

Principles *Audi Et Alteram Partem* Compatibility in Litigation Process at State and Religious Court: Impact of Pandemic

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ABSTRACT

The Covid-19 pandemic that surge around the world, caused adjustments in various ways, including in the law. The existence of regulations regarding e court strongly supports government programs in suppressing the rate of development of the Covid-19 virus, but on the other hand this development raises questions regarding the application of the principle of audi et alteram partem. This paper aims to present how the application of Principles Audi Et Alteram Partem Compatibility in Litigation Process in State and Religious Court in emergency situation. This study uses an normative method approach with descriptive analytical research specifications. This research seeks to illustrate the facts of the Audi et Alteram Partem Principle Compatibility in E-court and E-Litigation.. Starting from this, there should be synchronization and uniformity of rules for all judicial processes, which should ideally be conducted electronically. From the results of the study, the implementation of the electronic trial shows the application of the principle of audi et alteram partem. All of this is in the interest of the justice-seeking community itself so that the trial process can better guarantee. It is found that even though the court process is conducted online, the principle of audi et alteram partem can be realized.

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1. INTRODUCTION

The covid-19 virus, which was first discovered in Wuhan, China, spread so fast and began to infect people in other countries.¹ The Covid-19 epidemic has spread throughout the world since the beginning of 2020 and has changed the order of life for

¹ Purba, I. P., Widiyanti, A., Liana, I., (2021). The Protection of Political Rights in Surabaya Regional Head Elections 2020 during the COVID 19 Pandemic. *Musamus Law Review*, 4(1), 16-24

people in all around of the world. States in the world adopt physical restrictions / social restrictions and even lockdown policies to prevent the spread of this virus. Indonesia is one of the State that does not implement regional quarantine, but still imposes social distancing. The impact of social restrictions imposed in Indonesia has brought rapid changes to community activities. Community activities in various aspects of life are limited, and even diverted into virtual activities. One of the activities affected by this policy is the administration of trials / law enforcement. This situation causes the trial to be unable to be carried out properly (in normal circumstances) in accordance with the prevailing laws and regulations.

Law enforcement institutions took quick steps to overcome this situation by issuing a Cooperation Agreement between the institutions of the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights. The Cooperation Agreement regulates the Implementation of Trials by teleconference.² The consideration of the issuance of this Cooperation Agreement is to remember the conditions of the spread of Covid-19 which are increasingly widespread and worrying, and the law enforcement process must continue to take into account the rights of suspects, defendants, victims, witnesses, and the wider community. Based on the consideration of the formation of the cooperation agreement, it seems clear that the agreement is intended for the process of examining criminal cases.³

As the judicial process organizer, the Supreme Court has also issued a circular responding to the prevention and spread of Covid-19, Supreme Court Circular Letter Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of the Spread of Corona Virus Disease 2019 (COVID-19) in the Court's Environment Agung RI and the Judiciary Bodies under it, as last amended by SEMA No. 6 of 2020. Through this SEMA, the Supreme Court instructs civil, religious and state administrative matters to be heard through E-Litigation or electronic trials. Regarding criminal, jinayat and military criminal cases, the Supreme Court has instructed that trials during the Covid-19 pandemic continue to be carried out as usual in court, especially for cases where the accused is being held and whose detention period cannot be extended again during the period of preventing the spread of Covid-19.⁴ Strengthening this circular letter, the Supreme Court also issued Supreme Court Regulation (Perma) Number 4 of 2020 concerning the Administration and Trial of Criminal Cases at Courts Electronically.⁵

Meanwhile, the examination for civil, religious, military and state administration cases, before the Covid-19 pandemic broke out, had rules for conducting electronic trials. The Supreme Court has issued Supreme Court Regulation (Perma) Number 1 of 2019 concerning Electronic Case and Trial Administration in Courts. The regulation is applied to district courts, religious courts, military courts, and state administrative courts. Based on Article 4 of the Perma, electronic trials apply to trial processes and procedures for submitting lawsuit/plea, exception/denial, resistance, intervention,

² https://badilum.mahkamahagung.go.id/index.php?option=com_attachments&task=download&id=630, accessed on 30 April 2021 at 07:42 West Indonesian Time.

³ Cooperation Agreement between the Supreme Court of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, and the Ministry of Law and Human Rights of the Republic of Indonesia regarding the Implementation of Trials by Teleconference, p. 4.

⁴ <https://www.mahkamahagung.go.id/id/berita/4442/ketua-mahkamah-agung-membuka-acara-webinar-persidangan-pidana-secara-elektronik-dan-implikasinya-terhadap-hak-asasi-manusia>, accessed on 30 April 2021 at 08:06 West Indonesia Time.

