Page 1239 - 1256 **DOI:** *https://doij.org/10.10000/IJLMH.114164*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

Design of Electronic-Based Criminal Justice in Realizing Enforcement Reform Criminal Law

WIDYO BRAYOTO ARDI[1] AND MUHAMMAD RUSTAMAJI[2]

ABSTRACT

This study aims to provide a prescription regarding electronic justice in the renewal of criminal law enforcement, by providing a design of electronic justice in realizing the future reform of criminal law enforcement in Indonesia. This research is normative legal research. The results of the study show that electronic justice in realizing the renewal of criminal law enforcement in Indonesia can be carried out by a. Digital-based criminal justice must be regulated at the level of law (Discourse on Renewal of the Criminal Procedure Code), where the implementation of electronic criminal trials is still a problem. The reason is that until now, there has yet to be a legal umbrella that strictly regulates the standards for conducting electronic hearings. Meanwhile, the mechanism regarding this matter is the only alternative for carrying out criminal case trials. The reason is that the Criminal Procedure Code (KUHAP), as the law that regulates the procedures for criminal trials, does not even regulate this because, at the time the law was made, such matters could not be predicted. For this reason, so as not to hinder the law enforcement process, a legal umbrella is needed that regulates standardization and mechanisms regarding electronic trials by establishing laws that regulate electronic justice and holding legal reforms through revisions in Law Number 8 of 1981 concerning Indonesian Criminal Procedural Code (KUHAP); b. ensure readiness to apply modern technological devices and supporting resources to hold digital-based criminal trials.

***Keywords**: Criminal Justice, Electronic Justice, Law Reform.*

I. INTRODUCTION

A legal mechanism governs human relations with humans,[3] so that every person who commits a crime or violates the law will be punished according to the rules of criminal law. In its implementation, a person suspected of having committed a crime will be tried in court before being sentenced or sentenced.

[1] Universitas Sebelas Maret, Indonesia.
[2] Universitas Sebelas Maret, Indonesia.
[3] Rian Saputra, 'Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif', *Wacana Hukum*, 25.1 (2019), 10–18.

 [ISSN 2581-5369]

The trial process is based on applicable legal principles such as: "Examinations are carried out directly and verbally, the accused must be present at the trial and so on.[4] The stages and procedures for the trial of criminal cases in district courts are generally regulated in Law Number 8 of 1981 concerning Criminal Procedure Code (from now on referred to as the Criminal Procedure Code)". However, it cannot be denied that there are various deficiencies in the Criminal Procedure Code as a guide in the current criminal justice system. These deficiencies can be started by technological developments that make the technical procedures of the criminal procedure in the Criminal Procedure Code appear to be lagging and tend to appear less efficient.

It must be admitted that the rapid development of computer-based information and communication technology has affected the way of life in today's society. The community then became facilitated by the development of this technology.[5] One of the technological conveniences people feel is the existence of the internet. At present, information is a compelling medium for the economic development of a country, both developing and developed countries.[6]

The development of these technological developments makes the Criminal Procedure Code feel left behind. Moreover, this backwardness was intensely felt during the Covid 19 Pandemic, which resulted in trials not being able to be carried out in person but using electronic (online) trials of criminal cases. This seems to justify the legal adage that "the law is always lagging behind the development of society or regulated events (Het recht think anter de feiten an)".[7]

In response to this, several state institutions have taken quite progressive actions, including the Attorney General's Office, the Supreme Court, the Ministry of Law and Human Rights and Human Rights, and the Corruption Eradication Commission, especially regarding the implementation of the judicial process, this is very appropriate in dealing with problems amidst the Pandemic. The most straightforward problem is just one example. For example, the witness who should be summoned to be presented cannot attend because he is afraid to come to court or the place where he is determined to testify (detention centre/prosecutor's office/KPK) due to

[4] M. Beni Kurniawan, 'Implementation of Electronic Trial (E-Litigation) on the Civil Cases in Indonesia Court As a Legal Renewal of Civil Procedural Law', *Jurnal Hukum Dan Peradilan*, 9.1 (2020), 43 <https://doi.org/10.25216/jhp.9.1.2020.43-70>.

[5] Neisa Angrum Adisti, Nashriana, and Isma Nurilah, 'Pelaksanaan Persidangan Perkara Pidana Secara Elektronik Pada Masa Pandemi Covid 19 Di Pengadilan Negeri Kota Palembang', *Jurnal Legislasi Indonesia*, 18.2 (2021), 222–32 <https://doi.org/doi.org/10.54629/jli.v18i2.768>.

[6] Dian Latifiani, 'Human Attitude And Technology : Analyzing A Legal Culture On Electronic Court System In Indonesia (Case Of Religious Court)', *Jils (Journal of Indonesian Legal Studies) Volume*, 6.1 (2021), 157–84 <https://doi.org/doi.org/10.15294/jils.v6i1.44450>.

[7] Muhammad Bagus Adi Wicaksono and Rian Saputra, 'Building The Eradication Of Corruption In Indonesia Using Administrative Law', *Journal of Legal, Ethical and Regulatory Issues*, 24.Special Issue 1 (2021), 1–17.

 [ISSN 2581-5369]

fear of contracting Corona disease.[8]

One of the main essences of conducting trials via teleconference with this corona pandemic condition. The question is whether this practice can be categorized as negating the principle of criminal law and ignoring the judicial principle of criminal law, whose regulatory contents are based on respect for human rights (HAM).[9] Meanwhile, the formation of electronic court legal rules is carried out with the "under legislation" mechanism in which a legal product is formed by an institution or institution that is not mandated as a law-forming institution.[10]

When viewed sociologically, the development towards virtual courts is a necessity, both as a reaction to the Covid-19 Pandemic and as a reaction to technological advances. Particularly during the Pandemic, law enforcers were faced with a very concrete situation in the form of settling cases handled virtually or postponing trials with the consequence of increasing the number of cases in the future. Triggered by this situation, the law showed a moment of flexibility following the issuance of a number of regulations which, although not in the form of laws, were implemented empirically to ensure legal certainty.[11] However, the question is how legitimized this practice is, as a country that declares itself as a rule-of-law country; of course, this is important to question in order to avoid practices that are far from being allowed in a rule-of-law country.

