

AN ANALYSIS ON ONLINE CRIMINAL CASE HEARINGS: CAN JUSTICE BE SERVED ONLINE?¹

Marcella Elwina Simandjuntak*, Rika Saraswati, Petrus Soerjowinoto, Emanuel Boputra
Faculty of Law and Communication, Soegijapranata Catholic University
Semarang, Central Java
**Email:* marcella@unika.ac.id

Abstract

This paper examines the accountability of online criminal case adjudication in Indonesia during the COVID-19 pandemic. Although normal court trials have resumed, the judiciary must prepare for the integration of online trials to improve efficiency and case management. This empirical study employs qualitative methods, collecting data through interviews with judges, prosecutors, and written interviews with lawyers, along with questionnaires. Conducted in three district courts in Central Java, it also incorporates secondary data from legal statutes and literature. Most judges, prosecutors, and attorneys found online trials accountable, with outcomes comparable to in-person hearings. However, challenges persist, such as administrative gaps, and technical disruptions. The study urges legislative action to establish procedural norms for online trials and recommends improving court decisions' quality and quantity to ensure justice.

Keywords: online criminal court; online hearing; PERMA; justice.

A. Introduction

The rapid expansion of information technology over the last decade has given rise to new terminology in society, i.e., disruption, e-commerce, e-business, big data, social media, e-doctor, e-consultation, etc. Advancements in information technology have also brought new legal terms like e-court, e-mediation, e-litigation, and online hearings, along with modifications to specific litigation procedures, commonly known as judicial modernization (Bell et al., 2022; Dillon & Beresford, 2014; Mingsung & Shuling, 2020).

E-court application as a part of judicial modernization has been implemented by many countries since the 2000s. The use of information technology (IT), especially video-conferencing examinations, has already been widely used in international criminal tribunals, such as the ICC, ICTR, and ICTY. Countries such as the United States (US), Korea, Thailand, India, Malaysia and China have also operated e-courts or conducted e-trials for a number of purposes, such as: storing all court documents digitally, expediting access to information and obviating the need to physically a court, as well as increasing transparency (Charmonman & Mongkhonvanit, 2016). Many studies have demonstrated that information technology (IT) has actually supported the performance of the courts and changed the operation of law in society (Apostola & Lodder, 2016). In other words, using IT makes specific beneficial contributions in terms of the efficiency and quality of judicial systems (Borkowski, 2004; Griese, 2002; Hillis, 2000; Lederer, 1999; Macdonald & Wallace, 2004; Pratiwi et al., 2020; Winn, 2004).

E-court application in Indonesia was initially introduced in 2018 through Supreme Court Regulation (PERMA) No. 3 of 2018 on Electronic Court Case Administration. The PERMA

¹ The study was funded by internal research funds from the Faculty of Law and Communication at Soegijapranata Catholic University, Semarang, the 2021 budget year.

provides the court information system to lawyers as registered users to register civil cases on-line (e-filing), to obtain information or an estimated down-payment of court fees (e-payment), and to obtain an on-line summons (e-summons). The aim of issuing PERMA No. 3 of 2018 is to develop an online court system and its management, especially to increase the effectiveness and the performance of judges (courts) in handling civil cases at all levels of the judiciary in Indonesia. However, the PERMA did not regulate criminal cases because criminal trial proceedings in Indonesia are strictly regulated by the Criminal Procedure Code (KUHAP) which requires the presence of parties in the courtroom and trials which are open to the public (Santosa, 2020).

This study deals with the legality and accountability of implementing online criminal case trials during the COVID-19 pandemic. The study also deals with any changes in the law regarding the online trial method. However, this article only addresses two research questions. The first is the legality issue. Given that the Criminal Procedure Code (KUHAP) strictly regulates criminal examination and does not contain any regulation covering the conduct of an online criminal trial, the critical question regarding legality is the role of PERMA in supporting criminal trial examination. This part is essential for Indonesian courts, as it was needed to allow them to function while also being able to adopt practices that permitted the administration of justice without putting people's health at risk. The pandemic condition necessitated the use of technology to a degree not previously seen or familiar in Indonesian (regular) criminal courts. Second, the criminal case examination requires the maintenance of accountability. This part is pivotal as it examines whether the online criminal case trials, i.e., through poor online hearings or examinations, the lack of examination standards and evidence process will affect the court's decisions.

Can justice be served online? This question is of the utmost importance because it concerns human rights issues and will affect the defendant's future perspectives on law and justice. To determine whether justice seekers can achieve a fair, transparent, and competent trial through online examinations, leading to their respect for the law, the authors refer to Tom R. Tyler's landmark study (Tyler, 1990) titled "Why People Obey the Law." Tyler conducted a survey examining procedural justice and individuals' responses to their interactions with legal authority. Tom Tyler's classic study revealed an unexpected conclusion: individuals comply with the law based on their perception of its legitimacy rather than out of fear of punishment. Tyler proposed that legislators and law enforcement would do much better to make legal systems worthy of respect than rely on instilling fear of punishment. He concluded that people primarily comply with the law due to their profound respect for legitimate authorities and the treatment they receive with dignity. Thus, if the defendant's experience with online trials is negative because the case examination process is deemed incompetent and unfair, for example, due to minor technical IT issues, they will conclude in the future that the law is not working and cannot provide the justice they are entitled to.

