

The Current Application of Teleconferencing in the Criminal Justice Process

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Abstract. The emergence of the use of teleconference technology in criminal court hearings brings pros and cons. Many parties rejected the use of teleconferences, but not a few also supported the use of teleconferences in court. This study aims to identify and understand how the application and effectiveness of the teleconference in court. This research is a research that uses normative research methods using a qualitative descriptive approach, a conceptual approach and a statutory approach. Then by using primary, secondary and tertiary legal materials to get conclusions that are relevant to the problems at hand. The results show that the Criminal Procedure Code (KUHP) is currently one of the references in the application of teleconference media in court. Therefore, additional regulations are needed as legal protection, in a more complex and comprehensive manner related to the use and application of teleconferences in court.

Keywords: Application, Teleconference, Criminal.

1. Introduction

There are technological advances that bring changes to human life too has an impact on the development of existing laws in Indonesia. The emergence of use Teleconferencing technology in criminal court hearings brings pros and cons. Lots parties who refused the use of teleconferences, but not a few also supported them the use of teleconferences to hear witness testimony at trial. This conflict is due to the non-regulation of the use of teleconferences in the Criminal Procedure Code (KUHP) which is an umbrella for the implementation criminal procedural law. In principle, criminal procedural law is the rules that govern procedures for maintaining and maintaining good material criminal law contained in the book criminal procedural law (KUHP) as well as those contained in laws and regulations outside the Criminal Code.[1] Teleconference is a meeting conducted by two people or more is done over a telephone or network connection. The meeting can only using voice (audio conference) or using video (video conference) allows conference participants to see each other.[2]

The use of teleconferences in criminal proceedings to date still causes conflict, which occurs in both the government and law enforcers (judges, prosecutors), as well as in society. Whereas in the world of justice in Indonesia it is used A teleconference was held, namely in 2002, the Supreme Court (MA) gave permission to the former President BJ for the first time. Habibie to testify through teleconference in the case of

Bulog's non-budgetary fund deviation on behalf of the defendant Rahardi Ramelan. Then in the case of gross human rights violations (HAM) in East Timor who asked the Central Jakarta District Court (PN) on the grounds of safety and time efficiency. So that the teleconference testimony was held in the city of Dili, while the defendant was at Central Jakarta District Court (PN). Likewise with the trial of Abu Bakar Ba'asyir, The defendant case plans to bomb several churches on Christmas Eve 2000 and plans assassination of Megawati, who at that time was still the Vice President. Besides In Bali, witnesses were examined by teleconference at The Denpasar District Court (PN) in the Bali Bombing terrorism case, the defendant was Ali Gufron alias Muklas alias Sofwan who presented witness Wan Min bin Wan Mat who reside in Malaysia. And finally in 2011 the examination by teleconference was again practiced in the case of Abu Bakar Ba'asyir against the 16 (sixteen) witnesses who will give testimony.[3] Based on the cases mentioned above, which is in process examination of the case submitted by teleconference has shown that the law always have a dialectic with non-legal aspects. So it does not rule out the law too will dialectic with technology.

2. Methods

The type of research used is normative legal research, namely written legal research from various aspects, namely aspects: theory, comparison, structure and composition, scope and material, consistency, general explanation article by article, formality and binding strength of a law, and law language. (Ashofa, 2001: 15). The type of approach used in this research is the regulatory approach approach; conceptual approach; case approach. The legal materials used are primary, secondary and tertiary legal materials. In the framework of legal material procedures, the authors used document study techniques, then described them in accordance with the main problems that were studied qualitatively[4].