The concept of electronic trials or teleconferences in Indonesia was still not structured before the Covid 19 pandemic, and this had implications for judicial institutions under the Supreme Court carrying out electronic trials in their way. Only then did the Supreme Court issue Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases in Electronic Courts (Perma). With this Perma, electronic trials find a definite form in which the Perma regulates witnesses, experts, and evidence.[12] This Perma cannot only cause registration to be done online or as an e-court but trials can also be carried out electronically, namely e-litigation.[13] However, the question is whether a Perma-based legal product is enough

[8] Neisa Angrum Adisti, Nashriana, Isma Nurilah, Pelaksanaan Persidangan Perkara Pidana Secara Elektronik Pada Masa Pandemi Covid 19 Di Pengadilan Negeri Kota Palembang. *Jurnal Legislasi Indonesia* Vol 18 No. 2 - Juni 2021

[9] Syarif Hidayatullah and Ditha Wiradiputra, 'Urgensi Pelaksanaan E-Litigasi Dalam Persidangan Perkara Perdata Pada Masa Pandemi Covid-19', *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*, 12.2 (2021), 112–25 <https://doi.org/dx.doi.org/10.32493/jdmhkdmhk.v12i2.15864>.

[10] Lihat dalam Muhammad Rustamaji, *Dekonstruksi Asas Praduga Tidak Bersalah Pembaruan Tekstualitas Formulasi Norma dan Kandungan Nilainya*. Yogyakarta: Thafamedia, 2019. hlm 68

[11] Dewi Rahmaningsih Nugroho and Suteki Suteki. Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi). *Jurnal Pembangunan Hukum Indonesia.* Volume 2 No. 3 tahun 2020. hlm. 293

[12] Zil Aidi, 'Implementasi E-Court Dalam Mewujudkan Penyelesaian Perkara Perdata Yang Efektif Dan Efisien', *Masalah-Masalah Hukum*, 49.1 (2020), 80 <https://doi.org/10.14710/mmh.49.1.2020.80-89>.

[13] Sonyendah Retnaningsih and others, 'Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang

to serve as a legal basis in the practice of the criminal justice system, whose initial essence is respect for human rights.

This study intends to provide a prescription regarding electronic justice in the renewal of criminal law enforcement by providing an electronic justice design in realizing the future reform of criminal law enforcement in Indonesia.

(A) Research Methods

This study is intended to provide a prescription regarding electronic justice in the renewal of criminal law enforcement by providing an electronic justice design in realizing the future reform of criminal law enforcement in Indonesia.[14] The statutory approach is carried out by analyzing all laws and regulations related to the issues raised, namely electronic-based criminal justice. The conceptual approach is carried out by providing concepts from the design of electronic criminal justice in the future in Indonesia's renewal of criminal law enforcement. In contrast, the comparative legal approach is carried out by looking for an ideal design of electronic criminal justice in the renewal of Indonesian criminal law. In this study, the country used as comparison material is the United States.[15]

II. DIGITAL-BASED CRIMINAL JUSTICE IN INDONESIA MUST BE REGULATED AT THE LAW LEVEL (DISCOURSE ON REFORMING THE CRIMINAL PROCEDURE CODE)

Initially, legal experts and experts in "criminal justice science" introduced the criminal justice system in the United States. This is motivated by public dissatisfaction with the workings of law enforcers and law enforcement agencies.[16] Mardjono Reskodiputro argues that the criminal justice process is a series that describes events that progress regularly. This starts with investigation, arrest, examination by the court, the decision by the judge, sentence and finally, returns to society. Meanwhile, Barda Nawawi Arif explained that what is meant by the criminal justice system is the process of enforcing the criminal law itself. Therefore both substantive criminal law and procedural law are interrelated with one another.[17] Based on the provisions of

Administrasi Perkara Di Pengadilan Secara Elektronik Dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik (Studi Di Peng', *Jurnal Hukum & Pembangunan*, 50.1 (2020), 124 <https://doi.org/10.21143/jhp.vol50.no1.2486>.

[14] Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <https://doi.org/10.53955/jhcls.v2i1.21>.

[15] Lusia Indrastuti and Rian Saputra, 'Lost Role of Local Governments in Coal Mining Licensing and Management Environment in Indonesia', *European Online Journal of Natural and Social Sciences*, 11.2 (2022), 397–408.

[16] Dewi Safitri and others, 'Optimalisasi Kebijakan Sistem Peradilan Pidana Secara Elektronik Di Masa Pandemi Covid-19', *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora*, 8.2 (2021), 279–87 <http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/2532>.

[17] Panji Purnama and Febby Mutioara Nelson, 'Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary Dalam Dalam Sistem Peradilan Pidana Di Indonesia', *Rechhts Vinding*, 10.1

Article 2 paragraph (4) of the Law on Judicial Power, it is explained that the judiciary, in a simple sense, is the examination and settlement of cases carried out effectively and efficiently, which in essence, can be translated as a judicial process that does not require much time, and is not long-winded in the frame of the criminal justice system.