This paper employs Jeremy Bentham's 'utilitarian' theory to elucidate the critical phenomena stemming from the COVID-19 pandemic, the large-scale social restriction policies that impact the court trial operational system, the legal vacuum associated with online criminal trial policies, and the defendant's right to justice concerning the detention time limit (as any delay in justice leads to its denial). In his essay "An Introduction to the Principles of Morals and Legislation" (1781), Bentham emphasized the concept of 'utility' as the moral foundation for punishment. Utility (later known as utilitarianism), according to Bentham, refers to the principle that evaluates every action (individual or government) based on its potential to increase or decrease the happiness of as many individuals in the community as possible. According to Bentham, an action or policy (legislation) can be considered in line with the principle of 'utility' when its effect is to increase the community's overall happiness (shortened to the maxim 'the greatest happiness for the greatest number') (Bentham, 2000; See also Mill, 2009). Utilitarianism

achieved remarkable success as a social movement to reform social institutions around the 19th century. Utilitarian rationales were commonly used to support institutional or policy/legislation changes, which were of significant importance and closely related to the article's issues.

B. Method

This research is empirical in nature, as it involves conducting field studies on the implementation of online criminal case trials. According to Sunggono and Wignjosoebroto, this approach conceptualizes the law not as an independent normative phenomenon but rather as a social institution that interacts with other variables like law enforcement facilities and infrastructure, society, and culture (See Sunggono, 2015; Wignjosoebroto, 2013).

The authors conducted the research in three state courts and the district attorney's office under the jurisdiction of the Central Java High Court. Time and distance considerations, along with the high potential for COVID-19 transmission, guided the selection of the locations. The authors collected the primary data by conducting in-depth interviews with judges and prosecutors and administering simple closed and open questionnaires to fourteen legal counselors/advocates. Meanwhile, the authors collected the secondary data by conducting literature reviews and analyzing legal documents related to online court examinations. This research employs a descriptive-qualitative analysis.

C. Analysis and Discussion

1. Online Hearings and Its Precedents in Indonesia

The legal basis for conducting criminal cases trials in Indonesia is regulated in Law No. 8 of 1981 concerning the Criminal Law Procedure or Criminal Procedure Code (KUHAP). Article 3 of the Criminal Procedure Code specifies that trials are conducted by the procedures laid out in this law. Likewise, the legal basis for the operation of the judiciary and the prosecutor's office can be seen in Law No. 2 of 1986 on General Courts, which is amended by Law No. 8 of 2004 and Law No. 49 of 2009, as well as Law (UU) Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. However, these laws have not regulated the legal basis for implementing e-court and online trials in Indonesia.

Although not currently codified in the Criminal Procedure Code, Indonesia already had a precedent for online criminal and human rights examination cases long before the outbreak of the COVID-19 pandemic. In the 2000s, the Indonesian court implemented the use of audio-visual means to listen to and obtain testimony from witnesses in several criminal court trials. The cases involved corruption, human rights violations and terrorism (Dewi, 2012; Geovanie, 2021). The court corruption case (2002) involved two (2) state apparatus (minister) including Rahardi Ramelan and the hearing was conducted via teleconference. The trial is related to the 2002 Bali Bombing terrorism case. The defendant in that case was Ali Gufron alias Muklas alias Sofwan, who was present, but Wan Min bin Wan Mat, as the witness, resided in Malaysia (Geovanie, 2021). Another teleconference was that of 2005 involving Abu Bakar Ba'asyir, who was accused of having planned the bombing of several churches on Christmas Eve 2000 and the assassination of Vice President Megawati. Finally, in 2011, teleconference was again used for examination in the case where Abu Bakar Ba'asyir was charged with funding a training camp for militants in Aceh—Sixteen (16) witnesses testified by teleconference from Singapore (Dewi, 2012).

In these cases, the prosecution attorney or the defendant's legal counsel had to request the use of audio-visual means (teleconference) in court hearings. The rationale given by the attorney or legal counsel for the request was vary. The legal counsel for the corruption case requested a

teleconference, citing the importance of testimony under oath. They argued that merely reading out the testimony in court would prevent direct cross-examination, thereby undermining the sense of justice. On the other hand, the prosecution attorney declined the request due to the absence of teleconference regulations in the Criminal Procedure Code (KUHAP) (Dewi, 2012). Regarding human rights violations in Dili, East Timor, the Indonesian attorney conducted the witness hearing via teleconference. At the time of the trial, UNAMET was concerned about the safety of the witnesses (who lived in East Timor), supposed they have to testify at the North Jakarta State Court. The witnesses finally testified from the East Timor prosecutor's office (facilitated by the World Bank).

