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Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)

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ABSTRACT

This paper aims to propose the implementation of electronic justice within the Indonesian criminal justice system, focusing on the reform of criminal law enforcement. The research methodology employed is normative legal research. The findings of the study reveal two key points. *Firstly*, it is crucial to regulate digital-based criminal justice at the legislative level, particularly through the reform of the Code of Criminal Procedure (KUHAP). The current implementation of electronic criminal trials presents challenges, and the legal foundation for conducting such trials is established by external entities rather than the legislative institution. Therefore, incorporating regulations on electronic criminal trials in future KUHAP reforms is vital to facilitate criminal law reform. As it stands, electronic criminal trials



lack specific legal regulations. *Secondly*, the existing KUHAP does not sufficiently address the issue of technological advancements, as it cannot anticipate rapid changes in technology. Consequently, a legal framework should be established to address this issue. This framework should ensure the availability of modern technological devices and necessary resources to facilitate digital-based criminal justice. Additionally, it should introduce laws governing electronic courts and initiate legal reforms through the revision of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). To provide an example, the United States has regulated electronic criminal proceedings through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which implements fiscal stimulus policies and allows for video conferencing in certain cases. Such regulations can serve as a reference point for the implementation of electronic criminal proceedings in Indonesia.

Keywords: Criminal Justice, Digital-based Procedural Law, Law Reform

INTRODUCTION

Human interactions are fundamentally regulated by a legal framework, ensuring that the criminal justice system holds individuals accountable for their actions in accordance with statutory provisions. As part of this system, individuals who violate the law will undergo a judicial process, where they will be tried in court before receiving a sentence or punishment. By adhering to this plan, the criminal justice system aims to uphold the principles of fairness, due process, and accountability. It ensures that those who engage in

unlawful behavior face the appropriate legal consequences for their actions. The process involves the examination of evidence, presentation of arguments by both the prosecution and defense, and a judgment rendered by a court of law.¹

Through this judicial process, the criminal justice system seeks to strike a balance between the protection of individual rights and the maintenance of public order and safety. It serves as a mechanism to deter criminal behavior, provide justice for victims, and rehabilitate offenders where possible.

Procedures in court are based on the following applicable legal principles: "*The defendant is required to appear in court and undergo direct oral examination. Law Number 8 of 1981 Governing Criminal Process (hence referred to as KUHAP) governs the general phases and methods of trial for criminal matters in the district court*". It is undeniable, however, that KUHAP as a guide in the present criminal justice system has a number of flaws. These problems can be traced back to the progress of technology that has rendered the KUHAP's little details of criminal procedure seem archaic and inefficient.

The rapid advancement of computer-based information communication technology has had an effect on the manner of living in modern society. The advancement of this technology ultimately made life easier for the community. The widespread availability of the internet is one technological boon appreciated by locals. These days, knowledge is a medium that may make or break a country's economy, both in the developing world and the industrialized world.² Because of these technical advances, KUHAP feels they are falling behind. Because of this delay, criminal trials had to be conducted

¹ Rian Saputra, "Pergeseran Prinsip Hakim Pasif ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif," *Wacana Hukum* 25, No. 1 (2019): 10–18.

² Dian Latifiani, "Human Attitude and Technology: Analyzing A Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)," *Journal of Indonesian Legal Studies* 6, No. 1 (2021): 157–184, <https://doi.org/doi.org/10.15294/jils.v6i1.44450>.

electronically (online) rather than in person during the Covid 19 Epidemic. The old adage that "*the law always lags behind the growth of society or the events it regulates*" appears to have some basis in reality (*Het recht hink anter de feiten an*)".³

Several state institutions, including the Attorney General's Office, the Supreme Court, the Ministry of Law and Human Rights, and the Corruption Eradication Commission, have taken some fairly progressive actions in response to this circumstance, particularly with regard to the implementation of the judicial process, which is very appropriate in tackling problems amid the pandemic. As just one example, the simplest problem is that a witness who should appear in court but does not because he is afraid to come because he might be exposed to Corona disease in court or at the place where he is

³ Muhammad Bagus Adi Wicaksono and Rian Saputra, "Building the Eradication of Corruption in Indonesia Using Administrative Law," *Journal of Legal, Ethical and Regulatory Issues* 24, No. SI 1 (2021): 1–17. The phrase "*Het recht hinkt achter de feiten aan*" is a Dutch proverb, which can be translated to English as "*The law limps behind the facts.*" It conveys the idea that legal systems and regulations often struggle to keep up with the rapid pace of societal changes and developments. By the time laws are enacted or updated to address a particular issue, the circumstances or behaviors they aim to regulate may have already evolved. The proverb suggests that the law tends to be reactive rather than proactive, lagging behind the realities of society. It highlights the inherent challenge in formulating and implementing laws that accurately reflect and effectively address the current needs and dynamics of a rapidly changing world. The phrase serves as a reminder that legal frameworks should strive to be adaptable, responsive, and agile to adequately address emerging issues and societal transformations. *See also* Rama Halim Nur Azmi, "Indonesian Cyber Law Formulation in The Development of National Laws in 4.0 Era." *Lex Scientia Law Review* 4, No. 1 (2020): 46-58; Mokhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila." *Journal of Indonesian Legal Studies* 3, No. 2 (2018): 149-174; Kholil Said, and Ayon Diniyanto, "Determination of Advancement of Technology Against Law". *Journal of Law and Legal Reform* 2, No. 1 (2021): 125-134. <https://doi.org/10.15294/jllr.v2i1.44525>; Awaludin Marwan, Diana Odier-Contreras Garduño, Fiammetta Bonfigli, "Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia", *Bestuur* 10, No. 1 (2022): 22-32. <https://doi.org/10.20961/bestuur.v10i1.59143>

determined to testify (Correctional Institution, Attorney General's Office, Corruption Eradication Commission).⁴

Doing the experiment via teleconference under the current corona pandemic settings is crucial. In the context of criminal law, the question is whether this procedure violates the principles of criminal justice, the regulatory content of which is founded on the protection of human rights.⁵ Similarly, under legislation, a legal product is generated by an entity or institutions that are not mandated as law-forming institutions, and this is how electronic justice's legal rules are shaped.⁶

When considered from a sociological perspective, the trend towards virtual trials is not optional; it is an inevitable response to either the Covid-19 Epidemic or the rapid growth of related technologies. During the Pandemic in particular, law enforcement agencies faced a stark reality: they either had to resolve matters digitally or postpone trials, which would only lead to a backlog of cases. This event sparked the issue of a slew of regulations that, while not in the form of a law, were empirically applied to assure legal clarity, demonstrating the law's moment of flexibility.⁷ Of course, it's vital to ask questions like these in order to avoid behaviors that

⁴ Neisa Angrum Adisti, Nashriana, Isma Nurilah, Pelaksanaan Persidangan Perkara Pidana Secara Elektronik Pada Masa Pandemi Covid 19 di Pengadilan Negeri Kota Palembang. *Jurnal Legislasi Indonesia* 18 No. 2 (2021)

⁵ Syarif Hidayatullah and Ditha Wiradiputra, "Urgensi Pelaksanaan E-Litigasi Dalam Persidangan Perkara Perdata Pada Masa Pandemi Covid-19," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* 12, No. 2 (2021): 112-125, <https://doi.org/dx.doi.org/10.32493/jdmhkdmmhk.v12i2.15864>.

⁶ See Muhammad Rustamaji, *Dekonstruksi Asas Praduga Tidak Bersalah Pembaruan Tekstualitas Formulasi Norma dan Kandungan Nilainya*. (Yogyakarta: Thafamedia, 2019), p. 68

⁷ 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 (2020): 291-304. <https://doi.org/10.14710/jphi.v2i3.291-304>

wouldn't be tolerated in a state of law, but the question is how the validity of this practice is determined.

