

Hybrid Construction of Criminal Justice Towards Modern Justice in the Digital Era

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Abstract. The implementation of hybrid criminal justice is a change in the judicial paradigm from real space to a combination of real space and virtual space. This change clearly causes problems because it deviates a lot from the principles and norms of the Criminal Procedure Code as guidelines for the administration of criminal justice. The urgency of hybrid justice is an effort to resolve legal problems quickly when facing certain conditions due to the loss of time and space compression in the digital era. Considering that hybrid justice is also related to the readiness of facilities and infrastructure as well as human resource capabilities related to information technology, this element must also receive serious attention. Departing from the thoughts above, this writing begins by examining the condition of criminal justice in Indonesia, then continues to analyze the problems of administering hybrid justice and ultimately builds a new construction of hybrid criminal justice in realizing modern justice in the digital era.

Keywords: Court, Modern Justice, Hybrid Justice.

1 Introduction

The implementation of hybrid criminal justice is a change in the justice paradigm from real space to real and virtual space. This change clearly causes problems because it deviates from many principles and norms in formal law. The urgency of hybrid justice is an effort to resolve legal problems quickly when facing certain urgent and emergency conditions. This research's important breakthrough is through the establishment of norms for the administration of justice in a hybrid manner while still guaranteeing the values and principles of justice. Considering that hybrid justice requires the readiness of facilities and infrastructure as well as the ability of human resources to utilize information technology, this element must receive serious attention. The process of transforming conventional trials to virtual trials will face serious challenges related to regulations and infrastructure. In the era of the Covid-19 pandemic, the Court only relies on the Zoom meeting application, which is a general application where the level of security and connectivity is not guaranteed.[1] To accommodate the presence of technological devices in virtual trials that replace physical presence, modernization of judicial facilities and infrastructure in Indonesia is needed. The results of the research conclude that the existing condition of the judiciary in a virtuous manner is now normatively regulated only to the extent of PERMA which does not have perfect binding force. Law-level regulations are needed to regulate virtual justice for the legitimacy of hybrid justice as the basis for the virtual implementation of justice. The ideal legal construction for

hybrid justice requires policies related to determining and limiting certain conditions so that virtual justice is needed for the effectiveness and efficiency of trials in the modern era.

2 Discussion

2.1 Modern Criminal Justice.

Justice is a series of processes to uphold the law and truth based on the provisions outlined by law. According to Sjachran Basah, the judicial process is related to the task of law enforcers in deciding cases by applying the law, finding the law *in concrete* in maintaining and guaranteeing compliance with material law, by using procedural methods established by formal law.[2] In order to seek the truth, each court has different goals, civil law and state administration seek formal truth, relying on more evidence. (*preponderance of evidence*) from the parties without having to be accompanied by the judge's belief. Criminal law seeks material truth, namely the concept of current truth regarding past events, so that the criminal justice process is often described as a pursuit to determine the actual truth or at least close to the truth.[3] The process of seeking truth in criminal law is carried out through a system called the criminal justice system, as a place or forum for the work of police, prosecutors, judges, advocates and civil servants from the stages of investigation, prosecution, trial and correctional stages. The process or working mechanism of law enforcers is subject to formal law, namely criminal procedural law, with the aim of the system being to prevent crimes from occurring, resolve crimes through enforcement of criminal law and ensure that criminals do not repeat their actions.