The party who requested the teleconference was the Indonesian prosecuting attorney; however, the defendant's legal counsel rejected the use of audiovisual means, given the reasons that a teleconference was not regulated in the Criminal Procedure Law (Dewi, 2012). The judges argued that teleconference had been precedent, i.e., in B.J. Habibie's case. Moreover, the judges contended that Government Regulation (PP) No. 2 of 2002 on Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations has regulated teleconference witness examinations. In this case, it allows the examination of witnesses without their physical presence in court under specific circumstances. In the case of terrorism involving Abu Bakar Ba'asyir, the use of audiovisual means was requested by the prosecuting attorney because the three (3) witnesses were in detention in Singapore, which resulted in their being unable to fly to and be present physically at the court hearing (Thalib et al., 2017). In this case, the defendant's legal counsel also objected to teleconference methods because they are not regulated in the Criminal Procedure Code (KUHAP). The expressed concern was, among other things, that the given information or testimony might be false.

Although the use of teleconference in court hearings was initially controversial in Indonesian due to a lack of legislation or regulation, judges in these cases assert that the examination of criminal cases via teleconference is already well-established and acknowledged in many courts of justice. The judges emphasized that teleconference methods in court hearings closely resemble traditional in-person examination processes regarding transparency and authenticity. They also noted that the usage of teleconference aligns with the primary objectives of the judicial process. Furthermore, the advancement of information and communication technology has profoundly influenced every facet of human existence, including law.

Examining (remote) witnesses using teleconference media is one manifestation of the birth of an information court with a global reach. In addition, using teleconferences has facilitated the hearing of statements made by key witnesses who cannot otherwise be present. Many argued that the wider community could witness the defendant's examination case in a transparent manner. In contrast, many legal experts also argued that examining witnesses remotely using teleconferencing is a manifestation of a judiciary that provides information with a broad (global) and cross-border reach. Moreover, numerous experts asserted that the examination of witnesses via teleconferencing media mirrors the traditional method of direct and transparent witness examination in a trial. In a videoconference, the audio function allows the person's voice to be heard, while the visual function allows the person to be observed; moreover, the examination is conducted 'in real time' (i.e., it is not pre-recorded), further emulating an 'in physical court' experience. When viewed through the lens of Bentham's utilitarianism theory, it is clear that the judge's decision to allow examination via teleconference will result in greater benefits, specifically the benefit of obtaining the material truth of the case being examined. Consequently, it will benefit a greater number of individuals, particularly the parties engaged in the case under examination.

2. Supreme Court Regulations on Online Criminal Court Hearings

To deal with the impact of the spread of COVID-19 to criminal cases examination or hearings, the Indonesian Supreme Court issued Supreme Court Circular Letter (SEMA) No. 1 of 2020 concerning Guidelines for the Implementation of Duties during the Prevention of the Spread of Corona Virus Disease 2019 (COVID-19) within the Supreme Court and Judicial Bodies under the Supreme Court. Initially, the Circular Letter of the Secretary of the Supreme Court (SEMA) No. 1 of 2020 allows the court hearing process to be undertaken offline for criminal cases, military crimes, and jinayat (criminal cases in the Aceh region). However, after the increasing number of judges infected with the COVID-19 virus, this SEMA was revoked by the Supreme Court Circular (SEMA) No. 2 of 2020. The SEMA No. 2 of 2020 directed the implementation of trial administration using e-court applications. The reasons for issuing this SEMA were to assist justice seekers and to realize the principle of court services, which requires that a “simple, fast, and low-cost trial” occurs (Mertokusumo, 2002), that is, that trial administration has to adjust to a more modern justice practice based on the use of information technology.

Finally, the critical situation caused by the COVID-19 virus has forced the Indonesian Supreme Court to issue a new regulation regarding the online criminal case examinations, namely the *Peraturan Mahkamah Agung* (PERMA), or Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2020 on Administration and Trial of Criminal Cases in Electronic Courts (which was then amended and refined with PERMA No. 8 of 2022 right after the pandemic). This PERMA has become the basis for conducting online trials in Indonesian courts.

However, some legal experts and professionals in Indonesia continue to express doubts or questions about the e-court’s legality and legitimacy. The reason is that the Criminal Procedure Code (KUHAP) does not regulate e-court procedures. However, due to the COVID-19 circumstances, the PERMA then determines that all Indonesian courts are to run court procedures and administration electronically; this includes criminal case examination trials.