Before the Covid 19 epidemic, there was still some fuzziness about what constituted an electronic trial or teleconference; this suggested that the subordinate judicial institutions did not follow uniform procedures when it came to holding electronic trials. Supreme Court Regulation 4 of 2020, Relating to the Electronic Administration and Trial of Criminal Matters in Court, was released much later (hereinafter referred to as PERMA). Witnesses, experts, and evidence are all spelt out in detail in the legislation, giving electronic trials a concrete structure.⁸ Not only can cases be filed digitally (known as e-court) through the Perma, but trials can also take place digitally (known as e-litigation).⁹ Yet, it remains unclear if legal goods based on Perma can adequately serve as a legal foundation for the implementation of a criminal justice system whose core value is the protection of individual rights. The goal of this research was to develop a plan for implementing electronic justice in Indonesia, which would help bring about the aforementioned reform of the country's criminal law enforcement system.

This study takes a statutory approach, a conceptual one, and a comparative law one to arrive at its normative conclusions.¹⁰ The reform of criminal law enforcement in Indonesia is approached from

⁸ Zil Aidi, "Implementasi E-Court dalam Mewujudkan Penyelesaian Perkara Perdata Yang Efektif dan Efisien," *Masalah-Masalah Hukum* 49, No. 1 (2020): 80, <https://doi.org/10.14710/mmh.49.1.2020.80-89>.

⁹ Sonyendah Retnaningsih et al., "Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara di Pengadilan Secara Elektronik dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik (Studi di Pengadilan Negeri di Indonesia)," *Jurnal Hukum & Pembangunan* 50, No. 1 (2020): 124, <https://doi.org/10.21143/jhp.vol50.no1.2486>.

¹⁰ Rian Saputra and Silaas Oghenemaro Emovwodo, "Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law," *Journal of Human Rights, Culture and Legal System* 2, No. 1 (2022): 1–13, <https://doi.org/10.53955/jhcls.v2i1.21>.

three different angles: the legislative, conceptual, and comparative legal. The legislative angle examines existing laws and regulations pertaining to the topic at hand (in this case, electronic-based criminal justice), while the conceptual and comparative legal angles provide a concept for the future design of electronic criminal justice.¹¹

A significant body of scholarly literature has addressed electronic criminal justice; however, there is a notable gap in research that specifically examines the procedural law foundation necessary for its implementation. This research gap pertains to the adoption of electronic criminal justice systems in alignment with the legal provisions stipulated by judicial entities such as Supreme Court Regulations, Supreme Court Circulars, or Joint Decrees involving the Attorney General's Office, the Supreme Court, the Indonesian National Police, and the Ministry of Law and Human Rights.

In order to underscore the originality of this paper, the authors reference a selection of studies, including:

Firstly, "The Impact of the Covid-19 Pandemic on Effective Electronic Criminal Trials: A Comparative Study" which explores the repercussions of the pandemic on the efficacy of electronic criminal trials by drawing comparisons with similar situations in the Netherlands.¹² *Secondly*, "Acquisition and Presentation of Digital Evidence in Criminal Trials in Indonesia" delves into the presentation of digital evidence within electronic criminal proceedings in Indonesia. The study concludes that Indonesia has established laws and regulations governing the expansion of evidence, specifically digital evidence, and has also devised regulations regarding the

¹¹ Lusia Indrastuti and Rian Saputra, "Lost Role of Local Governments in Coal Mining Licensing and Management Environment in Indonesia," *European Online Journal of Natural and Social Sciences* 11, No. 2 (2022): 397–408.

¹² Orin Gusta et al., "The Impact of Covid-19 Pandemic on Effective Electronic Criminal Trials: A Comparative Study," *Journal of Human Rights, Culture and Legal System* 3, No. 2 (2023): 185–209, <https://doi.org/10.53955/jhcls.v3i2.57>.

methods of acquiring and presenting such evidence in criminal proceedings. Consequently, judges must assess the validity of digital evidence by considering the stipulated methods of acquisition and presentation.¹³

Thirdly, "Trial Proving in Electronic Criminal Case Trial Based on the Dignified Justice Perspective" focuses on electronic criminal justice from the perspective of upholding a dignified judiciary. It asserts the necessity of harmonizing the implementation of the Criminal Procedure Code and Supreme Court Regulations, suggesting that legislative-level regulations governing evidence presentation in electronic criminal proceedings should be established.¹⁴

Lastly, "Electronic Trial at the Supreme Court: Necessities, Obstacles, and Organization" investigates the requirements, challenges, and organization of electronic trials at the Supreme Court. The paper recognizes the contextual need for electronic trial implementation in Indonesia, which arose from social transformations preceding the COVID-19 pandemic and contributed to the adoption of virtual court proceedings. The existence of e-court mechanisms is considered a response to the societal demands within Indonesia. Challenges discussed include conducting public hearings and delivering verdicts while adhering to the fair trial principle, which necessitates just proceedings from initiation to conclusion.¹⁵

¹³ Dewa Gede Giri Santosa and Karell Mawla Ibnu Kamali, "Acquisition and Presentation of Digital Evidence in Criminal Trial in Indonesia," *Jurnal Hukum dan Peradilan* 11, No. 2 (2022): 195, <https://doi.org/10.25216/jhp.11.2.2022.195-218>.

¹⁴ Novritsar Hasintongan Pakpahan et al., "Trial Proving in Electronic Criminal Case Trial Based On the Dignified Justice Perspective," *Ius Poenale* 3, No. 1 (2022): 1–12, <https://doi.org/10.25041/ip.v3i1.2452>.

¹⁵ Nurjihad Nurjihad and Ariyanto Ariyanto, "Electronic Trial At The Supreme Court: Needs, Challenges And Arrangement," *Jurnal Jurisprudence* 11, No. 2 (2022): 170–186, <https://doi.org/10.23917/jurisprudence.v11i2.16348>.

Hence, it is crucial to uphold the principle of open justice throughout the entire judicial process, starting from the initial examination to the delivery of the verdict, as it is an integral component of the fair trial principle. This concept is commonly known as the principle of open justice in scholarly literature. Its fundamental aim is to safeguard the judicial process against any misconduct by judicial officials. However, when it comes to the e-court mechanism and the reading of verdicts in civil trials, there is a potential risk of infringing upon the principle of open justice if not promptly addressed, particularly in terms of ensuring public access to the reading of verdicts by judges. It is imperative to address this concern to maintain the transparency and integrity of the judicial system.¹⁶

The regulation regarding open trials for the public must commence with the formulation of PERMA, which must adhere to principles and laws that are hierarchically superior to PERMA. Thus, in the authors' opinion, there are two options that can be taken, namely: first, the amendment of the Judiciary Power Law should be formulated first to facilitate the provision of electronic judicial processes in the current digital era; second, adjusting the existing PERMA with the limitation of the principle of open trial for the public so as not to conflict with the regulations above it. In the context of electronic court proceedings, the term "open to the public" must be interpreted more broadly to encompass not only the physical attendance of members of the public, but also the accessibility of the court proceedings and decisions to the general public. This accessibility should be facilitated through real-time and/or Live Court access, allowing for ease of access to the proceedings by the public at large.¹⁷

¹⁶ Nurjihad and Ariyanto.

¹⁷ Nurjihad and Ariyanto.