The rapid progress of science and technology in telecommunications, information and computers has resulted in convergence in their applications. As a consequence, there is also convergence in human life. Along with the development of society and technology, more and more people are using digital technology tools, including in interacting with each other.[18] With the development of technology which has now entered the digital-based era, the criminal justice system has also evolved and developed by the times. the situation is proven by the application of technology to court services in the field of administration, especially later in civil cases that do not have to present the litigants in the settlement process.[19]

The electronic criminal justice system using digital means in trials in Indonesia is not a new thing. This is considering the provisions in Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which requires judges as law enforcers to continue to explore and understand and pursue material truth in criminal law, which selectively formal aspects should be slowly abandoned. Developments related to electronic trials can be found in provisions outside the Criminal Procedure Code, some of these lex specialist provisions will later contribute to creating a legal basis for virtual trials, such as in Article 27 paragraph (3) of the Juvenile Criminal Justice System Law (UU SPPA) which states that the judge may order the child as a victim or witness to give testimony through electronic recording or remote direct examination if the child is unable to be present to give testimony before a court hearing. Furthermore, it is explained in Article 9 Paragraph (3) of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims that in the case of witnesses or victims testifying directly via electronic means, they must be accompanied by an authorized official.

When viewed sociologically, electronic trials are a necessity, both as a reaction to the Covid-19 Pandemic and to technological advances.[20] Particularly during the Pandemic, law enforcers were faced with a very concrete situation in the form of the choice of settling cases handled

(2021), 97–116.

[18] Ronald van den HOOGEN, 'Will E-Justice Still Be Justice? Principles of a Fair Electronic Trial', *International Journal For Court Administration*, 18.January (2008), 65–73.

[19] Anggita Doramia Lumbanraja, 'Perkembangan Regulasi Dan Pelaksanaan Persidangan Online Di Indonesia Dan Amerika Serikat Selama Pandemi Covid-19', *Jurnal Crepido*, 02.1 (2020), 46–58 <https://doi.org/10.14710/crepido.2.1.46-58>.

[20] Stuart Yeh, 'The Electronic Monitoring Paradigm: A Proposal for Transforming Criminal Justice in the USA', *Laws*, 4.1 (2015), 60–81 <https://doi.org/10.3390/laws4010060>.

 [ISSN 2581-5369]

virtually or postponing trials with the consequence of increasing the number of cases in the future. Triggered by this situation, the law showed a moment of flexibility following the issuance of several regulations, although not in the form of laws implemented empirically to ensure legal certainty.[21]

The implementation of electronic criminal trials is still a problem. The reason is that until now, no legal umbrella strictly regulates the standards for conducting electronic hearings. Meanwhile, the mechanism regarding this matter is the only alternative for carrying out criminal case trials. The reason is that the Criminal Procedure Code (KUHAP), as the law that regulates the procedures for criminal trials, does not even regulate this because, at the time the law was made, such matters could not be predicted. The revolution of technology, information and science, which is currently taking place so rapidly, has resulted in the emergence of new circumstances that should have been considered in settling cases, including in the application of the Criminal Procedure Code.

In legalistic legal analysis, which tends to be rigid or formal legalistic, teleconference facilities cannot be accepted as media for examining cases by the provisions contained in Article 160 paragraph (1) letter a and Article 167 of the Criminal Procedure Code, which require the presence of witnesses in the courtroom. However, in contrast to the provisions in Article 28 paragraph (1) of Law Number 4 of 2004 (now regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning judicial power) requires judges to dig up material truth, so that opportunities are opened for judges to leaving aside the formal aspects. However, the question is, what about other law enforcement institutions in the criminal justice system? This is important to think about so that in the future the legality of digital-based criminal justice will no longer be questioned.

Previously, the author explained that the provisions for online criminal trials were implemented based on PERMA and the joint agreement made by the three institutions related to the conduct of trials. However, this can raise problems related to the loss of the discovery of material justice as a goal in criminal cases. The criminal trial, which we all know, is not just a meeting but a criminal case trial based on procedural law. It is a series of processes of seeking material truth or the real truth of a criminal incident which, in essence, makes fair and clear decisions on these criminal matters. These two things cannot reduce the Criminal Procedure Code and defeat the enactment of the law. This is because neither the PERMA nor the letter of agreement is equivalent to the law. The article, in this case, is the law that requires and ensures that criminal

[21] Neisa Angrum Adisti, Nashriana, and Nurilah.

 [ISSN 2581-5369]

trials are conducted in the courtroom with the accused's presence.

For this reason, so as not to hinder the law enforcement process, a legal umbrella is needed that regulates standardization and mechanisms regarding electronic trials by establishing laws that regulate electronic justice and holding legal reforms through revisions in Law Number 8 of 1981 concerning Procedural Law. Criminal Code (KUHAP). Legal reform in terms of the practice of implementing national procedural law in Indonesia which is more responsive needs to be carried out because the criminal procedural law (KUHAP) is currently seen as no longer by the state administration and legal developments that currently exist in society, besides that the direction of development and technology that has a global influence also to the meaning and existence of the substance of the Criminal Procedure Code, so that it is necessary to reform it with a criminal procedural law that is oriented towards legal certainty and has dimensions of justice which must also be able to adapt to global demands, in accordance with the times.

The importance of reforming the criminal procedural law (KUHAP) towards an integrated criminal justice system aims to create law enforcement that is as high and fair as possible in order to place law enforcers following their duties and authorities, which are also expected to be able to adapt to technological advances and legal developments in society.[22] Therefore, it is necessary to harmonize and synchronize within the framework of formulating a revision of the Criminal Procedure Code (KUHAP). Finally, with the birth of the concept and existence of the new KUHAP, which in this case is believed to be ratified and enacted as positive law as the basis for implementing Indonesian procedural law, it is hoped that it will bring about meaningful changes in the context of law enforcement to realize and achieve justice for all people.

