

5. Review On The Rights To Be Charged Fairly For Chases's Suspect Due To The Public Attention In Trial System Indonesian Law

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REVIEW ON THE RIGHTS TO BE CHARGED FAIRLY FOR CHASES'S SUSPECT DUE TO THE PUBLIC ATTENTION IN TRIAL SYSTEM INDONESIAN LAW

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Abstak

Persidangan merupakan tahapan penting dalam pembuktian bagi para pihak. Para pihak menyerahkan alat bukti yang mendukung dalil masing-masing sehingga majelis hakim dapat mengadili perkara dengan jelas. Para pihak berhak menjalani bentuk persidangan yang adil (*fair trial*). Tulisan ini, tim penulis fokus pada masalah hak terdakwa atas proses persidangan netral. Namun pada praktek dalam beberapa kasus pidana yang menarik banyak perhatian sering terjadi pengabaian hak-hak terdakwa untuk menjalani persidangan yang bebas dari tekanan public yang berlebihan bahkan juga dari opini yang menyertai suatu kasus. Hal ini mengakibatkan kecacatan penegakan hukum dimana hukum harus mampu memberikan pelayanan dan rasa aman yang sama kepada setiap pencari keadilan. Hukum pidana yang timpang ini akan mengakibatkan adanya putusan yang tidak adil baik bagi korban maupun terdakwa. Penelitian ini menggunakan jenis penelitian normatif dengan pendekatan komparatif dan pendekatan konseptual. Pendekatan ini digunakan mengkaji semua peraturan perundang-undangan yang terkait dengan masalah persidangan secara adil terhadap kasus-kasus dengan atensi publik yang besar. Penelitian dielaborasi dengan pendekatan dan doktrin yang berkembang di bidang hukum. Data yang digunakan adalah data sekunder yang diperoleh melalui studi pustaka dan data primer diperoleh dengan melakukan wawancara dengan responden dan lembaga litigasi. Kesimpulan yang bisa ditarik dari pembahasan tersebut adalah ada lubang dalam sistem Acara Pidana Indonesia. Apalagi dalam menangani kasus yang menarik perhatian publik yang besar. Hal ini mendesak untuk diperbaiki, sehingga martabat persidang tetap terjaga. Siaran langsung persidangan secara masif harus dipertimbangkan kembali. Hak siaran tidak boleh menyinggung martabat persidang. Persidangan dapat menempatkan media di ruang sidang selama untuk menjaga keadilan persidangan.

Kata kunci: Percobaan; Kasus dengan Bunga Tinggi; Masyarakat; Sistem Online; Kewajiban Hadir Tergugat

Abstract

A trial is an important stage in proofing for each party. Each of the party will submit any evidences to support their arguments of evidence so that the panel of judges can examine and judge cases clearly. Each party has the right to undergo a form of trial that is fair (*fair trial*). In this paper, the writing team focuses on the issue of the

defendant's right to a neutral trial process. But the reality is that in several criminal cases that attract public attention, there is often a neglect of the defendants' rights to undergo a trial that is free from public pressure, excessive media coverage, and even the accompanying opinion on a case. This has resulted in a flaw in law enforcement where the law should be able to provide the same service and sense of security to every justice seeker. This lame criminal law will result in the presence of an unfair decision for both the victim and the accused. This research used normative research with comparative approach and Conceptual approach. These approaches are used to examining all laws and regulations related to the legal issue that are imposed in this research. Research is elaborate with the views and doctrines that are developing in in law. The data used are secondary data obtained by library research and primary data obtained by conducting interviews with respondents and litigation institutions. The conclusion that can be drawn from the discussion are there is a loop in our Criminal Procedural system. Especially in treating a case with a huge public attention. It urges to be fixing, so the dignity of the trial of courtroom will be stay. The massive broadcasting for the live trial should be re-considered. The broadcaster right should not be offending the courtroom dignity. The trial may keep the media in courtrooms as long as to keep the fairness of trial.