⁵ <https://mahkamahagung.go.id/id/kepentuk/4341/peraturan-mahkamah-agung-republik-indonesia-nomor-4-tahun-2020-tentang-administrasi-dan-persidangan-perkara-pidana-di-pengadilan-electronically>, accessed on 30 April 2020 at 08.10 West Indonesia Time.

answers, replications, duplications, evidences, conclusions, and pronouncements of court verdict/determination. This paper will compare the rules for the implementation of an electronic trial from the judicial process under the Supreme Court, in terms of technical implementation and limitations in its implementation.

2. METHOD

This research is conducted by normative legal research. This method evaluate a legal state of affairs or offer a solution to a legal problem. method approach method which analyze secondary data. The concept of a normative framework seems narrower than that of a theoretical framework: while a theoretical framework can provide support for a variety of research questions, a normative framework is specifically needed to provide standards for evaluation. This research employs legislation approach, conceptual approach, and case approach. The primary and secondary law materials were analysed to answer the problems that have been formulated. The primary and secondary law materials were analysed qualitatively within a framework directed to get the answer to the problems being studied in this research and the result is embodied in this paper.

3. MAIN HEADING OF THE ANALYSIS OR RESULTS AND DISCUSSION

Observing several provisions regarding the implementation of electronic proceedings as described in the discussion, it can be seen that the purpose of the issuance of these regulations is as a legal basis for the administration of cases and trials electronically in court to support the realization of an orderly case handling that is professional, transparent, accountable, effective, efficient, , and modern. This is in line with Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, namely the implementation of a simple, fast and low cost trial. From these provisions, the electronic trial is expected to provide benefits to the litigants because the trial can be carried out quickly and is not bureaucratic, simple, and low cost. In addition, in relation to this pandemic situation, electronic trials can support efforts to prevent the spread of Covid-19 by limiting crowds and physical meetings, but the administrative and trial processes can still to be implement.⁶

3.1 Electronic Trial Process in Civil Cases

Regulation in Indonesia, especially Procedural Law Civil law, namely HIR (Herzeine Inlandsh Reglement) for Java and Madura and R.Bg (Rechtsreglement Buitengewesten) for outside Java and Madura. Civil case examination process based on procedural law in accordance with HIR / R.Bg in its development is no longer relevant to the problem of society which demands a simple, fast, and low cost trial process. ⁷ The limitations of the rules that have up to date made the stigma that the court process is complicated, closed, expensive, and ineffective judiciary institutions because they consume a lot of time so that they cannot serve society optimally. In response to this situation, the Supreme Court responded to the needs of the community by issuing Supreme Court Regulation Number 3 of 2018 concerning Electronic Case Administration in Courts. Not limited to case administration, then the Supreme Court issued another Regulation Number 1 of 2019 concerning Electronic Case

⁶ Dian Cahyaningrum, Brief Info: Electronic Trial During the Covid-19 Pandemic, DPR Skills Agency Research Center, page 2.

⁷ Asep Nursobah, 2015, Pemanfaatan Teknologi Informasi Untuk Mendorong Percepatan Penyelesaian Perkara di Mahkamah Agung, Jurnal Hukum dan Peradilan, Vol. 4, Nomor 2, p. 323- 334.

Administration and Trial Process in Courts. The Supreme Court's concrete action to follow up on this rule is to launch an e-court application. E-court application is made to facilitate electronic case registration, pay court fees electronically, and send electronic trial documents such as answers, replications, duplication, and electronic conclusions and summon the parties electronically. With the issued of Supreme Court Regulation Number 1 of 2019 e-court application has been upgraded with the addition of new features i.e. e-litigation. E litigation make a civil trial carried out electronically as such lawsuit readings electronically, electronic answers, electronic conclusions, electronic verdict, and sending verdict electronically.⁸

(PERMA) Number 1 of 2019 concerning Case and Trial Administration in Electronic Courts that replace PERMA No. 3 Year 2018 about the Administration of Cases in Court Electronically issued e-court system. E-court is an instrument court as a form of service to the public in terms of registration online case (e-filing), estimate down payment electronically (e-SKUM), down-payment of fees online (epayment), calling parties online (e-summons) and online trials.