One comparison can be made by looking at the practice of carrying out criminal trials during the Covid 19 pandemic in the United States. According to the 6th Amendment to the United States Constitution, trials should ideally be carried out physically and directly in the courtroom.[23] This was done so that the parties could have a confrontation with the witnesses and experts presented, and the jury could directly assess the witness' and expert's testimony and fulfil the defendant's right to be able to consult directly with his legal counsel during the trial.[24] However, because this practice is difficult to carry out during a pandemic, the United States government regulates that trials can be carried out electronically, which is one of the materials

[22] Rian Saputra and others, 'REFORM REGULATION OF NOVUM IN CRIMINAL JUDGES IN AN EFFORT TO PROVIDE LEGAL CERTAINTY', *JILS (JOURNAL OF INDONESIAN LEGAL STUDIES)*, 6.2 (2021), 437–82 <https://doi.org/10.15294/jils.v6i2.51371>.
[23] Agus Salim and Elfran Bima Muttaqin, 'Persidangan Elektronik (E-Litigasi) Pada Peradilan Tata Usaha Negara', *Paulus Law Journal*, 2.1 (2020), 15–25 <https://doi.org/10.51342/plj.v2i1.150>.
[24] Insan Pribadi, 'Legalitas Alat Bukti Elektronik Dalam Sistem Peradilan Pidana', *Jurnal Lex Renaissance*, 3.1 (2018), 109–24 <https://doi.org/10.20885/jlr.vol3.iss1.art4>.

in special rules related to the handling of the Covid 19 Pandemic in the United States, namely the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, this provision stipulates that trials can only be conducted electronically if certain conditions are met, namely: 1. there is an emergency situation determined by the community; 2. there is a decision by the Chief Justice to implement electronic trials; 3. the consent of the accused.[25]

The Electronic Trial in the United States itself is regulated in such a way that in the criminal court space, it can only be carried out in the following trials: 1. Initial appearances, namely initial trials to fulfil the right of the accused to be immediately brought before a Judge, or speedy trial; 2. A detention hearing is a trial to determine whether the accused will be detained or not; 3—arraignments, namely the trial reading of the indictment; 4. The preliminary hearing is the initial examination trial in every criminal case, such as the presentation of the arguments of the public prosecutor and legal advisers or the selection of a jury; 5. Trial related to parole 6. Trial for minor criminal cases.[26]

In practice, trials are carried out electronically where the Judge, Public Prosecutor and Legal Counsel attend trials from their respective homes. In contrast, the defendant attends trials from where he is detained.[27] However, in certain areas that allow easy mobility with private vehicles, such as Texas, judges can attend trials from the courtroom in court.[28] This practice differs from the courts in Manhattan, where public transportation is often used, so the Judge attends the trial from his home. The guarantee of trial accessibility will be carried out by providing a list of trial information on the court website and providing a special court telephone number that can be contacted by the public who wishes to follow the proceedings. Apart from that, the courts in the United States also provide stenographers, namely people who will take notes and record the course of the trial and trial transcripts based on the trial recordings which will be given to the parties.[29]

Looking at the digital-based criminal justice regulatory model in the United States, it can be concluded that electronic criminal justice in the United States is regulated by rules at the level

[25] Panji Purnama and Nelson.
[26] Vivi Lutfia, 'Optimalisasi Penegakan Hukum Terhadap Penyelenggaraan Peradilan Melalui E-Court Dalam Mewujudkan Keadilan Bagi Masyarakat Di Era Digitalisasi', *Jurnal Lex Renaissance*, 6.4 (2021), 677–91 <https://doi.org/10.20885/jlr.vol6.iss4.art3>.
[27] Sahira Jati Pratiwi, Steven Steven, and Adinda Destaloka Putri Permatasari, '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 (2020), 39–56 <https://doi.org/10.15294/ijals.v2i1.37718>.
[28] Wan Saman and Abrar Haider, 'Electronic Court Records Management: A Case Study', *Journal of E-Government Studies and Best Practices*, 2012 (2012), 1–11 <https://doi.org/10.5171/2012.925115>.
[29] Mery Christian Putri and Erlina Maria Christin Sinaga, 'Disrupsi Digital Dalam Proses Penegakan Hukum Pada Masa Pandemi Covid-19', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 10.1 (2021), 79 <https://doi.org/10.33331/rechtsvinding.v10i1.625>.

 [ISSN 2581-5369]

of the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, namely that electronic criminal justice does not only regarding the Covid 19 Pandemic but in the substance of the broader rules, namely electronic-based criminal justice can be carried out if: a. there is an emergency established in the community; b. there is a decision by the Chief Justice to implement electronic trials; c. the defendant's consent.[30]

So that it can be concluded that electronic-based criminal justice in the United States can be carried out based on the determination by the chairperson of the court and the consent of the defendant, so that even though the Covid 19 Pandemic has ended the space for electronic-based criminal trials can be carried out and has a strong basis of legitimacy because it is regulated at the level of law. -law. In the Indonesian context, this is important to be used as comparative and exemplary material in the context of the function of law reform, both to provide a basis for the legality of electronic-based criminal justice and provide preventive aspects for similar incidents in the future.

