



## **Implementation of Criminal Case Trials Through a Teleconference by Prosecutors with a Progressive Legal Approach**

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### **ABSTRACT**

The development of technology in the era of the 4.0 industrial Revolution, characterized by digitalization until covering the realm of criminal law, was affected by the activity of law enforcement. Moreover, this time crowded about criminal trials through teleconference in the middle increasingly the mass of pandemic spread covid-19 which of course also affects the duties and authority of the prosecutor. The study focuses on analyzing the implementation of the trial in a teleconference by prosecutors with a progressive legal approach, highlighting the law as "not only rules and logic but also behavior." This research uses the socio-legal approach. The results showed that the legal arrangements related to criminal proceedings through the teleconference were still scattered in various regulations and the double implications of prosecutors. As for the implementation of the trial teleconference by prosecutors from the legal side of progressive measured from two things, first behavior seen in the trial that met many challenges, second is measured from an understanding of a progressive order/following the dynamics of community development. But the future also needs to be re-evaluated every weakness of existing current and formulated standard operational procedures and detailed legal provisions of the proceedings through the teleconference selectively.

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## **1. INTRODUCTION**

The development of technology has encouraged the development of society towards a more modern life, because the use of technology has always influenced people's mindsets and lifestyles. A technology is basically created to improve the quality of life and facilitate human activities to be more effective and efficient (Wijaksana, 2017). Moreover, today's world has entered the era of the Industrial Revolution 4.0, where the process of digitization (Pusat Bahasa Departemen Pendidikan Nasional, 2020) through the use of technology and internet networks has occurred

massively and affects almost all aspects of life, including in the realm of law.

In the realm of law, especially at the level of criminal law enforcement practices, digitalization has been seen with the existence of virtual / online trials. Moreover, empirically, in the practice of Indonesian criminal justice, it has been proven that it has been a long time since carrying out witness examination by teleconference (Eddiyono, 2015). It can be seen that in 2002 the Supreme Court (MA) gave permission to the former President of the Republic of Indonesia, BJ Habibie, to testify via teleconference in the case of irregularities in Bulog's non-budgetary funds on behalf of the

accused Akbar Tandjung (Erdianto & Soponyo, 2015: 66).

However, when currently in Indonesia there is a Corona Virus Disease 2019 (Covid-19) pandemic with the latest data released on July 7, 2020 which shows that the number of positive people for this pandemic is 66,226, while the number recovered is 30,785 people, and the number who died was 3,309 (Covid.id, 2020) which will further increase the need for digitization. The Supreme Court, Attorney General's Office signed the Cooperation Agreement Number 402 / DJU / HM.01.1 / 4/2020, Number KEP.17 / E / Ejp / 4/2020 and Number Pas-06.HH.05.05 Year 2020 concerning the Implementation of the Trial Through a Teleconference, in order to respond to the Covid-19 outbreak which is increasingly worrying day by day. Furthermore, if we review it philosophically, the digitalization process in the legal realm, which is marked by the existence of online trials via teleconference, is actually for realizing the purpose of law to achieve justice for the parties involved in the trial process.

Observing the description above, interestingly, it is of course closely related to the power of prosecutors who can act as public prosecutors, even specifically in the criminal field, they explicitly have the duty and authority to carry out prosecutions as stipulated in Law No.16 of 2004 on the Prosecution. Therefore, this study will focus on the analysis of the importance of regulating the implementation of criminal proceedings through teleconferences and the implications associated with the duties and powers of prosecutors, leading to the latter being complemented by analysis in a progressive legal perspective.

## 2. RESEARCH METHODS

This study uses a socio-legal approach, which is an approach that combines normative and empirical studies, meaning that the study conceptualizes law as a norm as well as a reality (Samekto, 2015). The specification in this research is descriptive analytical. The research location is in the library, examination room,

online courtroom, Tojo Una-una Public Prosecutor's Office. The type of data used consists of; (1) primary data, which is obtained from the results of observations on the implementation of general criminal case hearings by teleconference and the results of interviews with Functional Prosecutors at the Tojo Una-una District Attorney's Branch in Wakai. (2) Secondary data, obtained by literature study of primary legal materials including laws and regulations governing online criminal trials, secondary legal materials consisting of various books, journals, seminar materials. As well as limited legal materials sourced from websites and online dictionaries. The data is then collected and analyzed qualitatively, namely by organizing the data and sorting it into manageable units, and deciding on something that can be shared with others or that describes it (Lexy J. Moleong, 2008).

