioning the reasons for his knowledge.[2] Second, expert testimony, according to the Criminal Procedure Code, is information provided by a person who has particular expertise on matters needed to make light of a criminal case for examination. The expert's statement is declared valid as evidence if it is stated before trial and under oath.[3] Third, letters that can be accepted as evidence are included in Article 187 of the Criminal Procedure Code.[4] The fourth tool of evidence is evidence of evidence which

[1] Fitria Astuti, "Perlindungan Hak Asasi Manusia Terhadap Kebebasan Menyatakan Pendapat Dikaitkan dengan Delik Pidana Pasal 156 KUHP di Media Sosial", *Lex Administratum* 5, no. 5 (2017): 17.
[2] Eddy O.S. Hiariej, *Teori dan Hukum Pembuktian*, (Jakarta: Erlangga, 2012), 100.
[3] *Ibid.* 106
[4] *Ibid.* 107

constitutes an act, event or situation which, due to the compatibility between one another and the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. These instructions can only be obtained from witness statements, letters and statements of defendants[5].

Since the emergence of the Covid-19 outbreak in recent months, it has prompted several law enforcement agencies to agree to hold online criminal case trials. Is a Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Police, and the Directorate General (Ditjen) of Corrections regarding the Implementation of Criminal Case Sessions through Video Conferences in the Context of Covid-19 Prevention on April 13, 2020. Although electronic trials have been implemented through e-Court and e-Court policies -Litigation before the pandemic period, but the application only applies to cases of civil, religious, civil administration cases. Meanwhile, online criminal court proceedings during a pandemic are in practice considered to cause problems or technical constraints in terms of infrastructure (facilities), in addition to the absence of procedural law guidelines regulations.

The use of teleconference technology in court sessions for the future is a necessity. However, the hasty application of online criminal case trials can reduce (override) the provisions of the applicable criminal procedural law, particularly the standard of proof.[6] The Indonesian Judicial System is based on systems, laws and institutions inherited from the Dutch state which had colonized the Indonesian nation for approximately three hundred and fifty years, as said by Andi Hamzah "For example Indonesia and Malaysia are two allied nations, but separated in their legal system by their respective colonizers, namely the Netherlands and England. As a result, even though we already have the Criminal Procedure Code which was created by the Indonesian nation itself, the system and its principles are still based on the Continental European (Dutch) system, while Malaysia, Brunei, Singapore rely on the Anglo Saxon system".[7] Therefore, Judges and Public Prosecutors must be careful, careful and mature in assessing and considering the problem of evidence.

In contrast to proof of other cases, evidence in criminal cases has started from the preliminary stage, namely investigation and investigation.[8] When an Investigator, in this case,

[5] *Ibid.* 109.
[6] Jemmy Mariangi, "Tinjauan Yuridis Tentang Pemeriksaan Saksi di Persidangan Melalui Teleconference", *Jurnal Ilmu Hukum Legal Opinion* 4, no. 1 (2013): 4.
[7] Hamzah, A., *Hukum Acara Pidana Indonesia Ed 2*. (Jakarta: Sinar Grafika, 2019), 245.
[8] Fachrul Rozi, "Sistem Pembuktian Dalam Proses Persidangan Pada Perkara Tindak Pidana", *Jurnal Yuridis Unaja* 1, no. 2 (2018): 22.

the Police or PPNS, begins to take his first steps in carrying out an investigation, he will automatically and directly be bound by the evidentiary provisions regulated in the Criminal Procedure Code. An important target in Investigation activities is collecting evidence to make light about the criminal act that occurred.[9] Likewise, if an investigator determines someone has the status of a suspect, at least the investigator must master the means of evidence which are known as preliminary evidence. So, although the most important and decisive activity of evidence is at the level of case examination before a court session, the effort to collect the means of evidence has played a role and functioned at the time of the investigation.

Investigators who carry out an investigation do not understand or do not pay attention to the provisions being carried out will experience failure in an effort to prevent or minimize the occurrence of failure in the examination at the level of investigation.[10] Therefore, before an investigator uses his/her authority to carry out an investigation, he should have understood everything related to the meaning and function of each means of proof, as regulated in article 116 to article 121 of the Criminal Procedure Code concerning issues related to the examination of witnesses and suspects in an investigation.

