

## RECONSTRUCTION OF SUPERVISION AT ONLINE TRIAL: EVALUATION DURING THE COVID-19 PANDEMIC

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**Abstract:** The existence of various problems in the online trial shows that the existing supervision system has not been optimally running. So that there is a need for a reconstruction of supervision at online trial in Indonesia. This is the background of the author to conduct this research. The formulation of the problem in this study is: How is the evaluation of online trial problems during the covid-19 pandemic? And how about the reconstruction of supervision at online trial? This study uses a descriptive normative research method with a qualitative approach. The research approach used is statue approach.

The research results shows that problems related to supervision in online trial include the absence of clear legal rules and supervision procedures that have not been regulated in Indonesia Law. Thus, related to this, it is necessary to have supervision for judges during online trials. Supervision of online trials in the Indonesian judicial system has not involved the Judicial Commission or KY. Therefore, there is a need for reconstruction related to supervision of online trial in Indonesia through: Revision of the Criminal Procedure Code (KUHAP); Establishment of Special Regulations Related to the Online Trial Law; and Formation of a Special Team for Online Trial Supervisors.

Keyword: Supervision, Online Trial, Problems.

### Introduction

The problem of the slow handling of cases in court has made the Indonesian Supreme Court (MA) carry out bureaucratic reforms.<sup>1</sup> This reformation is carried out by utilizing the development of communication and information

technology as it is developed in the current digital era. The use of technology by the Supreme Court can be done with case management to increase effectiveness and efficiency in court.<sup>2</sup> Courts as one of the public services will be more optimal when utilizing information technology.<sup>3</sup> With

<sup>1</sup> Mahkamah Agung RI, *Laporan Tahunan 2006* (Jakarta: Mahkamah Agung, 2007).

<sup>2</sup> Diana Rahmawati, "Analisis Faktor-Faktor Yang Berpengaruh Terhadap Pemanfaatan Teknologi Informasi," *Jurnal Ekonomi Dan Pendidikan* 5, no. 1

(February 29, 2008): 107-18, <https://doi.org/10.21831/JEP.V5I1.606>.

<sup>3</sup> Hadifadhillah Rusli, Iman Jauhari, and Dahlan Ali, "PENGUNAAN TEKNOLOGI INFORMASI DALAM PROSES PERADILAN DI MAHKAMAH SYAR'IAH," *Jurnal Ilmu Hukum*

the use of technology in court, the court will get various advantages such as speed in handling cases, consistency, and accuracy.<sup>4</sup> These advantages, as well as the court principle is fast, simple, and cheap.<sup>5</sup>

Another use of technology carried out by the Supreme Court is online trials. The presence of the online trial is expected to reduce or even eliminate the main complaints of the community over the judicial services so far, such as the slow and long-winded trial process in court which causes high costs.<sup>6</sup> The existence of online trial is increasingly needed during the corona virus disease or Covid-19 pandemic. Since 2019, the world has been facing the Corona Virus Disease (Covid-19), and Indonesia is no exception.<sup>7</sup> Until June 2022, it is known that the number of people who have been exposed to Covid-19 is more than 6 million people with more than 156,000 deaths.<sup>8</sup> The existence of this pandemic has made the Indonesian government to create various policies in order to reduce the transmission of Covid-19.<sup>9</sup> One of these policies is the social

distancing policy to reduce crowds in various places, including crowds during court proceedings.<sup>10</sup> In addition, there is also a Work From Home or WFH policy for all agencies in Indonesia including court agencies which aims to reduce the spread of Covid-19.<sup>11</sup>

Various policies during the Covid-19 pandemic actually raised issues related to the slow handling of cases at judicial institutions around the world during the Covid-19 pandemic.<sup>12</sup> Therefore, during the last Covid-19 pandemic era, judicial institutions carried out various developments in the process of handling court cases electronically or online. However, in the implementation of this online trial, it actually raises technical problems such as unstable internet network which has the potential to hamper the trial process. In addition, another problem is the knowledge of the Indonesian people still limited in accessing technology, which also affects the implementation of online trial.<sup>13</sup>

4, no. 3 (2016), <https://jurnal.unsyiah.ac.id/MIH/article/view/7181>.

<sup>4</sup> Sutarman, *Pengantar Teknologi Informasi* (Jakarta: Bumi Aksara, 2009).