The PERMA provides several reasons to justify the legality of conducting online criminal case trials. The first is the legal principle of “*Salus Populi Suprema Lex Esto*” (“The safety and welfare of the people is the highest law”), which is written and underlined in the PERMA. Through the PERMA, the Supreme Court would be able to protect the lives and livelihoods of anyone involved with the court from the calamities caused by the pandemic as soon as possible (as regulated by the Disaster Management Act No. 24 of 2007 and Health Quarantine Act No. 6 of 2018). Second, the Supreme Court, the first-tier institution in the Indonesian constitutional system (primary constitutional organs), has the authorities for issuing such regulations (*regels or beleid regulations*) (Tamin, 2018). Third, there is a legal principle that judges may not refuse to examine cases or to adjudicate cases that come before them, and they have to examine submitted cases where a law does not exist or is unclear (vague) (see Article 10 (1) of the Judicial Power Act No. 48 of 2009).

This principle is aimed to avoid the occurrence of a legal vacuum (*rechtsvacuum*) (Nasir, 2017), though, a legal vacuum, according to Deliarnoor rarely occurs because societies always try to ‘create’ laws that will meet the requirement of their social order and needs (Deliarnoor, 2019). Consequently, Indonesian judges are required to explore, to follow and to understand the legal values and sense of justice that exists in society (Article 5(1) of the Judicial Power Act No. 48 of 2009) in their examination of cases. However, even though the creation of PERMA has laid the legal groundwork for online criminal case examination and court administration in Indonesia, there are requirements for bringing PERMA into reality to function properly and appropriately. As mentioned by Lanzara and Patriotta, applying e-court is not just a matter of digitalizing or automating processes. It also involves many aspects, including IT infrastructure,

human resources, regulations, policies, and the socialization of internet use for a justice-seeking society (Lanzara & Patriotta, 2001).

Connected to Bentham's theory of utilitarianism, it becomes evident that the legal maxim *Salus Populi Suprema Lex Esto*, highlighted in PERMA, is meant to prioritize the well-being and satisfaction of the most significant number of people facing the criminal court and the urgent circumstances as a result of the COVID-19 outbreak. Therefore, according to the authors, the establishment of PERMA has gained a legal status (legality principle) due to its inherent nature, despite the challenges that it may face. Moreover, considering the existence of a legal vacuum in Indonesia, Bentham's concept of utilitarianism could be seen in the promulgation of the PERMAs, assuming there is no possibility of issuing other higher regulations due to the COVID-19 pandemic. One could view the Supreme Court's promulgation of PERMA as an appropriate decision that would benefit both the court and the defendant's human rights during the COVID-19 pandemic. Even though it may not be ideal, it is clear that these Supreme Court regulations have obtained a basis for their 'legality' and 'legitimacy' from the 'utilitarian' concept or perspective. However, the author suggests regulating the online examination of criminal cases at the legislative level, not just at the PERMA level, given the normalization of conditions and the expectation that online criminal courts will continue as an alternative for adjudicating criminal cases in the future.

3. Judge's, District Attorney's, and Lawyer's Perspectives on Implementing Online Courts

Though challenges arose, most judges and prosecutors responded positively to the PERMA No. 2 of 2020 issuance. One of the judges interviewed asserts that PERMAs could fill a legal void (legal vacuum), as the Criminal Procedure Code remains unregulated, which serves as the foundation for online criminal proceedings. According to them, waiting for an act-level regulation will violate the defendant's human rights and slow down the spread of the COVID-19 pandemic (interview, M.I. Fathoni, March, 9, 2021). Judges, prosecutors, and advocates have argued that PERMA No. 2 of 2020 can be used as proceeding guidance, though, as observed in the study, judges who determined online criminal cases had found difficulties because of a lack of appropriate information technology and audio-visual devices (Simandjuntak et al., 2021). However, according to Djatmiko and Dewi, such judges are convinced that the PERMA was issued in order to overcome the impact of the pandemic, to prevent a 'legal vacuum' and to fulfill the sense of justice for the justice seeker (Dewi, 2012; Djatmiko, 2019).

Moreover, to support the implementation of the e-court, especially in criminal cases trials, the Indonesian Attorney General has also issued the Attorney General's Instruction Number 5 of 2020 on the Policies for the Implementation of Duties and Case Handling during the Prevention of the Spread of COVID-19 in the Prosecutor's Office as well as the Attorney General's Letter Number B-049/A/SUJA/03/2020 on the Optimizing the Implementation of Duties, Functions and Authorities amid Efforts to Prevent the Spread of COVID-19. These policies indeed support the PERMA. Due to this Attorney General's Letter, the Indonesian prosecutors have been ordered to proceed with their work by conducting hearings via teleconference. The policies adhere closely to the legal maxim that 'any delay in the administration of justice constitutes a denial of justice' or 'justice delayed is justice denied' (Sourdin & Burstyn, 2014).

