

BUILDING MODERN JUSTICE BASED ON INFORMATION TECHNOLOGY *(Study on Judicial Adaptation in the New Normal)*

Andreas Eno Tirtakusuma
eno.tirta@gmail.com

Astrid Prayogo Putri
Universitas Pancasila

Abstrak

Bencana pandemi Covid-19 ini membawa dampak bagi lembaga peradilan dan sistem persidangan di Indonesia. Pandemi Covid-19 ini telah mempercepat proses modernisasi peradilan yang ada dengan cara melakukan persidangan online melalui video teleconference. Sebelumnya, dengan PERMA No. 3 Tahun 2018 yang disempurnakan dengan PERMA No. 1 Tahun 2019, Mahkamah Agung telah melaksanakan layanan persidangan online perkara perdata. Pada masa pandemic, persidangan online diterapkan juga pada pemeriksaan perkara-perkara pidana, yang dilaksanakan dengan PERMA No. 4 Tahun 2020. Dalam perkara pidana, pelaksanaannya dibatasi hanya dalam keadaan tertentu dan dilaksanakan dengan disekresi hakim/majelis hakim yang menyidangkannya. Banyak manfaat jika diterapkannya persidangan online di masa seperti ini, untuk menghambat penyebaran virus covid-19. Namun tetap ada kendala dan ada penolakan dalam pelaksanaannya, khususnya pada persidangan online yang dipaksakan berdasarkan penetapan hakim. Perubahan sistem persidangan ke cara online ini memerlukan peran hukum sebagai sarana untuk mengantisipasi berbagai hal yang belum terjadi (yaitu sebagai social engineering) maupun hukum sebagai sarana untuk menghadapi perubahan yang telah terjadi (yaitu sebagai social control). Satu dan lainnya yang bertujuan untuk mencapai harapan hukum dalam memberikan kepastian dan keadilan.

Kata Kunci: Modernisasi Peradilan, Sidang Online, Sosial Control, Social Engineering

Abstract

The COVID-19 pandemic has had an impact on the judiciary and the court system in Indonesia. The Covid-19 pandemic has accelerated the process of modernizing the existing judiciary by conducting online trials via video teleconference. Previously, with PERMA No. 3 of 2018 which was enhanced by PERMA No. 1 of 2019, the Supreme Court has implemented online trial services for civil cases. During the pandemic, online trials were also applied to the examination of criminal cases, which was carried out with PERMA No. 4 of 2020. In criminal cases, the implementation is limited only in certain circumstances and is carried out with the discretion of the judge/panel of judges who hears it. There are many benefits if an online trial is implemented at a time like this, to prevent the spread of the COVID-19 virus. However, there are still obstacles and there are rejections in its implementation, especially in online trials that are forced based on a judge's determination. The change in the trial system to an online method requires the role of law as a means to anticipate various things that have not yet happened (i.e. as social engineering) and law as a means to deal with changes that have occurred (i.e. as social control). One and another that aims to achieve legal expectations in providing certainty and justice.

Keywords: *Judicial Modernization, Online Trial, Social Control, Social Engineering*

INTRODUCTION

The development of judicial institutions and the trial process to provide justice for those seeking justice is heavily influenced by the changing conditions and needs of the times. Major factors, including technological advances which include information and communication technologies or ICT, and other major threats such natural disasters

and disease disasters, such as the ongoing COVID-19 pandemic, have forced the court to modernize quickly. The Supreme Court has long voiced its determination to modernize the judiciary as a way to respond to these various advances in social life, which had provoked a revolution in society in a process known as the “Industrial Revolution 4.0”. This intention has been described in the Blueprint for Judicial Reformation of 2010-2035¹ that was made by the Supreme Court more than a decade ago. In said blueprint, the Supreme Court stated that it had built an Information technology-based judicial system that was considered much more efficient and transparent, following the idea or principles of a simple, fast, and low-cost trial.² The authority of judiciary is strongly influenced by the speed in providing services and the disclosure of information provided by the judiciary in way that the Supreme Court is encouraged to optimize the use of information technologies.