As it is known that legal reform is conscious, planned and sustained effort within the framework of building a legal system, both in terms of substantive (legal content material) and legal institutions. The law covers all aspects of life from a normative and a practical perspective but is only one of the means to shape delays. Therefore the law must be approached from all aspects of life so that it is visionary and operates together with other fields. In other words, legal reform seeks to carry out liberation, both in the way of thinking and acting in law, so that the law can play a role and function to serve humans and humanity. The logical consequence is that the law will always experience changes both in an evolutionary and revolutionary way.[31]

From the renewal perspective, legal changes are an effort to reform the law (law reform). Legislation is an effective instrument in law reform compared to the use of customary law or jurisprudential law. It has been argued, the formation of laws and regulations can be planned so that legal reforms can also be planned. Laws and regulations do not only carry out the function of updating existing laws and regulations.[32]

Legislation can also be used to update jurisprudence, customary law or customary law. The function of reforming laws and regulations was, among other things, to replace laws and regulations from the Dutch East Indies government. It is equally important to renew national

[30] Putri and Sinaga.
[31] Dewi Asimah, 'PERSIDANGAN ELEKTRONIK SEBAGAI UPAYA MODERNISASI PERADILAN DI ERA NEW NORMAL', *Jurnal Hukum Peratun*, 4.1 (2021), 31–44 <https://doi.org/doi.org/10.25216/peratun.412021.31-44 I.>.
[32] Adi Sulistiyono, 'Pembaharuan Hukum Yang Mendukung Kondusifitas Iklim Usaha', *Yustisia Jurnal Hukum*, 4.3 (2015), 248–53.

 [ISSN 2581-5369]

laws and regulations (made after independence) which are no longer suitable for new needs and developments in customary law or customary law. Laws and regulations function to replace customary law, which is inconsistent with new realities. Utilizing statutory regulations as an instrument for reforming customary law or customary law is very beneficial because, in some issues, the latter two laws are rigid towards change.[33]

Therefore, from the perspective of legal renewal, electronic-based criminal justice is essential, considering that developments in the world of technology and new realities in society are, by the most fundamental principles of electronic-based criminal justice. Therefore it is essential to accommodate electronic-based criminal justice. In the future, this can be done either through the revision model of the Criminal Procedure Code or the formation of its law that regulates it, which provides a legal umbrella and legitimacy basis regarding electronic trial procedures.

III. ENSURING READINESS TO APPLY MODERN TECHNOLOGY TOOLS AND SUPPORTING RESOURCES TO HOLD DIGITAL-BASED CRIMINAL TRIALS

Starting with the description of criminal justice as an effort to extract material truth, we will first explain the definition of criminal justice itself. Judiciary is understood as a process carried out by authorized parties to uphold justice to create order and peace in society. Starting with the description of criminal justice as an effort to extract material truth, we will first explain the definition of criminal justice itself. Judiciary is understood as a process carried out by authorized parties to uphold justice to create order and peace in society.

Criminal justice is carried out based on criminal procedural law through several stages. Each stage involves a particular institution.[34] Following Sudikno Mertokusumo's thinking, criminal justice consists of three stages: the preliminary or initial stage, the determination stage and finally, the implementation stage. The preliminary stage is the investigation and investigation carried out by the police as stipulated in Article 1 points 1, 2, 4 and 5 of the Criminal Procedure Code, and the prosecution stage is carried out by the prosecutor's office as stipulated in Article 1 points 6 and 7 of the Criminal Procedure Code. The determination stage consists of examination in court, evidence and the judge's decision. Meanwhile, the implementation or execution stage consists of implementing the decision by the prosecutor as well as monitoring and observing the implementation of the judge's decision.[35]

[33] Sulistiyono.

[34] Azwad Rachmat Hambali, 'Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana', *Jurnal Ilmiah Kebijakan Hukum*, 13.1 (2019), 15 <https://doi.org/10.30641/kebijakan.2019.v13.15-30>.

[35] Randy Pradityo, 'Restorative Justice Dalam Restorative Justice in Juvenile Justice System', *Jurnal Hukum Dan*

In principle, criminal justice is full of human values. If it is associated with the types of criminal sanctions as stipulated in Article 10 of the Criminal Code, namely the death penalty, imprisonment, confinement, fines and imprisonment, the imposition of criminal sanctions on a person is a basic form of deprivation of human rights.[36] Departing from this, criminal justice is carried out by searching for materiel waarheid or, namely, the truth that happened or the absolute truth. This view was expressed by L.J. van Apeldoorn who stated that in contrast to judges in civil courts who seek formal truth, judges in criminal cases must seek material truth.[37]

Efforts to explore materiele waarheid in criminal justice are carried out in the process of proving. In connection with proof, there is a general principle that states actori incumbit probate. That is, if one of the parties argues or denies an event, the person concerned must prove it.[38] Referring to this principle, the burden of proof or bewijslast in criminal cases generally rests with the prosecutor as the public prosecutor. This concept is emphasized as implied in Article 66 of the Criminal Procedure Code, which stipulates that a suspect or defendant is not obligated to prove. This provision is based on a contrario interpretation, which means that the prosecutor must prove as the public prosecutor.[39]

Based on the previous description, it can be understood that criminal justice is an attempt to dig up material truth because the crime itself is inherently a violation of human rights, so the process is carried out in a measurable manner.[40] Proof in a criminal case is, in principle, a process to find and state the material truth regarding criminal acts and mistakes committed by someone so that that person can be subject to punishment.[41] Therefore, on a digital basis, criminal justice must also be based on the objectives of enforcing the criminal law. As the author described in the previous section, at this time, the application of digital-based criminal trials is a direction that gradually becomes a suitable choice in line with progress and developments—technology, in addition to considerations of efficiency. However, on the other hand, it must also be ensured

Peradilan, 5.3 (2016), 319–30 <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

[36] Okky Chahyo Nugroho, 'Peran Balai Pemasyarakatan Pada Sistem Peradilan Pidana Anak Ditinjau Dalam Perspektif Hak Asasi Manusia', *Jurnal HAM*, 8.2 (2017), 161 <https://doi.org/10.30641/ham.2017.8.356>.

[37] Nevey Varida Ariani, 'Pelaksanaan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak', *Lex Et Societatis*, 153, 2012, 39.