Regarding the controversies on conducting online criminal hearings, the Head of the General Crimes Section at the Semarang District Attorney's Office stated that the case examinations have been conducted according to the provisions of the Criminal Procedure Code. The only deviation was the presence of the defendant or witness who could not physically come directly to the Court. The accused and witnesses were present in a virtual room. Thus, they were present as in a normal-conventional trial. In practice, the defendant remains in the correctional facility when

undergoing an online examination. However, the hearing assessment of the witness and (witness) victim is carried out at the prosecutor's office by providing a separate room for the witness and (witness) victim. Moreover, the Supreme Court of the Republic of Indonesia, the Attorney General's Office, and the Ministry of Law and Human Rights have signed a cooperation agreement to facilitate criminal case examinations using teleconferencing. According to this agreement, every institution must fulfill its responsibilities and tasks under the relevant rules and regulations and provide sufficient facilities, infrastructure, and supporting equipment for online trials (Interview, M.R. Wibisono, January 18, 2021).

The response of lawyers and advocates who agreed regarding the legality of online trial procedures during the COVID-19 pandemic has demonstrated that it is appropriate to use the '*salus populi suprema lex esto*' maxim during a pandemic. The respondents understand the contents of PERMA No. 4 of 2020, which is aimed to prevent the spread of COVID-19. However, respondents who disagreed with the PERMA argued that online criminal case trials should strictly be regulated by legislation (KUHAP). Due to the differences between conventional or offline examinations in KUHAP and online examinations in PERMA No. 4 of 2020, they identified some technical and procedural issues that the Criminal Procedure Code (KUHAP) needs to address. This disagreement will lead to a discussion about the accountability of online criminal case trials.

The online examination process indeed offers both advantages and disadvantages. Witness examination is an essential process that deals with the defendant's rights as a human being, including the ability to present evidence and argue. The witness examination method has severe implications for the verdict for or against the defendant (Lederer, 2021). One advantage of having an online court is that the defendants will no longer endure a lingering sense of uncertainty due to the presentation of accusations without a final settlement, as the legal process will not be unduly delayed by waiting for the possibility of a physical, in-person examination or trial (Anditya, 2021; Berutu, 2020; Firmansyah, 2020).

In a normal condition, the Public Prosecutor (PP) commonly submits the files physically to the Court office. After that, the Head of the District Court will appoint a judge or panel of judges to hear the case, and this has to be recorded by the Registrar in the case register book and determined by the Chairman of the District Court. In accordance with Article 14 of the relevant PERMA, the Court Registrar (recently submitted through the court information system as specified in PERMA No. 8 of 2022) must ensure that all parties have sent the necessary documents to the court's email to be reviewed and read by the court registrar. Subsequently, once the document has been read out, it is imperative to guarantee that the court will transmit the documents to the email addresses of both the public prosecutor (PP) and the defendant/legal counsel for the defendant.

The examination phase of the trial, as stated in Article 153(3) of the Criminal Procedure Code, commences with a declaration by the Chairperson of the Panel of Judges stating that "the trial is officially open and accessible to the public." Wibisono (the PP) acknowledged that the absence of public access to the trial link account distinguishes the virtual or conventional nature of the trial. However, the court should regard the online trial link and examination via videoconference as an 'open courtroom', managed via internet-based platforms, where judges, prosecutors, witnesses, defense attorneys, and defendants (often in detention facilities) meet and connect. Indeed, he added that there are irregularities such as the physical absence of the defendant or witnesses who could not come physically in person but are instead "virtually" present via audio-visual means. According to Wibisono, following PERMA, this virtual connection circumstance must be seen as being 'identical' or 'comparable' to the physical presence of the parties in court (Interview, M.R. Wibisono, January 18, 2021) (Simandjuntak et al., 2021)

Regarding the defendant's presence in the courtroom, Article 154 of the Criminal Procedure Code states that the trial is carried out in the presence of the defendant, and when present, the defendant must be free, or, in other words, the defendant may not be handcuffed in accordance with the legal principle, which is 'the presumption of innocence.' Thus, according to Wibisono, based on the definition of the concept of presence as described above, the presence of the accused and witnesses through the 'virtual room' is regarded as presence in an offline trial, although when the examination is being conducted, the defendant remains in the detention center or other place, i.e., home (Interview, M.R. Wibisono, January 18, 2021). Meanwhile, based on the study, the examination of witnesses and victims is carried out at the prosecutor's office by providing a separate room for witnesses and victims. The place of examination is determined based on an agreement between the court, the prosecutor, and the prison. After the examination is completed, a letter of examination will be made at each place (witness in the prosecutor's office and the defendant in prison). Only if the judge considers that the online examination is insufficient will the prosecutor physically bring the defendant to court.

Prior to the examination of the case(s), it is mandatory for any witness and/or expert witness to undergo an oath or affirmation. Sections 160–174 and 177–180 of the KUHAP govern the process of interrogating witnesses and experts, which includes administering an oath. Witnesses are required to take oaths according to the regulations stated in Article 160 (3) of the Criminal Procedure Code. Expert witnesses, on the other hand, are required to take oaths as per the regulations stated in Article 160(4) of the Criminal Procedure Code. The judge will guide the oath assisted by a clergyman. In our 2021 survey, 75% of witness gave their oath and testimony by physically being present at the district attorney's office. The remainder said they had given their testimonies at the lawyer's office and from their house (Simandjuntak et al., 2021). However, based on the study, there is a need for improvements to the process and method of taking the oath.