UU no. 8 of 1981 concerning KUHAP has regulated the procedures for examining witnesses and suspects in the investigation so that the examination of witnesses at the police runs well so as not to prejudice the rights of defendants and witnesses. So that the Police Investigation Official Report (BAP) contains the testimony of witnesses and defendants by what the witnesses and defendants have stated based on their wishes, without coercion or pressure from any party.[11] The witness as a person who provides information based on a criminal incident he has heard, has seen and experienced is very necessary for his information in the process of proof.[12] Witness statements given to investigators must be free from pressure from anyone and in any form (Article 117 KUHAP). The witness's testimony is recorded by the investigator in the examination report made on the strength of the oath of office (not by remembering the oath of office) then dated and signed by the investigator and the witness

[9] Uminah Hakim, "Eksistensi Akuntansi Forensik Dalam Penyidikan Dan Pembuktian Pidana Korupsi", *Unnes Law Journal* 3, no. 1 (2013): 59.
[10] Widiada Gunakaya, "Solusi Problematika Penyidikan Dalam Kerangka Efektivitas Sistem Peradilan Pidana Dan Rekomendasi Pembentukan Lembaga "Penyidikan Lanjutan" Dalam Pembaharuan KUHAP", *Jurnal Wawasan Hukum* 24, no. 1 (2011): 281.
[11] Edwin Tumundo, Emma V. T. Senewe, Johnny Lembong, "Penyidikan Tindak Pidana Perdagangan Orang Pada Tingkat Kepolisian Dalam Perspektif Hak Asasi Manusia", *Lex Et Societatis* 6, no. 4 (2018): 86.
[12] Bastianto Nugroho, "Peranan Alat Bukti dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP", *Yuridika* 32, no. 1 (2017): 25.

who testifies after he agrees to the contents (Article 75 jo 118 paragraph (1) KUHAP). If the witness does not want to put his signature, the investigator does not need to force it. Still, it is sufficient to provide a note in the BAP accompanied by the reason that the witness testimony in the investigation is crucial for the process of evidence at trial because it is from the Police BAP (case file) and then by the Public Prosecutor. Contained in the indictment, serve as a guide in the trial examination.

As is known, so far there have been several problems in online criminal proceedings during the Covid-19 pandemic.[13] For example, the lack of fulfillment of the rights of the parties; the trial process is hampered; there are fears of Covid-19 transmission in court; the mechanism (procedural law) had to change.[14] Also, there are still many parties who have not been able to use information technology and the availability of internet networks in certain areas when they want to conduct electronic trials. However, there is a memorandum of understanding regarding the use of video conferencing on criminal cases, especially for witness examination. However, there were obstacles to the availability of electronic devices in each agency, the position of the accused, and the presence of related parties (witnesses). Therefore, if the online criminal trial continues to be held, it will disturb the principle of a fair trial. Because, if the infrastructure to support online justice is inadequate, it has the potential to reduce the validity of the evidentiary process.

Since the Covid-19 pandemic began to spread throughout the world since the beginning of 2020, many countries in the world have imposed social/physical distancing (social/physical restrictions) and even lockdown (regional quarantine). Indonesia and the United States are among the countries that have not imposed a lockdown, but that does not mean that it does not have an impact on the world of legal practice. Even though they did not impose a lockdown, Indonesia and the United States continued to impose social distancing in their countries which made it impossible for a trial to be carried out properly (in everyday situations) by applicable regulations. For the sake of implementing social distancing, the Court Institution can't hold trials according to pre-set standards, because it can cause crowds of people, which causes the risk of spreading the Covid-19 virus even higher. This causes the

[13] Dewi Rahmaningsih Nugroho, S.Suteki, "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)", *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 296.

[14] Samuel Arsheldon, Supriardoyo Simanjuntak, Kornelius Benuf, "Strategi Antisipasi Over Kapasitas Lapas Suatu Refleksi Atas Kebijakan Pencegahan Penyebaran Covid-19", *ADLIYA: Jurnal Hukum dan Kemanusiaan* 14, no. 1 (2020): 21.

judiciary to rely on technology to support the sustainability of legal services for justice seekers. Maximum utilization of the e-court system that has been running since the issuance of Perma No. 1 of 2019 has now become a solution for court institutions under the Supreme Court to continue providing legal services even though justice seekers do not appear in court directly. The use of this e-court ultimately boils down to the importance of implementing online trials without having to present the parties in the courtroom.