Keywords:

Trial; Cases with High Interest; Community; Online System; Obligation to Present the Defendant.

INTRODUCTION

Social life with the law are two things that cannot be separated. As the expert's statement reads: Ubi societas ibi ius, a legal rule is needed to regulate social life in order to achieve public order. Legal rules are binding for everyone in society in the field of public law and private law. The rule of law applies to be a positive law for society. At this time, the Covid-19 pandemic changed the way people live. Covid-19 has even created a new order (new normal) including a new order for criminal justice settlement courts in Indonesia in the form of online trials (hereinafter referred to as online). One of the trials that can be held online is the trial of criminal cases. Criminal case hearings are carried out through electronic media (online) for the purpose of reducing the spread of Covid-19.

However, the trial actually raises new problems in the field of law, namely regarding the guarantee of certainty of the rights of suspects in undergoing trials. In Jessica's case, it became a focal point that was highlighted by the media. The prominence and emphasis of Jessica's figure through a series of trial events led to pros and cons of the judge's decision. On the other hand, there is news that focuses on law enforcement in Indonesia but with parts of the news that are omitted, missed, or even hidden in the news text about the trial. Such news, in the end, will create biased coverage. A trial that is biased makes

the image of an online trial and the obligation to attend the defendant at trial has returned to the fore.

In this paper, the problem that will be examined in this study is to synergize the obligation to attend the suspect in court with court proceedings in a network (hereinafter referred to as online) involving cases with great attention. The implementation of online trials in the criminal justice system needs to examine several things. These include, among other things, the decision that was produced whether it fulfilled the sense of justice for the defendant. The purpose of writing this scientific journal is to provide an understanding of the legality of trials carried out online in the criminal justice system which is currently forced to be taken as a safe step in the midst of the Covid-19 pandemic which is contracted with the obligation to attend the defendant for a fair trial.¹

From the results of preliminary research by the research team, it is known that the current state of the Covid-19 pandemic has caused a lot of dissatisfaction for the accused. Organizing criminal hearings online via teleconference poses many challenges to its implementation. Although online criminal proceedings can be the right innovation and breakthrough, the Supreme Court must continuously refine the system. *Salus Populi Suprema Lex Esto*, which means people's safety is the highest law, this adigium is a very appropriate adigium if it is associated as a basis for making a policy in the midst of the Covid-19 outbreak, because a law that is established and enforced must truly cover its people.² The purpose of this paper is to examine the ideal implementation of criminal proceedings carried out online and to examine the obligation to attend the defendant at trial, which is currently forced to be limited as a safe step in the midst of the never ending Covid-19 pandemic.

METHOD

Legal Basic of Implementing Online Trials for criminal cases in Indonesia

One of the policies due to the Covid-19 pandemic is the imposition of social distancing, even a lockdown policy, so that the implementation of court activities cannot run as usual because it does not allow court institutions to hold trials in accordance with the prevailing rules and regulations before the Covid-19 outbreak. The use of regulations with the previous standard caused crowds of people to make it impossible to enforce them.

The transition of the trial system from conventional to online due to the Covid-19 outbreaks, of course, has caused many differences and various impacts. So it is necessary

¹ Marshal Clinard, *The Relation Of Urbanization and Urbanism To Criminal Behaviour*, Chicago : University Of Chicago Press.1980, P.34-36

² George Comstock, *Television and Human Behaviour*.New York : Columbia University Press. 1980, P 234

to do an analysis of online trials during the Covid-19 pandemic. The online trial will be carried out by referring to the Instruction of the Attorney General of the Republic of Indonesia Number 5 of 2020 concerning the Policy for Implementing Tasks and Handling Cases during the Prevention Period for the Spread of COVID-19 in the Environment of the Republic of Indonesia Prosecutors' Office on March 27, 2020. This instruction is accompanied by a Circular Letter of the Attorney General of the Republic Indonesia Number 2 of 2020 concerning Adjustment of Employee Work Systems in Efforts to Prevent the Spread of Coronavirus Disease (COVID-19) within the Republic of Indonesia Prosecutor's Office.³