Another studies, "Reasonable Accommodations for Persons with Disabilities in the Electronic Justice System (E-Court)" elucidates that the percentage of e-Court accessibility currently being utilized to reinforce analysis. This study elaborates on the accessibility of e-Court and the information components within it that need to be improved to provide adequate accommodation for people with disabilities, particularly in the form of services. The study also addresses the issue of the Standard Process of Justice involving Persons with Disabilities and the provision of Accompaniment and/or Interpreters for Persons with Disabilities during court proceedings related to personal assessment and community participation.¹⁸

Based on the discussion of various types of papers on the topic of electronic justice in general, as well as electronic criminal justice, the authors conclude that there is currently no specific writing that addresses the fundamental rules and regulations governing the implementation of electronic justice based on regulations established by judicial bodies and law enforcement agencies. Furthermore, the implementation of electronic criminal justice in Indonesia is carried out based on regulations that lack legitimacy from the sovereignty of the people (Under-Legislation). Thus, the authors provide an explanation regarding the implementation of electronic criminal justice in the framework of criminal procedural law reform in Indonesia, which is then compared to the regulation of electronic criminal justice implementation in the United States.

¹⁸ Siska Naomi Panggabean, "Reasonable Accommodations for Persons With Disabilities in Electronics Justice System (E-Court)," *Jurnal Hukum Dan Peradilan* 10, No. 1 (2021): 1, <https://doi.org/10.25216/jhp.10.1.2021.1-30>.

INDONESIAN CRIMINAL JUSTICE SYSTEM: A DISCOURSE ON THE REFORM OF THE CRIMINAL PROCEDURE CODE

Initially, the development of the criminal justice system can be attributed to American legal specialists and experts in the field of "criminal justice science." The dissatisfaction of the public with the performance of law enforcement personnel and organizations played a significant role in prompting this development.¹⁹ According to Mardjono Reskodiputro, the criminal justice system is a set of frequently occurring events that begin with an investigation, an arrest, a court appearance, a judge's decision, a conviction, and end with the individual being released back into society. In the meantime, Barda Nawawi Arif clarified that the criminal justice system refers to the actual procedure of enforcing the criminal code. As a result, there are connections between procedural and substantive criminal law.²⁰

Based on the provisions of Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Judicial Power Law), it is explained that justice is simply the effective and efficient examination and settlement of cases, which, in the context of the criminal justice system, can be translated as a judicial process that does not require a lot of time.

Because of the rapid advancements that have been made in the fields of computing, information, and communications technology, the applications of science and technology have begun to merge into

¹⁹ Dewi Safitri et al., "Optimalisasi Kebijakan Sistem Peradilan Pidana Secara Elektronik Di Masa Pandemi Covid-19," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 8, No. 2 (2021): 279–87, <http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/2532>.

²⁰ Panji Purnama and Febby Mutioara Nelson, "Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary dalam Sistem Peradilan Pidana di Indonesia," *Rechhts Vinding* 10, No. 1 (2021): 97–116.

one another. As a direct consequence of this, human life also displays characteristics of convergence. As both society and technology improve, individuals are using digital technology tools more frequently, even when interacting with one another, and this trend is expected to continue.²¹ As a result of advances in technology, which have culminated in the arrival of the digital age, the criminal justice system has progressed and matured in tandem with the progression of time. The situation is shown by the use of technology in court services, in particular in the field of administration. This is followed by civil cases in which the litigants are not needed to participate in the process of reaching a settlement.²²

Because of the provisions in Article 5 paragraph (1) of the Judicial Power Law, which requires Judges as law enforcers to continue to explore, understand, and pursue material truth in criminal law, the electronic criminal justice system in Indonesia, which uses digital means in trials, is actually not an absolutely new thing. This is the case when taking into consideration the provisions in Article 5 paragraph (1) of the Judicial Power Law. Some of these lex specialist provisions will contribute to creating a legal basis related to virtual trials, such as in Article 27 paragraph (3) of the Juvenile Justice System Law (hereinafter abbreviated as the Juvenile Justice System Law), which states that the Judge may order the child as a victim or witness to provide testimony through electronic recording or remo. Other developments related to electronic trials can be found in provisions outside the Criminal Procedure Code. In addition, according to Article 9 paragraph 3 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, in the event that a witness or

²¹ Ronald van den Hoogen, "Will E-Justice Still Be Justice? Principles of a Fair Electronic Trial," *International Journal For Court Administration* 18, No. 1 (2008): 65–73.

²² Anggita Doramia Lumbanraja, "Perkembangan Regulasi dan Pelaksanaan Persidangan Online di Indonesia dan Amerika Serikat Selama Pandemi Covid-19," *Jurnal Crepido* 2, No. 1 (2020): 46–58, <https://doi.org/10.14710/crepido.2.1.46-58>.

victim testifies directly through electronic means, he or she is required to be accompanied by an authorized official. This law was passed in an effort to better protect witnesses and victims.

As regarded from a sociological perspective, electronic trials are a need. This could be a reaction to the Covid-19 Epidemic or it could be a reaction to technical advancements.²³ Especially during the Pandemic, law enforcement officials were confronted with a very concrete situation in the form of a choice between resolving cases handled virtually or postponing trials, with the consequence of piling up the number of cases in the future. This choice was presented to them as a choice between resolving cases handled virtually or postponing trials. As a result of this circumstance, the law displayed a moment of flexibility after the issuing of a number of rules. These regulations, which did not take the form of a law but were empirically applied to ensure legal certainty, were triggered by this situation.²⁴

There is still a challenge associated with the adoption of electronic criminal trials. The reason for this is that, up until this point, there has not been a legal framework in place that stringently regulates the criteria for the actual implementation of electronic trials. In the meanwhile, the process addressing this topic is the sole alternative that can be utilized in order to carry out criminal trials. This is due to the fact that the Criminal Process Code (KUHAP), which is the law that governs the rules of criminal procedures, does not regulate this. This is because such things could not be expected at the time the law was written, thus it does not regulate this. The revolution

²³ Stuart Yeh, "The Electronic Monitoring Paradigm: A Proposal for Transforming Criminal Justice in the USA," *Laws* 4, No. 1 (2015): 60–81, <https://doi.org/10.3390/laws4010060>.

²⁴ Neisa Angrum Adisti, Nashriana, and Isma Nurilah, "Pelaksanaan Persidangan Perkara Pidana Secara Elektronik Pada Masa Pandemi Covid 19 di Pengadilan Negeri Kota Palembang," *Jurnal Legislasi Indonesia* 18, No. 2 (2021): 222–32, <https://doi.org/doi.org/10.54629/jli.v18i2.768>.

in technology, information, and science that is taking place at such a rapid pace right now has resulted in the emergence of new circumstances that should be considered in the process of resolving cases, including in the application of KUHAP. These new circumstances have caused a shift in the way that KUHAP should be applied.

Teleconference facilities cannot be accepted as a medium for examining cases in accordance with the provisions contained in Article 160 paragraph (1) letter a and Article 167 of the Criminal Procedure Code, which require the presence of witnesses in the courtroom. This is because legalistic legal analysis has a tendency to be rigid or formal legalistic. However, in contrast to the provisions in Article 28 paragraph (1) of Law No. 4 of 2004, which (now regulated in Article 5 paragraph (1) of Law No. 48 of 2009 concerning judicial power) requires judges to investigate the material truth, there is the possibility for judges to prioritize the material truth over the formal aspects of a case. Yet, the question that needs to be asked is what should be done about other institutions of law enforcement that are part of the criminal justice system? It is essential to give some thought to this matter in order to ensure that the legitimacy of computer-based criminal justice systems will not be called into doubt in the future.