<sup>5</sup> Muhammad Jazil Rifqi, "Perkembangan Dan Pemanfaatan Teknologi Informasi Pengadilan Agama," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 7, no. 1 (June 30, 2020): 70-82, <https://doi.org/10.24252/AL-QADAU.V7I1.13935>.

<sup>6</sup> Dewi Asimah, "To Overcome the Constraints of Proof in the Application of Electronic Evidence," *Jurnal Hukum Peratun* 3, no. 2 (2021): 97-110, <https://doi.org/10.25216/peratun.322020.97-110>.

<sup>7</sup> Rezky Panji Perdana Martua Hasibuan and Anisa Ashari, "Optimasi Peran Negara Menghadapi Pandemi Corona Virus Disease 2019 Dalam Perspektif Hukum Tata Negara Darurat," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 3 (May 25, 2020): 581-94, <https://doi.org/10.15408/SJSBS.V7I7.15379>.

<sup>8</sup> "Informasi Terbaru Seputar Penanganan COVID-19 Di Indonesia Oleh Pemerintah. | Covid19.Go.Id," accessed December 24, 2022, <https://covid19.go.id/>.

<sup>9</sup> Darmin Tuwu and Kota Kendari, "KEBIJAKAN PEMERINTAH DALAM PENANGANAN PANDEMI COVID-19," *Journal Publicuho* 3, no. 2 (July 3, 2020): 267-78, <https://doi.org/10.35817/jpu.v3i2.12535>.

<sup>10</sup> Anggraeni, "Wabah Pandemi Covid-19, Urgensi Pelaksanaan Sidang Secara Elektronik," *Adalah: Buletin Hukum & Keadilan* 4, no. 1 (2020): 1-6, <https://journal.uinjkt.ac.id/index.php/adalah/article/view/15264>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Dudu Duswara Machmudin, "Optimalisasi Peran Hakim Agung Dalam Penyelesaian Perkara Kasasi Dan Peninjauan Kembali," *Jurnal Konstitusi* 12, no. 2 (May 20, 2016): 373-400, <https://doi.org/10.31078/JK1229>.

<sup>13</sup> Siti Amatil Ulfiah, Vena Lidya Khairunissa, and Dian Latifiani, "Urgensi Pelaksanaan E-Litigasi Dalam Persidangan Perkara Perdata Pada Masa

Besides technical problems, other potential problems is related to law enforcement in online trial. Such as the lack of maximum evidence, the potential for hacking irresponsible persons, and prone to violations of the code of ethics by judges. This is as the report received by the Judicial Commission or KY regarding violations committed by judges as many as 1,346 in 2021 as shown below:

Image: Community Report to KY 2021<sup>14</sup>



Sources:

[https://www.komisiyudisial.go.id/frontend/news\\_detail/15036/laporan-masyarakat-ke-ky-tahun-bertambah-dibandingkan-sebelumnya](https://www.komisiyudisial.go.id/frontend/news_detail/15036/laporan-masyarakat-ke-ky-tahun-bertambah-dibandingkan-sebelumnya)

In addition, online trials can also lead to potential maladministration such as protracted delays and the ignorance of judges in operating the system can also disrupt the focus of judges in leading the

trial.<sup>15</sup> Apart from problems with online trials, basically every trial including online trials requires honest and objective judges. However, in reality there are many cases of judges' behavior that deviates from what it should be.<sup>16</sup> In addition, when referring to the formal legal doctrine, the online trial does not appear to be in accordance with the provisions of Article 160 paragraph (1) letter a and Article 167 of the Criminal Procedure Code which requires the physical presence of witnesses in the courtroom. However, the Panel of Judges at that time also considered the provisions of Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which requires judges as law and justice enforcers to explore, follow, and understand and pursue material truths in criminal law, formal aspects should be left selectively.<sup>17</sup> The existence of various problems in the implementation of online trials shows that a supervisory system is needed to control and assist the task of judges in online trials.

Basically, supervision at the trial, including supervision for judges, is carried out by two state institutions, namely the Supreme Court and the Judicial Commission. This is as stipulated in Article 24B paragraph (1) of the 1945 Constitution.<sup>18</sup> However, the rises of

Pandemi Covid-19," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 12, no. 2 (December 15, 2021): 150-62, <https://doi.org/10.32493/JDMHKDMHK.V12I2.15864>.

