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## Fulfillment of Defendant's Rights in PERMA Number 4 of 2020 Reviewed from the Principle of Due Process of Law

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### ABSTRACT

The purpose of this study is to find out and analyze the defendant's rights and the obstacles to their fulfillment through the principle of due process of law. The defendant's rights are contained in Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically. It was considered that during the Covid-19 pandemic, the trial was conducted electronically due to the emergence of public social restrictions. This research was conducted using the juridical-normative method by examining library materials and secondary data through a previous study of laws and regulations, books, and research results. The deviations of the fulfillment of the defendant's rights in the electronic trial from those previously contained in the Criminal Procedure Code occur because of the limited scope regulated by Supreme Court Regulation 4/2020 that concerning electronic trials, so it is considered difficult to implement the defendant's rights in practice fully. Non-optimal fulfillment of the defendant's rights indicates that the due process of law principle cannot be applied in electronic trials, so it is necessary to update regulations regarding electronic trials in Indonesia to optimize the to optimize the development of national law that considered the perspective of justice.

### KEYWORDS

*Defendant's rights; Due process of law; Electronic trials.*

## 1. INTRODUCTION

The emergence of the Covid-19 pandemic did not only cause changes in social and economic mobility but also changes in the law enforcement process. Since the announcement of non-natural national disaster conditions through Presidential Decree Number 12 of 2020, all regional heads are required to make policies that limit social mobility, which is expected to reduce the number of Covid-19 spreads.<sup>1</sup> It starts from the policy of Large-Scale Social Restrictions,<sup>2</sup> which requires limiting the number of people in an agency,<sup>3</sup> to the policy of Enforcement of Restrictions on Community Activities,<sup>4</sup> which can close an office currently operating if there are employees who are indicated to be positive for Covid-19.<sup>5</sup> However, the regulations limiting these activities impact the law enforcement process, the limited social mobility outside the area, and the restrictions on people who can enter an agency require the law enforcement process to carry out online.

Considering the adagio justice delayed is justice denied,<sup>6</sup> and anticipates the buildup of cases,<sup>7</sup> and believes the scope of national legal development,<sup>8</sup> the Supreme Court on September 25, 2020, then established Supreme Court Regulation No. 4 of 2020 on The Administration and Trial of Criminal Cases Electronically (Perma 4/2020). However, applying the rule

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<sup>1</sup> Republik Indonesia, 2020, *Keputusan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non Alam Penyebaran Corona Virus Disease 2019 (COVID-19) sebagai Bencana Nasional*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/135718/keppres-no-12-tahun-2020>.

<sup>2</sup> Republik Indonesia, *Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan penanganan Corona Virus Disease 2019 (Covid-19)*. Diakses dari <https://peraturan.bpk.go.id/Home/Details/135059/pp-no-21-tahun-2020>.

<sup>3</sup> Pasal 2, *Ibid*.

<sup>4</sup> Republik Indonesia, *Instruksi Menteri Dalam Negeri Nomor 17 Tahun 2021 tentang Perpanjangan Pemberlakuan Pembatasan Kegiatan Masyarakat Berbasis Mikro dan Mengoptimalkan Posko Penanganan Corona Virus Disease 2019 di Tingkat Desa dan Kelurahan untuk Pengendalian Penyebaran Corona Virus Disease 2019*, diakses dari : <https://covid19.go.id/storage/app/media/Regulasi/2021/Juli/INMENDAGRI%20NO.%2017%20TAHUN%202021%20TENTANG%20PERPANJANGAN%20PPKM%20BERBASIS%20MIKRO.pdf>

<sup>5</sup> *Ibid*.

<sup>6</sup> Pertimbangan Mahkamah Konstitusi dalam Putusan Nomor 16/PUU-VIII/2010 dalam Perkara Pengujian UU Nomor 8 Tahun 1981 tentang Hukum Acara Pidana terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>7</sup> Neisa Aningrum Adiati, et.al, Pelaksanaan Persidangan Perkara Secara Elektronik Pada Masa Pandemi Covid-19 di Pengadilan Negeri Kota Palembang, *Jurnal Legislasi Indonesia*, Volume 18 Nomor 2, 2021, hlm 224.