Who can use e-court services? Firstly, Registered User is advocates who qualify as a user of e-court information system with rights and obligations regulated by Supreme Court. Secondly, other users are legal subjects other than advocates who fulfill the requirements to use e-court information system with rights and obligations regulated by the Supreme Court, including State Attorney, Government/TNI/POLRI Legal Bureau, Directors or employees appointed by legal entities, incidental attorney determined by law.⁹ The importance of implementing the standby electronic trial is to answer from the public who want a simple, fast and low cost trial process. The implementation of an electronic trial that does not require physical contact and is sufficient in cyberspace is very relevant to the ongoing pandemic situation. In general, electronic trials (e-litigation) consist of:

1. First Trial

At the first trial, the plaintiff and defendant were summoned to the courtroom. The Panel of Judges ordered the plaintiffs to show the original lawsuit, power of attorney letter, and approval to conduct the trial electronically. These documents have been previously uploaded in the e-court application. Furthermore, the panel of judges explained the rights and obligations of the parties in an electronic trial.¹⁰ The Panel of Judges offered the defendant an electronic trial. Article 20 paragraph (1) of Perma Number 1 of 2019 states that the electronic trial was held with the agreement between the plaintiff and the defendant after the mediation process was unsuccessful. Why is the defendant's consent required? This is intended for the protection of the defendant's rights in an impartial trial. The agreement from the defendant means that the defendant has agreed to follow the provisions of the trial electronically, so there is no reason why the defendant in the electronic trial is invalid. The Panel of Judges will reconcile the parties to settle the dispute peacefully if the reconciliation is unsuccessful, The case will continue in mediation process according to Perma Number 1 of 2016.

⁸ M. Beni Kurniawan, 2020, Implementation of Electronical Trial (e-Litigation) on The Civil Cases in Indonesia Court As The Legal Renewal of Civil Procedure Law, Jurnal Hukum dan Peradilan, Volume 9, Nomor 1, p. 334.

⁹ Supreme Court Regulation No. 1 of 2019 concerning Case Administration and Court Trials Electronically State News No 894 of 2019, Article 1.

¹⁰ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 17.

If mediation failed, at the next hearing, the Panel of Judges will reassert to the Defendant whether to proceed electronically. If the Defendant who is not an advocate approves to electronic trial, then the Defendant is asked to sign a writing agreement to proceed electronically as it had been done by the Plaintiff. On the contrary, if the Defendant states that he disapproves electronic trial, then the electronic trial cannot be continued and the next trial will be conducted manually as stipulated in HIR/RBg.¹¹

How are the Defendants more than one person?, must the agreement still be signed by all Defendants? In author's opinion it is yes, the agreement must still be signed by all Defendants because every defendant has their own right to approve or disapprove electronic trial. In the case if one of the Defendants signed the agreement while the others did not want electronic trial? The author argues that both Plaintiff and Defendant who agree with electronic trial applies to electronic trial provisions (summons, submission of answers, replicas, duplicates, conclusions, as well as reading of judge's verdict done electronically). Whereas for the Defendant who disagrees to electronic trial applies to normal trial as regulated in HIR/RBg.¹²

2. Court Calendar

In electronic trials, court calendars are defined as the schedule and agenda of trial. The chairman of panel of judges prepares a court calendar and reads it in front of the parties. The parties study the court calendar and conveyed their agreement by signing the court calendar. Court calendar that has been agreed by the parties will help the trial running smoothly.¹³ According to Article 21 PERMA Number 1 of 2019 court calendar contains an electronic trial schedule from submission of responses, rebuttal, rejoinder, evidences to the reading of judge's verdict. In the determined trial schedule, if the Plaintiff does not send a replica and conclusion, or the Defendant does not send an answer, duplicate and conclusion electronically without a valid reason, then it is considered that he does not use his rights. Except for a valid reason, the trial may be postponed once. By making a court calendar the Panel of Judges can control the trial proceedings, get an image of trial agenda and when the case can be decided. So that the trial proceeding becomes simpler and the case can be decided in a short time as mentioned by principle of simple and speedy justice.¹⁴

3. Responses, rebuttal, rejoinder, evidences in electronic trial

At the electronic answer-replica-duplicate stages, the trial is not attended by the parties. Even though the parties did not attend to the trial, the Panel of Judges continued to convene as they should in the courtroom. Electronic proceedings with submission of responses, rebuttal, rejoinder, evidences in electronic trial and conclusions are carried out with procedures.¹⁵ The parties are required to submit electronic documents (answers, replicas, duplicates and conclusions) no later than the day and time of trial according to the set schedule. After receiving and checking the electronic documents, the Panel of Judges shall forward the electronic documents to opposing party. The substitute clerk is obliged to record all activities at the electronic trial in Electronic dossier. The parties who do not submit electronic documents responses, rebuttal, rejoinder according to the schedule and proceedings

¹¹ Acho Nur and Amam Fakhrur, *Hukum Acara Elektronik di Pengadilan Agama*, Jakarta: Nizamia Learning Center, 2019, p.7

¹² M. Beni Kurniawan, *Op.cit*, p. 57.