As a crime prevention system, the existence of the criminal justice system is required to develop dynamically following the development of society, especially in the modern era, the speed of development of science and technology greatly influences social interactions. Starting from this, to create a modern judiciary, changes are needed so that the criminal justice system can be more effective and efficient in dealing with social problems in society. The ideal form of this change is through hybrid justice by utilizing information technology, by combining conventional justice with virtual justice. Considering the aim and function of the judiciary, namely to uphold truth and justice, hybrid justice must also be able to fulfill a sense of justice for all parties. To fulfill a sense of justice according to Richard Susskins, virtual-based justice must fulfill 7 (seven) principles of justice, namely (a) *Substantive justice* namely containing a fair decision, (b) *Procedural justice* namely containing a fair process for all parties, (c) *Open justice* namely transparent and open to the entire community, (d) *Distributive justice* namely a system that can be accessed by all parties without exception, (e) *Proportionate justice* namely a sense of proportional justice that is balanced among all parties in an appropriate manner, (f) *Enforceable justice* namely supported by all parties, especially state law, and (g) *Sustainable justice* namely including adequate resources in continuous change in order to continue to be the best.[4]

In the modern criminal justice paradigm, whether we like it or not, law enforcers must respond to developments in information technology in order to build social interaction with justice seekers to provide higher quality, effective and efficient services to justice seekers.[5] Through the development of a modern justice system based on a hybrid of transparency and accountability in an effort to achieve fast, low-cost justice, it is not impossible to achieve. This is because through modern hybrid-based justice, apart from being able to minimize meetings between law enforcers and litigants, it can also restore public confidence in the law enforcement process (*law enforcement*) and the justice system in Indonesia from the opinion

that has developed in some circles that the law enforcement process in court is very long, complicated, expensive, and decisions or decisions are difficult to execute.

2.2 The Role of Technology in Hybrid Criminal Justice

Hybrid criminal justice has actually been carried out in Indonesia. This concept was first applied by the South Jakarta District Court when conducting an examination of BJ Habibie, considering that the information concerned was very necessary to obtain material truth, the Panel of Judges conducted an examination of the person concerned as a witness using teleconference because BJ Habibie was in Hamburg accompanying his sick wife. Apart from that, hybrid justice was also applied in the examination of the Abu Bakar Ba'asyir case for reasons the witnesses are being detained by the Malaysian Government and the Singapore Government. The concept of hybrid justice became an option when the Covid-19 pandemic hit the world for reasons of avoiding physical contact and crowds. All forms of public services were carried out with restrictions. As a result of the Covid-19 pandemic, judicial institutions are forced to carry out judicial duties and functions using information technology. This reality changes the conventional justice system into a hybrid where physical meetings are limited to a virtual/online system based on digital technology aimed at preventing the spread of Covid-19.[6]

The basic concept of hybrid justice is to combine the conventional justice system with virtual justice. The aim is to modernize judicial institutions so that they can provide better quality, effective and efficient services to justice seekers.[9] For this purpose, the justice system must follow the development of society in the modern era while remaining based on the spirit of criminal justice to search for material truth. Through hybrid justice, there are certain stages that can be carried out virtually, but there are crucial stages that must still be carried out conventionally. The crucial stage that must still be carried out conventionally is in the context of examining evidence, while virtual justice is carried out for the reading of indictments, exceptions, demand letters, pleas, replicas and duplicates. However, in the context of examining evidence, there are exceptions if there is an emergency situation through a judge's determination. The implementation of justice during the Covid-19 pandemic, justice was actually carried out in a hybrid manner, where under certain conditions witnesses were still examined before the trial in front of the judge and public prosecutor, while the defendant, accompanied by a legal advisor, was in another room in the detention center. In the context of hybrid justice, virtual examinations are carried out not only for health reasons but also for certain reasons that can be taken into consideration. As for the virtual meaning, here the examination is carried out in real life, but witnesses or experts are presented using information technology devices in three dimensions.