<sup>8</sup> Cakupan pembangunan hukum nasional termasuk didalamnya adalah mengembangkan dan melakukan modernisasi dalam penegakan hukum untuk mendukung efektivitas dan efisiensi hukum yang berkeadilan. Lihat Badan Pembinaan Hukum Nasional, 2020, *Dokumen Pembangunan Hukum Nasional Tahun 2020*, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Jakarta, hlm.25 dapat diakses di : [https://bphn.go.id/data/documents/13.\\_buku\\_dphn.pdf](https://bphn.go.id/data/documents/13._buku_dphn.pdf).

poses its problems, considering that the electronic criminal conduct rules have not been regulated in the KUHAP. In its implementation, the KUHAP rules cannot be applied as much as possible, including the accused's rights. In the rules, there are irregularities in several articles involved in the KUHAP. For example, defendants who are required to come to court become unnecessary to go directly to court and can be done through electronic media in RUTAN or Lapas where the accused is detained.<sup>9</sup> In addition, the limited scope stipulated in Perma 4/2020 causes limitations of defendants and legal advisors in access to evidence and affects the quality of proof.<sup>10</sup> Trial application online is not made by proof only, but from the beginning of the trial until the reading of the verdict.<sup>11</sup>

This paper will specifically discuss the fulfillment of the accused's right to obtain a fair trial following the principle of due process of law in the test conducted electronically. This paper will raise the formulation of how the rights of the accused can be fulfilled through the trial electronically.

To answer these problems, this paper begins with a description of the principle of due process of law in the criminal justice system in Indonesia, the implementation of the regulation in the process of illegal conduct in Indonesia, and the irregularities committed in the application of the electronic criminal justice system following Perma 4/2020 because the right of the accused is present through the paradigm of fair legal process (due process of law) so that in its implementation it is necessary to know indicators of appropriate legal process to be understood completely and comprehensively.

## 2. METHOD

This research is conducted using Normative Juridical methods. Normative juridical research is research by examining library materials or secondary data.<sup>12</sup> The literature used in this research is in the form of primary legal materials consisting of the Constitution of the Republic of Indonesia of

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<sup>9</sup> Pasal 2, Republik Indonesia, *Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2020 tentang Administrasi dan Persidangan Perkara Pidana di Pengadilan Secara Elektronik*. Diakses dari : <https://jdih.mahkamahagung.go.id/index.php/beranda/database/2.-Kebijakan-Mahkamah-Agung/1.-Peraturan-Mahkamah-Agung/Tahun-2020/PERMA-NOMOR-4-TAHUN-2020/>.

<sup>10</sup> Neisa Aningrum Adiati, Loc.cit.

<sup>11</sup> Munhamin Ihwana Ahmadi, et.al, "Efektivitas Persidangan Online Perkara Pidana Pada Masa Pandemi Covid-19 Terhadap Objektivitas Hakim, (Studi Kasus di Pengadilan Negeri Surabaya Kelas IA Khusus)", *Jurnal Dinamika* Volume 27 Nomor 16 , 2021, hlm 2338.

<sup>12</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajagrafindo Persada, Jakarta, 2014, hlm 12.

1945, laws and regulations related to online trials and judge rulings, as for secondary legal materials consisting of books as well as the results of previous research and tertiary legal materials consisting of dictionaries and legal encyclopedias.<sup>13</sup>

The data obtained is then analyzed using the method of legislative approach and the case approach. The legislative policy is carried out as a first step to conduct the analysis.<sup>14</sup> In contrast, the case approach is carried out by reviewing related cases that have been decided by the court and have permanent legal force.<sup>15</sup>