As far as the author's search, there are several articles related to this paper. Some of the articles used as references for writing this article are research articles that review evidence in criminal case proceedings. According to Fachrul Razi, the proof is part of the criminal procedure law which regulates various types of evidence which are valid according to law, the system adopted in evidence, the conditions and procedures for presenting the evidence and the judge's authority to accept, reject and judge the evidence.[15] Then in the article written by Syahrul Azwar, it is stated that the evidence, according to positive law is witness testimony, expert testimony, letters, instructions and statements of the defendant. Then in a study in 2020 that both examined online trials during the Covid-19 pandemic outbreak. RR. Dewi Anggraeni researched the urgency of holding an electronic trial during the current Covid-19 pandemic. RR. Dewi Anggraeni stated that electronic trials need to be implemented so as not to harm the parties in litigation.[16]

Positive law regulates that only means of evidence that are valid according to the law can be used for proof. Based on these articles, the researcher has not found a study of the progressive clause that discusses how to carry out evidence in trials conducted online. In this article, we intend to explore and find solutions to the obstacles in trials conducted online during the Covid-19 pandemic. Therefore, it is necessary to review how the problems of proof in criminal cases online trials during the Covid-19 pandemic?

This research uses normative or doctrinal legal research methods. Normative legal research is intended to study and examine legal norms,[17] In the Criminal Procedure Code and other laws and regulations that are related to the application of evidence in online trials of criminal cases during the Covid-19 pandemic. The object of research in writing this article is

[15] Fachrul Rozi, "Sistem Pembuktian Dalam Proses Persidangan Pada Perkara Tindak Pidana", *Jurnal Yuridis Unaja* 1, no. 2 (2018): 32.

[16] RR. Dewi Anggraeni, "Wabah Pandemi Covid-19, Urgensi Pelaksanaan Sidang Secara Elektronik", *ADALAH: Buletin Hukum dan Keadilan* 4, no 1, (2020): 12.

[17] Kornelius Benuf, Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Gema Keadilan*, 7, no. 1, (2020): 24.

how the evidence is applied in criminal cases online trials during the Covid-19 pandemic. Sources of legal information use primary legal materials (regulations and relevant documents) for further qualitative analysis.[18] The approach used is statutory, conceptual, analysis and comparative law in helping solve the problem formulation. The data source of this research consists of primary legal materials, secondary legal materials to be continued by analyzing as a whole, the laws and regulations, literature, data, and several related documents, as well as tertiary legal materials to explain and assist in analyzing primary legal materials or secondary.

EVIDENCE IN CRIMINAL CASE HEARING

Whereas basically, the system of evidence is the arrangement of the kinds of evidence that may be used, the decomposition of the evidence, and in what ways the evidence is used and in what way the judges must form their conviction before the court session.[19] Evidence in criminal procedural law is significant in the process of examining criminal cases in court. Evidence is seen as very important in criminal procedural law because what is sought in a criminal case examination is material truth, which is the goal of criminal procedural law itself.[20]

To find out the truth in a case, the proof is the most important way used by a judge to determine whether the accused has committed the act accused or to obtain a primary basis for making a decision in settling a case.[21] Therefore, the judges must be careful, careful, and mature in assessing and considering evidentiary issues. In contrast to proof of other cases, evidence in a criminal case has started from the preliminary stages, namely investigation and investigation. When an investigating official takes his first steps in carrying out an investigation, it is automatically and directly bound by the provisions of evidence set out in the Criminal Procedure Code. In fact, an important target in investigative activities is collecting evidence to make clear about the criminal act that occurred.[22] Likewise, if an investigator determines someone has the status of a suspect, at least the investigator must

