Between Fair and Speedy Trial: E-Court During Pandemic and A Challenge in Society 5.0

Vidya Prahasacitta1*, and Anastasia Monica1,2
1Business Law Program, Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, Indonesia 11480
2Mochtar Karuwin & Komar Lawfirm, Jakarta, Indonesia 12920

Abstract. Indonesian authorities impose restrictions on community activities to control the spread of Covid-19 infection. It impacts the court activities, including the criminal trial process. Therefore, the Indonesia Supreme Court issued a regulation that imposed the electronic court process on a criminal trial to solve this situation. The research aims to analyze the implementation of electronic courts, especially in the criminal trial during the pandemic Covid-19 in Depok District Court. The research is qualitative with a socio-legal approach. Data collection is obtained through in-depth interviews and observation. The result shows that the court focused on a speedy trial. However, there is a lack of quality of a fair trial, and, subsequently, it harms the defendant's rights. The electronic court will be widely used in society 5.0, where technology is highly used to integrate cyberspace and physical space. It requires a shifting paradigm from face-to-face contact to virtual contact. It becomes a challenge and may impact the decision-making process. Therefore, in the post-pandemic Covid-19 era, the court requires reviewing and improving the electronic court process, which provides the advanced technology to support the electronic trial and is more critical to guarantee access to a fair trial in the electronic court process.

1 Introduction

Pandemic Covid-19 has impacted social activities in Indonesia. Since the pandemic started in early 2020, Indonesian authorities have restricted community activities, limiting specific actions in an area infected by the Covid-19 virus to prevent its spreading. It impacts the court hearing process in Indonesia. Several district courts were forced to be closed because judges, clerks, and court staff were infected. The Republic of Indonesia Supreme Court (2022) official data report that until April 2022, there were 4029 infected cases Covid-19 in the Indonesian judiciary, with 44 persons reported dead.

This situation becomes a dilemma for Indonesia's judiciary system. Especially for criminal cases. As described in Table 1 (Republic of Indonesia Supreme Court 2021 and Republic of Indonesia Supreme Court 2022), the numbers of criminal cases were high. The situation becomes worst because the defendants are often in detention during the trial process. Consequently, the court should resolve the matter immediately before the defendants' detention period end.

<table>
<thead>
<tr>
<th>Type of Court</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court</td>
<td>199.936</td>
<td>168.480</td>
</tr>
<tr>
<td>High Court</td>
<td>12.046</td>
<td>13.325</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>7.005</td>
<td>7.384</td>
</tr>
</tbody>
</table>

The pandemic Covid-19 remarks on the more comprehensive implantation of electronic courts in Indonesia. In September 2020, the Supreme Court issued Regulation Number 4 the Year 2020 concerning Administration and Electronic Court Process for Criminal Case (Supreme Court Regulation No. 4 the Year 2020), which allow the judge to conduct a trial process even though parties do not appear prior the courtroom. Technology video conferences have been used to virtually present the parties in the courtroom. In 2020, the electronic court had used in 99.21% of the district court (379 of 382), which operated in 57.75% (115.455 of 199.936) of criminal cases (Republic of Indonesia Supreme Court, 2022). Then in the following year, the electronic court was used in 76.91% (129.576 of 168.480) of criminal cases (Republic of Indonesia Supreme Court, 2022). It shows that the implementation of the electronic court succeeded fully in supporting the court's obligation to examine and issue verdicts during a pandemic.

Society 5.0 is human-centered, where social problems are resolved by a system that integrates cyberspace and physical space (Potocan, Mulej, & Nedelko, 2021). The advanced technology promotes goods and services that combine cyber and physical space to ensure suitable infrastructures that solve the problem in modern society (Higashihara, 2018). Therefore, after the pandemic Covid-19, advanced technology is required to support the trial process and actualize electronic court as Indonesia's modern court. It aligns with the Indonesian Supreme Court's vision to modernize the court.

* Corresponding author: vidya.prahassacitta@binus.ac.id
The previous document from Purnama and Nelson (2021) shows that the electronic court accommodates a speedy trial principle. On the other hand, a speedy trial shall follow a fair trial. Hence, this research is essential to observe and analyze the appropriate trial implementation of electronic courts in Indonesia, especially during pandemic Covid-19. Observation focus on Depok District Court because two reasons. First, Depok is a high-risk Covid-19 infection area, and Depok District Court was temporary closed several times in 2020, 2021 and early 2022. Second, Depok is the suburban area near Jakarta's capital on Java Island, which has better technology and an internet network to support the electronic court process.