<sup>14</sup> "KY | Laporan Masyarakat Ke KY Tahun 2021 Bertambah Dibandingkan Sebelumnya," accessed December 24, 2022, [https://www.komisiyudisial.go.id/frontend/news\\_detail/15036/laporan-masyarakat-ke-ky-tahun-bertambah-dibandingkan-sebelumnya](https://www.komisiyudisial.go.id/frontend/news_detail/15036/laporan-masyarakat-ke-ky-tahun-bertambah-dibandingkan-sebelumnya).

<sup>15</sup> Miftakhul Ihwan and Prasasti Dyah Nugraheni, "Urgensi Sistem Pengawasan Dalam Pelaksanaan Persidangan Secara Online," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 2, no. 2 (August 30, 2021): 93-98, <https://doi.org/10.36722/JAISS.V2I2.555>.

<sup>16</sup> Wahyu Wiriadinata, "Komisi Yudisial Dan Pengawasan Hakim Di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 48, no. 2 (December 2, 2014): 513-25, <https://doi.org/10.14421/AJISH.2014.48.2.513-525>.

<sup>17</sup> Dewi Rahmaningsih Nugroho and Suteki Suteki, "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (August 28, 2020): 291-304, <https://doi.org/10.14710/JPHI.V2I3.291-304>.

<sup>18</sup> Umi Laili, "PERAN KOMISI YUDISIAL DALAM PENGAWASAN PELANGGARAN KODE ETIK DAN PEDOMAN PERILAKU HAKIM," *LEGALITAS: Jurnal Ilmiah Ilmu Hukum* 2, no. 1

various problems in the online trial show that the existing supervision system has not been running optimally. So that there is a need for a reconstruction of supervision at online trial in Indonesia. This is the background of the author to conduct this research. The formulation of the problem in this study is: How the evaluation of online trial problems during the covid-19 pandemic? And how about the reconstruction of supervision on online trial? This study uses a descriptive normative research method with a qualitative approach. The research approach used is the statue approach.

**Evaluation of Online Trial Problems During the Covid-19 Pandemic**

Basically, online trials have been regulated in regulations by various law enforcement agencies. The implementation of online criminal trials within the scope of the Ministry of Law and Human Rights (in this case the implementation at the State Detention Center) is carried out based on letter numbered M.HH.PK.01.01.04 dated March 24, 2020. The Attorney General of the Republic of Indonesia also formulates policies through a letter Number B-049/A/SUJA/03/2020 concerning Optimizing the Implementation of Duties, Functions, and Authorities amidst Efforts to Prevent the Spread of Covid-19, dated March 27, 2020. In addition, the Supreme Court issued Letter No. 379/DJU/PS.00/3/2020 regarding Teleconference Case Trials and Supreme

Court Regulation or PERMA No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically. The three law enforcement institutions finally formed a partnership as outlined in the Cooperation Agreement Number: 402/DJU/HM.01.1/4/2020, Number: KEP-17/E/Ejp/04/2020, Number: PAS-08.HH. 05.05 of 2020 dated April 13, 2020 Regarding the Implementation of the Trial Through Teleconference.<sup>19</sup>

It can be constructed that the online trial has brought major changes regarding the conduct of the trial empirically. There are four points that have the potential to reduce the objectivity of the panel of judges in deciding cases that are tried in online trials. The four points are:<sup>20</sup>

Table 1. Potential Points for Judges' Objectivity in Online Trials

No	Point	Description
1)	Court location	The online trial has changed the domain of the trial, based on the provisions in Article 230 paragraphs (1) and (2) of the Criminal Procedure Code explaining that court trial are held in the court building in the courtroom, Judges, Public Prosecutors, Legal Counsels and Registrars wear

(September 12, 2017): 16-33, <https://doi.org/10.31293/LG.V2I1.2837>.

<sup>19</sup> S Suhendra, E Salia, and S Sulastri, "Penerapan Sistem Persidangan Pidana Secara Online Pada Masa Pandemi Covid 19 (Studi Kasus Pada Rumah Tahanan Negara Kelas I Palembang)," *Doctrinal* 6, no. 2 (2021): 84-99, <https://jurnal.um-palembang.ac.id/doktrinal/article/view/3897%0Ahttps://jurnal.um-palembang.ac.id/doktrinal/article/download/3897/2591>.