Undeniably, it was challenging to run criminal case examinations in an ideal or optimal manner during the large-scale social restrictions (PSBB/PPKM). These are summaries of the positive and negative outcomes of the survey results distributed to legal counsel and advocates: The utilization of online criminal case examinations is the most expedient solution caused by the COVID-19 pandemic (66.7%); coordination with the court, detention center, or prison is more complicated (66.7%); having difficulties to meet the clients in a detention center or prison (where the client is detained) (91.7%); online trials are highly effective, allowing for faster completion of the examination process (41.7%); though online trials are highly effective, the result is not as satisfactory as the offline trial (58.3%); the online trial is complicated, tiring, and exhausting (25%); the online trials are cost-effective, it can reduce transportation expenses (41.7%); overall process and results are accountable, reliable and equivalent to a physical examination in court (41.7%); and there is a requirement for additional regulation to present the evidence virtually (75%) (Simandjuntak et al., 2021).

Legal counselors and advocates in this study asserted that the transition into online trials has increased the complexity of coordinating with the detention center. They encountered challenges contacting their clients due to the inmate's routine operational procedure, which required them to undergo a 14-day isolation period upon leaving the prison during the pandemic. Additionally, there was a constraint on the ability to meet and communicate with the client, which could impact the court's final (Simandjuntak et al., 2021). They also stated that showing evidence during an online trial is crucial, considering that internet networks sometimes run slowly or poorly. That situation could potentially harm the accountability of the trials. Based on the qualitative written responses, the lawyers and advocates mentioned that technical (IT) issues kept them from focusing or concentrating, especially during the cross-examination of witnesses. Moreover, a poor internet connection repeatedly delayed the trials. When the IT system malfunctioned, court technicians were unprepared to address the issue, leading to trial delays or

postponements (Simandjuntak et al., 2021; Yuniar et al., 2021).

The head of the Semarang State Court, Rusianto, acknowledged the insufficient IT infrastructure and human resources at the early stages of the pandemic. He asserted that during the onset of the epidemic, the court's IT infrastructure was incomplete. The judge had to use personal electronic devices such as laptops, cameras, and headphones (Interview, Rusianto, June 3, 2021). Since the New Normal era, the Semarang State Court has provided adequate funding and equipped all courtrooms with the necessary tools for conducting online trials. Currently, Semarang State Court furnishes all the courtrooms with smart TVs, PCs, and some even feature video cameras. Technical training also strengthens the court's technical team, preparing them to handle any potential network or IT issues. While waiting for the Indonesian Supreme Court's information system, the judges also underwent training to familiarize themselves with various ViCon platforms. In addition, Rusianto indicated that the court has already arranged for each judge to be provided with a Personal Computer (PC) to enhance the efficiency and convenience of conducting online trials. Nevertheless, Courts must still be fully equipped with filming capabilities to facilitate television transmission for public viewership (Interview, Rusianto, 3 June 2021). There is also the danger of data hacking occurring due to the utilization of foreign-made internet programs such as Zoom or Google Meetings. Improving IT infrastructure and human resources is critical as secure networks must be established to serve parties and the court (Macdonald & Wallace, 2004). In the future, the Indonesian Supreme Courts will have to create their own professional IT application. Upon completion, the online trial process will become more accessible to the public.

One of the interviewed judges stated that one of the obstacles that also appeared during the examination was that the judge could not see the expressions of the witness (and the defendant). It is crucial to assess whether the testimony is trustworthy or whether the witness (and the defendant) lied. Judges can usually assess the content of given testimony by observing eye movements, hand movements, or facial expressions (Interview, Rusianto, June 3, 2021).

Concerning the accountability of the witness online examination (including that of expert witnesses), Menashe (Menashe, 2018) stated that video or online testimony cannot fully substitute for in-court testimony. It undermines the expressive benefits of the judicial process. An individual testifying at home does so in a secure, familiar setting, where they maintain control over the physical settings. However, the ceremonial context governs the conditions when one testifies in court. The court's purpose is to express governmental power, not to offer comfort and convenience. The courtrooms designed a symbolic framework to embody specific emotions and principles. When the judge enters the courtroom, for example, individuals stand, positioning the judge above all those present and symbolizing his power with the national and state flags. The intention is to intimidate the witnesses into providing testimony under distressing and oppressive circumstances, under oath or affirmation, with deputies and bailiffs present, and without sustenance or hydration. The court frequently evokes a sense of awe in the witness. This discourages witnesses who may be inclined to provide misleading testimony.