Through hybrid justice, the meaning of the court as a place and service is maintained as stated by Susskind, the court as a place to seek justice still maintains its authority through the courtroom and trial procedures. On the other hand, the court as a form of service can be replaced with technology. Thus, the aim of criminal justice to seek material truth through the courtroom still reflects the actual method of seeking truth. The role of information technology clearly greatly influences the implementation of justice in a hybrid manner due to internet networks and video facilities *teleconference* is the main factor in carrying out virtual examinations. In a comparative perspective, the use of technology for administering virtual justice in England and the United States initially also experienced dynamics related to human resources, electronic devices. In England, virtual courts were first used in North Kent and Chester Courts in 2009 with the aim of streamlining the criminal justice system and in 2010

this system was evaluated by the Ministry of Justice.[3] Based on the results of a new evaluation in 2012, criminal justice in North Kent was able to implement the system. virtual uses a secure network to transfer criminal case document files virtually, then this concept is extended to remote hearings in tax disputes, civil justice and criminal justice.

Hybrid trials in New York have been implemented since 2020 by holding trials using video conferencing facilities (Skype application), where the judge, public prosecutor, lawyer and defendant are in different locations. Judicial authorities have a central role in monitoring and limiting courtroom access to maintain social distancing in accordance with public health authority guidelines. This judicial model is a solution for urgent court services while still protecting the health and safety of judges and the public who use services.

2.3 Hybrid Criminal Justice Problems

The challenges of implementing criminal justice in a hybrid manner are divided into two large groups, namely those related to the substance of the law and the readiness of facilities and infrastructure. These two problems must be solved together in the context of legal transplantation, so that the law can be adaptive to face changing times to meet the needs of modern society which is starting to switch to the digital space.. Seeing that adaptation to digitalization of justice is needed in the new normal conditions that will come in the pattern of working relations between people for life in the future, strict legal substance is needed so that the aim of creating justice and legal certainty can be achieved. If there is no clarity on the legal substance, it will destroy public confidence in law enforcement and even the courts According to at least seven legal substance issues must be taken into account when changing a conventional trial into a virtual trial, namely;

- a. There are no regulatory guidelines for procedural law or mechanisms for implementing procedural law which are currently being forced to change;
- b. There is no uniformity in every court for teleconference hearings, especially regarding the presence of the Public Prosecutor, Legal Counsel, Defendant and Witnesses at the trial;
- c. The issue of online hearings is an absolute, semi-absolute obligation (*Same Online*) or be an alternative choice of the parties;
- d. The issue of criteria for criminal cases is what online trials can be carried out.
- e. The Basic problems are open to the public that are not available at online conferences;
- f. The problem of lack of fulfillment of the rights of the parties, especially legal advisors who are not side by side with the defendant, which resulted in objections from legal advisors to teleconference hearings;

Efforts to overcome the above legal substance problems require reform of formal criminal law (criminal procedural law) considering that when the Covid-19 pandemic occurred and the trial process was carried out virtually, it gave rise to academic debate regarding legal issues regarding the validity/legality of examining witnesses in the virtual criminal case examination process. [7] Virtual judicial legitimacy during the pandemic uses a cooperation agreement between (a) the Supreme Court of the Republic of Indonesia Number: 402/DJUH/HM.01.1/4/2020, (b) the Attorney General's Office of the Republic of Indonesia Number: KEP-17/E/Ejp/04 / 2020, and (c) Ministry of Law and Human Rights of the Republic of Indonesia Number: PAS-08.HH.05.05 of 2020 dated 13 April 2020, which allows trials of criminal cases via video conferencing to which Supreme Court Regulation (Perma) No. 4 of 2020 concerning Electronic Administration and Trial of Criminal Cases in Court, is a short-term policy to address legal gaps.[19] In the long term, this policy does not provide a solution in dealing with the dynamic development of society in the modern era, as described by

Giddens, "as an era of dependence on local and global communication which creates a process of transformation of space and time in human life so that distant events in one country influence people in other countries."