The authors have previously clarified that the provisions of online criminal trials are implemented based on PERMA and the joint agreement formed by the three institutions linked to the execution of the trial. This agreement was made in relation to the implementation of the trial. On the other hand, this may result in difficulties because the discovery of material justice as a goal in criminal proceedings may no longer be possible. The criminal trial, which, as we all know, is not just a meeting, but rather, the criminal trial, which is based on procedural law, is a set of processes to find the material truth or the true truth of a criminal event, which, in essence, creates a fair and clear

conclusion on the criminal problem. Both of these things are incapable of lessening the KUHAP and undermining the law's reliability. This is due to the fact that neither the PERMA nor the agreement letter are equivalent to the Law. The Law mandates and guarantees that criminal proceedings take place in a courtroom in the presence of the defendant, whereas neither the PERMA nor the agreement letter do either.

For this reason, in order to not impede the process of law enforcement, a legal framework is required that regulates the standardization and mechanism of electronic trials. This can be accomplished through the establishment of laws governing electronic justice, as well as through legal reform by revising Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). Because the current criminal procedure law (KUHAP) is no longer seen as being in accordance with the constitution and legal developments that currently exist in society, legal reform in terms of the practice of implementing national procedural law in Indonesia that is more responsive needs to be done. In addition, the direction of global development and technology also affects the meaning and existence of the substance of the KUHAP, so it is necessary to update with criminal procedure law.

The importance of reforming the Criminal Procedure Law (KUHAP) towards an Integrated Criminal Justice System aims to create the highest and fairest law enforcement in order to place law enforcers in accordance with their functions, duties, and authorities which are also expected to adapt to technological advances and legal developments in society. The goal of this reform is to create the highest and fairest law enforcement in order to place law enforcers in accordance with their functions, duties, and authorities. As a result, it is imperative that the formulation of the updated Code of Criminal Process be harmonized and synchronized (KUHAP). It is hoped that,

finally, with the introduction of the idea for and the existence of the new KUHAP, which in this instance is believed to be ratified and enforced as positive law as the basis for implementing Indonesian procedural law, it will be possible to bring about significant changes in the context of law enforcement with the intention of realizing and achieving justice for the entirety of the community.²⁵

It is possible to draw parallels between the current situation and the practice of conducting criminal trials in the United States during the COVID 19 pandemic. The 6th Amendment to the Constitution of the United States stated that trials should ideally be conducted physically and directly in the courtroom. This is one comparison that can be drawn between the current situation and the previous one.²⁶ This was done so that the parties could directly confront the witnesses and experts that were presented, so that the jury could directly evaluate the testimony of the witnesses and experts, and so that the defendant's right to consult directly with his legal counsel during the trial could be satisfied.²⁷ The United States government, however, regulates that trials can be conducted electronically, which is one of the materials in the special rules related to handling the Covid 19

²⁵ Pratama Herry Herlambang, "Positivisme dan Implikasinya Terhadap Ilmu dan Penegakan Hukum". *Indonesian State Law Review (ISLRev)* 2, No. 1 (2019): 336-342. <https://doi.org/10.15294/islrev.v2i1.36187>; Wahyu Rizki Pratama, "Application of the Principle of Miranda Rule for Legal Aid Assistance in Criminal Cases for Poor People in Indonesia in Accordance With Law No. 16 of 2011". *The Digest: Journal of Jurisprudence and Legisprudence* 3, No. 2 (2022): 115-138. <https://doi.org/10.15294/digest.v3i2.66015>. See also Hamidah Abdurrachman, et al. "Application of Ultimum Remedium Principles in Progressive Law Perspective." *International Journal of Criminology and Sociology* 10 (2021): 1012-1022; Mohamed Shahabuddeen, "Does the Principle of Legality Stand in the Way of Progressive Development of Law?." *Journal of International Criminal Justice* 2, No. 4 (2004): 1007-1017.

²⁶ Agus Salim and Elfran Bima Muttaqin, "Persidangan Elektronik (E-Litigasi) Pada Peradilan Tata Usaha Negara," *Paulus Law Journal* 2, No. 1 (2020): 15-25, <https://doi.org/10.51342/plj.v2i1.150>.

²⁷ Insan Pribadi, "Legalitas Alat Bukti Elektronik Dalam Sistem Peradilan Pidana," *Jurnal Lex Renaissance* 3, No. 1 (2018): 109-124, <https://doi.org/10.20885/jlr.vol3.iss1.art4>.

Pandemic in the United States, namely the Coronavirus Aid, Relief, and Economic Securities (CARES) Act. This provision regulates that trials can only be conducted electronically if they meet the conditions, which are as follows: All participants must be located in the United States or a territory that is a part of the United States; All participants must be over the age of:²⁸ a. the existence of an emergency situation determined by the community; b. the determination of the President of the Court to implement electronic trial; c. the consent of the defendant

E-trials in the United States are structured in such a way that, within the framework of the criminal justice system, they can only be carried out in a courtroom: *a*). Initial appearances, which are preliminary hearings to fulfil the defendant's right to be immediately brought before a judge, or speedy trial; *b*). Detention hearings, which are hearings to determine whether or not to detain the accused; *c*). Arraignments, which are hearings to read the charges; *d*). Preliminary hearings, which are preliminary hearings in any criminal case, such as the presentation of arguments by the prosecution and defense counsel or jury selection; *e*). Parole hearings; and *f*). Trial of misdemeanor cases.²⁹

In actual reality, electronic trials are presided over by a judge, public prosecutor, and legal counsel who all attend the proceeding from their own residences. The defendant, on the other hand, is required to attend the proceeding from the facility in which he or she is being held.³⁰ On the other hand, judges in some jurisdictions, like

²⁸ Panji Purnama and Nelson, "Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary dalam dalam Sistem Peradilan Pidana di Indonesia."

²⁹ Vivi Lutfia, "Optimalisasi Penegakan Hukum Terhadap Penyelenggaraan Peradilan Melalui E-Court dalam Mewujudkan Keadilan Bagi Masyarakat di Era Digitalisasi," *Jurnal Lex Renaissance* 6, No. 4 (2021): 677–691, <https://doi.org/10.20885/jlr.vol6.iss4.art3>.

³⁰ Sahira Jati Pratiwi, Steven Steven, and Adinda Destaloka Putri Permatasari, "The Application of E-Court as an Effort to Modernize the Justice Administration in

Texas, which make it very simple to get around using private vehicles, are able to watch the hearings unfold from within the courtroom itself.³¹ This procedure is not followed in the courts located in Manhattan, which make heavy use of public transportation and require the judge to travel to sessions from his or her home in order to preside over them. To make the trial as accessible as possible, the court will post a list of trial-related information on its website and will also make a special court telephone line available so that members of the public who are interested in following the trial can get in touch with the court directly. In addition, courts in the United States always supply a stenographer, who is a someone who takes notes and records the proceedings, and transcripts of the proceedings are always provided to the parties involved.³²

Looking at the regulatory model for digital-based criminal justice in the United States, it can be concluded that electronic criminal justice in the United States is regulated in the rules at the level of laws and regulations of the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, namely in these provisions electronic criminal justice is not only related to the Covid 19 Pandemic but in the substance of broader rules, namely electronic-based criminal justice can be carried out if: a. the existence of a public emergency; b. the determination of the President of the Court to implement electronic trials; c. the consent of the defendant.³³

Indonesia: Challenges & Problems," *Indonesian Journal of Advocacy and Legal Services* 2, No. 1 (2020): 39–56, <https://doi.org/10.15294/ijals.v2i1.37718>.

³¹ Wan Saman and Abrar Haider, "Electronic Court Records Management: A Case Study," *Journal of E-Government Studies and Best Practices* 2012 (2012): 1–11, <https://doi.org/10.5171/2012.925115>.

³² 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 (2021): 79, <https://doi.org/10.33331/rechtsvinding.v10i1.625>.

³³ Putri and Sinaga.