<sup>20</sup> Dewi Safitri and Bambang Waluyo, "TINJAUAN HUKUM ATAS KEBIJAKAN SISTEM PERADILAN PIDANA SECARA ELEKTRONIK DI MASA PANDEMI COVID-19," *National Conference on Law Studies (NCOLS)* 2, no. 1 (November 19, 2020): 806-19, <https://conference.upnvj.ac.id/index.php/ncols/article/view/1522>.

		court clothes and their respective attributes. Provisions regarding the courtroom are further detailed physically in the provisions of Article 230 paragraph (3) of the Criminal Procedure Code.
2)	Witness presence	Based on the provisions in Article 160 paragraph (1) of the Criminal Procedure Code, the summoning of witnesses has its own procedure, namely being summoned to the courtroom sequentially.
3)	Defendant's presence	The provisions governing the presence of the defendant in Articles 154 and 196 of the Criminal Procedure Code which generally means the obligation to be physically present. This can also be found in Article 12 of the Law on Judicial Power which states that the Court examines, trials, and decides on criminal cases in the presence of the defendant,

		unless the law provides otherwise.
4)	Openness of the trial to the public	Based on Article 195 of the Criminal Procedure Code, all court decisions are only valid and have legal force if they are pronounced in a trial open to the public. This is also confirmed through Article 13 paragraphs (1) and (2) of the Law on Judicial Power which states that all court hearings are open to the public, unless the law provides otherwise and court decisions are only valid and have legal force if they are pronounced in a trial open to the public general.

From Table 1 above, it can be seen that, these four points can be a substantive juridical weakness in the online trial. This is actually related to the weakness of the virtual system itself which naturally cannot present situations and conditions as the trial system directly. This is exacerbated by the assumption that there are still technical obstacles in the field, such as internet instability that can disrupt the proceedings.<sup>21</sup> In its implementation, online criminal trials encounter several obstacles and problems. Some of the problems encountered during online criminal court trials are as follows:<sup>22</sup>

<sup>21</sup> *Ibid.*

<sup>22</sup> Neisa Angrum Adisti, Isma Nurilah, and Alfian Mardiansyah Kantor Wilayah Kementerian

Hukum dan Hak Asasi Manusia Sumatera Selatan, "PELAKSANAAN PERSIDANGAN PERKARA PIDANA SECARA ELEKTRONIK

Table 2. Problems in Online Trials

No	Problems	Description
1)	Facilities and infrastructure	The problem that often occurs in online criminal trials is an unstable internet network that can even be disconnected. This has happened when an online trial was conducted and the cause was the damage to the tower at one of the national providers. It was not possible to continue this online trial and it was postponed until a predetermined time. In this online trial, the positive side is faster and less expensive, so far from the best side. But when it comes to budgets, sometimes other agencies need to adjust their budgets, because they are the Police or the Prosecutor's Office sometimes there is no budgets because they have not been prepared. Unlike the Palembang District Court, they have often conducted/implemented e-court and it adjusts the budget and it does not make

		it difficult. According to the Registrar of the Palembang District Court, this online trial will become a habit because it is much safer and the parties are gathered together, so there is little chance of a budget markup.
2)	Online evidences	In the implementation of this online criminal trial, the Judge decides with 2 (two) pieces of evidence and adds the Judge's conviction, in this case the Judge is very difficult to catch it. As a legal advisor, it is also very difficult to see the information given by the defendant because the information is true. In this case, there is still considerable doubt for the conviction of the Judge and Legal Counsel because this material truth is the most important and becomes difficult when going through an online trial. Offline evidence is carried out because in order to find the material truth or the actual truth that has been regulated in Article

