VIRTUAL CRIMINAL JUDGMENT PROBLEMS (E-Court Juridical Overview)

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ABSTRACT

Criminal Justice is an inseparable part of the state's efforts to uphold the rule of law. In an ideal context, criminal procedural law is implemented in order to implement fair, transparent and accountable law enforcement. In concrete law, the absolute competence of judicial institutions authorized to examine, hear and decide cases juridically is stated in Article 10 paragraph (2) of Law no. 4 of 2004 jo. Law Number 48 of 2009 concerning Judicial Power. Legal problems arise when situations and conditions do not allow the authority of the judiciary to be exercised ideally, for reasons of security, health conditions, and other legal reasons. This paper will discuss whether the legal substance of the e-court implementation has legal force, while the Procedural Law (KUHAP) does not explicitly regulate the implementation of the e-court.

Keyword: *Criminal Justice, e-Court, Virtual Judgment.*

1. Introduction

Questioning the legitimacy of the trial conducted online or in other terms, namely e-court, as many parties have questioned the validity of the judicial formalities, leaving other issues regarding the legality of the trial to the sense of justice in the community, plus the effectiveness of the online trial [1]. The primacy of the judicial process actually lies in how the trial process can provide a sense of trust for justice seekers, and is carried out within the framework of transparency and accountability that can be maintained. Law No. 8 of 1982 concerning the Criminal Procedure Code (KUHAP) does not provide a clear understanding of the judiciary carried out by means of online (video conference), The practice of trial conducted by video conference was first conducted in Indonesia in 2002, in the trial of the corruption case that ensnared Rahadi Ramelan, over the procurement of Bulog rice, where BJ Habibie (Former President of the Republic of Indonesia) gave testimony from Hamburg, Germany, which was tried in the District Court South Jakarta [2]. The purpose of the panel of judges is that the trial can be witnessed by the public and there can be direct dialogue between the Public Prosecutor, Legal Counsel and Judge. In the implementation of the criminal justice trial, witness testimony, the defendant is very important in terms of giving confidence to the judge in deciding a case [3]. The presence of witnesses as regulated in Article 185 paragraph (1) is to provide information in a trial. This is what triggered Habib Rizieq's objections in the trial, especially when he based his legal arguments on articles 152 and 154 of the Criminal Procedure Code. On the other hand, the possibility of an online trial is the Supreme Court of the Republic of Indonesia issuing Supreme Court Regulation (Perma) No. 01 of 2019 concerning Electronic Court Case Administration and Trial.

2. DEFINITION OF THE CRIMINAL JUSTICE SYSTEM

The theoretical criminal justice system was first conceived by Frank Remington in the decade of 1958, known as the Criminal Justice System as an engineering judicial administration using a systems approach [4]. This concept according to Pangaribuan, (2017) is an effort to control crime involving the Police, Prosecutors, Courts and Correctional Institutions. If we are based on this opinion, then there is a need for harmonization and synchronization of laws and regulations on the authority possessed by these institutions. The Criminal Justice System is a correction to the Law and Order approach (Law and Order) which only focuses on the police so that the success of crime prevention is highly dependent on the effectiveness of police officers [5]. In the Law and order approach, questions often arise regarding the concept of legality. The criminal justice system approach as a tool for tackling crime

basically has the following objectives: (1) prevent people from becoming victims of crime; (2) Resolving crime cases that occur so that the community is satisfied; and (3) Ensuring that those who have committed crimes do not repeat their crimes. Of the three objectives, the commutative becomes the orientation of the state in building and running the criminal justice system. The criminal justice system can be dichotomized into an adversarial model system and an inquisitorial model (non adversarial model). Both adversarial and inquisitorial both contain the general values of a criminal justice system to resolve a criminal case, which are then detailed and operationalized.