[38] Nur Rima Cessio Magistri, 'Tinjauan Yuridis Terhadap Perlindungan Hukum Korban Tindak Pidana Penusukan Dalam Peradilan Pidana', *Jurnal Pembangunan Hukum Indonesia*, 2.1 (2020), 82–101 <https://doi.org/10.14710/jphi.v2i1.82-101>.

[39] Made Sugi Hartono and Ni Putu Rai Yuiartini, 'Penggunaan Bukti Elektronik Dalam Peradilan Pidana', *Jurnal Komunikasi Hukum*, 6.1 (2020), 281–302.

[40] Rusli Muhammad, 'Pengaturan Dan Urgensi Whistle Blower Dan Justice Collaborator Dalam Sistem Peradilan Pidana', *Jurnal Hukum IUS QUIA IUSTUM*, 22.2 (2015), 203–22 <https://doi.org/10.20885/iustum.vol22.iss2.art2>.

[41] Ook Mufrohim and Ratna Herawati, 'Independensi Lembaga Kejaksaan Sebagai Legal Structure Didalam Sistem Peradilan Pidana (Criminal Justice System) Di Indonesia', *Jurnal Pembangunan Hukum Indonesia*, 2.3 (2020), 373–86 <https://doi.org/10.14710/jphi.v2i3.373-386>.

by the readiness to apply modern technological devices and supporting resources to hold digital-based criminal trials.

So to provide good use of electronic-based criminal justice and prevent future problems from occurring in its application in the criminal justice system in Indonesia, there are essential aspects that must be considered besides regulatory aspects, which the author will describe below.

1. Application and Network Usage Security

An architecture or development of internet facilities is needed to facilitate flexibility and convenience and support speedy trials without face-to-face meetings. Using algorithms, capacity building at low cost (for the parties), and a good level of consistency concerning automated systems can be a good basis for increasing access to justice.[42] Electronic trial requires a secure network to protect data and cybercrime risks. Network strength is a challenge and obstacle in the implementation of electronic trials. Implementing electronic courts or trials requires that the parties involved understand how the application and equipment used work. In this context, law enforcement agencies should use providers or applications developed specifically for electronic criminal justice or enforcement to ensure that the privacy rights of the parties or defendants are maintained in the electronic justice space.

The author's view regarding the guarantee for the protection of the privacy rights of parties or defendants in the electronic criminal justice space through the development of special electronic criminal trial applications is in line with the due process of online discourse, in the concept of digital constitutionalism, which states that in a digital society, the state is not the only dominant actor, whose power can directly affect individual rights. Private companies that create, manage, and sell digital technology products and services are the new Leviathan of the digital age. Laidlaw, speaking specifically of Internet Service Providers and particularly of search engines, correctly defines these actors as 'online gatekeepers'.[43] In the case of search engines, their power to control access to information becomes apparent. Removing or simply lowering search result rankings is doomed to digital non-existence, consequently limiting individual rights to access publicly available information. More generally, however, Laidlaw's description fits nicely across the technology company category. By controlling access to digital technology, they can shape the way individuals use these instruments. In this way, they have the potential to influence

[42] Ronald W Staudt, 'All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice', *Loyola of Los Angeles Law Review*, 42 (2009), 101–29.

[43] Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <https://doi.org/10.53955/jhcls.v2i3.54>.

 [ISSN 2581-5369]

the exercise of our fundamental rights, not very dissimilar to how nation-states do it.[44]

In this context, there is a debate about whether, to what extent, and how to apply existing constitutional standards governing the exercise of state power by these private actors (technology companies). As the previous chapter shows, constitutional systems exist to limit dominant actors' powers and safeguard fundamental individual rights. Their historical mission, however, aims to overcome state power. Existing constitutional norms do not articulate principles limiting private entities' power. However, given the similarities between how the state and private enterprise can affect individual rights, one is intellectually tempted to apply these principles to the private sector, especially the private sector, whose performance orientation points to the basic principles of society.

From a legal perspective, the private sector is not formally bound by international human rights.[45] The state must ensure that private entities also protect these rights. In 2008, UN Special Representative John Ruggie issued a document setting out guiding principles on business and human rights, called the 'Ruggie principles'.[46] This text not only reaffirms the state's obligation to prevent human rights violations from being committed by private actors but also vigorously affirms the responsibility of private entities to protect human rights. Although this document is not legally binding and only imposes moral obligations on private actors, it does witness the start of a legal backlash against the power of private entities. Therefore, it is important to develop special tools for electronic criminal justice to ensure that the parties' privacy rights, especially the accused, are maintained.

2. The Power of Evidence

Proof in a criminal case is, in principle, a process to find and state the material truth regarding criminal acts and mistakes committed by someone so that that person can be subject to punishment.[47] The process of proof is regulated in procedural law, so its implementation has limitations related to the evidence that can be used, including the assessment of the evidence.[48] Neither the public prosecutor nor the accused, through their legal advisers, can freely present evidence they deem correct. In this case, the judge's role becomes vital in assessing and considering the strength of proof of evidence. The judge should base it on the evidence that is

[44] Saputra, Zaid, and Oghenemaro.
[45] Saputra, Zaid, and Oghenemaro.
[46] Saputra, Zaid, and Oghenemaro.
[47] Henry Donald Lbn. Toruan, 'Legal Implications of Bank Loans Turn into Corruption', *Jurnal Penelitian Hukum*, 16.1 (2016), 339–48.
[48] Syahril Syahril, Mohd Din, and Mujibussalim Mujibussalim, 'Penerapan Undang-Undang Pemberantasan Tindak Pidana Korupsi Terhadap Kejahatan Di Bidang Perbankan', *Syiah Kuala Law Journal*, 1.3 (2017), 16–28 <https://doi.org/10.24815/sklj.v1i3.9635>.

limitedly stated in the law.