## 3. RESULTS AND DISCUSSION

### *Implementation of Criminal Case Sessions by Teleconference Currently Applicable*

Starting this discussion, it should be stated that in fact, in the provisions of positive law (*ius constitutum*) as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as KUHAP) (Adhari, 2020) that the problem of criminal proceedings via teleconference is not accommodated. But only in a sectoral manner in the law which specifically regulates the development of evidence, while the provisions that explicitly regulate teleconferences are contained in jurisprudence. This is natural, because 1981 has not yet entered the era of the Industrial Revolution 4.0 and there has been no massive digitization.

Apart from that, the legislators at that time had not yet imagined that there were "certain circumstances" that required a virtual trial, such as a national non-natural disaster in the form of the Covid-19 pandemic. So that the current provisions of the Criminal Procedure Code become less relevant and out of date, and demand that law enforcers be able to make legal

breakthroughs (rule breaking) to overcome these crucial conditions and problems.

In the perspective of the Special Law (*Lex Specialis*), there are several provisions that enable and support the implementation of criminal case trials via teleconference, although they are limited to the following provisions regarding "witness examination":

**Table 1.** Provisions regarding the possibility to support the implementation of criminal justice through teleconference

No.	Regulation
1	Article 34 of Law no. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law No.1 of 2002 Concerning the Eradication of Criminal Acts of Terrorism Into Law;
2	Article 9 of Law no. 13 of 2006 in conjunction with Law no. 31 of 2014 concerning Protection of Witnesses and Victims;
3	Article 38 of Law Number 15 of 2002 concerning the Crime of Money Laundering as amended by Law Number 25 of 2003;
4	Articles 29 and 30 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons;
5	Article 44 of Law Number 11 Year 2008 concerning Electronic Information and Transactions;
5	Article 86 of Law Number 35 of 2009 concerning Narcotics.
6	Article 4 letter c Government Regulation of the Republic of Indonesia Number 2 of 2002 concerning Procedures for the Protection of Witnesses and Victims of Serious Human Rights Violations

From the above matrix, the authors see that *lex specialis* only regulates the examination of witnesses via teleconference, although it has not fully regulated the procedures for conducting criminal proceedings through teleconferences in an integral and holistic manner. As for the research conducted by Mahrus Ali et al and the LPSK Report as quoted by Supriyadi W. Eddiyono, explained that several court processes regarding teleconference that have been used in Indonesia, namely (Wijaksana, 2017):

**Table 2.** Several court processes regarding teleconference that have been used in Indonesia

No	Case	Information
1	Rahardi Ramelan	Proposed by the Legal Counsel, broadcast on SCTV, the location of witness BJ Habibie at the Indonesian Consulate in Germany
2	Pengadilan Ham Ad Hoc	Proposed by the Public Prosecutor, Witness testimony taken in Dilli, Timor Leste, at the expense of the World Bank
3	Abu Bakar Ba'asyir	Proposed by the Public Prosecutor, Witness statements were taken in Kuala Lumpur and Singapore, at the expense of Densus 88
4	Ali Gufron	Proposed by the Public Prosecutor, the Witness's statement was taken in Kuala Lumpur, at the expense of the State
5	Abu Bakar Ba'asyir	Proposed by the Public Prosecutor, the Witness's statement was taken in Kuala Lumpur, at the expense of the State
6	JIS	Proposed by the Public Prosecutor, Witness testimony is taken in Dilli, Timor Leste, at the expense of the state

In its development, there is an entry point (legal umbrella) which regulates the implementation of criminal case trials by teleconference, which is based on:

**Table 3.** Legal umbrella which regulates the implementation of criminal case trials by teleconference

No	Ministries / State Agencies	Regulation
1	MA	Letter of the Director General of Badilum MARI No: 379 / DJU / PS.00 / 3/2020 (dated 27 March 2020)
2	Kejaksaan RI	Letter of the Attorney General of the Republic of Indonesia No: B-049 / A / SUJA / 03/2020 (dated 27 March 2020)
3	MA, Kejaksaan RI, dan	Cooperation Agreement on April 13, 2020 between the Supreme

Kemnkumham	Court (Number: 402 / DJU / HM.01.1 / 4/2020) and the Attorney General's Office (Number: KEP-177 / E / Ejp / 04/2020) and the Ministry of Law and Human Rights (Number: PAS-08.HH.05.05 Year 2020) regarding the Implementation of Trials by Teleconference
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Of the three legal umbrellas, the strongest legal umbrella regulating the Implementation of Trials by Teleconference is at point 3 (Conducting Trials by Teleconference). This of course has implications for carrying out the duties and powers of the prosecutor who acts as the public prosecutor in conducting trials. Based on the results of interviews with key informants, namely Moh. Qasim Talib, there are at least 2 (two) implications received by the Prosecutor (Public Prosecutor) regarding its existence.