		184 of the Criminal Procedure Code, the evidence in question is witness testimony, expert testimony, letters, instructions, and statements from the defendant. Likewise, in how to use and assess the strength of evidence attached to each piece of evidence, it is carried out within the limits justified by law. So that in realizing the truth is about to be handed down, the panel of judges avoids sacrificing the truth that must be justified, lest the truth embodied in a decision based on the results of the acquisition and elaboration that comes out of the line justified by the evidentiary system, does not smell and is colored by the judge's subjective feelings and opinions.
3)	Legal Basis	The legal basis that guides the implementation of this online trial is not detailed enough, because the information obtained is the Supreme Court will soon issue a new rule as a guide for trials conducted

		online. So, the parties also hope that in the future all parties must be ready before a policy will be decided and the infrastructure must also be prepared so that everything can ensure that there is no pressure from any party. In this online trial, it is something sacred and will determine how a person's future will be in the future. Because the trial of criminal cases electronically is open, but actually it doesn't seem like it is open even though in some large District Courts there are already large screens so that all visitors can witness.
4)	Fulfillment of the suspect's rights	Between the defendant and the Legal Counsel and it is not possible to consult directly, because this right is not fulfilled in the online trial. Legally, in terms of proof in civil cases what is sought is formal truth, because civil evidence is not done online so it is directly with the parties and the judge.
5)	Fulfillment of the rights	In the online trial of criminal cases, only

of victims and the public in court information	the location of the defendant and law enforcers is regulated during the online trial. Meanwhile, the access of the public and victims to witness the trial of criminal cases electronically is not strictly regulated.
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Based on Table 2 above, it can be seen that there are 5 aspects of problems in the implementation of online trials that have been happening so far. However, apart from these 5 aspects, there are also other problems as stated by the Indonesian Ombudsman. The problem consists of:<sup>23</sup>

- a. Unclear time for the trial.
- b. Limited facilities and infrastructure such as limited courtrooms that have teleconference equipment.
- c. The internet network is less stable so that the online trial process is delayed for a long time.
- d. The judge has limited in technology operations.
- e. Less coordination between parties.
- f. Legal advisors are not side by side with the defendant
- g. Unable to ensure witnesses and defendants with the pressure.

However, with these weaknesses, online trials are considered not contrary to the principle of an open trial to the public

and the principle of direct and oral examination of judges. However, as regulated in Article 17 Supreme Court Regulation or PERMA No. 4 of 2020 if there are obstacles, the Panel of Judges will postpone the trial and resume it according to the schedule of the next trial.<sup>24</sup> However, in PERMA No. 4 of 2020 does not explain what kind of technological interference barriers give judges the authority to postpone the trial. Meanwhile, technology disruption has a broad definition, which can be in the form of networks, systems, applications, software and hardware. If it is not explained in detail and limited, in other words, the judge can postpone the trial at any time, because it could be a barrier to technological interference due to the unpreparedness of the online court officer. This of course can be detrimental to the defendant if the trial is often postponed.

Regarding the supervision of judges in online trials, there are still no clearer rules. So that the supervision of law enforcers who are in the judiciary is not carried out properly. This is because in the absence of clear legal rules and supervision procedures that have not been regulated in a regulation, it will make it difficult for the public, advocates and law enforcement agencies to carry out their supervisory functions.<sup>25</sup> Therefore, regarding this matter, it is necessary to have supervision for judges during online trials.

<sup>23</sup> Ismail Koto rwin Asmadi, Padian Adi Selamat, Benito Asdhie Kodyat, "Efektivitas Pemanfaatan Teknologi Informasi Dalam Persidangan Perkara Pidana Selama Pandemi Covid-19," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 2 (February 21, 2022): 465-75, <https://doi.org/10.30596/DLL.V6I2.9431>.

<sup>24</sup> I Gede Suastika, Putu Eva, and Ditayani Antari, "Mekanisme Persidangan Secara Daring (Online) Dalam Penyelesaian Perkara Pidana Pada Masa Pandemi Covid-19 Di Wilayah Pengadilan Negeri

Denpasar," *Jurnal Analisis Hukum* 4, no. 2 (September 28, 2021): 283-93, <https://journal.undiknas.ac.id/index.php/JAH/article/view/3022>.

<sup>25</sup> Romualdus Telaumbanua, "URGENSI PENGAWASAN TERHADAP HAKIM DALAM RANGKA PELAKSANAAN E-COURT DAN E-LITIGATION DI INDONESIA," *Jurnal Hukum & Pembangunan* 50, no. 1 (July 13, 2020): 124, <https://doi.org/10.21143/JHP.VOL50.NO1.2486>.