Menashe argues that video conferencing is insufficient to replace in-person testimony in court due to the fundamental nature of trials (Menashe, 2018). He explains that physically attending court to testify allows the institution to assert its authority more effectively. The physical and formal structure of the courtroom plays a significant symbolic role that virtual formats cannot fully replicate. This environment encourages respect for the process and discourages false testimony. For example, eating or drinking is prohibited during in-person testimony (Kostelak, 2014). Similarly, Kostelak notes that video conferencing can distort nonverbal cues, such as facial expressions, posture, and gestures, which are crucial for a judge's assessment. Technical issues, such as poor internet connections or inadequate camera angles, can further hinder the judge's ability to interpret these cues accurately (Menashe, 2018).

Menashe asserts that cross-examination functions as a 'legal engine' that ascertains the factual accuracy of testimony by compelling witnesses to respond to inquiries aimed at verifying the integrity of their statements. Video conference trials suffer from epistemically deficient cross-examination, resulting in the loss of a crucial tool for truth-telling and a heightened danger of judgment errors. Furthermore, a lack of proficiency in conducting cross-examinations will heighten the likelihood of making mistakes (Menashe, 2018). In contrast, Michael Legg and Anthony Song contended that using video conferencing to screen or interview witnesses would make it very difficult for them to participate actively, as it would leave them feeling isolated, stressed, or exhausted. This could potentially result in less reliable testimony (Legg & Song, 2021).

When it comes to accountability in the context of examining witnesses, expert witnesses, and judicial authority, several factors must be considered. One such factor is the 'symbolic' impact of the physical form of the courtroom and court procedure, as discussed by Menashe and Kostelak. A formal, physical courtroom atmosphere fosters respect and can discourage or lessen the likelihood of witnesses providing false testimony. A teleconference must have the highest quality possible and cover more ground than just face-to-face communication. An online video conference examination can distort or obscure nonverbal indicators like facial expressions and gaze. Additionally, if the camera is just focused on the subject's face, posture, and gestures, also known as body language that can also affect the judge's decision, it may go unnoticed. A shoddy or slow internet network may hide a person's facial responses. Even on a flawlessly functioning network via streaming, the camera shot may mask facial expressions or leave a face only partially visible.

The Supreme Court then enacted PERMA No. 8 of 2022 to enhance PERMA No. 4 of 2020. This new PERMA covers some important areas that PERMA No. 4 of 2020 did not. These include the requirement to upload and verify standard documents in the Court Information System prior to their review, the electronic home addresses of the parties, the prosecutor's accountability for physical evidence (including a list and photos of said evidence), and the accuracy of the court's verdict prior to its electronic signature.

As previously mentioned, numerous factors contribute to the imperfections of electronic criminal trials. Given the recent normal situation, the author recommends conducting witnesses, expert witnesses, and defendants' examination in person in the courtroom, as it is the most crucial process in the examination procedure. The courtroom can conduct other procedures electronically, such as reading the indictment, exceptions, criminal charges, the defendant's defense, and verdict.

D. Conclusion and Suggestion

These PERMA(s) close legal gaps and provides guidance for implementing online court proceedings. Despite numerous challenges encountered while determining online criminal case examinations during COVID-19 pandemic, the study's findings indicated that judges, prosecutors, and most legal counselors and advocates believed that the accountability of case examinations could be accounted for. They generally thought that the COVID-19 pandemic crisis situation should be prioritized. In light of the current normal circumstances, the author recommends in-person examination of witnesses, expert witnesses, and defendants in the courtroom, as it is the most critical aspect of the criminal examination process. In the future, PERMA alone won't be sufficient to determine the legality and accountability of online trials. The government and the law-making body (the legislature) have to amend the Criminal Procedure Code (KUHAP) to anticipate information technology changes and regulate online criminal trials and proceedings to avoid legal controversy.