Neither the public prosecutor nor the accused, through their legal advisers, can freely present evidence they deem correct. In this case, the role of the judge becomes very vital in assessing and considering the strength of proof of evidence. The judge should base it on the evidence that is limitedly stated in the law.[49] Therefore this is called proof in a broad sense. Second, the defendant refuted substantial evidence in terms of what was stated by the plaintiff. Things that are not disproved need no proof. This is, from now on, referred to as proof in a limited sense. Similar to R. Supomo's thoughts, Sudikno Mertokusumo put forward the meaning of juridical proof. For him, proof can be seen in a juridical sense as an effort to provide sufficient grounds for the case examining judge to provide certainty about the truth of an event postulated.

With the same substance, Eddy O.S. Hiariej formulates the idea of the importance of proof as a step to seek the truth of an event. It is often echoed that criminal justice is a search for material truth. If so, the proof is a logical consequence because the essence of proof itself is to find the truth about legal events. So it is not wrong if the crucial momentum is at the point of proof in a trial of a criminal case. Not only that, it still concerns criminal trials, efforts to prove have even been carried out at the investigation stage as the discovery stage of events suspected of being a crime to determine whether or not an investigation can be carried out. Therefore, the law of proof is needed to seek the truth of a legal event with legal consequences.[50]

In the proving process, the basis of reference is the indictment previously prepared by the prosecutor as the public prosecutor. The indictment contains the articles accused of the defendant. So to come to the conclusion that the defendant is proven to have committed the crime as alleged, the elements contained in the article must be proven first.[51] This refers to the provisions of Article 184 of the Criminal Procedure Code, which states that evidence includes witness statements, expert statements, letters, instructions and statements of the accused. The types of evidence have developed with the existence of the ITE Law, which is based on the provisions of Article 5 paragraphs (1) and (2) that electronic information and/or electronic documents and/or printouts are also valid evidence so that they can be used in criminal justice.

The imposition of a decision by a judge in a criminal case is determined mainly by the

[49] Agnes Pembriarni Nuryuaningdiah, 'Urgensi Pembentukan National Asset Management Credit Dalam Penyelesaian Kredit Macet Bank Bumn', *Masalah-Masalah Hukum*, 49.4 (2020), 443–53 <https://doi.org/10.14710/mmh.49.4.2020.443-453>.

[50] Abdul Manan, 'Penemuan Hukum Oleh Hakim Dalam Praktek Hukum Acara Di Peradilan Agama', *Jurnal Hukum Dan Peradilan*, 2.2 (2013), 189 <https://doi.org/10.25216/jhp.2.2.2013.189-202>.

[51] Henry Dianto Pardamean Sinaga, 'The Criminal Liability of Corporate Taxpayer in the Perspective of Tax Law Reform in Indonesia', *Mimbar Hukum*, 29.3 (2017), 769–86 https://doi.org/10.1093/he/9780199646258.003.0013.

evidentiary process. In the event that the judge considers that the defendant's actions have been proven legally and convincingly, the perpetrator is likely to be sentenced to a criminal sentence. Moreover, vice versa, if it is not legally and convincingly proven, the accused is released. The judge deciding on the form of punishment is based on two pieces of evidence and their beliefs in him. This provision is regulated in Article 183 of the Criminal Procedure Code, which theoretically is seen as a*n opposing wettelijke bewijs theory* or a negative theory of proof based on law.[52]

Historically, the existence of electronic documents in court for the first time gained juridical legitimacy through the Supreme Court Circular Letter (SEMA) Number 14 of 2010 concerning Electronic Documents which is a completeness of the Request for Cassation and Judicial Review. The aim is to increase the efficiency and effectiveness of the case file mutation process and to support transparency and accountability of public services by the Supreme Court and the judiciary under it. Interestingly this SEMA does not regulate electronic documents as evidence but talks about electronic documents in the form of decisions or charges in a compact disc, flash drive, or transfer via email as the completeness of a request for cassation and review.

Based on Article 5 paragraph (1) of the ITE Law, in principle, electronic evidence can be classified into two: information and/or electronic documents and printouts of electronic information and/or printouts of electronic documents. Electronic information and/or documents are further qualified as electronic or digital evidence, while printouts of electronic information and/or documents are further qualified as documentary evidence.

As referred to in Article 5 paragraph (1), the evidence is now an extension of legal evidence following the procedural law in force in Indonesia. The purpose of the expansion here is to add evidence that has been regulated in the criminal procedural law in Indonesia to add to the types of evidence as regulated in the Criminal Procedure Code. Second, expanding the scope of evidence that has been regulated in criminal procedural law in Indonesia. This relates to the printout of information and/or electronic documents, which are documentary evidence as stipulated in the Criminal Procedure Code. In connection with the expansion of evidence in criminal procedural law in Indonesia, it is regulated in various laws and regulations, for example, the Company Documents Law, the Terrorism Law, the Corruption Crime Eradication Law and so on.

Views related to electronic evidence actually face off on two sides which are viewed as an extension of documentary evidence and as a guide. Arief Indra K.A. looking at electronic

[52] Pradityo.

evidence can be qualified into two options: documentary evidence or guidance evidence. As long as it is made in printed form, electronic evidence becomes documentary evidence; if it is related to other evidence of which all powers are independent, it can be said to be supporting evidence.