¹³ Amran Suadi, *Pembaharuan Hukum Acara Perdata di Indonesia Menakar Beracara di Pengadilan Secara Elektronik* (Jakarta: Prenamedia Group, 2019), p. 78

¹⁴ M. Beni Kurniawan, *Op.cit*, p. 57-58.

¹⁵ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 22

without a valid reason based on the judge's judgment, are considered not using their rights.

4. Evidentiary Process in Electronic Trial

The evidentiary process in electronic court is carried out based on Article 25 of Perma Number 1 of 2019. Based on these provisions, it is said that the evidence is carried out by following the procedural law stipulated in HIR / RBg. So that the parties must be present in the courtroom. Before the evidentiary agenda, the parties must upload the documents first into the e-court application. Other users (other than advocates) who do not understand the procedures for the e-court application to scan and upload documentary evidence can ask for help from the e-court desk clerk to scan and upload their documents. The urgency of those who are present in the evidentiary agenda is to check the documentary evidence and the authenticity of the document. The authenticity and validity of evidence documents in an electronic trial is not only the responsibility of the judge, but also for the party, especially in the case of denial of the evidence of the opposing party. The presence of parties is also needed during witness testimony. the parties will be given a turn to ask witnesses through the Panel of judges. Of course this opportunity will not be obtained if the parties are not attended the trial. Regarding to witness testimony hearing, in the case of witnesses lives in the outside of court jurisdiction, the witnesses hearing can be carried out by teleconference.¹⁶ The Chief of court asked assistance to other chief of court where the witness domicile, in order to appoint a judge and a clerk who would take the witnesses oath and supervise the witnesses when giving testimony through videos teleconference.

5. Electronic Conclusions

Different from HIR/Rbg where both Plaintiff and Defendant explain their conclusions in orally or in writing form. The Conclusions according to PERMA Number 1 of 2019 is done paperless by upload electronic documents (conclusions) to e-court application no later than the day and time of trial according to the set schedule.

6. Electronic Verdict

The stages of reading judge's verdict are carried out through electronic proceedings without attended by the parties. The panel of judges convened by opening the trial then reading out the verdict as usual. After the verdict is read out, the chairman of panel of judges is responsible for uploading a verdict's copy to e-court application and sending it to the parties according to their electronic domicile address. This is an official document that the verdict has been sent to the parties legally. If the parties are not satisfied with the contents of verdict they can file an appeal within 14 days after a copy of the verdict sent to their electronic domicile.¹⁷

3.2. Electronic Trial in Criminal Case

In fact, the electronic trial of a criminal case does not change significantly conventional trial that has been applied so far. In this section, we try to explain several main points are regulated in the Supreme Court Regulation Number 4 of 2020 concerning Electronic Administration and Trial of Criminal Cases in Courts.

¹⁶ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 24

¹⁷ Acho Nur and Amam Fakhur, Op.cit, p. 139.

1. Court Examination Regulation

Under normal conditions, criminal case trials must of course be held in space court hearing, and everyone's there, in one room. However, with abnormal conditions like today, in the midst of the covid-19 virus outbreak, the trial was carried out reduced normal as much as possible, and replaced with electronic trials. Perma Number 4 of 2020 has strictly regulated the electronic trial. Article 1 point 12 of the Perma regulates that the trial is electronic a series of processes to examine, try and decide the case of the Defendant by the Court implemented with the support of information and communication technology, audio visual, and another electronics media. The trial participants electronically are the judge / panel of judges, prosecutors, accused/law advisor, witnesses and experts.

Based on the regulation of Article 2 paragraph (2) of Perma Number 4 of 2020, criminal proceedings are carried out electronics are basically still carried out in the courtroom court. Judge / Panel Judge and the substitute clerk still hear in the courtroom, and they are there in the same room, just like the trial during normal conditions. But for other parties, can attend the trial from another place or another room. Prosecutors can convene in the courtroom with the judge / panel of judges and the substitute clerk,¹⁸ or attend the trial from his office.¹⁹

The accused accompanied/without the assistance of a legal advisor attended the trial from the correctional officer/penitentiary where the accused was detained,²⁰ or attended a trial at the prosecutor's office in the case the place where he is detained does not have special facilities for participate in the trial electronically.²¹ A defendant who is not detained can attend the trial in the courtroom or from the prosecutor's office accompanied/unaccompanied by Legal Counsel. However, the accused who was not detained did attend trials from other places within or outside the jurisdiction of the court judge, as long as first requesting approval from the judge / panel of judges who will issue determination.²²