Basically, the duties and authorities for the supervision of judges are regulated in Article 12A of Law Number 50 of 2009, which states that internal control over the behavior of judges is carried out by the Supreme Court. Meanwhile, external supervision in order to maintain and uphold the honor, dignity, and behavior of judges is carried out by the Judicial Commission or KY.<sup>26</sup> However, the Judicial Commission's supervisory function faces several obstacles, including limited funds, human resource capabilities, management systems, and administration. In addition, the existence of the Judicial Commission Liaison (PKY) and the Judicial Commission Network (JKY) to help ease the duties of the Judicial Commission is still not optimal. People tend to report judges suspected of violating the code of ethics to non-governmental organizations (NGOs), not to the Judicial Commission.<sup>27</sup>

So from these obstacles it shows that the Judicial Commission in supervising judges has not been effective because of the limited supervisory authority and the absence of a firm dissection regarding the realm of supervision related to judicial techniques and behavior.<sup>28</sup> Therefore, the Judicial Commission must further improve

in supervision and introspect its institutions so as not to deviate from their basic rights of supervision.<sup>29</sup> Basically the role of the Judicial Commission is very important in the supervision process in every trial, including online trials. However, the rules or implementation of online trials in the Indonesian justice system have not involved the Judicial Commission as an external supervisory body for judges. So the supervision carried out by the Judicial Commission in terms of supporting the implementation of online trials in Indonesian courts is very minimal.<sup>30</sup> Therefore, based on this, it is necessary to have a reconstruction related to supervision of online courts in Indonesia. The reconstruction can be done through:

#### *Revision Criminal Procedure Code (KUHAP)*

Online trials within the Supreme Court will not be effective if the law number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) does not change.<sup>31</sup> The revision of the Criminal Procedure Code and the establishment of a separate law are needed to provide a legitimate legal stand regarding electronic court proceedings. Meanwhile, to overcome technical

<sup>26</sup> A. H. (Abdul) Talli, "Sistem Pembinaan Dan Pengawasan Hakim Pengadilan Agama Pasca Lahirnya UU No. 50 Tahun 2009," *Al-Hikmah Journal for Religious Studies* 15, no. 1 (2014): 22-35, <https://www.neliti.com/id/publications/30615/>.

<sup>27</sup> Nimas Masrullail Miftahuddini Ashar, "Hukum Internasional Tentang Genosida Dalam Perspektif Fikih Dauliyah," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 01 (April 1, 2014): 1-24, <https://doi.org/10.15642/AD.2014.4.01.1-24>.

<sup>28</sup> Oddie Moch Ikhsan, Habib Muhsin Syafingi, and Dyah Adriantini Sintha Dewi, "EFEKTIFITAS PENGAWASAN HAKIM OLEH KOMISI YUDISIAL," *Varia Justicia* 13, no. 1 (January 30, 2017): 10-17, <https://doi.org/10.31603/VARIAJUSTICIA.V13I1.1861>.

<sup>29</sup> Nur Kautsar Hasan et al., "Efektifitas Pengawasan Komisi Yudisial Dalam Mengawasi Kode Etik Profesi Hakim," *Kertha Patrika* 40, no. 3 (December 31, 2018): 141-54, <https://doi.org/10.24843/KP.2018.V40.I03.P02>.

<sup>30</sup> Telaumbanua, "URGENSI PENGAWASAN TERHADAP HAKIM DALAM RANGKA PELAKSANAAN E-COURT DAN E-LITIGATION DI INDONESIA."

<sup>31</sup> Iwan Taufik Firdaus, "KEABSAHAN ALAT BUKTI PADA PERSIDANGAN PERKARA PIDANA MELALUI TELECONFERENSI DI MASA PANDEMI COVID 19," *Al-Adl: Jurnal Hukum* 12, no. 1 (April 13, 2021): 151-71, <https://doi.org/10.31602/AL-ADL.V12I1.4324>.

obstacles, it is necessary to provide human resources in the information technology field with optimal competencies and numbers, increase the understanding of law enforcers in the field of technology, as well as the availability of facilities that can support the trial process electronically.<sup>32</sup>

The principle of the defendant presence (*in absentia*) in the Criminal Procedure Code is contrary to the practice of online trial, if online trial is applied to criminal cases. Meanwhile, the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 does not allow criminal cases to be examined through the e-Litigation application. These things cause the implementation of online court proceedings in Indonesia to not be effective, where regulatory developments are stagnant and there is disharmony between regulations. If the stakeholders do not address it immediately, then this problem will cause quite complicated and complex problems in the future. On the other hand, the online trial is the only way out during the COVID-19 pandemic so that the settlement of criminal cases under the Supreme Court does not stagnate.<sup>33</sup>