### **3. RESULT AND DISCUSSION**

#### **A. Principle of Due Process of Law**

The principle of due process of law originally appeared in the charter of Magna Charta. This charter issued the purpose of limiting the absolute power of the monarchical system of government in England during the reign of King John III in 1215, which was formulated along with the development of democratization thought during absolute government.<sup>16</sup> This principle does not mention the "due process of law principle." Still, one of the articles in the charter stresses a person should not be deprived of their freedom or subject to arbitrary acts by the state unless it is based on a valid ruling. This right not to be subjected to abuse is then recognized as a human right in the Universal Declaration of Human Rights.<sup>17</sup> But in fact, no one definition can explain the true meaning of the due process of law because of the differences that affect it. That is because the definition of the due process of law depends on the relationship between statutes or regulations governing the behavior of citizens with laws that limit power.<sup>18</sup>

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<sup>13</sup> Ibid.

<sup>14</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, hlm. 154.

<sup>15</sup> Ibid.

<sup>16</sup> Rumusan due process of law dirumuskan dengan Bahasa : " No Freeman shall be taken or imprisoned, or be disseised of his freehold or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land" Sumber : Learned Hand, "Due Process of Law and The Eight-Hour Day", *Harvard Law Review*, Volume 21 Nomor 7, 1908, hlm 496.

<sup>17</sup> Vide Pasal 9, Pasal 10, Pasal 11 Deklarasi Universal Hak Asasi Manusia.

<sup>18</sup> Putusan MK No. 21/PUU-XII/2014 dalam Perkara Pengujian Materiil UU Nomor 8 Tahun 1981 tentang Hukum Acara Pidana terhadap UUD NRI 1945, hlm 44

When looking at the conditions in Indonesia, the principle of due process of law itself is not explicitly explained in the constitution. Still can find the right to legal justice through Article 27 of the 1945 Constitution.<sup>19</sup> The formulation of this article appears as a consequence of the affirmation that Indonesia is a state of law. To affirm the rule of law, Indonesia must adopt aspects of the rule of law, one of which is the due process of law.<sup>20</sup> Due process of law itself consists of two dimensions, namely substantive due process of law and procedural due process.<sup>21</sup> Substantive dimensions mean that arbitrary actions carried out by the government in law enforcement are indeed justified in positive legal objectives. At the same time, the procedural size is intended as arbitrary actions carried out by the government following the law.<sup>22</sup> Thus, the principle of due process of law is significantly related to the context of criminal law justice, on the other hand, considering that in the enforcement of criminal law, actions that limit human freedom.

According to Packer, the criminal justice process has two models: the crime control model and the due process model.<sup>23</sup> The system underlying the crime control model is based on the main objectives in criminal law enforcement, namely the eradication of criminal behavior and the protection of law-abiding communities to achieve its goals. Attention should be focused on the efficiency and speed of settlement rates in deciding the wrongs of perpetrators and sentencing.<sup>24</sup> While in the due process model emphasizes human rights and is designed to protect the rights of suspects or defendants, with presents a long legal process that the suspect or defendant must pass.<sup>25</sup> One of the things that distinguish between the two types of models is the presumption of the quilt principle. So, the crime control model emphasizes the importance of affirming the

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<sup>19</sup> UUD 1945 sebelum amandemen yang berbunyi: "Segala warga negara bersamaan kedudukannya dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya".

<sup>20</sup> Ramlan Surbakti, *Demokrasi dan Nomokrasi dalam Problematika Hukum dan Peradilan*, Komisi Yudisial Republik Indonesia, Jakarta, 2014, hlm.15

<sup>21</sup> Roland J Pennock dan John W Chapman, "Due Process", *New York University Press*, Volume 73 Nomor 1, 1977.

<sup>22</sup> Erwin Chemerinsky, "Substantive due process." *Touro Law Rev.* Volume 15, 1998, hlm. 15

<sup>23</sup> Michael Barama, "Model Sistem Peradilan Pidana dalam Perkembangan", *Jurnal Ilmu Hukum*, Volume 3 Nomor 8 2016 hlm 10.