The trial may commence after the Substitute Registrar checks the readiness of the trial and report to the judge/panel of judges regarding court readiness and assurance connected with trial participants.²³ At the time of the trial, all trial participants must be visible at monitor screen clearly and the sound heard clearly,²⁴ and use the each trial's attributes.²⁵ The accused who is accompanied by the legal counsel must be physically present the same room as the accused.²⁶ In the event that a legal counsel does not allow it accompany the accused at the detention office/correctional officer, the legal counsel in session at the prosecutor's office or court.²⁷ During this electronic trial, in the event that the accused is at home detainees, both detention office and detention rooms at the police, prosecutor's office or the KPK, are very big chance the legal counsel is not allowed to enter, for example for health reasons.

¹⁸ Article 2 Paragraph (2) point a Perma Number 4, 2020.

¹⁹ Ibid.,

²⁰ Ibid.,

²¹ Ibid.,

²² Ibid.,

²³ Article 2 Paragrah (4) Perma Number 4, 2020.

²⁴ Ibid.,

²⁵ Ibid.,

²⁶ Ibid.,

²⁷ Ibid.,

Corruption Eradication Commission (KPK) which was formed by Law No. 30 of 2002, as an alternative and independent institution that is authorized to conduct investigations other than the Police and Attorney's Office in eradicating corruption is expected to have a high ability of moral integrity; because of the fact that so far it has been described that the investigation of corruption crimes previously carried out by the Police and the Attorney General's Office, it turns out that in its implementation it creates legal problems at the level of implementation, tends not to be maximum and seems less capable in optimizing corruption. The existence of KPK is a manifestation of the legal response of the community that is legitimized by the State so that the KPK is able to play a more representative role in combating increasingly complex corruption.²⁸

This can have an impact on the communication of the legal counsel with the accused (his client). The trial process will be hampered. In addition, it is possible that the legal counsel will be late following suit. The trial was huge, having to go to court after finding out he could not enter the place where his client is being held.²⁹ Each trial document is converted into electronic form by using portable document format (Pdf), and sent to an electronic domicile address (e-mail). objections/exceptions, responses, demands, defense letter, replication and duplicate documents are sent to the e-mail address of the court hearing the case before it is read out. After being read, the court sent these documents to the prosecutor/accused's e-mail address and/or to legal counsel e-mail address.³⁰

2. *Electronic Domicile*

The most significant changes in PERMA E-Litigation are: accommodated electronic domicile. Electronic domicile is a messaging service in the form of a verified account belonging to the investigator, prosecutor, court, accused, legal counsel, witnesses, experts, detention office,³¹ and correctional office. Forms of electronic domicile this is an e-mail (e-mail), whatsapp address, or SMS (short message service).³²

If the trial is conducted electronically, the summons, documents objections/exceptions, responses, demands, defense, replicas, and duplicates must be sent to the domicile electronic before being read out.³³ The notification of the verdict was also conveyed to the accused through electronic domicile, in the event that the accused is not present at the reading of the verdict.

3. *Open to Public Principal in Criminal Case Electronic Trial*

Article 13 of the Law Number 48, 2009 about Judicial Power confirms that all court hearings are open to the public, unless the law provides otherwise (paragraph 1). Court verdict only valid and has legal force if pronounced in an open for public trial (paragraph 2). The failure to fulfill the two provisions resulted in the verdict being canceled for the sake of the law (paragraph 3). How does Perma Number 4, 2020 interpret an open for public trial?

²⁸ Jane Aileen Tedjasaputra and Alfeus Jebabun, 2021, *Persidangan Perkara Pidana Secara Elektronik*, Jurnal Dictum, Volume 14, March 2021, p. 76.

²⁹ Article 3 Perma Number 4, 2020.

³⁰ Article 1 point 9 Perma Number 4, 2020.

³¹ Article 6 Paragraph (3) and Article 16 Paragraph (3) Perma Number 4, 2020.

³² Article 3 Paragraph (2) Perma Number 4, 2020.

³³ Jane Aileen Tedjasaputra and Alfeus Jebabun, op.cit, p. 77-78.