Second *policy* The above at first glance seems ideal for dealing with the developments in legal dynamics that are occurring, but if we examine it further *policy* These are just rules that are below the level of law, leaving legitimacy problems related to their validity and the strength of their binding force. Considering that legal certainty is the main guidance, juridically these norms must be formed based on a predetermined method.[2] In order to make the virtual trial policy effective, rational efforts are needed to update the legal substance (*legal substance*). This effort to update the legal substance ultimately provides legal certainty regarding guidelines, limitations and criteria for administering justice in a hybrid manner in accordance with the principle *there is no judgment without law* in Article 3 of the Criminal Procedure Code. Apart from that, it is no less important to update this substance to fulfill the rights of the parties in carrying out virtual trials considering that criminal justice system procedures are designed in criminal procedural law as formal rules that have unique characteristics, are coercive and protect human rights.

The next problem concerns the facilities and infrastructure in virtual justice which include:

- a. Security and protection issues related to the use of teleconferencing applications;
- b. Human resource problems with IT personnel or limited technological mastery for the parties;
- c. The problem of internet network availability which is not yet widespread in certain areas, especially areas that are underdeveloped when it comes to conducting electronic trials;
- d. Problems with the availability of electronic devices in each agency and limited infrastructure, such as the absence of a courtroom that has a teleconference device;

When virtual trials were held during the Covid-19 pandemic, the adequacy of technological support and guaranteed access to virtual technology for all parties became the main problem, this was due to the unavailability of special technological support for trials. The use of the zoom meeting application as trial access clearly creates problems because court authorities cannot control and guarantee privacy during the trial. Apart from that, using free applications results in an unstable internet network that disrupts the trial process. The next problem is related to mastery of technology and the availability of electronic devices and courtrooms in each agency. Considering that the application of information technology in virtual trials is actually an effort to encourage the judiciary to become modern in accordance with the principles of simple, fast, low-cost justice, quality legal services through modern facilities and infrastructure are a must. Based on the description above A special policy is needed that regulates the use of virtual justice facilities and infrastructure, which includes data security, privacy, technological reliability and internet access to ensure that the implementation of virtual justice does not compromise the integrity of the judicial process.

2.4 Construction of Hybrid Criminal Case Trials in the Digital Era

As a new legal culture, hybrid criminal justice which combines conventional and virtual trials requires a philosophical, sociological and juridical basis so that it can be integrated into the criminal justice system in Indonesia. As Radbruch argues, law will apply perfectly if it fulfills three basic values, namely in accordance with philosophical doctrine, sociological

doctrine (*sociological doctrine*) and juridical doctrine(*juridical doctrine*).[5] The philosophical aspect cannot be separated from the essence of making laws to regulate behavior according to the values that exist in society. In the context of hybrid justice, the question that arises is whether hybrid justice is in accordance with the duties and functions of the judiciary to uphold the law and values of justice based on the principles of criminal law. Considering that the aim of modernizing the judiciary is none other than to provide better quality, effective and efficient services to justice seekers, the use of information technology to assist the judicial process has become a necessity in the digital-based modern era. This is in line with the Supreme Court's vision to become a Judicial Body Modern based on Integrated Information Technology. Meanwhile, changes to trial procedures have logical consequences with the principles and norms of procedural law, namely the principles of fast, simple and low-cost trials as well as the principle that court examinations are open to the public. The implementation of hybrid justice is very relevant with the principles of being fast, simple and low cost because this system answers the needs of people seeking justice in the modern era which requires effectiveness and efficiency. Regarding the principle of court examinations that are open to the public, which requires the general public to be able to attend trials in hybrid courts. When virtual examinations are carried out, the court space will turn into a digital space, therefore there is a need for a special network created by the Supreme Court that can be accessed by the public.