1.1 Objectives

There are two research aims. First, reviewed the electronic court process during the pandemic Covid-19 in Depok District Court. Second, to deliver a recommendation to improve the application of electronic court in the future to actualize Depok District Court's modern court.

2 Literature review

Indonesia's criminal procedural court rules are based on the Criminal Procedural Code issued in 1981. One of the primary principles in the Indonesian Criminal Procedural Code is peradilan cepat sederhana dan biaya murah means that the state shall conduct a compact with a low-cost trial. This principle is also known as a speedy trial. The principle is part of fundamental rights protected by the International Covenant on Civil and Political Rights. The defendant's request, which prohibits all delays, requires a bright-line rule for how long a delay can be conducted (Saetveit, 2022). The right to a speedy trial attaches at the time of arrest or formal charge, whichever comes first (Walsh, 2020). The defendant can't lock up and hold in prison for many days, months, or years without fair justice. The principle minimizes the defendant's certainty and ability to defend himself before the court. In the end, it provides the defendant to have a fair trial (Kumar, 2020).

However, implementing a speedy trial shall not harm the defendant's right, especially the right to have a fair trial. Like a speedy trial, a fair trial is also part of civil and political rights. Indonesian Criminal Procedural Code also stipulates this principle. A fair trial guarantees both prosecution and defendant shall have equal opportunity, time, and effort to deliver their evidence and argumentation to defend their position, which becomes a consideration for the judge in decision-making (Gul & Ali, 2016). The right to have legal counsel is the essential norm of a fair trial which gives the defendant access to defense from accusation, especially before the court.

Furthermore, implementation of a fair trial can conduct if the public has access to the court hearing process.

Indonesia introduced an electronic court in 2002 in the Indonesian Bureau of Logistics corruption case. Court used teleconference technology to hear primary witness testimonies. Then, Anti-Terrorism Act Year 2003 and Witness and Victim Protection Act Year 2006 regulated the teleconferencing technology can be used to examine the witness testimonies. The teleconference technology used in Abu Bakar Ba’asyir and Ali Guron terrorism cases (Handika et al., 2020). However, teleconference technology does not apply in every case. The judge shall consider particular conditions before permits to witness for delivering their testimonies outside the courtroom.

In 2019 Indonesian Supreme Court issued the Indonesian Supreme Court Number 1 the Year 2019 concerning the Electronic Court Administrative and Trial Process, which marks the implementation of the electronic and modernization court process. The Indonesian Supreme Court first designed and implemented electronic courts for civil cases. Characteristics of the civil procedural process are more suitable for implementing electronic courts. The civil court process relies on documents and formal truth. The cross-examination based on legal evidence submitted to the trial and documents becomes the most dominant evidence in the civil court hearing (Dillon & Pakpahan, 2021).

The electronic court is part of the modernization of the Indonesian court. It regenerates functions and case management to improve public access to justice. The aims are to modernize case management, reorganize the case management organization, and reorganize the case management process (Keyuan, 2015).

Then in 2020, Supreme Court Regulation No. 4 the Year 2020 states that the implementation of electronic court using teleconference technology. It empathizes with the electronic court, including all criminal cases. The regulation does not limit hearing the witness testimony, but from the beginning of the illegal trial process when the prosecution delivers the indictment until the judge gives the verdict, as described in Figure 1 criminal trial process. During the trial process, only the judge attends court. Meanwhile, the prosecutor and counsellor alternatively follow the trial process in court or their own office. Then, the defendant alternatively follows the trial process in the prosecutor's office or detention room. Therefore, teleconference has become an essential technology in electronic court, allowing the court to conduct a trial even though the defendant does not appear in the courtroom. The technology accommodates the in-absentia principle, which obligates the defendant to appear in front of the court in every stage of the court hearing process so the defendant can defend himself before the court (Wheeler, 2019).
Fig. 1. Criminal trial process.

However, the civil court hearing process has different characteristics from the criminal court hearing process. Unlike a criminal court hearing, the judge shall examine the material truth (Sitompul, 2017). The judges shall find the real and the ultimate truth based on exploring the evidence submitted by the prosecutor and defending before the court. Witness testimonies become primary evidence, and judges hear the witness testimonies and observe the witness's condition and situation while delivering their testimonies. Therefore, conducting a criminal case in electronic court have more challenge and obstacle.