[18] Diantha, I. Made Pasek, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. (Prenada Media, 2016), 37.
[19] Y. A. Triana Ohoiwutun, "Urgensi Bedah Mayat Forensik Dalam Pembuktian Tindak Pidana Pembunuhan Berencana, Kajian Putusan Nomor 79/Pid.B/2012/PN.BGR", *Jurnal Yudisial* 9, no. 1, (2016):78.
[20] Muhammad Taufiq, "Penyelesaian Perkara Pidana Yang Berkeadilan Substansial", *Yustisia* 2 no.1, (2013): 25.
[21] Migel Kamu, "Kekuatan Alat Bukti Keterangan Saksi Yang Memiliki Hubungan Darah dengan Terdakwa dalam Tindak Pidana Pencurian (Penerapan Pasal 367 Ayat (2) Jo Pasal 362", *Lex Et Societatis* 7, no. 1, (2019): 57.
[22] Yusup Khairun Nisa, Johny Krisnan, "Kekuatan Visum Et Repertum Sebagai Alat Bukti Dalam Mengungkap Terjadinya Tindak Pidana", *Varia Justicia* 11 no. 1 (2015): 193.

master the means of evidence which is known as preliminary evidence. Thus, although the most critical and decisive activity of evidence is at the level of case examination before a court session, the effort to collect the means of evidence has played a role and functioned at the time of the investigation.

Investigators who carry out an investigation do not understand or ignore the provisions being carried out will experience a failure to prevent or minimize failure in the examination at the level of investigation, so before the investigator uses his / her authority to carry out an investigation, he should have understood everything related to the meaning and function of each means of proof, as provided for in articles 116 to 121 of the Criminal Procedure Code concerning matters relating to the examination of witnesses and suspects in an investigation. The Criminal Procedure Code regulates the procedures for examining witnesses and investigating suspects so that the examination of witnesses at the Police can run well so as not to prejudice the rights of defendants and witnesses. So that the Police Investigation Report (BAP) contains the testimony of witnesses and defendants according to what the witnesses and defendants have stated based on their wishes, without any coercion or pressure from any party.

A witness as a person who provides information based on a criminal incident that he has heard has seen and experienced is very necessary for his information in the process of proof. Witness statements given to investigators must be free from pressure from anyone and / or in any form (Article 117 KUHAP). The witness's testimony is recorded by the investigator in an examination report made on the strength of the oath of office (not by remembering the oath of office) then dated and signed by the investigator and the witness who testifies after he agrees to the contents (Article 75 jo 118 paragraph (1) of the Criminal Procedure Code). In the event that the witness does not want to put his signature, the investigator does not need to force it, but it is sufficient to provide a note in the BAP accompanied by the reasons.

The testimony of witnesses at investigation is very important for the process of proof in court because the police BAP (case file) and later by the public prosecutor are included in the indictment, which serves as a guide in the trial examination. If the testimony of the witness at trial turns out to be different from that in the former case, the head judge at trial shall remind the witness about this and ask for information regarding the differences that exist and be recorded in the trial minutes (Article 163 KUHAP). Article 183 of the Criminal Procedure Code stipulates that a judge may not impose a sentence on a person unless, with at

least two valid evidence, the judge is convinced that a criminal act has occurred and that the defendant is guilty of committing it, the judge will not decide the sentence against him defendant.

The evidence for loquiter resume is a fact that speaks for itself. And there are three kinds of evidence for resumes loquiter, namely:

1) Goods resulting from crime and fraud, if an item has a person, then clear indications show that the object is the result of a crime or fraud. The recognition of the person controlling it as his property cannot be accepted.[23]
2) The property is known to be the legal property of the person who controls it. If it is known that something that is in someone's control is his legitimate possession, then the person's claim against it is not accepted. When considering the length of expiry time, then Ibn Qayyim, Ibn Wahab, Ibn Abdul Hakim, and Ashbaugh, determined that the length of expiry time was ten years. Loquiter resupsa evidence which contains two possibilities. There is evidence of res upset loquiter which contains two possibilities, namely the possibility that it is the legal property of the party controlling it, and the possibility that the ruler was carried out illegally. In such a case, the claim can be heard based on the evidence presented by the plaintiff. And if there is no stronger opposing evidence, then the property is determined to be the property of the plaintiff, because the Shari'a does not change the property of a person who is recognized by custom and by the sense of the law of the local community declared as his own, to be declared as his unlawful possession. A system emerged that was not based on the individual conviction of a judge who was free to determine decisions for the accused. This theory is called the theory of proof based on the judge's conviction for logical reasons. In this theory, there is a system in which the judge can decide someone guilty based on evidence-based on specific evidentiary rules. So, in this case, the judge's decision was handed down with a motivation;
3) This system or theory of proof is also called free proof because the judge is free to state the reasons for his belief. This system is then divided into two directions, including a system of proof based on a judge's conviction for