REFERENCES

- Apistola, M., & Lodder, A. R. (2016). *Law Firms and IT – Towards Optimal Knowledge Management Law Firms and IT – Towards Optimal Knowledge Management*. January 2005.
- Bell, F., Bennett Moses, P. L., Legg, P. M., Silove, J., & Zalnieriute, M. (2022). *AI Decision-Making and the Courts : A Guide for Judges, Tribunal Members and Court Administrators*. The Australian Institute of Judicial Administration Inc.
- Bentham, J. (2000). An Introduction to the Principles of Moral and Legislation. In H. L. Wesseling (Ed.), *Batoche Books*. Kitchener.
- Borkowski, J. (2004). Court Technology in Canada. *William & Mary Bill of Rights Journal*, 12(3).
- Charmonman, S., & Mongkhonvanit, P. (2016). Harnessing the Power of Information Technology for Efficiency in E-Court and E-Trial. *International Journal of the Computer, the Internet and Management*, 24(2), 1–7.
- Deliarnoor, N. A. (2019). *Pengertian Sistem Hukum Indonesia*. Universitas Terbuka.
- Dewi, S. (2012). *Kajian Yuridis terhadap Keterangan Saksi Melalui Audio Visual (Teleconference) di Persidangan Perkara Pidana*. Universitas Indonesia.
- Dillon, M. P., & Beresford, D. (2014). Electronic Courts and the Challenges in Managing Evidence. A View From Inside The International Criminal Court. *International Journal for Court Administration*, 6(1), 29. <https://doi.org/10.18352/ijca.132>
- Djarmiko, H. (2019). Implementasi Peradilan Elektronik (E-Court) Pasca Diundangkannya PERMA Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan secara Elektronik. *Legalita*, 1(1), 22–32.
- Geovanie, D. G. (2021). The Current Application of Teleconferencing in the Criminal Justice Process. *ICLSSE*. <https://doi.org/10.4108/eai.10-11-2020.2303385>
- Griese, M. (2002). Electronic Electronic Litigation Filing in the USA , Australia and Germany : a Comparison. *ELaw Journal : Murdoch University Electronic Journal of Law*, 9(4).
- Hillis, B. J. (2000). A Review of Electronic Court Filing in the United States. *The Journal of Appellate Practice and Process*, 2(2), 319–328.
- Kostelak, R. (2014). *Videoconference Technology and the Confrontation Clause* (33).
- Lanzara, G. F., & Patriotta, G. (2001). Technology and The Courtroom: An Inquiry into Knowledge Making in Organizations. *Journal of Management Studies*, 38(7), 943–971.
- Lederer, F. I. (1999). The Road to the Virtual Courtroom? A Consideration of Today's -- and Tomorrow's -- High Technology Courtrooms. *South Carolina Law Review*, 50, 800–844.
- Lederer, F. I. (2021). The Evolving Technology-Augmented Courtroom Before , During , and After the Pandemic. *Vanderbilt Journal of Entertainment & Technology Law*, 23(2), 301–339.

- Legg, M., & Song, A. (2021). The Courts, the Remote Hearing and the Pandemic. *UNSW Law Journal*, 44(1), 126–166.
- Macdonald, R., & Wallace, A. (2004). Review of the Extent of Courtroom Technology in Australia. *William and Mary Bill of Rights Journal*, 12(3), 649–659.
- Menashe, D. (2018). A Critical Analysis of the Online Court. *University of Pennsylvania Journal of International Law*, 39(4), 921–953.
- Mill, J. S. (2009). *Utilitarianism* (1879th ed.). The Floating Press.
- Mingtsung, C., & Shuling, L. (2020). Research on the Application of Artificial Intelligence Technology in the Field of Justice. *Journal of Physics: Conference Series*, 1570(1). <https://doi.org/10.1088/1742-6596/1570/1/012047>
- Nasir, G. A. (2017). Kekosongan Hukum & Percepatan Perkembangan Masyarakat. *Jurnal Hukum Replik*, 5(2), 172–183.
- Pratiwi, S. J., Steven, S., & Permatasari, A. D. P. (2020). The Application of e-Court as an Effort to Modernize the Justice Administration in Indonesia: Challenges & Problems. *Indonesian Journal of Advocacy and Legal Services*, 2(1), 39–56. <https://doi.org/10.15294/ijals.v2i1.37718>
- Santosa, D. G. G. (2020). Changes in Criminal Trial Proceedings during COVID-19: Challenges and Problems. *Indonesian Law Journal*, 13(2), 123–135.
- Simandjuntak, M. E., Saraswati, R., Boputra, E., Soerjowinoto, P., & Kusniati, Y. (2021). *Legalitas, Akuntabilitas dan Efektifitas Proses Pemeriksaan Perkara Pidana di Pengadilan secara Online*.
- Sourdin, T., & Burstyn, N. (2014). Justice Delayed is Justice Denied. *Victoria University Law and Justice Journal*, 4(1), 46–60. <https://doi.org/http://dx.doi.org/10.15209/vulj.v4i1.61>
- Sunggono, B. (2015). *Metodologi Penelitian Hukum*. Raja Grafindo Persada.
- Tamin, B. E. D. (2018). Tinjauan Yuridis terhadap Kedudukan Peraturan Mahkamah Agung (PERMA) dalam Hierarkhi Peraturan Perundang-Undangan di Indonesia. *Lex Administratum*, VI(3), 112–121.
- Thalib, H., Rahman, S., Mamulai, M., & Djanggih, H. (2017). Verification Through the Electronic Media (Teleconference) on the Court in Criminal Judicial System. *ADRI International Journal of Law and Social Science*, 1, 1–9.
- Tyler, T. R. (1990). *Why People Obey the Law*. Yale University Press.
- Wignjosoebroto, S. (2013). *Hukum: Konsep dan Metode*. Setara Press.
- Winn, P. A. (2004). Online Court Records : Balancing Judicial Accountability and Privacy in an Age of Electronic Information. *Washington Law Review*, 79(1), 307–330.
- Yuniar, V. S., Sulistyanti, J. S., & Latifiani, D. (2021). The Court Role in Providing E-court System Education to Community: Post-Enactment of Supreme Court Regulation Number 1 of 2019. *Unifikasi: Jurnal Hukum*, 08(1), 34–42.