Supreme Court Regulation No. 4, the Year 2020 issued during the pandemic. It's an emergency since pandemic Covid-19 has forced the Indonesian Supreme Court to apply electronic court in the criminal cases trial process. The electronic court accommodates the speedy trial principle (Panji Purnama & Nelson, 2021). Even though Supreme Court Regulation No. 4 the Year 2020 was issued during pandemic Covid-19, it does not rule out the possibility that electronic court will continuously apply in the judicial process in Indonesia.

During the pandemic, more challenging to conduct electronic court in criminal cases. The virtual court has impacted the judge's decision-making because it dismisses human interaction and impedes an effective defendant’s defense (de Vocht, 2022). In the cross-examination process, remote hearing raises problems regarding availability and quality of technology, fairness and civic courtroom (Legg & Song, 2021). The impact of remote hearings on defendant’s rights includes legal assistance during the hearing, lack of confidential communication between the defendant and the counselor, and difficulties with challenging evidence (Justicia European Right Network, 2020). The virtual court during pandemic has reduced the right to a public hearing which can influence a fair trial (Paduch, 2021).

3 Methods

The research is qualitative research with a socio-legal approach to examine law in action and how the legal system operates (Feenam, 2013). The method applies to resolve a legal problem that clouds not completely an analysis only using norm study, but it requires examining the norm's implementation. Socio-legal is legal research which employs social sciences not so much for substantive analysis but as a tool for data collection (Banakar et al., 2005). Data collection in socio-legal can be qualitative or quantitative (Creuzfeldt et al., 2020). Data collection in the research is qualitative, obtained from interviews and observation.

Researchers conduct in-depth-interview with interviewees and respondents. Each interview has a different purpose—the interview process for the interviewee, Law Bureau Officer at Supreme Court. The aim is to collect information concerning supreme court policy to impose electronic court during the Covid-19 pandemic. The respondents are four judges. Respondents are chosen through purposive sampling, a non-random sample used in cases of a particular population (Neuman, 2014). The respondent shall meet the criteria that have handled the criminal case with electronic court process on Depok District Court. The aims are to collect data regarding implementing the electronic court hearing process—all the interviews conducted in 2021. All respondent and interviewee identities are not published in this article for comfortable and confidential purposes.

Researchers observed the electronic court in Depok District Court. Direct observation was conducted in 2020 and 2021. The Depok District Court permitted the researchers to attend electronic court in the courtroom. However, the observation was restricted when the number of Covid-19 infected cases increased, and the Depok District Court was temporarily closed.

4 Data collection

Researchers analyze data using qualitative content analysis. It is a method that systematically describes the meaning of qualitative material by classifying material as instances of the categories of a coding frame (Schreier, 2012). Researchers modify the qualitative content analysis steps for law analysis to meet the research goal. Researchers first create a coding structure; each class's main categories and several types have a specific
meaning. Then respondent interview transcript and observation report were systematically reviewed, classified and coded based on the coding frame and rechecked to ensure suitable categories. The coding result is analyzed by drawing and describing a relation line between types with speedy and fair trial principles. Table 2 shows the data collected from the respondents and interviewees that have been systematically coded based on the theme and description.

<table>
<thead>
<tr>
<th>Code</th>
<th>Parent</th>
<th>Description</th>
<th>Text Sorted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology</td>
<td>Barriers</td>
<td>Technology issues that become obstacles to implementing electronic court</td>
<td>Internet network, device, apps, device down or error, signal, glitch, WhatsApp's feature, unstable signal, device quality, zoom meeting.</td>
</tr>
<tr>
<td>Trial Process</td>
<td>Barriers</td>
<td>Issues in the examination process that become obstacles to implementing electronic court</td>
<td>Case with the child as victim, witness examination, judges do not have the same feeling when conduct electronic court, judges can't observe defendant or witness body language; judges can't have eye contact with defendant or witness, judges have difficulty in conducting cross-examine, case that very difficult to investigate, serious matter, a witness, can hear other witness testimonies, drug misuse case, sexual harassment case, a judge has difficulty to understand the defendant or witness testimonies when signal unstable, judges do not have an understanding whether the witness or defendant is under pressure to deliver their testimonies, material truth.</td>
</tr>
<tr>
<td>Non-Technical</td>
<td>Barriers</td>
<td>Non-technology facilities that become obstacles to implementing electronic court</td>
<td>Room to conduct teleconference does not meet the standard, inappropriate room, unconductive situation, noisy, require particular room, with CCTV, need more space to conduct teleconference, regulation, standard operation procedure.</td>
</tr>
<tr>
<td>Speedy Trial</td>
<td>Defendant Right</td>
<td>Defendant's right to be trial immediately</td>
<td>Court calendar, detention, deadline to deliver a verdict, effective and efficient, Covid-19.</td>
</tr>
<tr>
<td>Fair Trial</td>
<td>Defendant Right</td>
<td>Defendant right to have equal opportunity to deliver evidence and argumentation to defend himself and become considered for over the verdict</td>
<td>Media covering the trial, consoler shall be in the same place with the defendant, limiting the number of court visitors, private communication between defendant and consoler, witnesses can't visit prosecutor office to deliver their testimony, consoler does not have access to meet the defendant in prison, right of denial, limiting access to the ride court officer.</td>
</tr>
</tbody>
</table>
Researchers review and compare the data from the judge's respondents with data interviewee from Law Bureau Officer at Supreme Court. The purpose is to find the similarities and differences barriers to conducting electronic court during a pandemic. Then, Researchers analyze the obstacles to implementing the electronic court towards fulfilling the defendant's right to have a speedy and fair trial. In Figure 2, researchers compare data collection and data coding results from judges' respondents with data interviewees from Law Bureau Officer at Supreme Court.