The next aspect is the sociological aspect which focuses on the acceptance of law in society, meaning that legal rules are binding because they are recognized and accepted in society or can be enforced even if society rejects them. Considering that in the era of globalization, society in social relations moves dynamically taking advantage of the loss of time and space compression, institutionally the judiciary must be able to keep up with developments in society. Virtual trials are not only related to the readiness of court institutions, but also the readiness of prosecutors, police, correctional institutions, advocates and defendants as well as other parties. An important problem related to the sociological aspect is in relation to the validity of the examination process/stages (especially the verification process). The examination process/stages must not cause difficulties in finding material truths that cannot be separated from the "sacredness" and authority of the courtroom. The final aspect, namely the juridical or normative aspect, emphasizes that the legal basis for the enactment of a rule is tied to the hierarchy of its formation. The judicial process carried out in a hybrid manner requires a juridical basis related to the validity of the judicial process. The juridical basis referred to is related to the straightforward and formal nature of procedural law and the obligation to fulfill formal legal principles and material legal principles of the judicial process relating to the truth to be upheld.

Based on the explanation above, philosophically, sociologically and juridically, hybrid justice has the legitimacy to be implemented in justice in Indonesia. The next stage needs to be to regulate the substance and procedures of hybrid justice so as not to give rise to wrong interpretations regarding how hybrid justice is implemented. Seeing that the virtual trial policy in the era of the Covid-19 pandemic was only formulated to deal with compelling critical situations or emergencies without considering aspects of modernization, an important breakthrough in virtual trial writing was presented to overcome certain situations that arise in modern society. The important substance in hybrid trials is how to utilize information technology to facilitate judicial tasks in the modern era which allows justice seekers to follow the trial process from different places using technology_information while still considering aspects of justice, expediency and legal certainty. The justification for moving courtrooms from conventional to hybrid is due to the reality of modern society which requires legal

flexibility so that the principle of legality cannot be maintained if applied strictly. Certain circumstances that allow conventional courtrooms to move to virtual spaces are situations where the process of administering cases and trials is due to distance and time. These distance and time constraints are then overcome by using information technology so that in hybrid trials not all examination processes are carried out virtually but only in certain circumstances. Thus the trial is virtual.

It is the procedure for carrying out virtual trials that requires the support of facilities and infrastructure, as Richard Susskind argues, every step towards virtual courts must ensure that the justice system remains "accessible, transparent, sufficiently resourced, appropriately balanced." Learning from the virtual trial period in the era of the Covid-19 pandemic, the facilities and infrastructure needed to carry out virtual trials include: (a) Virtual courtrooms, the transformation of conventional to virtual courtrooms must maintain the authority of the court as a place to seek justice, so strict rules are needed, related to behavior, attitudes, words that can demean and undermine the authority, dignity and honor of the judiciary known as "Contempt of Court", (b) Technological support, the adequacy of technological support here for all parties involved in the dispute to access technology virtual. The use of technology is not only in court, but in all places where the parties are located to test the truth of evidence. (c) Public access to the trial process. Special arrangements related to public access to trials are important because they are in accordance with the principle that trials are open to the public as a function of community control over the process. justice, and finally (d) Access security, guaranteeing access security to avoid data hacking. which has the potential to become an obstacle in the trial process.

3 Closing

3.1 Conclusion

- a. The use of technology in the conduct of trials requires updating legal instruments that must accommodate values and various interests that take into account the psychological and political aspects of state law.
- b. Holding criminal trials in a hybrid manner is a change in the judicial paradigm from real space to virtual and real space. The use of information and technology (IT) in court has brought about quite big changes, both for justice seekers and court implementers
- c. The new construction of hybrid trials must be contained in statutory and regulatory policies, taking into account modernization aspects but must be able to realize the protection of human rights in the criminal justice system.

3.2 Suggestions

- a. The current momentum for updating the Criminal Procedure Code is a means to improve the provisions for hybrid criminal case trials with the main aim being to ensure that virtual trials can run smoothly, fairly and reliably.
- b. In order for the hybrid trial policy to be effective and in accordance with its direction, guidelines and arrangements are needed so that the implementation of hybrid criminal case trials is in accordance with the principles adopted by the legal system in force in Indonesia.

- c. The construction of hybrid trials should be part of the drafting of the Criminal Procedure Code Bill to realize ideal law enforcement as an effort to protect society and achieve social welfare in the modern era.

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