Even though the Covid 19 Pandemic is over, it is possible to carry out electronic-based criminal trials in the United States based on a stipulation by the chief justice and the consent of the defendant. This means that the space for electronic-based criminal trials can still be carried out and has a strong legitimacy base because it is regulated at the statutory level. To give a basis for the legitimacy of electronic-based criminal justice and to provide preventive aspects for the same incident in the future, it is vital for this to be used as a comparison and pilot in the context of the role of legislative reform in the context of the Indonesian context.

It is common knowledge that legal reform entails making a conscientious, well-planned, and long-term effort within the context of the construction of a legal system, with regard to both the substance (legal content) and the institutions of the legal system. The law, in all its normative and its practical elements, encompasses all facets of life; nonetheless, it is just one of the ways that delays might be formed. As a result, the study of law needs to take into account all elements of life in order to be forward-thinking and to collaborate effectively with other fields. In other words, the purpose of legal reform is to free, both in terms of the manner that thinking and acting in law is done, so that the law is able to play a part and function to serve humans and humanity. This goal of legal reform was originally formulated by John Stuart Mill. The inevitable conclusion is that the legal system will always be subject to change, maybe in both an evolutionary and revolutionary direction.³⁴

When seen from the standpoint of renewal, changes in the law might be interpreted as an attempt to reform the law (law reform). In comparison to the employment of customary law or jurisprudence,

³⁴ Dewi Asimah, "Persidangan Elektronik Sebagai Upaya Modernisasi Peradilan di Era New Normal," *Jurnal Hukum Peratun* 4, No. 1 (2021): 31–44, <https://doi.org/doi.org/10.25216/peratun.412021.31-44> I.

the use of legislation as an instrument for law reform is an effective tool. It has been asserted that the formulation of laws and regulations can be planned in order to plan legal reform, and it has also been suggested that this is possible. It is not the sole responsibility of legislation to execute the function of renewing (previous) legislation.³⁵

It is also possible to employ legislation as a tool for the purpose of modernizing jurisprudence, customary law, or customary law. In order to, among other things, replace legislation that was passed by the government of the Dutch East Indies, the job of updating law is to replace that legislation. In addition to this, it is necessary to revise any post-independence national statutes and regulations that are no longer appropriate in light of new circumstances and advancements. The purpose of legislation in the sphere of customary law or customary law is to replace customary law or customary law that is not in harmony with current realities. The use of legislation as a tool for the reform of customary law or customary law is extremely valuable since the latter two laws are very stiff to change in certain issues. This is why the use of legislation as an instrument for reforming customary law is very useful.³⁶

Therefore, it is important to note the inevitability of electronic-based criminal justice from the perspective of legal reform. Considering that advancements in the world of technology and new realities in society are in accordance with the most fundamental principles of electronic-based criminal justice itself, and considering that developments in the world of technology and new realities in society are in accordance with the most fundamental principles of

³⁵ Adi Sulistiyono, "Pembaharuan Hukum yang Mendukung Kondusifitas Iklim Usaha," *Yustisia Jurnal Hukum* 4, No. 3 (2015): 248–53. See also Donny Tobing, "Tinjauan Hukum Terhadap Hukum Acara Persaingan Usaha dalam Perspektif Due Process of Law." *Journal of Private and Commercial Law* 1, No. 1 (2017): 1–28. <https://doi.org/10.15294/jpcl.v1i1.12344>

³⁶ Sulistiyono.

electronic-based criminal justice itself, and considering that it is important to accommodate electronic-based criminal justice in the future, and that this can be done either through.

I. DIGITAL CRIMINAL TRIALS IN MODERN TECHNOLOGIES & RESOURCES: SOME CHALLENGES

In order to begin the explanation of criminal justice with an emphasis on the recovery of factual information, we shall first discuss the definition of criminal justice by itself. It is generally accepted that the concept of justice refers to a procedure that is carried out by authorized parties with the intention of maintaining justice in order to establish order and tranquilly in society. To get started with the explanation of criminal justice as an effort to unearth objective truth, let's first go through the definition of criminal justice itself. It is generally accepted that the authorities are responsible for carrying out the process of ensuring that justice is maintained in the interest of establishing order and maintaining peace within a society.

The administration of criminal justice is carried out in accordance with the rules of criminal procedure through a number of steps. At each stage, there are specific institutions involved.³⁷

³⁷ Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, No. 1 (2019): 15, <https://doi.org/10.30641/kebijakan.2019.v13.15-30>. See also Malik Abdus Salam, and Tri Nurmega Oktarina. "Alternative Model of Settlement of Narcotics Abuse by Children through Diversion (Case Study in Sambas District)." *Jurnal Scientia Indonesia* 5, No. 1 (2019): 60-74. <https://doi.org/10.15294/jsi.v5i1.36065>; Claudia Carolina Indra Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion." *Indonesian Journal of Criminal Law Studies* 4, No. 1 (2019): 1-8. <https://doi.org/10.15294/ijcls.v4i1.18680>

According to the ideas of Sudikno Mertokusumo, the system of criminal justice is comprised of three stages, which are as follows: the preliminary or first stage, the stage of determination, and finally the stage of implementation. The investigation and enquiry that takes place during the preliminary stage is carried out by the police in accordance with the provisions of Article 1 numbers 1, 2, 4, and 5 of KUHAP. The investigation and enquiry that takes place during the prosecution stage is carried out by the prosecutor's office in accordance with the provisions of Article 1 numbers 6 and 7 of KUHAP. The stage of determination includes the examination that takes place in court, the presentation of evidence, and the conclusion made by the judge. In the meantime, the stage known as implementation or execution is comprised of the prosecutor carrying out the judgement as well as supervision and surveillance of the judge's decision being carried out.³⁸

In theory, the field of criminal justice is rich in humanistic principles. If it is associated with the types of criminal sanctions as regulated in Article 10 of the Criminal Code, namely the death penalty, imprisonment, confinement, fines, and closure, then the imposition of criminal sanctions on a person is a form of deprivation of fundamental human rights. If it is associated with the types of criminal sanctions as regulated in Article 10 of the Criminal Code, then it is.³⁹ From this foundation, the administration of criminal justice is accomplished by searching for *materiele waarheid*, sometimes known as the truth that actually occurred or the absolute truth. L.J. van Apeldoorn was the one who articulated this viewpoint when he

³⁸ Randy Pradityo, "Restorative Justice Dalam Restorative Justice in Juvenile Justice System," *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016): 319–30, <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

³⁹ Okky Chahyo Nugroho, "Peran Balai Pemasyarakatan Pada Sistem Peradilan Pidana Anak Ditinjau Dalam Perspektif Hak Asasi Manusia," *Jurnal HAM* 8, no. 2 (2017): 161, <https://doi.org/10.30641/ham.2017.8.356>.

argued that in contrast to judges in civil court who investigate formal truths, judges in instances involving criminal offences are required to investigate material truths.⁴⁰

In the field of criminal justice, the gathering of evidence is the stage at which efforts are made to obtain material witness testimony. When it comes to evidence, there is a principle known *as actori incumbit probatia*, which stipulates that in the event that one party implies or denies the occurrence of an event, the person in question is obligated to provide proof of it.⁴¹ In accordance with this guiding concept, the burden of proof, also known as the *bewijslast*, is typically shouldered by the prosecutor in public prosecutions of criminal offences. This idea is driven home even further by the rules of Article 66 of the Criminal Process Act, which provide that the suspect or defendant does not bear the responsibility of proving their innocence. According to a *contrario* interpretation of this rule, it is recognized that the one who is obligated to show something is the prosecutor in their capacity as the public prosecutor.⁴²

Because the act of being a criminal inherently breaches human rights, the criminal justice system is an endeavor to discover material truth because the process is carried out in a measured manner. This may be understood based on the explanation that was provided earlier in this paragraph.⁴³ The gathering and presentation of evidence in legal proceedings is fundamentally a procedure that aims

⁴⁰ Nevey Varida Ariani, "Pelaksanaan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," *Lex Et Societatis*, No. 153 (2012): 39.