In principle, this electronic trial remains open to the public, because the trial process continues to be carried out in the court courtroom. No difference between a physical trial and an electronic trial. Parties or the public including the media can still attend the trial and must adhere to health protocol including the limitation on the number of visitors. The arrangement for a trial which is open to the public can be seen in Article 15 Perma Number 4, 2020 which regulates that criminal prosecution, defense, replication, and the duplicate is read out before the court in accordance with the provisions of the procedural law. Provisions of Article 15 This is confirmed again in Article 16 which regulates that the verdict is pronounced by the judge/the panel of judges in a session open to the public attended by the prosecutor and accused/legal counsel, unless otherwise stipulated by law. Furthermore Article 18 stipulates that in the event that the trial is held electronically, public access to administration and trials are conducted in accordance with statutory regulations.

Public access in Perma Number 4, 2020 does not mean providing an application link (ex: Zoom link) the trial to the public. The public can still have access to the hearing by come to court (SK KMA No. 026/2020). Court will enforce strict health protocols.[33] This Perma E-Litigation Criminal Arranges the trial not to be broadcast live (live) to the public via Youtube or other media. This is to avoid Witnesses who haven't gave his statement and did not hear the witness's previous statement. Very important keep the Witness unaffected by the witness's previous testimony. However, Perma Number 4, 2020 also does not prohibit if there is a trial that will be broadcast live because of the verdict is on the Head of the Panel of Judges.

4. Electronic Evidence Submission

An important thing that is also regulated in the Perma Number 4, 2020 is related to submission evidence electronically. First, in the event of an delegation of cases, both ordinary cases, express, or summary, and the delegation is done by e-mail, the evidence remains in the prosecutor's office.³⁴

Second, in the examination of evidence in the trial electronically, the prosecutor show the material evidence to the judge/panel of judges electronically. If the evidence is in the form of printed documents, the judge /panel of judges verifies the documents a scanned item contained in the case file with the original document shown by prosecutor electronically. ³⁵However, if the evidence is in the form of non-printed documents, material evidence can be photographed or videotaped and sent to the inner court e-mail address trial before being submitted as material evidence.

Third, mitigating evidence presented by accused, in the form of documents printed or non-printed documents, the evidence is treated the same as goods the evidence that is with the prosecutor. ³⁶The judge matches the evidence sent with the original electronically.

5. Examination of Witnesses and Expert

Basically, examination of witnesses and/or experts in court remains the same as the conventional trial. Before giving testimony, witnesses and /or the expert continues to recite the oath /promise according to his religion or belief, which is guided by the Head of the Panel or by an appointed judge. Witnesses and/or experts who provide testimony from the Prosecutor's office or from other places, the pronouncement of

³⁴Article 4 Paragraph (4) and Article 14 Paragraph (1) Perma Number 4, 2020.

³⁵ Article 14 Paragraph (3) Perma Number 4, 2020.

³⁶ Article 14 Paragraph (5) Perma Number 4, 2020.

oaths/ promises is guided by judges /panel of judges assisted by clergy who are in the office where the witness is held and/experts provide testimony.³⁷

Examination of witnesses and/or experts in electronic proceedings is carried out in a room court proceedings.³⁸ However, in certain circumstances, the judge/panel of judges can determine virtual examination of witnesses and/or experts. During the virtual examination, witnesses and/ or the expert is in: (a) a legal office in his jurisdiction; (b) if witnesses and / or the expert is outside the jurisdiction of the court that hears the case, witnesses and/or experts give testimony at the court where the witnesses and/or experts are located; (c) embassy/consulate Indonesia with the approval/recommendation of the Minister of Foreign Affairs, in terms of witnesses and/or experts is abroad; or (d) other places determined by the judge/panel of judges.³⁹

In the event that the witness examination is carried out outside the jurisdiction of the court hear the case, the head of the court where the witnesses and/or experts are heard the statement provides electronic trial facilities and appoints 1 (one) a judge and 1 (one) clerk/substitute clerk without using attributes hearings to oversee the involvement of the examination of witnesses and / or experts. Examination of witnesses and/or experts conducted at the Indonesian embassy/consulate, facilities the trial is electronically prepared by the Embassy/Consulate General of the Republic of Indonesia. The Embassy also appoints 1 (one) embassy employee to supervise the orderliness of the examination process of witnesses and /or experts.⁴⁰

Prior to the examination of witnesses and/or experts, the party presenting the witnesses and/or experts notify/send to the clerk/substitute clerk in the form of: number of witnesses and/experts who will be presented; accounts where witnesses and/or experts are examined that can be connected with the trial implementation application, and other required documents.⁴¹ In examination of witnesses and/or experts, the judge /panel of judges examining the court from the courtroom try the case.

a. The challenges of implementing electronic trials

Electronic administration and trials contain great benefits for justice seekers to get simple, speedy and low-cost justice, but in author's opinion, there are problems and challenges that will be faced. Especially related to transform of procedural law from manual to electronic, completeness of infrastructure and technology, limited human resources, facilities that support data connectivity with all of stakeholders and relevant agencies, and the enthusiasm of public or justice seekers who use e-court services. To see the effectiveness in implementing electronic administration and electronic trials, it can be seen from Lawrence Friedman's effectiveness theory. As quoted by Lutfil Ansori, Lawrence Friedman argued for the effective of law application, then the three legal sub-systems must work well. The three sub-systems are legal substance, legal structure, and legal culture.