Based on the above, the Attorney General issued several important points in handling criminal cases during the Covid-19 period. This is stated in the Circular of the Attorney General of the Republic of Indonesia Number B-049 / A / Suja / 03/2020 of 2020 concerning Optimization of the Implementation of Duties, Functions and Authorities Amidst Efforts to Prevent the Spread of Covid-19 (hereinafter abbreviated as SEJA No. Number B- 049 / A / Suja / 03/2020).

Furthermore, Article 9 Paragraph (3) of Law No.31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, which states that witnesses / victims can be heard directly through electronic means accompanied by an authorized official. The next development was born from Perma No. 1 of 2019 Administration of Cases and Trials in Courts Electronically, this Perma can be seen as an effort to develop an e-court system for court institutions under the Supreme Court to continue to provide legal services even though justice seekers do not appear in court directly. The use of this e-court ultimately boils down to the importance of implementing virtual courts which are held on-line without the need to present the parties in the courtroom⁴

Online Trials for criminal cases in German

The German government is a government that is based on the German Grundgesetz constitution which was promulgated on 23 May 1949. The Grundgesetz German Constitution was actually planned as a provisional constitution. In that constitution, it is stated in the opening article of the German Constitution that guarantees the dignity of fellow human beings, freedom in personal development, equality for everyone before the law and freedom in belief and belief. Men and women have the same rights and no one is differentiated in terms of sex, descent, race, language, origin, belief and religion or political beliefs. Everyone is free to express their opinions and thoughts either through speech, writing or in pictures. The German judicial system divides the judiciary into 5 (five) categories, there are :

³ <https://www.tatsachen-ueber-deutschland.com>. accessed on May 1 2021, 09.00 wib

⁴ <https://id.m.wikipedia.org>. accessed on May 3 2021, 09.00 wib

1. "General courts" handle criminal cases and civil cases. There are four levels: District Court (Amtsgericht); District Court (Landgericht); High Court (Oberlandesgericht) and Federal Supreme Court (Bundesgerichtshof).
2. The "Labor Court" handles civil disputes relating to employment relations, as well as disputes between the two employment partners, namely the employer and the labor union. Has three agencies at the county, state and federal levels.
3. The "Administrative Court" handles all public cases in the field of state administrative law. These agencies exist at the county, state and federal levels.
4. The "Social Court" handles all disputes relating to compulsory social security insurance. It has three agencies such as Administrative Courts.
5. The "Financial Affairs Court" deals with cases involving taxes and levies.⁵

The highest court body RFJ, is the Federal Constitutional Court that stands outside the five areas of justice outlined above. The existence of this State Institution is stipulated by the Constitution. The function of the institution is to decide cases related to the Constitution. The Federal Constitutional Court is chaired by a President currently chaired by Hans-Jürgen Papier and a Vice President currently served by Andreas Voßkuhle.⁶

The historical point of holding a trial without the presence of a suspect in Germany is further regulated in the International Military Tribunal (Nuremberg Tribunal). The Nuremberg Tribunal (its official name is the Military Tribunal / IMT) is the first international military tribunal established in the world to try war criminals and other serious crimes. This tribunal later adopted the contents of the London Charter. Article 12 of the London Charter regulates trials in absentia, in which the whereabouts of the accused persons are not known.⁷

In its development, the Federal Court of Germany prohibited activities involving technology in courts.⁸ Cell phones have no place in courtrooms and forbid judges from using them when hearing a case. This problem is considered not just courtesy but also concerns the core of the

⁵ Edwin H Sutherland, Donald R Cressey, Prinsip-Prinsip Dasar Kriminologi. Terjemahan. Edisi 11, Jakarta :Prenada Media Grup. Hlm.260-261.