3. Result and Discussion.

There is a judge's decision on the use of teleconferences on sample cases accepted legally because a judge cannot reject a case because there is no reason legally, Article 10 paragraph (1) of Law Number 48 of 2009 concerning Power The Judiciary, so regardless of the situation the judge has the obligation to examine and make a decision, which means he is obliged to find the law. Legal developments are relatively fast is not sufficiently regulated in a law. For example a teleconference, where because it is not regulated in the Criminal Procedure Code (KUHAP) can't be done. In fact, ideally the estuary of law enforcement should be relative it is material truth that must be sought so that the administrative aspects, formal and relatively less substantial, should be abandoned.[3] But in the Book The Criminal Procedure Code (KUHAP) itself also has no provisions prohibiting the use of teleconferences itself.[5] Despite the use of the teleconference inside criminal proceedings are not regulated in the Criminal Procedure Code, this does not become contrary to the Criminal Procedure Code itself, however the use of teleconferencing is a new breakthrough in law enforcement existing in Indonesia, specifically criminal procedural law. Therefore, an active role for the judge

is required in accordance with Article 5 paragraph (1) of Law Number 48 of 2009 concerning Power Justice, in order to discover new laws (*rechtfinding*) to reach the truth material and justice in accordance with the expectations of society. Therefore, the authors agree with use or use of teleconferences in court examinations for enforcement law, provided that it does not conflict with the norms and public order prevailing at Public[6].

In addition, the use of teleconferences in the examination of criminal cases in court does not violate general principles applicable to the criminal procedure law. These principles namely: The principle of fast, simple and low cost trial, and the principle of examination in attendance defendant. There is the use of teleconferences in criminal case examinations in court according to the author, is a breakthrough in the field of law as a form of human activity which is influenced by Information and Communication Technology. Making a human problem as the main problem brought the author to the thought of Satjipto Rahardjo with law progressive, which places humans as the starting point. According to him, thought law needs to return to its basic philosophy, namely law for humans, not the other way around.[7] In this regard, the law does not exist for itself, but for something wider and bigger. So whenever there's a problem with the law, the laws that are reviewed and corrected are not human beings who are forced to enter into in the legal scheme.

Despite the trial examination by teleconference have been several times done, in fact, setting the law has not been regulated in the Book Criminal Procedure Law (KUHAP), is regulated disguised in statute in a manner *lex specialist* discussed development of evidence written provisions regarding teleconferencing exists in jurisprudence, namely Supreme Court Decision No. 112 PK / Pid / 2006 case of Schapelle Leigh Corby, but in this case a plea examination by teleconference cannot be accepted by the Supreme Court (MA) with the proposition that in the system civil law, jurisprudence is persuasive "so there is no obligation for judges in Indonesia to use teleconferencing and neither is it a necessity according to the criminal procedure law which benefits Indonesia for using a teleconference in the process examination. [8]

With respect to use the teleconference, the provisions of which can be used as a basis for use measure the strength and results of evidence, among others, by paying attention to and reviewing the existing provisions in Article 183 through Article 189 Criminal Procedure Code (KUHAP) jis Article 3 of the Book of Law Criminal Procedure Law (KUHAP); Article 284 paragraph (2) Code of Law Criminal Procedure (KUHAP) and Article 10 paragraph (1) and Article 5 paragraph (1) of the Law Number 48 of 2009 concerning Power Justice.[5]

Especially with the development of Information and Communication Technology the more rapidly it is clear that the Criminal Procedure Code (KUHAP) will always be lagging behind the times, such as the use of teleconferencing technology in examination of criminal cases in court which is now the pros and cons because the Criminal Procedure Code (KUHAP) does not recognize the procedure of examination the trial via teleconference. For that we need an idea of promoting development progressive national law that stems from the concern that practical law science is more emphasizes the paradigm of regulation, order and legal certainty, which is apparently lacking touching the paradigm of human welfare itself. Satjipto said that the difference lies in practical legal science that uses the regulatory paradigm (rule), while science progressive law uses the human paradigm (people). Acceptance of the human paradigm bring progressive law science to care about behavioral factors (behavior,