In its development, the criminal justice system that is widely used according to Herbert L. Packer in his book, "The Limits of Criminals Sanction", are the Crime Control Model and the Due Process Model [6]. The Crime Control Model (CCM) is based on the statement that criminals should be prosecuted, and the criminal justice process is also a positive guarantee for public order. To be able to realize this goal, CCM focuses its attention on efficiency aspects, which include speed and accuracy as well as administrative efficiency in processing criminals. Considering this efficiency, in CCM the criminal justice process should not be disturbed by ceremonial events that have the potential to cause resistance that can hinder the settlement of cases. Packer further explains that in CCM the operationalizing doctrine is the Preasumption Of Guilt. In implementation, CCM requires the existence of power (Government, Police, Prosecutors, and Judges) and the use of power against perpetrators of crimes even at the expense of human rights. Due Process Model (DPM) is a form of criticism of CCM. Where in the DPM the protection of individual rights and restrictions on the use of the power of law enforcement officers are the main objectives. In DPM, the widely known doctrine is the Persumption of Innocence, therefore in DPM it demands an investigation process to find facts objectively. The defendant was given the opportunity to defend himself in a trial that was open to the public Where in the DPM the protection of individual rights and restrictions on the use of the power of law enforcement officers are the main objectives. In the DPM, the widely known doctrine is the Persumption of Innocence, therefore in the DPM it demands an investigation process to find facts objectively. The defendant was given the opportunity to defend himself in a trial that was open to the public Where in the DPM the protection of individual rights and restrictions on the use of the power of law enforcement officers are the main objectives. In the DPM, the widely known doctrine is the Persumption of Innocence, therefore in the DPM it demands an investigation process to find facts objectively. The defendant was given the opportunity to defend himself in a trial that was open to the public

DPM demands a formal process of investigating a case by finding facts objectively where the case of a suspect or defendant is heard openly before the trial and an assessment of the allegations of the public prosecutor will only be carried out after the defendant has had the full opportunity to submit facts that refute or deny the allegations to him. . So what is important is the evidence in court with the demands of how the end of a process in a case is not so important in DPM.

3. CRIMINAL COURT EXAMINATION EVENT

In essence, when we discuss the application of the criminal justice system, we will actually discuss how to prove a crime or violation in a concrete and administratively logical sense. This meaning is based on the purpose of the judiciary itself which emphasizes that the place to seek justice is the court (een plek om gerechtigheid te zoeken). In the administrative frame, the prosecutor's indictment is the basis for the court to initiate an examination of a case, therefore, before the examination is carried out in trial, the panel of judges will examine the case that has been delegated to find out the contents of the case file. The Criminal Procedure Code basically divides the types of examinations based on the crime being tried, and the types of inspection are: (1). Regular Event Examination; (2). Brief Event Examination; (3). Quick Event Check. In principle.

3.1 The Ordinary Examination Procedure (APB) is based on the principles :

a. Examination Open to the Public (PTU)

Basically, all court trials are open to the public, this implies that when the judge begins to examine the case in the trial, the chairman of the panel of judges will (obligate) state: "The trial is open and open to the public (Article 152 paragraph (4) of the Criminal Procedure Code), except in cases concerning decency or the defendant is a child.

b. Distinguished Audience (HSH)

Article 218 of the Criminal Procedure Code orders anyone in the courtroom to show respect to the court. Violations of these provisions and are criminal in nature, prosecution may be filed against the perpetrators.

c. Be present before the Judge enters the courtroom

Based on the provisions of Article 232 paragraph (1) of the Criminal Procedure Code, the parties who are required to be present before the judge enters the courtroom are visitors, the court, the clerk/substitute clerk, the public prosecutor and legal counsel.

d. Presence of the Defendant in Trial

In principle, the trial in the ordinary examination procedure and the brief examination program, the defendant must be presented, the legal consequences of not fulfilling this result in the trial hearing the case cannot be carried out. As article 154 of the Criminal Procedure Code regulates this matter. Article 154 paragraph (4) reads:
"If the defendant has been legally summoned but does not appear at the trial without a valid reason, the examination of the case cannot be carried out and the presiding judge at the trial orders the defendant to be summoned again.
The following is a chart of the usual inspection procedure [5]:

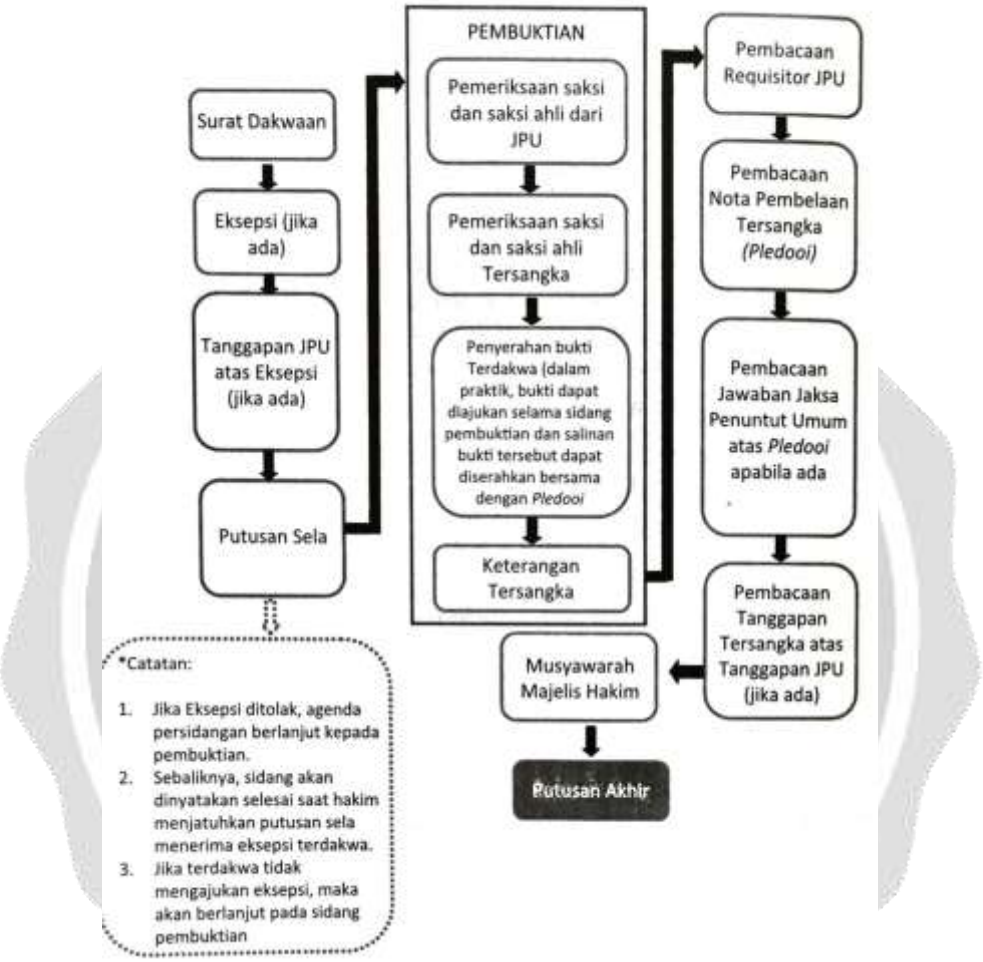

Figure 1. Chart Of The Usual Inspection Procedure

3.2. Brief Examination Event (APS)

The brief examination procedure was previously known as the summiere procedure, in the Eleventh Chapter of HIR Article 334 to Article 337 letter (f), which was later adopted in the Criminal Procedure Code in the provisions of Article 203, which reads as follows:
a). What is examined according to the brief examination procedure are cases of crimes or violations that are not included in the provisions of Article 205 which according to the public prosecutor, the proof and application of the law are easy and simple in nature.
b) In the case as referred to in paragraph (1), the public prosecutor shall present the accused along with witnesses, experts, interpreters and the necessary evidence.
c). In this event, the provisions in Part One, Part Two, and Part Three of this Chapter apply as long as the regulations do not conflict with the provisions below:
1. The Public Prosecutor immediately after the defendant has answered all the questions as referred to in Article 155 paragraph (1) shall notify the defendant orally from his notes about the crime he is accused of by explaining the

time, place and circumstances at the time the crime was committed, and This notification is recorded in the minutes of the trial and is a substitute for the indictment.
2. In the event that the Judge considers that additional examination is necessary, so that an additional examination may be held within a maximum period of fourteen days and if during that time the public prosecutor has not yet been able to complete the additional examination, then the judge orders the case to be submitted to a court session in the usual manner;
3. Gfor the purpose of defense, at the request of the defendant and/or legal counsel, the judge may postpone the examination for a maximum of seven days;
4. Pthe envoy is not made specifically, but is recorded in the minutes of the trial;
5. Hthe judge gives a letter containing the verdict;
6. Contents The letter has the same legal force as a court decision in an ordinary procedure