1. Legal Substance

The legal substance includes legal material which is stated in the regulation.

Good rule is a responsive and aspirational rule to public's demands. The rules on

³⁷ Article 11 Paragraph (2) Perma Number 4, 2020.

³⁸ Article 11 Paragraph (3) Perma Number 4, 2020.

³⁹ Article 11 Paragraph (4) Perma Number 4, 2020.

⁴⁰ Article 11 Paragraph (6) Perma Number 4, 2020.

⁴¹ Modul Diklat Tahap 3, Bukti Elektronik di Persidangan, Pusat Pendidikan dan Pelatihan Teknis Peradilan Mahkamah Agung RI, 2019

Electronic Administration and Electronic Trials have been responsive to public's demands who want a quick, simple, and low-cost trial.

In civil cases at the Religious Courts, electronic evidence submitted by the parties in the trial has often been found, including prints of WhatsApp screenshots, Instagram prints, SMS prints, photo prints, proof of bank transfer and video prints.⁴²

The position of electronic evidence is assessed by the Panel of Judges based on the fulfillment of the formal and material requirements of the electronic evidence, because there are no specific rules governing the procedural law of electronic evidence at trial, which results in multiple interpretations of its position as evidence.

According to Perma No.1 of 2019, that every trial electronically must be made a court calendar. The Judicial Calendar, which is often positioned as a judge's note on case acceptance, is made to facilitate the stages of the trial so that the process of answering answers, evidence, conclusions and decisions can be scheduled regularly. The court calendar is also structured so that the completion of cases can be predicted to be completed faster, not exceeding the maximum period of 5 months (according to Sema Number 2 of 2014). After the decision of the chairman of the court calendar is read out, the next step is to read the plaintiff's lawsuit, after completion and it is declared that there is no change, the chairman of the assembly postpones the trial until the date that has been set on the court calendar with the agenda of hearing the response from the Defendant. In view of this e litigation. is a new problem for the religious judiciary apparatus, so there is a need for comprehensive socialization and interaction with the user e court for PTSP officers, leaders, clerks, bailiffs, substitute clerks and judges regarding their respective activities in the implementation of e court which includes e filing, e payment, e summons and e litigation in order to fulfill the principles of simple, fast, cheap and modern cases.

This change is seen in the instructions for civil procedural law rules (regulated in HIR / R.Bg) to become procedural law rules in electronic trials, as well as in criminal cases regulated under Law Number 8 of 1981 (KUHAP) to become rules of criminal procedural law. based on Perma 4 of 2020. Some of these rules are only set out in the form of Supreme Court regulations (Perma) which are secondary rules that are not included in Article 7 paragraph (1) of Law Number 12 of 2011.

The problem is can an electronic trial regulated in a Supreme Court Regulations be able to override the procedural law regulated in HIR / R.Bg. Normatively-juridical HIR / R.Bg dan Law Number 8 of 1981 (KUHAP) has a higher standing than PERMA is based on hierarchy of statutory regulations. So that applied the principle of *lex superior derogate lex inferior* (higher rules override lower rules).

2. Legal Structure

Legal structure is a component or organ that moves within a mechanism in implementing a policy. The legal structure relates to institution, personnel (HR), and infrastructure.⁴³ For the effective of electronic administration and electronic trials (e-litigation), it is necessary to have an up to date information technology as

⁴² Ibid.

⁴³ Iman Pasu Purba, "Penguatan budaya hukum masyarakat untuk menghasilkan kewarganegaraan transformatif", *Jurnal Civics: Media Kajian Kewarganegaraan*, Vol. 14, No. 2 (2017), p.146.
Jawardi, "Strategi Pengembangan Budaya Hukum (Strategy of Law Culture Development)", *Jurnal*

supporting instruments for electronic administration and electronic trials (e-litigation). As well as the data encryption system, so that the case data in e-court application is protected and not easily hacked by irresponsible parties.