⁴¹ Nur Rima Cessio Magistri, "Tinjauan Yuridis Terhadap Perlindungan Hukum Korban Tindak Pidana Penusukan Dalam Peradilan Pidana," *Jurnal Pembangunan Hukum Indonesia* 2, No. 1 (2020): 82–101, <https://doi.org/10.14710/jphi.v2i1.82-101>.

⁴² Made Sugi Hartono and Ni Putu Rai Yuiartini, "Penggunaan Bukti Elektronik Dalam Peradilan Pidana," *Jurnal Komunikasi Hukum* 6, No. 1 (2020): 281–302.

⁴³ Rusli Muhammad, "Pengaturan dan Urgensi Whistle Blower Dan Justice Collaborator Dalam Sistem Peradilan Pidana," *Jurnal Hukum IUS QUIA IUSTUM* 22, No. 2 (2015): 203–22, <https://doi.org/10.20885/iustum.vol22.iss2.art2>.

to discover and articulate the material truth about the criminal offences and errors committed by a person so that the person can be punished for their actions.⁴⁴ Therefore, criminal justice on a digital basis must also be based on the objectives of criminal law enforcement, as the authors describe in the previous section that at this time, the application of digital-based criminal trials is a direction that is gradually becoming a relevant choice along with technological progress and development, in addition to considerations of efficiency. This is due to the fact that the authors stated that at this time, the application of digital-based criminal trials is a direction that is gradually becoming a relevant choice along with technological progress and development. On the other hand, it must also be secured by the preparedness to apply contemporary technology gadgets and accompanying resources in order to hold criminal trials that are conducted digitally.

In order to ensure a good use of electronic-based criminal justice and to prevent future difficulties in its use in the criminal justice system in Indonesia, there are significant aspects that must be considered in addition to the regulatory aspects that the author will detail below.

In the further context, it is necessary to design or construct online facilities that can enable flexibility, convenience, and support for a rapid trial without the necessity for face-to-face encounters. The use of algorithms, the expansion of capacity at a reasonable cost (to the parties), and the maintenance of a high level of consistency in regard

⁴⁴ Ook Mufrohim and Ratna Herawati, "Independensi Lembaga Kejaksaan Sebagai Legal Structure Didalam Sistem Peradilan Pidana (Criminal Justice System) di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, No. 3 (2020): 373–386, <https://doi.org/10.14710/jphi.v2i3.373-386>.

to automated systems can provide a solid foundation for the improvement of access to justice.⁴⁵

In order to protect data and reduce the risk of cybercrime, electronic trials need to take place via a network that is encrypted. In order to successfully execute electronic trials, one of the challenges and obstacles that must be overcome is the strength of the network. When electronic courts or trials are employed, all parties involved are required to have a solid understanding of how the software and hardware being utilized actually function. In this context, law enforcement agencies should use providers or applications developed specifically for enforcement or electronic criminal justice to ensure that the privacy rights of the parties or defendants in the electronic justice space are maintained. This can be done by ensuring that the privacy rights of the parties or defendants in the electronic justice space are maintained.

It is in line with the discourse of due process of online, in the concept of digital constitutionalism, which states that in a digital society, the state is not the only dominant actor whose power can directly affect individual rights, and the author's view regarding the guarantee of the privacy rights of the parties or defendants in the electronic criminal justice space through the development of special applications for electronic criminal trials. This view is expressed through the development of special applications for electronic criminal trials. The digital age has given rise to a new Leviathan in the form of private firms that specialize in the production, management, and sale of digital technology products and services. When speaking explicitly about Internet Service Providers and when speaking specifically about search engines, Laidlaw appropriately identifies these actors as "*online gatekeepers*". He does this by speaking

⁴⁵ Ronald W Staudt, "All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice," *Loyola of Los Angeles Law Review* 42 (2009): 101–129.

specifically about search engines.⁴⁶ It is very evident that search engines have the ability to control who has access to specific information. It is similar to being condemned to digital non-existence when search results are removed or simply down-ranked, which subsequently restricts individuals' rights to access publicly available information. To be more specific, however, the description provided by Laidlaw is an excellent fit for the overall category of technology enterprises. They are able to mould the ways in which individuals use digital technology since they control individuals' access to these tools. They have the ability to potentially impact the exercise of our fundamental rights in this way, which is not all that unlike to the way that nation-states have the ability to do so.⁴⁷

In this environment, issues emerge over whether or not, to what extent, and how to apply existing constitutional principles controlling the use of state authority to these private players. These questions are brought up because of the context (technology companies).⁴⁸ As was discussed in the prior chapter, constitutional systems came into being in order to put a check on the power of dominating actors and to ensure that fundamental individual rights were protected.⁴⁹ But, throughout history, their primary objective was to challenge the authority of the state. The rules that are now in place for the constitution do not express any principles for restricting the power of private entities. One is intellectually tempted to apply those principles to the private sector as well, particularly a private sector whose performance orientation is towards the fundamental principles of

⁴⁶ Rian Saputra, M Zaid, and Silaas Oghenemaro, "The Court Online Content Moderation: A Constitutional Framework," *Journal of Human Rights, Culture and Legal System* 2, No. 3 (2022): 139–148, <https://doi.org/10.53955/jhcls.v2i3.54>.

⁴⁷ Saputra, Zaid, and Oghenemaro.

⁴⁸ Saputra, Zaid, and Oghenemaro.

⁴⁹ Taufik Hidayat, Resti Dian, and Suviwat Jenvitchuwong, "Disharmonization of Supreme Court Regulations in Material Judicial Rights," *Journal of Human Rights, Culture and Legal System* 2, No. 3 (2022): 149–166, <https://doi.org/10.53955/jhcls.v2i3.34>.

society, given the similarities between the ways in which the state and private companies can affect individual rights.

Private actors are not required to comply with international human rights laws as a matter of formality, according to the legal system.⁵⁰ It is the responsibility of the state to make certain that these rights are safeguarded by private organizations as well. The '*Ruggie principles*' are a collection of guiding principles that were outlined in a document that was released in 2008 by John Ruggie, who was the UN Special Representative for Business and Human Rights.⁵¹ This text not only reaffirmed the obligation of states to prevent human rights violations committed by private actors but also vigorously asserted the responsibility of private entities to protect human rights. Specifically, this text reaffirmed the obligation of states to prevent violations of human rights committed by private actors. It is the beginning of a legal backlash against the authority of private entities, despite the fact that this document is not legally enforceable and consequently simply imposes moral requirements on private actors. It is essential, for this reason, to devise specialized tools for the administration of electronic criminal justice in order to guarantee the protection of the parties' and, in particular, the accused's right to personal privacy.

II. LEGAL CERTAINTY ON ELECTRONIC EVIDENCE CAPABILITY

The gathering and presentation of evidence in legal proceedings is fundamentally a procedure that aims to discover and articulate the

⁵⁰ Saputra, Zaid, and Oghenemaro, "The Court Online Content Moderation: A Constitutional Framework."