### ***Establishment of Special Regulations Regarding the Online Trial Law***

There is a need for special provisions related to the implementation of online trials in a regulation. With the existence of an online court system within the

Indonesian judiciary, the supervisory mechanism needs to be regulated in a standard rule that explains what kind of rules are used and implemented. Even if it is seen that the implementation of online trials is not much different from the implementation of offline or in-person trials, mechanisms that should exist in the context of supervision are still needed. This does not only see that supervision is an instrument that cannot be separated from the judiciary, but supervision can be a measure of the success of the Supreme Court in the implementation of online courts in Indonesia. With the harmony in terms of supervision, it will also make it easier for the judiciary to answer legal problems to uphold justice in the community.<sup>34</sup>

Thus, the reconstruction of online court supervision can be carried out by establishing a separate law that regulates in detail related to electronic trials. In this regard, it is important for the House of Representatives of the Republic of Indonesia to propose a bill on online trial proceedings or amendments to the Criminal Procedure Code so that the online trial can be properly regulated.<sup>35</sup> In addition, the Online Trial Law requires provisions that regulate a clear mechanism in terms of supervision by the Judicial Commission. So that there is no inequality in terms of realizing an Indonesian judiciary that is fast, simple and low cost.<sup>36</sup>

<sup>32</sup> 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, no. 1 (April 29, 2021): 79, <https://doi.org/10.33331/RECHTSVINDING.V10I1.625>.

<sup>33</sup> Anggita Doramia Lumbanraja, "PERKEMBANGAN REGULASI DAN PELAKSANAAN PERSIDANGAN ONLINE DI INDONESIA DAN AMERIKA SERIKAT SELAMA PANDEMI COVID-19," *CREPIDO* 2, no. 1 (May 26,

2020): 46-58, <https://doi.org/10.14710/CREPIDO.2.1.46-58>.

<sup>34</sup> Telaumbanua, "URGENSI PENGAWASAN TERHADAP HAKIM DALAM RANGKA PELAKSANAAN E-COURT DAN E-LITIGATION DI INDONESIA."

<sup>35</sup> Dian Cahyaningrum, "PERSIDANGAN SECARA ELEKTRONIK PADA MASA PANDEMI COVID-19," *Info Singkat Bidang Hukum: Kajian Singkat Terhadap Isu Aktual Dan Strategis* 14, no. 12 (2021): 1-6.

<sup>36</sup> Telaumbanua, "URGENSI PENGAWASAN TERHADAP HAKIM DALAM RANGKA

### ***Special Team Formation for Online Trial Supervisors***

With the various obstacles in the online trial as mentioned in the previous subchapter, this can make the evidence process not optimal and potentially to interfere with the principle of fair trial, namely an honest and fair trial. Therefore, there must be standardization of facilities and infrastructure for this online trial in court, by maximizing and adding information and technology or IT personnel in all court institutions, as well as forming an independent special team to supervise and evaluate the implementation of this online trial.<sup>37</sup> As for the formation of a competent Human Resources team in the IT field, it is necessary to include the role of the Judicial Commission or at least carry out cooperation with other institutions.<sup>38</sup>

### **Conclusions**

There are four points that have the potential to reduce the objectivity of the panel of judges in deciding cases in online trials, namely: the location of the trial, the presence of witnesses, the presence of the defendant, and the openness of the trial to the public. These four points can be a substantive juridical weakness in the online trial process. In its implementation, online criminal trials encounter several obstacles and problems in several aspects such as: facilities and infrastructure; online verification; legal basis; fulfillment of the suspect's rights; fulfillment of the rights of

victims and the public in court information.

In addition, other problems are related to supervision in online trials which there are no clear legal rules and supervision procedures that have not been regulated in a law. Thus, related to this, it is necessary to have supervision for judges during online trials. Supervision of online trials in the Indonesian judicial system has not involved the Judicial Commission. Therefore, our argument is there's a need for reconstruction related to supervision of online trial in Indonesia through: Revision of the Criminal Procedure Code (KUHAP); Establishment of Special Regulations Related to the Online Trial Law; and Special Team Formation for Online Court Supervisors.

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