⁶ <https://www.tatsachen-ueber-deutschland.com>. accessed on May 1 2021, 09.00 wib

⁷ Dimmick & Rothenbuhler, *The Niece and Dominance In Media Industry*, Competition, Displacement and Coexistence, New Jersey :Temple University, 1984 ,P 157

⁸ Bernard Berelson. *Communications and Public Opinion in Mass Communications*, Urbana : Univestity of Illonois Press. 1960. Pp. 527.

judge's duties, which must focus on the cases he is handling at all times. It added that in an emergency, the trial may be temporarily suspended and resumed with full attention. A judge from Germany's highest civil court, Thomas Fischer, insisted that cell phones should not be in the courtroom, and this applies to visitors, legal advisors, and judges as well.

The Urge of implementing Online trial on cases with great public attention

Television media was once the media with the largest consumers compared to other types of media such as print media, radio media and internet media. The presence of television media on the shows that are presented has a great influence on media consumers. Television media is considered to have the advantage of being able to present live broadcasts with various kinds of broadcasts.

Dimmick & Rothenbuhler argues that there are three sources of life for the media.⁹ The three sources of life are content, capital and audiences. Content is related to the content of media presentations, for example programs (television and radio), news / features, and so on.¹⁰ Capital concerns the source of funds to support the media. Meanwhile, the audience is related to the target segment problem. When the media prioritizes content and the audience, of course, the presentation of media content is in accordance with the ideal concept.

Broadcasting of legal cases is carried out by the media directly or indirectly (re-broadcast).¹¹ Related to this, the Research Team for the National Law Development Agency (BPHN) of the Ministry of Law and Human Rights of the Republic of Indonesia has conducted research on the practice of live television media broadcasting which found that the practice of courtroom television which is interpreted as an activity that broadcasts both directly and again in a case has cornered the suspect. This of course violates the principle of presumption of innocence or the presumption of innocence. It is feared that trial practice in the media will lead to trial by the press which has the potential to cause contempt of court.

In the 2014-2019 periods there were several cases that attracted great attention from the public. In this paper, the writing team only puts forward 2 (two cases). These cases are the murder case by Jessica and the case of

⁸ Bernard Berelson. *Communications and Public Opinion in Mass Communications*, Urbana : Univestity of Illinois Press. 1960. Pp. 527.

¹¹ Jason Ditton. Bias In The Newspaper Reporting Of Crime News. *British Journal Of Criminology*, 1983, P 159,

religious blasphemy by Ahok. These two cases are in the public spotlight. The trial process was broadcast live. The trial proceedings are broadcast in detail. The live broadcast of the trial process of the two cases turned out to be in the public spotlight, even the international community considered the Indonesian judiciary to be very poor. The international judicial community is concerned that live broadcasts of cases with great public attention will place judges as publicly adjudicated by the judicial process. On the other hand, the media must still exist in a judicial process to become a means of control so that judges remain neutral.

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RESULT AND DISCUSSION

A. The Fair Trial System in Criminal Law According To Indonesia and Germain

The use of the online system at this trial can be categorized as a form of legal breakthrough (rules breaking) in the criminal justice system.¹² This is positive. This is also based on the recapitulation of online trial data from March 30 to July 6, 2020. The number of cases whose cases were held online totaled 176,912 times that of general criminal proceedings. The number of cases resolved significantly. however, the online trial still leaves some problems, therefore, this paper tries to solve these problems by classifying the problems earlier into two types of problems. The two types of problems that exist are First, juridical-procedural problems, this is based on the inadequate view of the legal umbrella that currently exists, because it has not been regulated in Law No. 8 of 1981 on Criminal Procedure Law (KUHAP); Second, the juridical-substantive problem, this specifically refers to the application of the online trial for the type of case that does not allow the trial in absentia in the regular examination and short examination.

¹² Edwin H Sutherland, Donald R Cressey, Prinsip-Prinsip Dasar Kriminologi. Terjemahan. Edisi 11, Jakarta :Prenada Media Grup. Hlm.260-261.