The hallmark of the Brief Examination Procedure (APS) is that the Public Prosecutor does not make indictments in writing, but orally on his notes, but it must be known and understood that it does not mean that the Prosecutor makes these notes carelessly, but mutatis mutandis is is a legal record that must meet formal and material requirements as is the case with an indictment letter.
Judges can change the Brief Examination Procedure (APS) to a Quick Examination Procedure (APC). However, if we look at there are things that are actually interesting to be studied further, related to article 203 paragraph (3) which states that the fourth part of the Criminal Procedure Code which regulates the Evidence, does not apply in this Brief Examination Procedure, so that it becomes a fundamental question as well. , what appropriate evidence can be used in this Brief Examination Procedure, because this is not regulated in the articles and explanations in the Criminal Procedure Code as well as in Government Regulation (PP) No. 27. 1982 concerning the implementation of the Criminal Procedure Code.

3.3 Quick Check Event (APC)

We can find the types of Quick Examination Procedures in Part Six of the Criminal Procedure Code, Article 205. KUHAP divides this type of Quick Examination Program into 2 (two) parts, namely: (1). Minor Crime Examination Procedures (Article 206 of the Criminal Procedure Code); and (2). Traffic Violation Examination Procedure (Article 211). If we look at Article 210 of the Criminal Procedure Code, then we can understand that the provisions in Part One, Second and Part Three of the Criminal Procedure Code apply equally to this Quick Examination Procedure. Article 210 of the Criminal Procedure Code reads:
"The provisions in the first part, second part and third part of this chapter shall remain in effect as long as they do not conflict with this paragraph".
(1). Minor Crime Examination Event. It is regulated in Article 205 (1) of the Criminal Procedure Code. Namely:
a. Cases that are punishable by imprisonment or imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 7,500;
b. Minor insults except those specified in paragraph 2 of this part
We can also find a quick inspection program in SEMA No. 18 of 1983; namely for cases that are subject to a maximum imprisonment of 3 (three) months or a fine of more than Rp. 7,500; PERMA No. 2 of 2012; Cases of fraud, embezzlement, vandalism and confiscation with a value of not more than Rp. 2,500,000.

4. REGULATIONS RELATED TO JUDICIARY BY VIDEO CONFERENCING

In the Criminal Procedure Code, the regulation regarding the giving of testimony conducted via video conference has not been regulated, but the Criminal Procedure Code provides space for taking testimony on oath at the time of examination at the investigation stage of a witness who is unable to attend for strong reasons. Based on article 162 (2) of the Criminal Procedure Code, the testimony of the witness is as strong as that of the witness who was present at the trial.
Some time later, in its development, several laws and regulations governing this examination were published, including:
a). Article 4 letter c, Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Witnesses and Victims of Serious Human Rights Violations;
b). Article 34 of Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of terrorism into law;
b). Article 9 of Law no. 13 of 2006 concerning the Protection of Witnesses and Victims;

c). Law No. 09 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism;
d). Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.
If we look at the issuance of several laws and regulations governing the examination of witnesses/suspects, we can see that there is a pattern of law formation that accommodates the social dynamics that develop in society. The construction of legal development should aim at the welfare of the community, or in other words, development must be in line with the development of community culture which tends to be dynamic. As stated by Hoeb In order for the law to function properly, there are at least 4 (four) basic legal functions [7], namely:
1). Establishing relationships between community members, by indicating what types of behavior are permitted and what are prohibited;
2). Determine the division of power and specify who can legally determine coercion and who must obey it and at the same time choose effective sanctions;
3). resolve disputes; and
4). Maintaining the community's ability to adapt to changing living conditions, by reformulating the relationship between members of the community.
In practice, legal policy is a legal formulation to accommodate the dynamic development of community culture, such as judicial matters which are conducted online (virtually) through video conference media. The most basic question arises, what is the position of Perma as an instrument for implementing the e-court? Why are many parties still debating the implementation of the contents of the Perma?