The existence of various entry points (legal umbrella) certainly provides a clear basis / basis for prosecutors to conduct criminal proceedings via teleconference. Prosecutors perform their duties and powers by acting as public prosecutors to carry out prosecution by teleconference. Especially during a pandemic like today, the existence of a legal breakthrough in the form of an MoU for the three institutions mentioned above, is very useful in realizing legal objectives that still prioritize the value of justice for the parties in litigation. In addition, another advantage is that we don't have to have physical contact with many people so that we avoid the risk of contracting the corona virus and others, the time efficiency is also quite good, not too draining, and reduces other risks on the trip such as escaped prisoners, and all trials are recorded in the media electronics (zoom app) used (Moh. Qasim Talib, 2020).

It should be noted that there are a number of weaknesses in the trial through teleconference, namely the judge examining the actual condition of the witness/expert is less aware, then the internet network/weather factors that are not good also have an effect, judges and prosecutors are also less free to see the body language of the witnesses and defendants, then examination of evidence in the form of letters is also quite risky, the cause of which there is concern that it

will affect the process of evidence aimed at discovering the material truth. So that the prosecutor must also adjust (change behavior), for example, the voice must also be clarified in asking questions or reading out the demands and so on. This is done in order to deal with the weaknesses listed above, as well as a challenge for a prosecutor in a hearing (Moh. Qasim Talib, 2020).

Observing the two implications above, the author only wants to convey that the legal arrangement related to the implementation of online criminal cases is a progressive legal breakthrough. Especially during a pandemic like now, however, it is worth to be aware of any negative implications that could potentially arise, so that in the future there must be regular monitoring and evaluation from related parties.

### ***Implementation of Criminal Case Trials by Teleconference by Prosecutors with a Progressive Legal Approach***

Starting from this discussion, it is worth putting forward the conception of progressive law. The term progressive originally emerged from a criminal law scientist and former Deputy Attorney General, Moeljatno, stated that: "development in the field of legal order requires the elimination of everything that is obsolete and obsolete to be replaced by fresh, useful and progressive ones (bold print by the author), then the formal juridical way of thinking should be replaced with the material juridical in the sense that the words used in the regulation should be interpreted so that the meaning of the regulation is in perfect harmony with and in tune with the dynamics and progress of society where the regulation is expected to benefit" (Arief, 2012). From the above affirmation. It is seen, that according to Moeljatno, do not merely think formal juridical (textual minimalism), but should be extended to material juridical in accordance with the dynamics / progressivity (bold print by the author) of society or in other words towards contextual / substantive maximalist thinking.

Furthermore, the idea of progressive law became more grounded with the emergence of Satjipto Rahardjo, but he did not define what progressive law was. However, in general progressive law can be identified as follows: Progressive law departs from two basic components of law, namely rules and behavior. Progressive law departs from the basic concept that law is for humans, not the other way around. Progressive law also departs from the basic assumption that law is not an absolute and final institution, because law is always in the process of being (law as a process, law in the making) and that progressiveness appears with a sign that the law is sensitive to changes that occur. occurs in both local, national and global communities (Yudi Kristiana, n.d.).

As for the implementation of criminal trials via teleconference, based on data presented by Sunarta, that as of July 6, 2020, the Attorney General's Office has successfully completed online trials throughout Indonesia totaling 176,912 general criminal cases. He further stated that (Sunarta, 2020: 8):

**Table 4.** Recapitulation of the trial and stage ii online general criminal procedures for the period 30-31 March to 29 June 2020

No.	Date	Kejari/ Cabjari	The Judge online	Prosecutor	Stage II	Info
1	March and April	4062	57736	12984	305	
2	May	3502	46295	13622	328	
3	June	4974	62686	18525	620	
4	until July 6	824	10195	3075	114	
	amount	13362	176912	48206	1367	

As for the implementation of the trial by means of a teleconference by the prosecutor, the author observes the proceedings of the trial in general criminal cases at the district attorney's branch tojo una-una in Wakai, namely in 2 (two) cases. First is trial in criminal cases of intercourse against children and second is

criminal assault. The course of the virtual trial was quite smooth, but sometimes the network was not very good, so the voice was not very clear. Furthermore, the authors describe the results of the interviews with sources, there are several important points related to this online trial (Moh. Qasim Thalib, 2020):