In addition to being regulated in KUHAP Article 154 paragraph (4) KUHAP is also a principle in criminal law. Third, the technical-empirical problem, which refers to real conditions in the field, such as the instability of the internet and the inadequate proof of evidence during online proceedings. In an effort to solve this problem, this article is offered to revisit the problem at a theoretical level.

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The direct broadcast of the trial process is related to the principle of open trial to the public in accordance with Article 195 of the Criminal Procedure Code (KUHAP) which states that all court decisions are only valid and have legal force if they are pronounced in an open court to the public. Bagir Manan said that once a verdict is pronounced, it becomes public property. Because it was pronounced in an open court, it became public property, no longer the property of those who litigated. Every person concerned has the right to know the verdict.

Affirmation of Article 153 paragraph (1), Article 195 of the Criminal Procedure Code and Article 13 paragraph (1, 2 and 3) of Law no. 48 of 2009 concerning Open Trial for the Public, opens space for the television media industry to attend the trial process with live broadcast. However, in Indonesia, there are actually no rules that allow or prohibit live media broadcasting during the trial process in an explicit and detailed court, either in the Criminal Procedure Code or in other laws. The Criminal Procedure Code only regulates judges as maintainers of trial order, can remove people who are deemed degrading the dignity of the trial from the courtroom. This allows the judge to expel the cameraman who is present in the courtroom, if this is deemed to have interfered with the trial process.

The arrangements regarding trial recording are found in several regulations. Supreme Court Circular (SEMA) No. 4 of 2012 concerning Recording of Trial Processes

regulates the implementation of trials that are more transparent, accountable and orderly, so in addition to the notes of the substitute clerks contained in the trial minutes which have been regulated in Article 202 paragraph (1) of the Criminal Procedure Code, in the future it is necessary to carry out audio-visual recording in a manner. Systematic, orderly and inseparable from the regular procedure of the trial.

While in Germain, the procedure involved in criminal law cases in Germany is regulated by the Strafprozessordnung (StPO). In English, this is called the German Code of Criminal Procedure. (The German Criminal Code will be referred to as StPO throughout this text.) This is a detailed text which manages every aspect of how such a case is carried out. The investigation procedure is regulated by the StPO (German Code of Criminal Procedure). It states that an investigation may occur if **there is an initial suspicion that a criminal offence has occurred**.¹³ (§160 StPO). This initial suspicion usually arises when a party affected has made a criminal complaint. Third parties not directly impacted can also provide the necessary criminal complaint. However, a criminal complaint is not necessary in the **event of the suspicion arising in an alternative manner**, such as from media reports or where the police officer or public prosecutor has obtained the information in a private capacity. Under sections §152.2 and §160 StPO, the public prosecutor must take the case when the suspicion arises. In fact § 258 of the German Criminal Code regulates issues concerning public prosecutors/police officers preventing the course of justice. **The omission of information** is held as one means by which a public prosecutor/police officer can be prosecuted if they fail in their obligation to provide necessary information when it is required.

If a defendant is called to trial it is usually a **mandatory requirement to attend**. A person cannot be tried in Germany without them being present for the case.¹⁴ (§230 StPO). If a defendant does not appear in court, without a valid excuse, after having being issued with a court summons they run **the risk of arrest for contempt of court**. For lower consequence issues, where the sentence is likely to be quite low, the defendant may not be required to attend in theory. In accordance with §232 StPO, the defendant will be told in advance if their presence is not required. However, they will also be warned of the potential penalties they may face if they do not attend.

If the case is brought to trial the accused will find themselves in a court **in front of a group of judges**. Germany does not provide jury trials in contrast to courts in Common Law countries such as the United States of America. The number of judges will be based on the level of court in question with a **lower numbers of judges in the local court of first instance** (Amtsgerichte -local/district court) compared to the higher courts (Oberlandesgericht and even Bundesverfassungsgericht – high court/constitutional court). The trial will start with the judge asking for the suspect's personal details, and

they will then present the charges against the suspect. The suspect will also be informed that they do have the **right to remain silent** to prevent themselves from self-indicting themselves. If the person in question is not a native German-speaker, **there will be a translator present during court proceedings**. However, it is necessary to have legal representation present which is fluent in German during the trial.