4.1. Construction of Perma Number 4 of 2020 concerning Electronic Criminal Administration and Trial

Construction is a solid chart or framework from a legal perspective. Where online culture is a new culture that shifts the old culture, namely offline. How the offline culture can be replaced by a new culture, here is the review. In principle, an online trial (online) or e-court is a form of communication [8].
The functions of group communication include: First is social relations, in the sense of how a group is able to maintain and strengthen social relations among its members, such as how a group routinely provides opportunities for its members to carry out informal, relaxed, and entertaining activities. The second function of the group is education, how a group formally or informally works to achieve and exchange knowledge. The third is the function of persuasion, a group member tries to persuade other members to do or not do something. The fourth function of problem solving, the group is also reflected in its activities to solve problems and make decisions [9].
Therefore, essentially the construction of Perma No. 4 of 2020 is a communication group (Communication of Integrated Criminal justice system) which aims to find justice for a criminal incident. through the trial without undue delay, due to the Covid-19 pandemic factor, in which the implementation uses communication technology facilities. The use of communication technology today is a necessity, and this communication technology will gradually shape (shift) offline culture to become virtual or online. Technological developments have an impact (influence) both from the positive and negative sides. In criminal case trials which emphasize more on material evidence, judges may experience problems as a result of slow connections because not all regions in Indonesia have good internet connectivity stability, this will have an impact on the problem of disrupting the concept of fair and fair trial. why is it because of the unstable connectivity bias that has an impact on the evidentiary process, on the other hand, substantively, in relation to articles 153 and 154 paragraph (1), where the Criminal Procedure Code requires that the trial be open to the public (can be witnessed by the public) and the judge ordered the defendant to be presented in the courtroom, which cannot be done online.
However, by teleological and extensive interpretation, The above problems can be solved by taking into account the aims and objectives of the law. Sociological interpretation is carried out because there are changes in society, while the sound of the law does not change. The change in society is the existence of the COVID-19 pandemic which requires people to limit gathering (maintain a distance) and the existence of communication technology that can be used as an e-court facility. Where the presence of the defendant can be in the courtroom while the judge and other parties are in another room, but the trial continues simultaneously and in real time. The change in society is the existence of the COVID-19 pandemic which requires people to limit gathering (maintain a distance) and the existence of communication technology that can be used as an e-court facility. Where the presence of the defendant can be in the courtroom while the judge and other parties are in another room, but the trial continues simultaneously and in real time. The change in society is the existence of the covid-19 pandemic which requires people to limit gathering (maintain a distance) and the existence of communication technology that can be used as an e-court facility. Where the presence of the defendant can be in the courtroom while the judge and other parties are in another room, but the trial continues simultaneously and in real time.

4.2 The Power of the Law of Perma No. 4 years 2020

If we base the implementation of Perma No. 4 of 2020 in Law no. 12 of 2011 concerning the Formation of Legislation, especially in Article 7, we do not find the Perma included in the rules referred to in Article 7 of Law no. 12 of 2011. However, if we look at Law no. 12 of 2011, the type of Regulation of the Supreme Court is the regulation referred to in Article 8 paragraphs (1) and (2), namely the Regulations established by the Supreme Court due to its authority and/or statutory orders, applicable as statutory rules that binding, but the position of Perma as a statutory regulation lies under the law and is equivalent to a Government Regulation (PP).

4. CONCLUSIONS

Supreme Court Regulation No. 4 of 2020 is an administrative solution for online criminal trials, which the Criminal Procedure Code has not regulated regarding this issue. E-court (Perma No. 4 of 2020) is more based on considerations of the covid-19 pandemic. Where social changes occur in the community, one of which is the prohibition of gatherings that result in crowds that can become a means of transmitting COVID-19 infection. The issue of wireless network infrastructure (internet) is the most important issue in the implementation of e-court, so that the implementation of e-court must also consider the availability of a good quality network.

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