Another problem is the lack of human resources (court apparatus) who understands information technology. Whereas for the effective in implementing e-court, it is necessary to have expert resources in technology and information systems considering the use of e-court applications can be at any time, during working hours, and also outside working hours. As well as for the judge, the Judge who hears electronic trial, inevitably have to master information technology, and e-court applications. Because the case documents are no longer in hard file but in soft file. The judge must know how to make a court calendar in the case tracking information system (SIPP), download answers, replicate, duplicate, conclusions soft documents at e-court application and then send them to the opposing party, witnesses statement hearing with audio or video visual, and uploading and sending electronic verdict to the parties electronic domicile. But in fact, there are many Judges who are old and not mastered information technology at this time. Therefore, to improve court human resources, especially Judges, there are needs to hold sustainable trainings.⁴⁴

To make electronic administration run effectively, it also requires population data connectivity. Integrated population data becomes a keyword to make it easier to use the data because to know the parties data, it is enough with taking the data from integrated data bank. Data integration management needs to be done in collaborating with the Ministry of Home Affairs, the Ministry of Communication and Information, the Ministry of Finance, and the Ministry of Foreign Affairs.⁴⁵

3. Legal Culture

The view on the effectiveness of implementing the rule of law, legal culture is a very important element. Finally, what is said to be law is not only how the rule of law is made but how it is confronted with the legal culture of society.⁴⁶ If the legal culture is neglected, the law will fail. People will choose not to follow this law and prefer to continue to behave according to their values and views.

Therefore, for the effective of electronic administration and electronic trial, it is necessary to improve legal culture aspect and justice seekers understanding towards electronic trial. So far, the authors see Supreme Court has been intensively disseminating information about the enactment of Supreme Court Regulation No. 1 of 2019 to the wider community and Advocates. With this socialization, it will cause stretches and enthusiasm of the public to litigate electronically, because there are many benefits received by litigation electronically.⁴⁷

In contrast to the provisions of court proceedings, criminal cases are electronically determined by the judge in their decision. The effectiveness of the implementation of criminal cases electronically will depend on the judge to choose between the criminal case electronically or in person. These considerations of course must be based on "Distance" and "Certain Circumstances" as a condition for conducting criminal proceedings electronically. However, it is not limited to the

⁴⁴ M. Beni Kurniawan, Op.cit, 63-64.

⁴⁵ Ibid.

⁴⁶ Penelitian Hukum De Jure, vol. 16, no. 1 (2016), p. 93

⁴⁷ M. Beni Kurniawan, Op.cit, p. 64

forementioned provisions, in fact the electronic trial of criminal cases can also be applied to a simple case examination / easy proof. This of course will be related to the fulfillment of simple, fast, and low cost judicial principles for justice seekers.

4. CONCLUSION

Electronic criminal court proceedings regulated in Perma, both Perma Number 1 of 2019 and Perma Number 4 of 2020 are actually a progressive step from the Supreme Court to carry out a simple, fast and low cost trial. In addition, it is also a response to the 4.0 industrial revolution so that the digitization of the judicial process is a necessity. Facing the Covid-19 pandemic situation actually requires an affirmation to conduct electronic trials for civil cases, in order to prevent the spread of Covid-19 by reducing the intensity of physical meetings in the trial process. Furthermore, in the development of procedural law in the future, ideally the civil procedure code and criminal procedure code should also adopt the provisions of the trial electronically so that they are not only regulated in Perma, but in law. So that the problem of the principle of *lex superior derogat lege inferiori* can be answered. Based on Article 1 number 17 of Perma Number 4 of 2020, Distance is the distance between the place where the defendant is detained, as well as the distance between the place of the witness and the expert and the court hearing the case. Based on Article 1 1 number 17 of Perma Number 4 of 2020, certain conditions are conditions that do not allow the process of case delegation, case administration, and trials to be carried out in accordance with the procedures and procedures regulated in the procedural law due to distance, natural disasters, disease outbreaks, circumstances. others determined by the government to be an emergency, or other conditions which according to the judges it is necessary to conduct an electronic trial. In addition, in the aspect of legal structure, it is necessary to increase the capacity of law enforcement officers in operationalizing information technology so that there are no technical obstacles. Another solution could also be to provide assistance to information technology experts for law enforcement officials to facilitate the trial process. Meanwhile, according to the aspect of legal culture, the Supreme Court and judiciary bodies under it should always and always provide input and suggestions to the public to choose an electronic trial. All of this is in the interests of the justice-seeking community itself so that the trial process can better guarantee the principles of a simple, fast, and low-cost trial

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