In comparison to common law jurisdictions, the **judges in Germany play a more hands-on role** when it comes to the inquiry section of the trial. They will act in a manner that involves questioning the parties to find the answers required. This more inquisitorial role allows the lawyers to present the details to the court with the judge acting more actively in questioning the suspect. Following the suspect's presentation and the reading of the details of the case, the witnesses will be brought to the stand. They will be questioned and then cross-examined for the facts to be established. The court has power to **determine which questions will be allowed and which ones are inadmissible**. If you have been the victim of a crime, you will be called as a witness by the public prosecutor. During your time on the stand as a victim, you are bound to tell the truth. There are cases where the victim can be excused from standing as witness such as those where they are married or are closely-related.

Issues in regards to the criminal procedure concerning **the venue/ jurisdiction of the court, witnesses and the verifiability of experts** and generally how the trial should be carried out are all regulated for by the StPO. When it comes to selecting witnesses and experts, the party or their legal representation must present the list of witnesses and experts to the judge in advance. If there are any doubts about the legality of the criminal procedure, followed your legal counsel should be able to alert you to these issues and provide you with the appropriate legal course of action.

B. The Fair Trial System for The Cases with a huge Public Attention

As matters as has been told above, the online trial still leaves some problems. The two types of problems that exist are First, juridical-procedural problems, this is based on the inadequate view of the legal umbrella that currently exists, because it has not been regulated in Law No. 8 of 1981 on Criminal Procedure Law (KUHAP); Second, the juridical-substantive problem, this specifically refers to the application of the online trial for the type of case that does not allow the trial in absentia in the regular examination and short examination. In addition to being regulated in KUHAP Article 154 paragraph (4) KUHAP is also a principle in criminal law. Third, the technical-empirical problem, which refers to real conditions in the field, such as the instability of the internet and the inadequate proof of evidence during online proceedings.

The direct broadcast of the trial process is related to the principle of open trial to the public in accordance with Article 195 of the Criminal Procedure Code (KUHAP) which states that all court decisions are valid and have legal force as if they are pronounced in an open court to the public. However, in Indonesia, there are actually no

rules that allow or prohibit live media broadcasting during the trial process in an explicit and detailed court, either in the Criminal Procedure Code or in other laws. The Criminal Procedure Code only regulates judges as maintainers of trial order, can remove people who are deemed degrading the dignity of the trial from the courtroom.

Soo by that point, Indonesia Court should emphasised a new system trial in criminal procedural like in German. First, there should be some protection measurement from directly impacted can also provide the necessary criminal complaint. This is including **event of the suspicion arising in an alternative manner**, such as from media reports or where the police officer or public prosecutor has obtained the information in a private capacity. Soo by that, there should be some privacy in a trial, especially for a case with a huge public attention. Second, **there should be omission of information is held as one means by which a public prosecutor/police officer can be prosecuted if they fail in their obligation to provide necessary information when it is required.** The last is issues in regards to the criminal procedure concerning **the venue/ jurisdiction of the court, witnesses and the verifiability of experts** and generally how the trial should be carried out are all regulated. All of this matter should be full filled to keep the fairness of trial.

CONCLUTION

There some conclusion that the autors team can provide in this reseach. There are:

- a. There is a loop in our Criminal Procedural system. Especially in treating a case with a huge public attention. It urges to be fixing, so the dignity of the trial of courtroom will be stay.
- b. The massive broadcasting for the live trial should be re-considered. The broadcaster right should not be offending the courtroom dignity.
- c. The trial may keep the media in courtrooms as long as to keep the fairness of trial.

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