⁵¹ Saputra, Zaid, and Oghenemaro.

material truth about the criminal offences and errors committed by a person so that the person can be punished for their actions.⁵² Because the evidential process is regulated by procedural law, its implementation is subject to certain constraints. These constraints are specifically related to the types of evidence that can be utilized in the process as well as the evaluation of the evidence.⁵³ As a result of the fact that neither the public prosecutor nor the defendant, acting through his legal counsel, is permitted to freely submit evidence that they believe to be true, the role that the judge plays in evaluating and considering the strength of the evidence becomes very important in this scenario. The law should only refer to the evidence that can be used to make a decision, and judges should base their decisions on that evidence.⁵⁴

On the significance of proof, R. Supomo offers two different points of view. In the first place, having proof is necessary in order to attempt to legitimize legal ties. The standards of valid evidence dictate that the existence of evidence is necessary in order to enhance the judge's decision.⁵⁵ In the broadest sense, this is what is meant by the term "*evidence*." Second, providing evidence is essential in the case that the defendant contradicts what the plaintiff has asserted in the lawsuit. Things that are not in dispute do not need to be proven in any way. In the following, we will refer to this in a restricted sense as

⁵² Henry Donald Lbn. Toruan, "Legal Implications of Bank Loans Turn into Corruption," *Jurnal Penelitian Hukum* 16, No. 1 (2016): 339–348.

⁵³ Syahril Syahril, Mohd Din, and Mujibussalim Mujibussalim, "Penerapan Undang-Undang Pemberantasan Tindak Pidana Korupsi Terhadap Kejahatan Di Bidang Perbankan," *Syiah Kuala Law Journal* 1, No. 3 (2017): 16–28, <https://doi.org/10.24815/sklj.v1i3.9635>.

⁵⁴ Andry Harijanto, Siti Hatikasari, and Juliet Musabula, "The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice," *Journal of Human Rights, Culture and Legal System* 2, No. 2 (2022): 100–112, <https://doi.org/10.53955/jhcls.v2i2.33>.

⁵⁵ Agnes Pembriarni Nuryuaningdiah, "Urgensi Pembentukan National Asset Management Credit Dalam Penyelesaian Kredit Macet Bank Bumn," *Masalah-Masalah Hukum* 49, No. 4 (2020): 443–53, <https://doi.org/10.14710/mmh.49.4.2020.443-453>.

evidence. In a manner that is analogous to R. Supomo's ideas, Sudikno Mertokusumo proposes something that is referred to as the judicial interpretation of proof. According to him, proof can be understood in a legal sense as an endeavor to present adequate grounds to the judge who is evaluating the case in order to provide certainty about the truth of an event that is being argued. This is done in order to provide certainty about an event that is being argued.

In the same vein, Eddy O.S. Hiariej developed the concept of the significance of proof as an essential stage in the process of determining the reality of an occurrence. The idea that criminal justice is a search for objective truth is one that is repeated rather frequently. If this is the case, providing proof is an obvious next step given that the purpose of providing proof in the first place is to establish the reality of the legal proceedings. So, it is not improper if the most important momentum in the trial of criminal cases occurs at the time where proof is presented. In addition to this, in the context of criminal trials, evidentiary efforts have even been made during the investigation stage as a stage of discovering events that are suspected of being criminal offences in order to determine whether or not an investigation can be carried out. This is done in order to determine whether or not an investigation can be carried out. Because of this, the law of evidence is required in order to discover the truth about a legal event, which is defined as an event that has legal repercussions.⁵⁶

During the phase of the investigation in which evidence is being gathered, the indictment that the prosecutor has produced in his capacity as a public prosecutor will serve as a point of reference. The indictment now includes the items that are being held against the defendant as criminally responsible. In order to arrive at the

⁵⁶ Abdul Manan, "Penemuan Hukum Oleh Hakim dalam Praktek Hukum Acara di Peradilan Agama," *Jurnal Hukum dan Peradilan* 2, No. 2 (2013): 189, <https://doi.org/10.25216/jhp.2.2.2013.189-202>.

conclusion that the defendant is guilty of committing the criminal offence as charged, it is necessary to first establish each of the components specified in the article. In terms of the evidence, this is a reference to the provisions of Article 184 of the Criminal Process Code, which establishes that witness testimony, expert testimony, letters, instructions, and the defendant's own testimony are all acceptable forms of evidence in a trial. After the passing of Law Number 11/2008 on Electronic Information and Transactions, there have been modifications made to the various categories of evidence (hereinafter referred to as the ITE Law). The provisions of Article 5 paragraphs (1) and (2) constitute the foundation of the ITE Law. These paragraphs specify that electronic information and/or electronic documents and/or their prints are also valid evidence that can be utilized in the administration of criminal justice. As a direct result of the ITE Legislation, the creation of this particular kind of evidence took place.

In a criminal case, the evidence process plays a significant role in determining the verdict that the court will ultimately hand down. If the judge concludes that the defendant's activities have been legally and clearly demonstrated, then it is likely that the offender will be given a punishment for their crime. On the other hand, the defendant will be found not guilty if the accusation cannot be lawfully and persuasively proven. In order to get to a conclusion regarding the appropriate level of punishment to impose, the judge considers two pieces of evidence in addition to the conviction that is at his disposal. This provision is regulated in Article 183 of the Criminal Procedure Code, which is theoretically seen as a *negatief wettelijke bewijs theorie* or theory of proof based on negative legislation. In other words, this

theory of proof is based on the concept that negative legislation is admissible evidence.⁵⁷

Throughout the course of history, the use of electronic documents in the judicial system first received the legitimacy of the law through the Supreme Court Circular Letter (SEMA) Number 14 of 2010 concerning Electronic Documents, which are the entirety of Cassation and Judicial Review Applications. In addition to supporting transparency and accountability in the provision of public services by the Supreme Court and the courts that fall under its jurisdiction, the goal was to enhance the efficiency and effectiveness of the process of documenting the case files. It is interesting to note that this SEMA does not regulate the use of electronic documents as evidence; rather, it discusses the use of electronic documents in the form of decisions or indictments that can be stored on a compact disc, flashdisk, or transferred via email as evidence that an application for cassation and review is complete.

According to the first paragraph of Article 5 of the ITE Law, electronic evidence can be broken down into two distinct categories: electronic information and/or documents, and printouts of electronic information and/or printouts of electronic documents. In general, these two types of electronic evidence can be distinguished from one another. Printouts of electronic information and/or documents can be further defined as letter evidence, whereas electronic information and/or documents that are stored in a digital format can be further qualified as electronic evidence or digital evidence.

An extension of legal evidence is a term that will be used throughout the rest of this article to refer to the evidence that is described in Article 5 paragraph (1). This term is applicable in Indonesian procedural law. First, adding to the evidence that has been

⁵⁷ Pradityo, "Restorative Justice dalam Restorative Justice in Juvenile Justice System."

regulated in the criminal procedure law in Indonesia in such a way that it adds to the forms of evidence as they are regulated in the Criminal Procedure Code. This is the meaning of the expansion that is being discussed here. Second, broadening the categories of evidence that are covered by Indonesia's existing regulations on criminal procedure law. This pertains to printouts of information and/or electronic documents, both of which are considered to be letter evidence in accordance with the regulations found in the Criminal Process Code. The control of the growth of evidence in Indonesian criminal procedural law is actually dispersed throughout a number of different laws and regulations, such as the Law on Business Documents, the Law on Terrorism, the Law on the Elimination of Corruption, and so on.

There are actually two schools of thought when it comes to electronic evidence; one sees it as an extension of letter evidence, while the other sees it as a hint. According to Arief Indra K.A., electronic evidence can be classified as either letter evidence or clue evidence. These are the two choices that can be considered. As long as it is produced in written form, electronic evidence is considered letter evidence. If it has a relationship with other evidence, all of the strength of which is free, then it is possible to refer to it as instructional evidence.