experience).[9] Since progressive legal science prioritizes humans, progressive law science does not being submissive or simply submitting to existing laws but being critical. The author argues that the use of teleconferences in criminal case examination at court indicates that the law has followed the development of human needs Information and Communication Technology, besides that the use of teleconferencing is also wrong a form of the birth of a judiciary that has global reach, across borders. Because the law is not is an institution that is separated from human interests. Legal quality, determined by its ability to serve human welfare. According to progressive law, law in charge of serving humans, not the other way around. Progressive law puts interests first human being greater than interpreting the law from the point of "logic and rules".[7] Law it is expected to be able to keep up with the times, able to respond to changes age with all the bases in it, and able to serve the community with relying on the morality aspect of the law enforcement human resources itself.

The use of teleconferences in the examination of criminal cases in court, according to author, only as a means to get the truth of a criminal act, although the Criminal Procedure Code (KUHAP) does not exist yet the arrangement, however, in order to achieve material truth as desired by procedural law criminal, then it can be justified if the judge proves it in court use teleconference so that the principles of fast, simple and low cost trial can be realized. Although the principle is a strong foundation in the formation of chapters in the Criminal Procedure Code (KUHAP), but if it is no longer appropriate with values that grow and develop in the community, it is a natural principle this is diverted, so that the sense of justice in society can be fulfilled. Examination the legal arrangements have not been regulated in the law by means of teleconference Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), but only disguisedly regulated in laws which a lex specialist regulates development of evidence while the provisions explicitly regulate teleconferences contained in jurisprudence, namely the Supreme Court Decision No. 112 Pk / Pid / 2006. Can not It is undeniable that the existence of a teleconference examination has embodied the principle of rapid justice, simple and low cost, where the process of case examination in court becomes more easy, straightforward and brief, because the trial does not have to be adjourned constantly various reasons and of course lighter in terms of cost by using the application teleconference which is free and easy to operate by anyone. Apart from that existence examination by means of a teleconference does not conflict with the principle of examination the presence of the defendant because in principle the examination of the defendant was using teleconference is the same as the usual way of conducting regular checks directly verbally and transparently, the only thing that distinguishes is where the defendant is give explanation. In a normal examination the defendant is presented physically (face to face face) in the courtroom, it is different with the examination using teleconference, where the defendant is not presented physically but only virtually while the defendant was physically in another room or place[10].

4. Conclusion

Based on the description above, the authors conclude that the use of teleconference technology can only be used if it is deemed necessary by investigators, public prosecutors, legal advisors with the approval of the panel of judges. This is

because the legal instruments in the form of laws and regulations The procedural law that is the basis for the use of teleconferences has not been thoroughly regulated, the use of teleconferences can be used as a whole if the Indonesian legislature carries out formulative policies (making laws) related to the use of teleconferences in Indonesian courts. There is no denying existence teleconference checks have been embody the principle of fast justice, simple and low cost, where the process case examination in court becomes easier, less wordy and short, because the trial does not have to be continuous postponed for various reasons and has been certainly lighter in terms of cost with use of the teleconference application free and easy to operate by whom only. Apart from that the existence of an examination by using teleconferencing no contrary to the principle of examination in the presence of the defendant because of in principle, the examination of the accused by using teleconference is the same as the usual way of checking which is done directly orally and transparent, the only difference is where the defendant was when giving name. Under regular checks the defendant was presented physically (face to face) in the courtroom then another relationship with inspection by using teleconferencing, where the defendant does not presented physically but only virtually while physically the defendant be in another room or place. In order to clarify the rule of law use of teleconferencing in examination of criminal cases in court then the legislators at Indonesia must immediately amend Law Number 8 of 1981 regarding the Code of Law Criminal Procedure (KUHAP) in particular 74 Badamai Law Journal, Vol. 3, Issue 1, March 2018 regarding usage teleconference in case examination criminal in court. And as long as it happened vacuum of law and legitimacy against use of teleconferencing in court, Successfully accommodated through a circular MA or only through the "determination" of the assembly judge or head of court. [11]

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