[23] Andi Hamzah, *Hukum Acara Pidana*, (Jakarta: Rieneka Cipta. 2011), 99.

logical reasons, a system of proof that is logically negatively based on the law. The two majors concluded that the judge's powers had been limited by a provision not free as in the previous system so that it did not allow the defendant to defend his human rights as a suspect. These limitations can be distinguished, among others[24]: a) Limits of power that are based on beliefs based on logical reasons, b) The limitation of power which originates from a belief based on law.

The proof is impossible, and the absolute truth can be achieved (absolute). That all knowledge is the only relative, which is based on experiences, visions, and thoughts about something that is always uncertain. If absolute truth conditions are required to be able to punish someone, then most of the perpetrators of criminal acts cannot be punished, surely they can expect to be free from criminal convictions. The only thing that can be hinted at and what is now being done is that there is a high probability that the defendant has been guilty of the acts that have been charged while the truth he did even though there is always a possibility is something that cannot be accepted.[25]

PROBLEMS OF EVIDENCE IN CRIMINAL CASE ONLINE TRIALS

Since stepping into the Era of the Industrial Revolution 4.0, regulatory products regulating the application of digitalization have not yet experienced significant development. The existing laws and regulations have not been able to accommodate the latest legal issues and data security issues that occur in society. This is due to the slow manufacturing process of regulatory products which requires a long time and a fairly tough process, while on the other hand, legal issues and data security issues that occur as a result of the application of digitalization are developing so fast every day and require good regulation by law. Here the role of the Government, the DPR and the Supreme Court is very much needed to address this backwardness in order to maintain order, security and welfare of society amid the rapid development of legal problems.

On March 23, 2020, the Supreme Court issued Circular Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period for the Spread of Corona Virus Disease 2019 (COVID-19) within the Supreme Court of the Republic of Indonesia and

[24] *Loc. Cit.* 98
[25] Topo Santoso, *Krimonologi*, (Jakarta: Rajawali, 2013), 32.

the Judiciary Bodies under it. This letter evaluates as well as revokes the Circular of the Secretary of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Adjustments to the Work System of Judges and Judicial Apparatus in Efforts to Prevent the Spread of COVID-19 in the Indonesian Supreme Court and the Judiciary Bodies Under it, which was issued on March 17, 2020. With referring to the Circular of the Minister of Administrative Reform and Bureaucratic Reform Number 19 of 2020 dated 16 March 2020 concerning Adjustments to the Work System of State Civil Apparatus in Efforts to Prevent the Spread of COVID-19 within Government agencies, SE MA No.1 of 2020 provides instructions to Judges and Judicial Apparatus to carry out their duties by working in their home or residence (Work From Home) and implementing social distancing in providing services directly within the institution and implementing health protocols in the work environment.[26].

In order to work at home (work from home), all service duties, including the implementation of court administration, use the e-Court application, meanwhile, for the implementation of the trial using the e-Litigation application. This application has been implemented within the Supreme Court since the issuance of Regulation Number 1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically, which took effect on August 19, 2019. The court has developed a method for determining appropriate jurisdiction when a potential conflict occurs. If a defendant from outside the state has a level of "minimum contact" or a business presence in state forums, the state can assign jurisdiction.[27]

This issue has also become the concern of the Indonesian Ombudsman who discovered the potential for maladministration related to the holding of online trials in the midst of the Covid-19 pandemic. One of the recommendations, the Ombudsman, suggested to the Chief Justice of the Supreme Court to form a Special Team to supervise and evaluate the trial implementation in a network system (online) or electronic litigation. The formation of a Special Team, including the addition of information and technology (IT) experts. This is necessary so that the online trial is not obstructed in every district court. Limited IT personnel

[26] Lumbanraja, Anggita Doramia. "Perkembangan Regulasi Dan Pelaksanaan Persidangan Online Di Indonesia Dan Amerika Serikat Selama Pandemi COVID-19." *Jurnal CREPIDO* 2. no.1 (2020): 46-58.
[27] Freeman, Edward H. "Cyber Courts and the Future of Justice. Inf. Secure. J. A Glob. *Perspect"*, 14 no.1 (2005): 5-9.

have prepared for the virtual trial slow, especially if there are technical obstacles in the middle of the trial.