Muhammad Nuh Al-Azhar made a similar point, stating that in actuality there are two schools of thought held by law enforcement personnel, specifically prosecutors and judges, with regard to the availability of electronic evidence. According to the opinion of one of the parties, the sixth piece of evidence is information and/or electronic documents. On the other hand, the opposing party considers electronic evidence to be an extension of the scope of evidence, as described in paragraph one of article 184 of the Criminal Procedure Code. Over the course of the trial, a digital forensics expert provided

an explanation regarding the reliability of electronic evidence. One of the fundamental tenets of proof is that every piece of evidence may be made to talk; to put it another way, an expert is what gives electronic evidence its voice.⁵⁸

In general, one may say that the evidence constitutes the meat and potatoes of the actual trial. This is due to the fact that the evidence process will be used to determine whether or not the defendant is guilty. Referring to Article 197 of the Criminal Procedure Code, specifically paragraph (1) number d., it is stated that the verdict letter of conviction contains one of them, specifically considerations that are succinctly compiled regarding the facts and circumstances along with the evidence obtained from the examination at the trial, which is the basis for determining the guilt of the defendant. In addition, the letter of conviction must include the basis for the determination of the guilt of the defendant. Specifically, what this clause indicates is that in the process of imposing a punishment or a conviction against a person, one of them must be founded on the evidence that is revealed in the proof during the process of the court hearing, explicitly.⁵⁹

Hearings on the presentation of evidence are typically held in criminal courts after an earlier judgement has been rendered (if the defendant files an exception). A common saying in the field of legal research is "*actori incumbit probatio*," which can be translated to mean something along the lines of whoever postulates a right is the one who establishes it. In point of fact, this proverb is more recognized in the field of civil law, notably in relation to parties claiming ownership of rights (the provisions of Article 163 HIR or Article 283 R.Bg and

⁵⁸ Cahya Wulandari et al., "Penal Mediation : Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju," *Lex Scientia Law Review* 6, No. 1 (2022): 69–92, <https://doi.org/10.15294/lesrev.v6i1.54896>.

⁵⁹ Y M Saragih and M A Sahlepi, "Kewenangan Penyadapan dalam Pemberantasan Tindak Pidana Korupsi," *Hukum Pidana dan Pembangunan Hukum* 1, No. 2 (2019), <https://doi.org/10.25105/hpph.v1i2.5467>.

Article 1865 of the Civil Code). This proverb, on the other hand, is applicable to the field of criminal law as well. Article 14 point g of the KUHAP is where the authority of the public prosecutor, namely the ability to conduct prosecutions, is regulated. For this prosecution, the public prosecutor has the responsibility to provide evidence. So, it is crystal evident that the responsibility of bearing the burden of proof, also known as the obligation of proof, in criminal proceedings is typically assigned to the public prosecutor.

The judge, as opposed to the public prosecutor, has the authority to bring charges against the defendant. Trial, as defined by the provisions of Article 1 paragraph 9, is a series of activities by judges to receive, evaluate, and rule upon criminal cases based on principles that are free, honest, and impartial in court. When it comes to investigating the case, the judge is the one who has the authority to consider the evidence. This indicates that the judge, using the authority vested in him, investigates the evidence that is presented by either the public prosecutor or the legal counsel. Upon consideration of all of this evidence, the judge will ultimately reach a verdict, which will be bolstered by the conviction that results from it.⁶⁰

During the evidentiary phase of the trial, the judge is responsible for analyzing the evidence, as well as the evidence that was presented by the prosecutor. The proof and evidence both need to be relevant and legitimate in accordance with the provisions of the legislation, and they also need to fulfil the formal and material standards. So, the first step that the judge takes in determining the evidence that can be utilized in criminal justice is to establish the relevance and validity of the evidence in question. Article 5 of the ITE Law specifies that electronic information, electronic documents, and/or their printouts

⁶⁰ Dian Latifiani et al., "Reconstruction of E-Court Legal Culture in Civil Law Enforcement," *Journal of Indonesian Legal Studies* 7, No. 2 (2022): 277–294, <https://doi.org/10.15294/jils.v7i2.59993>.

are all acceptable forms of legal evidence. This regulation pertains specifically to evidence in the form of electronic information and/or documents, which are specifically referred to as "*electronic information and/or documents*".

The utilization of digital evidence in criminal trials gives rise to concerns about the reliability of the proof and its ability to instill trust in the judge. Particularly in the digital realm of criminal justice in Indonesia, the absence of explicit legislation addressing the intricacies of evidence compounds this issue. The efficacy of the evidentiary process in criminal justice hinges upon establishing coherence between the presented evidence and the specific criminal case under examination. Ultimately, the judge's trust in the evidence is contingent upon its alignment with the case being tried.

In point of fact, the evidence that is offered is frequently obscured due to the fact that it is shown practically. Hence, the quality of apps or supporting facilities for digitally-based criminal justice must be able to support the actual process of justice.⁶¹ In addition, there is a higher likelihood of prejudice when investigating facts through inquiries if the defendants in question are not immediately presented or addressed. As a consequence of this circumstance, the quality of the infrastructure that supports the actual administration of justice is the determining factor in determining the weight of the evidence within the realm of criminal justice that is conducted online.

On the other hand, the implementation of digital-based criminal proceedings also has a tendency to be closed. This is due to the fact that access to electronic criminal proceedings is only given to the litigants, and it is not open to be accessed by the public. As a result, public accessibility to digital-based criminal proceedings cannot be

⁶¹ Lego Karjoko et al., "The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosia* 16, No. 2 (2021): 362–92, <https://doi.org/10.19105/al-lhkam.v16i2.5314>.

guaranteed. To ensure that the trial is easily accessible to the general public, the court should provide a comprehensive list of trial-related information on its website and make available a dedicated court telephone number that members of the public who are interested in following the proceedings can call. In addition, the court is obligated to supply a stenographer, who will take notes, record the proceedings, and transcribe the proceedings based on the trial recordings that will be sent to the parties. The stenographer will also record the proceedings.⁶²

This final point is the result of a comparison with electronic criminal justice in the United States, which appears to be slightly more advanced than Indonesia because it has thought about technical matters, such as the court having its own virtual application specifically designed for electronic trials, and has thought about guaranteeing public accessibility to the electronic trial itself by providing the widest possible information on the court's website. This last point is the result of a comparison with electronic criminal justice in Indonesia, which is the result of a comparison with electronic criminal justice in the United States.

CONCLUSION

This study concluded that to achieve the reform of criminal law enforcement in Indonesia through the implementation of electronic justice, the following steps can be taken: *First and foremost*, it is essential to regulate the implementation of digitally based criminal justice at the legislative level. This can be achieved through a comprehensive discussion on the renewal of the Criminal Process

⁶² Putri and Sinaga, "Disrupsi Digital dalam Proses Penegakan Hukum pada Masa Pandemi Covid-19."

Code, addressing the specific aspects related to electronic justice. *Secondly*, to ensure a smooth process of law enforcement, a robust legal framework is necessary to govern the standardization and mechanisms of electronic trials. This can be accomplished by: *a*). Establishing laws specifically dedicated to governing electronic justice and initiating legal reforms through the revision of Law No. 8 of 1981 on Criminal Procedure (KUHAP). This revision should incorporate provisions that explicitly address the unique aspects and challenges of conducting electronic trials. *b*). Ensuring the readiness of modern technological devices and necessary supporting resources to effectively carry out criminal justice proceedings based on digital platforms. This includes investing in infrastructure, providing adequate training for legal professionals, and promoting the adoption of secure and reliable digital technologies. Furthermore, the study also highlighted that by implementing these measures, Indonesia can establish a solid foundation for the implementation of electronic justice in its criminal law enforcement system. This will enhance efficiency, accessibility, and transparency in the administration of justice while ensuring the protection of rights and due process for all parties involved.

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