5 Result and discussion

Based on the data collection above, three barriers and obstacles to conducting the criminal trial process using the electronic court in Depok District Court. First is technology barriers. Teleconference has become a key element in driving electronic court. The problems are Indonesian Supreme Court does not have a particular application to perform this virtual trial. The court usually uses Zoom apps or feature videocall in WhatsApp. Then, unstable signals and weak or poor network connection become serious problems.

The second is non-technical barriers. Lack of regulation and the standard operating procedure has become one obstacle since Supreme Court Regulation No. 4 the Year 2020 is an emergency regulation that issues several challenges to conducting offline court hearings during pandemic Covid-19. There is a gap between the Supreme Court Regulation No. 4 in the Year 2020 and the Indonesian Criminal Procedural Code. The judges need more guidelines from the Supreme Court to solve several conditions. However, the main non-technical issue is regarding out-of-court facilities when the defendant is detained so that the defendant will attend teleconference in prison or prosecutor's office. Same with the witness that shall attend teleconference in the prosecutor's office. The teleconference heals in a crowded and noisy room without CCTV facilities. Subsequently, the judge had difficulty hearing witnesses and defendants' testimonies and observing witnesses and defendant gestures to determine whether they delivered their testimonies freely and without intimidation.

On the other hand, a witness by law forbidden to hear other witnesses' testimonies during the cross-examination process. Still, due to limited room in the prosecution's office, the witness is in the same room with another witness so they can listen to and influence each other testimonies. Therefore, a particular room in a prison or prosecution office that meets required or meets the standard to conduct teleconference properly becomes a necessary facility to conduct electronic court.

The third is the trial process itself. Judges have different attachments and emotions when conducting conventional trials and virtual trials. When criminal trials perform offline, judges have more opportunities to observe, criticize and analyze witness and defendant gestures and to have eye contact. The judges do not have the same chance in the virtual trial. It becomes an obstacle for judges to find out the material truth and raise the conviction that the defendant is guilty or innocent and deliver the punishment to the defendant based on their actions. To solve this problem and based on the judge's authorities, the judges then determent limitation of criminal cases that shall conduct offline where the parties should attend prior court. Those cases are sexual harassment, drug misuse, criminal cases with a child as defendant and victim, and severe cases complicating the cross-examining process.

The three barriers above became a challenge in Depok District Court. However, the most concerning obstacle are the trial process itself. Technology and the non-technical problem can quickly improve by investing in and building infrastructure to support the criminal cases. Proper infrastructure will support the judge in making a better verdict. However, it's not easy to shift the judge paradigm from a conventional or offline court hearing process into a virtual court hearing process. This challenge is similar to de Vouch's (2022) research result, which stated that when the technology is used in the virtual court hearing process, it can allow us to replace physical face to face contact and adjust our traditional courtroom settings by replacing and eliminating human interaction may affect the judicial decision making. Judges need to have a more comprehensive view of the witness or defendant's stories by observing their gestures, making eye contact, and ensuring that the witness delivers their testimonies voluntarily without any intimidation.

Next, based on the data collection above, respondents and interviewees stated that electronic court should not reduce the fair trial. The public still can access the trial process even though there are several restrictions. The judge gives access to press to cover the trial process, especially the criminal case that becomes a public concern and public attention. Families and relatives also have access to attend and collaborative electronic court processes. Other than that, a judge with aims to maintain the court order has the authority to select people who can join the electronic court process.