<sup>24</sup> Febby Mutiara Nelson, "Due Process Model dan Restorative Justice Di Indonesia : Suatu Telaah Konseptual", *Jurnal Hukum Pidana & Kriminologi*, Volume 1 Nomor 1, 2020, hlm. 94

<sup>25</sup> Ibid



existence of power, and the use of state power against every perpetrator's crime must be as much as possible.<sup>26</sup> In contrast, the due process model is based on the presumption of innocence as the basis of the criminal justice system. So that the state's power is limited. But broadly speaking, neither the due process model nor the crime control model necessarily becomes an absolute guideline for a country in making formal laws that are then applied in that country. This principle is only used as an indication of the fulfillment of human rights by people who are then suspected of being perpetrators of crimes.

## **B. Principle of Due Process in Criminal Justice System in Indonesia**

Criminal proceedings in Indonesia are fully regulated in KUHAP promulgated through Law No. 8 of 1981. The establishment of KUHAP is based on Law No. 14 of 1970 on the Basic Provisions of Judicial Power, which is reflected as protecting human rights for people dealing with the law.<sup>27</sup> Description of protection is deemed necessary to be included in KUHAP as a form of providing legal certainty and to be fully and thoroughly understood.<sup>28</sup> Therefore, it is appropriate that the determination of fair judicial principles also looks from the context of what rights have been recognized in the law governing procedural provisions. Still, as previously explained, the universal definition of due process of law itself is complicated to find references. So, determining whether the Indonesian KUHAP uses a due process model system or crime control model needs to be seen further about the incarnation of the principle of presumption. Innocence is stipulated in the KUHAP.

Applying this principle in Article 66 of KUHAP, which states that the suspect or defendant is not burdened with the obligation of proof, causes loading of proof given to the public prosecutor as the person who demands it. This article is also a formulation of the principle of presumption of innocence which is interpreted as any person who is suspected, arrested, detained, prosecuted, and faced before a court hearing, must be considered innocent until a court ruling declares his guilt and obtains permanent legal force. The existence of this presumption of innocence is one indication that KUHAP in Indonesia adheres to a due process model. Still, it cannot be directly assessed by applying the principle because, in its application, this principle is not permanently

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<sup>26</sup> Hung-En Sung, "Democracy and Criminal Justice in Cross-National Perspective: From Crime Control to Due Process", *The Annals Of The American Academy*, Volume 605, 2006, hlm. 312.

<sup>27</sup> Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*, diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

<sup>28</sup> Ibid

attached absolutely in a country's regulatory system. This is following McConville's view that the application of due process models is not necessarily applied entirely and can be applied in a mixture with the crime control model method.<sup>29</sup>

In the context of the Indonesian KUHAP, the presumption of innocence principle also recognizes several other regulations such as:

- a. Equal treatment of the law;<sup>30</sup>
- b. Arrests, detentions, searches, and seizures are only carried out under written orders by officials authorized by the law;<sup>31</sup>
- c. Must be allowed to obtain legal assistance;<sup>32</sup>
- d. Must be notified of the indictment, what legal basis is indicted, and informed of its rights, including the right to contact and seek the help of legal counsel (Miranda rules);<sup>33</sup>
- e. The examination of the court with the presence of the accused;<sup>34</sup>
- f. An examination hearing that is open to the public;<sup>35</sup>
- g. Supervision of the implementation of the court's decision.

Overall principle that is broadly contained in the Indonesian KUHAP, can be categorized that Indonesia adheres to the due process model system in its criminal justice system. On the other hand, KUHAP also explicitly shows some deviations of the principle, for example, when caught by hand. In the event of being captured in hand, the officer can make an arrest directly without conducting an investigation first, even confiscating goods without going through the approval process from superiors or courts. In addition, in the case of urgent, officers can carry out actions such as deprivation, confiscation, search, and do not need to get the

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<sup>29</sup> PETER DUFF, "CRIME CONTROL, DUE PROCESS AND 'THE CASE FOR THE PROSECUTION': A Problem of Terminology?", *The British Journal of Criminology*, Volume 38 Nomor 4, 1998, hlm. 611–615,

<sup>30</sup> Pasal 5, Republik Indonesia, *Undang-Undang Nomor 14 Tahun 1970 tentang Ketentuan-Ketentuan Pokok Kehakiman*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47929/uu-no-14-tahun-1970>.