Muhammad Nuh Al-Azhar stated that, in practice, there are two views among law enforcement officials, prosecutors and judges regarding the existence of electronic evidence. One party considers electronic information and/or documents as the sixth evidence. While other parties view electronic evidence as an extension of evidence as regulated in Article 184 Paragraph (1) of the Criminal Procedure Code. A digital forensic expert explains the validity of electronic evidence in the trial process. The principle inherent in the proof is that every evidence can talk. In other words, what makes electronic evidence able to speak is an expert.[53]

In principle, the proof is the substance of the trial itself. Why is that? Because the guilt of the accused will be tested in the evidentiary process. Referring to Article 197 of the Criminal Procedure Code, especially paragraph (1) number d. states that the sentencing decision contains one of them, namely briefly compiled considerations regarding the facts and circumstances along with the evidence obtained from the examination at trial which forms the basis for determining the defendant's guilt. Explicitly, this provision implies that in imposing a crime or sentencing a person, one of them is based on the evidence revealed in the evidence at the trial court.[54]

The evidentiary trial in criminal justice is usually carried out after an interlocutory decision has been made (if the defendant submits an exception/defence). In legal scholarship, it is known that there is an adegium "*actory in cumbit probation*", which means more or less who postulates a right. It is the person concerned who proves it. Indeed this adegium is better known in civil law (provisions of Article 163 HIR or Article 283 R.Bg and Article 1865 of the Civil Code), especially about parties who claim ownership of rights. However, this adegium is also relevant in the area of criminal law. The Criminal Procedure Code in Article 14, point g regulates the public prosecutor's fiduciary responsibilities, namely, prosecutions. In connection with this prosecution, the public prosecutor must prove it. Thus it is clear that the burden or obligation of proof in criminal cases is the responsibility of the public prosecutor.

Unlike the public prosecutor, the judge has the authority to adjudicate. According to the

[53] Cahya Wulandari and others, 'Penal Mediation : Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju', *Lex Scientia Law Review*, 6.1 (2022), 69–92 <https://doi.org/10.15294/lesrev.v6i1.54896>.

[54] Y M Saragih and M A Sahlepi, 'Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi', *Hukum Pidana Dan Pembangunan Hukum*, 1.2 (2019) <https://doi.org/10.25105/hpph.v1i2.5467>.

 [ISSN 2581-5369]

provisions of Article 1 number 9, adjudicating is a series of judges' actions to accept, examine and decide criminal cases based on the principles of being free, honest and impartial in court proceedings. The context of proof is the authority of the judge in examining cases. That is, the judge, with his authority, examines the evidence submitted either by the public prosecutor or by legal advisers. Based on this evidence, in the final part, the judge will make a decision strengthened by the conviction that arises because of it.

The judge is tasked with examining the evidence and evidence submitted by the public prosecutor in the evidentiary process. The evidence and evidence are, of course, relevant and valid according to the provisions of the laws and regulations and meet the formal and material requirements. Thus, the first step taken by a judge in determining a piece of evidence that can be used in a criminal trial is to determine its relevance and validity. About evidence, especially electronic information and/or documents, it is expressly regulated in Article 5 of the ITE Law, which states that electronic information and/or electronic documents and/or their printouts are valid legal evidence.

So here, there are concerns related to this proof, which raises the question of whether the process of proof in a digital-based criminal trial can give confidence to the judge if the evidence provided is shown digitally. In the field of electronic justice in Indonesia, there are no precise arrangements regarding aspects of proof in the area of electronic criminal justice. As with the proving process in the criminal justice space, how is the coherence between the evidence presented and the criminal case being tried, which ultimately leads to arousing the judge's conviction based on the evidence and its coherence with the trial led case?

The evidence presented often needs to be clarified because it is shown virtually. Therefore the quality of applications or supporting facilities for digital-based criminal justice must support the running of the judiciary itself. In addition, the defendant who was not presented or confronted directly resulted in systematic bias in exploring facts through questioning. Therefore, in this position, the strength of evidence in the electronic-based criminal justice space is largely determined by the quality of the supporting infrastructure for the trial itself.

On the other hand, the implementation of digital-based criminal trials also tends to remain closed because access to electronic criminal trials is only given to the parties to the litigation and is not yet open to be accessed by the public, thus not guaranteeing public access to the electronic-based criminal trials. Guarantees for trial accessibility must be carried out by providing a list of trial information on the court website and a special court telephone number that can be contacted by the public who wishes to follow the proceedings. In addition, the court

 [ISSN 2581-5369]

must also provide a stenographer, a person who will take notes, record the course of the trial and provide a transcript of the trial based on the trial record, which will be provided to the parties.[55] What the author lastly describes is the result of a comparison with electronic criminal justice in the United States, which seems to be more advanced than Indonesia because it has considered technical matters, such as the court having its virtual application specifically designed for electronic trials, and has considered guaranteeing public accessibility. In the course of the electronic trial itself, by providing the broadest possible information on the court website.

IV. CONCLUSION

Electronic justice, in realizing the renewal of criminal law enforcement in Indonesia, can be done by: a. Digital-based criminal justice must be regulated at the level of law (Discourse on Renewal of the Criminal Procedure Code), where the implementation of electronic criminal trials is still a problem. The reason is that until now, no legal umbrella strictly regulates the standards for conducting electronic hearings. Meanwhile, the mechanism regarding this matter is the only alternative for carrying out criminal case trials. The reason is that the Criminal Procedure Code (KUHAP), as the law that regulates the procedures for criminal trials, does not even regulate this because, at the time the law was made, such matters could not be predicted. For this reason, so as not to hinder the law enforcement process, a legal umbrella is needed that regulates standardization and mechanisms regarding electronic trials by establishing laws that regulate electronic justice and holding legal reforms through revisions in Law Number 8 of 1981 concerning Procedural Law. Criminal (KUHAP); b. ensure readiness to apply modern technological devices and supporting resources to hold digital-based criminal trials.

*****

[55] Putri and Sinaga.

 [ISSN 2581-5369]