Furthermore, judges guarantee that all defendants' rights have been fulfilled in the trial process. The defendant and counsellor can still exercise their right to submit evidence and witnesses and deliver their defense argumentation. However, the lack of defendant and counsellor private communication becomes an issue that can reduce the defendant's right to have a fair trial. During pandemic Covid-19, there is a restriction to visiting the defendant in prison, and in some cases, the limitation applies to the counsellor. Then, during the electronic court, the counsellor can't accompany the defendant to prison or persecution office. The counsellor only allows attending the electronic court in the courtroom or the counsellor's office. The observation finding in the District Court of Depok is similar to the Institute for Criminal Justice Reform's (2022) research, which highlights the lack of implementation of the presumption of innocence in the electronic court process. Especially during the pandemic Covid-19 in Indonesia, the defendant does not have equal opportunity and access to a counsellor. Subsequently, it reduces the private and privileged
communication between the defendant and counsellor to defend himself in front of the court. Later, this has specific implications for the quality of a fair trial itself. When counsellors do not give complete access to communicate with the defendant, the defendant does not have the same opportunity to defend their position, which becomes a consideration for the judge in a decision-making process and harms the fair trial. This principle is a political and moral consensus that the defendant should not be subject to punishment until adjudicated guilty under a strict standard of proof (Wilkinson, 2018), and presumption of innocence is one of the keys to having a fair trial.

Thus, the implementation of electronic court in the District Court of Depok gives the defendant the right to a speedy trial, especially during the pandemic Covid-19. As regulated by Supreme Court, the District Court of Depok provides a limitation to the court to examine and deliver a case verdict within five months. Technology teleconference makes court effective and efficient, which the in line with the primary principle in the Indonesian Criminal Procedural Code is peradilan cepat sederhana dan biaya murah. However, the benefit of a speedy trial shall follow having a fair trial. In this case, the implementation of the electronic court hearing, especially in Depok District Court, indicated a lack of fair trial.

In comparison, the United States has implemented a virtual court. Since 1998, teleconferences are often used in court hearings to examine evidence and hear witness evidence. The United States has issued Public Act 262 of 2001. In this act, the cyber court only applies to high technology cases. Using a computer and advanced technology in this case examination process is more effective and efficient than the conventional court hearing process.

During the pandemic Covid-19 United State issue the Coronavirus Aid, Relief and Economic Security Act (CARES Act). The act impacted the criminal trial process. The United States modified the criminal court system, which implements virtual court. However, the virtual court only applies to trivial criminal and parole cases. There are three circumstances to hold a virtual trial—first, there is a social emergency. Second, the court head permits conducting virtual court. Third, the defendant agrees to have a virtual court process.

United States virtual court model can be a reference to reduce the lack of fair trial. The electronic court shall limit trivial and traffic violation cases requiring a simple cross-examination process. The judge has the authority to determine the criminal cases compatible to be tried using the electronic court. Last but not least, the defendant's voice shall consider choosing whether he will be tested with the electronic court or not. The defendant has the necessary right to justice, which includes obtaining justice.

6 Conclusion

The implementation of electronic court in the District Court of Depok during pandemic Covid-19 has two side coins. It gives the defendant legal certainty to have a speedy trial, but on the other side, it might harm the defendant's right to have a fair trial. Does the question arise whether post-pandemic Covid-19 electronic court can continually be applied?

In society 5.0, advanced technology applies to solve the problem in modern society. The Indonesian Supreme Court itself has the vision to actualize a modern court by utilizing cutting-edge technology. The electronic court is part of the Indonesian Supreme Court to actualize the current court. This means that the District Court of Depok will participate in modernization.

Electronic courts indeed support courts to rapidly examine and deliver verdicts which becomes a solution to reduce court obligation to resolve numbers of criminal cases. However, a lot of improvement requires to make electronic court better. District Court of Depok and Supreme Court shall invest and build infrastructure to support electronic court. However, the most important is to shift the judge paradigm from face-to-face contact to virtual contact. In a criminal procedural process, witness testimonies play as the primary evidence to find the ultimate truth; human interaction in the courtroom becomes a proper way to raise the judge's conviction that the defendant is guilty or innocent. Thus, not all criminal cases can be examined and decided using the electronic court. Restriction type of cases that can be handled by an electronic court required. Like in the United States, the virtual court only applies to trivial criminal cases and parole cases.

References