<sup>31</sup> Pasal 7, Republik Indonesia, *Undang-Undang Nomor 14 Tahun 1970 tentang Ketentuan-Ketentuan Pokok Kehakiman*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47929/uu-no-14-tahun-1970>.

<sup>32</sup> Pasal 69, Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

<sup>33</sup> Pasal 51, Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

<sup>34</sup> <sup>34</sup> Pasal 154, Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

<sup>35</sup> Pasal 64, Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

permission of the chief justice first.<sup>36</sup> However, further, the definition of this urgent situation is not explained in the KUHAP. In practice, the provisions of these coercive circumstances are left entirely to law enforcement officials. Therefore, applying the criminal justice model in the Indonesian Kuhap can be categorized not wholly using the due process model in absolute terms but using a mixed model between the due process model and the crime control model.

### **C. Fulfillment of defendants' rights in Supreme Court Regulation No. 4 of 2020 and Constraints on Implementation**

The emergence of the covid-19 pandemic caused regional heads to make policies based on limiting the social mobility of the community. The procedure was designed to minimize the emergence of cluster spread in the community. The existence of this restriction policy has the potential to slow down the criminal law enforcement process. To ensure legal certainty for someone who has been suspected of committing a criminal offense, the Supreme Court makes rules regarding trials electronically. This regulation is then outlined in Supreme Court Regulation No. 4 of 2020 (Perma 4/2020).

Perma 4/2020 regulates the implementation of criminal proceedings electronically, and this needs to be handled more specifically considering that so far, the trial is not conducted electronically but is carried out directly in the courtroom.

Previously, no regulations governed electronic trials. Only in some cases were witness examinations allowed using teleconference as has been done in several instances, including in the dana Yanatera Bulog corruption case filed by BJ Habibie in 2002<sup>37</sup> and terrorism cases with defendant Abu Bakar Ba'asyir.<sup>38</sup> The application of teleconference examination even raises pros and cons.<sup>39</sup> This is because KUHAP has not regulated the examination of witnesses through teleconference, as well as electronic trial examinations are also not regulated in the KUHAP. The establishment of Perma 4/2020 is also one of the actual manifestations in implementing the development of national law. Perma 4/2020 has utilized technology as a means of criminal speech so that the effectiveness and efficiency of the law develop through Perma 4/2020. But unfortunately, the implementation of Perma 4/2020 has not been able to be done because Indonesia was hit by a legal system that is

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<sup>36</sup> Pasal 40, Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Diakses dari : <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>.

<sup>37</sup> Vivi Amelia Ervanda dan Eko Soponyono, "Keabsahan Pembuktian Keterangan Saksi Melalui media Teleconference dalam Hukum Acara di Indonesia", *Supremasi Hukum: Jurnal Penelitian Hukum*, Volume 29 Nomor 2, 2020 hlm 133.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid hlm. 140



not an adequate embodiment of actual electronic trials.<sup>40</sup> It becomes different when speaking in the context of law enforcement in the pandemic period. In this context, there are two conflicting interests, namely the interests of suspects whose cases have not been tried and the safety of the people.<sup>41</sup> For this reason, these deviations need to be done to carry out both because it must enforce the law.<sup>42</sup>

The difference in the implementation of the previous trial directly conducted electronically caused problems. This is due to irregularities in the performance of the rights of the accused contained in the KUHAP. As an example of deviations to the defendant's right to a trial that is open to the public, this deviation occurs because the link is not given in general to the public so that the hearing is not accessible to the general public because it relates to the protection of privacy and maintaining conducive circumstances during the trial. However, its implementation to fulfill this principle was conducted by airing the online broadcast to the people who attended the court so that the people present could watch the hearing.<sup>43</sup>

Against other cases that attracted public attention, the case was aired online through the youtube platform, as an example of a chance of social assistance corruption with defendant Juliari Batubara and possibly spreading false news with defendant Muhammad Rizieq. Another right that is kept is the right to attend the trial. In Perma 4/2020, it is determined that can conduct the problem without the defendant's presence in the courtroom. However, the defendant still follows the trial of Rutan, the prosecutor's office, or other places that the judge has approved conducted electronically. But in practice, this cannot be done optimally. Suppose there is a technical glitch, such as a power outage or a lousy signal state. In that case, a defendant may go in and out of the media platform. So, in its application, this principle will be challenging to apply absolutely. In addition, the right to be accompanied by legal counsel.