- (1) We have conducted online criminal trials (two cases) on a clear basis as previously disclosed, especially since it was strengthened by the pandemic which was declared by the president as a national non-natural disaster through Presidential Decree No. 12 of 2020.
- (2) The implementation of a virtual trial as an innovation in criminal proceedings is an effort that we are making to achieve the goal of balanced criminal law enforcement, on the one hand it continues to carry out the law enforcement process and on the other hand continues to comply with government instructions in order to suppress the spread of Covid-19 in Indonesia and adhere to health protocols by maintaining physical distance.
- (3) Even though the location of our work unit is in an archipelago which is quite far away, coupled with limited personnel, the availability of electricity that is not yet 24 hours, the internet network is not stable, the infrastructure is not yet representative, we still hold the trial by joining the online courtroom. at the State Prosecutor's Office with the permission of the leadership.

Based on the results of the research above, it becomes interesting when analyzed with a progressive legal approach. By moving on the ontology aspect, the concept of law in progressive law is interpreted as "not only rules and logic but also behavior". So, what is progressive is not only the enforcement but also the rules / substance (Suteki, 2020).

Implementation of criminal proceedings via teleconference based on the author's research is a form of progressive behavior. Law enforcement is brave to be out of the box, even though in fact there are still shortcomings / obstacles or

challenges that must be evaluated in the future. This evaluation is in line with the character of progressive law (law as a process, law in the making).

The implementation of criminal proceedings via teleconference based on the author's research is based on the rules / legal substance which is also progressive. Progressiveness in the regulation exists because the substance has the courage to break through the existing provisions that are out of date.

**Table 5** Judging from the substance / rules

Positive Legal Norms / Principles (KUHAP and Law No. 48/2009)	Law Breaking (Rule Breaking)
- The Principle of Attendance at Trials attended by 3 Judges assisted by the Registrar, the Public Prosecutor must be present, the Defendant must be present. (Law 48/2009)	Legal Counsels / Defendants, Experts, Witnesses were virtually present at the trial online via teleconference, from different places at the same time;
- Defendants / legal advisors, experts, witnesses, present public prosecutors (KUHAP)	

In connection with this legal breakthrough, it appears that there has been an expansion in the meaning of the word "present", because being present in the sense of KUHAP and Law 48/2009 is physically present. Meanwhile in the new regulations, namely the Cooperation Agreement on April 13, 2020 between the Supreme Court (Number: 402 / DJU / HM.01.1/4/2020) and the Attorney General's Office (Number: KEP-177 / E / Ejp / 04/2020) and the Ministry of Law and Human Rights (Number: PAS-08.HH.05.05 Year 2020) concerning the Implementation of Trials via Teleconference which is expanded to mean virtual presence. In connection with this matter, the Supreme Court is also preparing a Draft PERMA on electronic trial which consists of 6 Chapters: I. General Provisions, II. Pre-trial: Delegation, Numbering and Vocation, III. Trial: Preparation for Trial, Indictment, Objections, Responses, Intermediate Decisions IV. Examination: Swearing, Witnesses, Experts, Evidence, Claims, Defense,

Replications, Duplicates, Decisions/ Notifications, V. Transfers, VI. Closing (Suhadi, 2020). The breakthrough was carried out with the consideration that Covid-19 is increasingly widespread and increasingly worrying. In addition, law enforcement must continue to take into account the rights of suspects, defendants, witnesses, victims, witnesses and the wider community.

Interestingly, from the results of interviews with resource persons, he suggested that in the future the RKUHAP also include new norms regarding trials via teleconference in a special chapter by attaching requirements "in certain circumstances" which are selective,(Covid.id, 2020) because the new RKUHAP allows hearings by teleconference only in terms of testimony. However, the authors also propose to immediately make online trial SOPs by internal prosecutors.

#### 4. CONCLUSION

The conclusions obtained from this discussion are legal arrangements regarding the implementation of criminal proceedings via teleconference are still scattered in various regulations and some still have various limitations but have been anticipated by the existence of a legal breakthrough in the form of a cooperation agreement between the Prosecutor's Office, the Supreme Court and the Ministry of Law and Human Rights. The implications of this for the duties and authority of the prosecutor are, in a positive sense, making legality (the entrance / legal umbrella) in the implementation of hearings via teleconference already exists and in a negative sense it creates many challenges in terms of proof and other technical obstacles. Conducting criminal proceedings through teleconference by prosecutors in terms of a progressive legal perspective is measured in two ways, firstly the progressiveness is seen from the behavior and way of thinking that is bold out of the box, the second is supported by the existence of regulations which are also progressive. / dynamic because it is able to follow the development of human life and conditions in the

current social environment and it is possible to selectively refine this rule in the future.

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