In the results of the Ombudsman's monitoring study, it was found that there were technical obstacles in the implementation of online trials in 16 district courts, namely the Central Jakarta District Courts (PN), South Jakarta, Depok, Bogor, Cibinong, Bekasi, Tangerang, Serang, Medan, Batam, Jambi, Surabaya, Denpasar, Banjarmasin, Kupang, and Manokwari District Court. The obstacles are such as limited mastery of technology by judges, poor coordination between parties, legal advisors are not sided by the side with the defendant, and cannot ensure that witnesses and defendants are under pressure/lies.[28]. Therefore, it is necessary to formulate regulations on the standardization of court facilities and infrastructure in the network at district courts to improve the quality of online trial administration. Limited facilities and infrastructure, such as limited courtrooms with video teleconferencing devices and unstable internet networks, have the potential to cause prolonged delays in the trial process because the postponement of the trial could be potential maladministration in the implementation of the virtual trial.

These things are used as evaluation materials for the Supreme Court to overcome the obstacles in question. Because, like it or not, holding a virtual trial is an option that must be taken in serving justice seekers. Therefore, at the same time, the Chief Justice has formed a Team / Working Group to design and compile matters related to the online trial application. The implementation of the trial via teleconference at a later date will cause problems of legal harmonization. Without the amendment of Law No. 8 of 1981 concerning Criminal Procedure Law (referred to as KUHAP) which regulates the Criminal Justice System in Indonesia, it is challenging to hold trials through teleconferences. The cooperation agreement between the three institutions does not have a sufficiently strong legal basis. It even contradicts the higher laws and regulations, in this case, the KUHAP, PP No. 27 of 1983 jo. PP Number 58, the Year 2010 jo. Government Regulation Number 92 of 2015 concerning Implementation of the Criminal Procedure Code. In article 154 of the Criminal Procedure Code, although it does not explicitly state that the Defendant is obliged to attend the trial. However, the seven paragraphs in Article 154 of the Criminal Procedure Code confirm that the Defendant should be present and not allowed to be represented in court based on a summons by the Public Prosecutor

[28]Agus Sahbani, "Problematika Sidang Pidana Daring Saat Pandemi", *Hukum Online*, 10 Juni, 2020, https://www.hukumonline.com/berita/baca/lt5edfd188dad3f/problematika-sidang-pidana-daring-saat-pandemi?page=2

(Article 152 paragraph (2) KUHAP). The Criminal Procedure Code does not allow in absentia judicial proceedings in ordinary examination procedures and this brief examination can be seen in Article 154 paragraph (4) of the Criminal Procedure Code. The principle of the presence of a defendant is commonly known in special crimes such as corruption and economic crimes. The principle of the defendant's presence has another title, namely ius singular, ius speciale, or bonder strafrecht. [29]. In addition, the principle of presence of the defendant is related to the Principle of Direct and Oral Examination of Judges [30].

CONCLUSION

Online trials known as e-litigation at the Supreme Court will not be effective unless the amendment of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The principle of defendant participation in the Criminal Procedure Code (in absentia) conflicts with e-trial investigations if an e-trial investigation is applied. Meanwhile, the Supreme Court Circular Letter No.1 of 2020 does not allow criminal cases to be investigated through e-court. This is the reason why online testing in Indonesia is ineffective in areas where regulatory developments are stagnant and unfair. Therefore, it is necessary to formulate regulations on the standardization of court facilities and infrastructure in the network at district courts to improve the quality of online trial administration. Limited facilities and infrastructure, such as limited courtrooms with video teleconferencing devices and unstable internet networks, have the potential to cause prolonged delays in the trial process because the postponement of the trial could be potential maladministration in the implementation of the virtual trial.

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