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<sup>40</sup> Badan Pembinaan Hukum Nasional, Op.cit, hlm. 34.

<sup>41</sup> Asas Salus Populi Suprema Lex Esto menyatakan bahwa keselamatan rakyat adalah hukum tertinggi. Erwin Ubwarin dan Patrick Corputty, "Pertanggungjawaban Pidana dalam Keadaan Darurat Bencana Covid-19", *Mizan: Jurnal Ilmu Hukum*, Volume 9 Nomor 1, 2020, hlm 1

<sup>42</sup> Dikutip dari asas Fiat Justitia Ruat Caelum yang berarti hendaklah keadilan ditegakkan walaupun langit akan runtuh, Sumber : Freeman P. (2019) "*Fiat Justitia ruat caelum*". Is This a Good Guide to the Role of a Specialist Appeal Court Judge?. Dalam : Selvik G, et al, *The Art of Judicial Reasoning*. Springer, Luxembourg, 2019.

<sup>43</sup> Neisa Angrum Adisti, Op.cit, hlm 227

This right will be vulnerable once saved, considering that in the covid-19 pandemic, it will be complicated if the rules set by the Penitentiary restrict others from entering the prison or cannot arrange for defendants and legal counsel to be in the same space. So that in some cases, the accused is forced to have difficulty communicating with legal counsel,<sup>44</sup> not even accompanied by legal counsel.

The consequences are vital concerning proof, considering that material truth is sought and unearthed; therefore, the essence of the criminal trial is in terms of evidence.<sup>45</sup> So, the quality in this evidence impacts the material reality presented and used as a guideline to prove an error indicted to the accused. Although the KUHAP determines the defendant is not burdened by the obligation of proof.<sup>46</sup> Still, it is a right for the accused to present witnesses/experts a de charge.<sup>47</sup> But the provisions in Perma 4/2020 state that the examination of witnesses/experts is only determined in the prosecutor's office in his jurisdiction, the court where the witness/expert is located, the embassy/consulate general of the Republic of Indonesia, or other places determined by the Judge / Panel of judges.<sup>48</sup> This provision does not regulate the examination of witnesses a de charge in the office of legal counsel or conducted in one room with the accused, even though the defendant is also given the right to present mitigating witnesses/experts.

In addition, the regulation regarding evidence in Perma 4/2020 Article 14, the law is limited that the evidence to be examined remains in the Prosecutor's office, and the obligation to show the evidence is carried out by the Public Prosecutor only to the judge electronically. This makes it difficult for legal advisers and defendants to see the evidence.<sup>49</sup> It considered reducing the defendant's access to evidence. The regulation also does not require the public Prosecutor to show evidence to the defendant, which indicates the low respect for the defendant to defend

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<sup>44</sup> Mardatillah, A, (Desember,2020), "Beragam Hambatan dalam Sidang Pidana Elektronik", *Hukum Online*, 11 Desember 2020, diakses dari : <https://www.hukumonline.com/berita/baca/lt5fd24fdd9edbc/beragam-hambatan-dalam-sidang-pidana-elektronik/>

<sup>45</sup> Eddy O.S. Hiariej, *Teori & Hukum Pembuktian*, Penerbit Erlangga, Jakarta, 2012, hlm 4.

<sup>46</sup> Ibid

<sup>47</sup> Bahwa terdakwa dapat mengajukan saksi yang meringankan sebagai penerapan prinsip due process of law dalam proses peradilan pidana berdasarkan Putusan Mahkamah Konstitusi Nomor 65/PUU-VIII/2010 dalam Perkara Pengujian UU Nomor 8 Tahun 1981 terhadap UUD NRI 1945.

<sup>48</sup> Vide Pasal 11 Republik Indonesia, *Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2020 tentang Administrasi dan Persidangan Perkara Pidana di Pengadilan Secara Elektronik*. Diakses dari : <https://jdih.mahkamahagung.go.id/index.php/beranda/database/2.-Kebijakan-Mahkamah-Agung/1.-Peraturan-Mahkamah-Agung/Tahun-2020/PERMA-NOMOR-4-TAHUN-2020/>.

<sup>49</sup> Neisa Angrum Adisti, *Op.cit*, hlm 229.

himself.<sup>50</sup> Because the evidentiary process is the core of a criminal trial case, it is proper that the regulations regarding this evidence are regulated more rigidly and specifically to protect the defendants' rights, which are limited due to the Covid-19 pandemic.

Another problem is the adequacy of the technology available in court institutions, prosecutors' offices, and prisons/remand centers.<sup>51</sup> Given the differences in the strength of the internet network in each region, the trial cannot be carried out optimally. For example, in the preparation of reading the verdict in the corruption case of Social Funds Assistance with the defendant Juliari Batubara, it was not possible to fully listen to the judges' considerations in imposing. An internet connection problem caused this decision in the court. So that the adequacy of information technology also impacts whether or not the defendant's right to a fair trial is fulfilled.

These deviations not only reduced the portion of the defendant's rights during the trial but furthermore related to the decision to be handed down. This is because the neutrality of the judiciary is challenging to assess, considering that in practice, the camera sometimes does not cover the entire room, and there is no guarantee that the trial will be carried out without pressure and influence.<sup>52</sup>

Based on this description, further arrangements regarding electronic trials should still be reviewed to be refined, considering the modernization of the legal system included in one of the achievements of national legal development. It is appropriate that the regulation of electronic trials is given a better portion to improve a fair concept of law. So as not only to realize the development of the national law itself but also to implement the fulfillment of the rights of the accused not only limited to the KUHAP for the realization of the acceleration of human rights-oriented law enforcement.

#### **4. CONCLUSION**

The emergence of the COVID-19 pandemic also had an impact on changing the criminal procedure system in Indonesia. To deal with this, the trial was carried out electronically with the guidelines of Supreme Court

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<sup>50</sup> Adhigama Andre Budiman, et al. *Laporan Situasi Kebijakan Hukuman Mati di Indonesia 2020 Mencabut Nyawa di Masa Pandemi*, 2020, Institute Criminal of Justice Reform, Jakarta,

<sup>51</sup> Adhigama Andre Budiman, et al. *Laporan Situasi Kebijakan Hukuman Mati di Indonesia 2020 Mencabut Nyawa di Masa Pandemi*, 2020, Institute Criminal of Justice Reform, Jakarta, hlm 17.

<sup>52</sup> Neisa Angrum Adisti, *Loc.cit.*

Regulation Number 4 of 2020, considering that the regulation regarding electronic problems was not actually regulated in the Criminal Procedure Code. What emerges is the fulfillment of the defendant's rights in the electronic trial. It turns out that this fulfillment cannot be done absolutely in practice because of deviations made against the rights of the accused. Very significant variations are in the process of proving, and the availability of information technology arrangements regarding electronic evidence is only regulated on the surface and do not regulate the details. This incomplete arrangement impacts the quality of evidence which is the core of criminal trials and the main milestone in making decisions. The non-fulfillment of the defendant's rights is one indication that the due process principle cannot be carried out optimally in electronic trials, thus potentially causing the non-fulfillment of the principle of equality before the law and an objective attempt. The limited availability of information technology also hampers the fulfillment of the defendant's rights to be carried out optimally. So that to continue to respect the defendant's rights in trials during this pandemic, it is crucial to perfect the regulations regarding electronic trials as one of the goals of developing a just national law and guaranteeing the recognition of constitutional legal rights and human rights.

## **5. DECLARATION OF CONFLICTING INTERESTS**

None

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