In the Blueprint for Judicial Reformation of 2010-2035, the Supreme Court states its plan to reform the management of cases in court in order to realize 2 (two) missions of the Supreme Court: first, to provide legal services that have certainty and justice for those seeking justice; second, to increase the credibility and transparency of the judiciary. The agenda for improvement in said case management can be divided into 3 (three) major sections:³

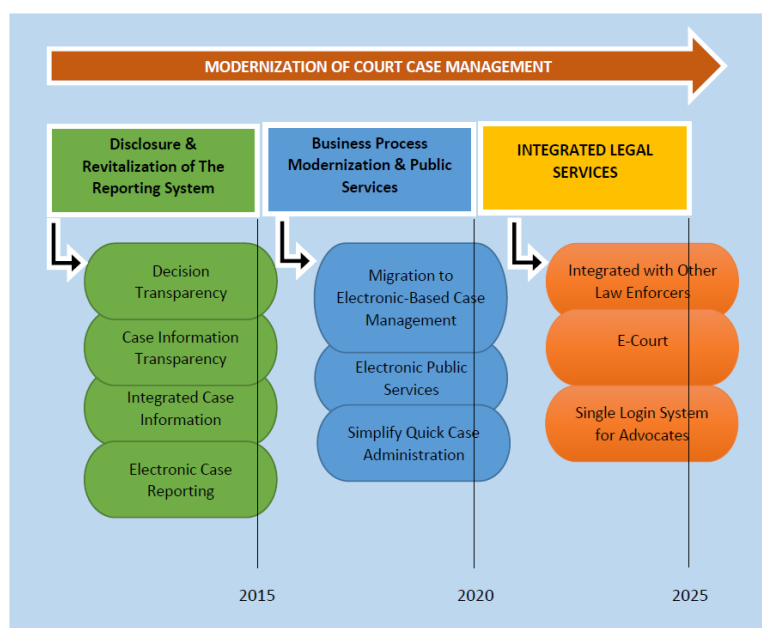
1. Modernization of case management;
2. Reorganization of case management organization;
3. Rearrangement of the case management process.

Modernization of case management is directed into three groups according to the following chart:

¹ Supreme Court (1), *Cetak Biru Pembaharuan Peradilan 2010-2035*, (Jakarta: Mahkamah Agung, 2010).

² The principle of a simple, fast and low cost trial has been regulated in Law Number 48 of 2009 concerning Judicial Power which replaced Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970. Article 4 paragraph (2) states that the judiciary assist justice seekers and try to overcome all obstacles and obstacles to achieve a simple, fast and low cost trial.

³ *Op.cit.*, p. 35



Source:
 Blueprint for Judicial Reform 2010-2035, p. 35.

Indeed, if the Supreme Court does not modernize its judiciary system by using information and communication technology, then the supreme Court will be outdated in conducting its trials. In contrast, other professions are already adapting and utilizing the technology that enables them to work online. It is even easy to find scammers who practice their evil doings online. Even beggars have moved online, uploading account numbers and sharing a little tale of their misery and helplessness, inviting a response from social media users.⁴

Additionally, great threats also forces the acceleration of judicial modernization. For example, the threat of the Covid-19 pandemic, which is getting more and more violent day by day. The first Covid-19 case in Indonesia was discovered in Depok City in early March 2020. In January 2021, Indonesia reached 1 million people (positive cases on January 26, 2021 were recorded at 1,012,350 people. Whereas at the end of 2020 (date 31 December 2020) there were only 743,198 positive cases. As of 15 July 2021, in Indonesia there were 2,768,803 positive confirmed cases of Covid-19 with 2,176,412 recoveries and 70,192 deaths. On 15 July 2021, t the number of new cases that day was 56,757 people, a terrifying figure.⁵ Globally, it was reported that Indonesia was ranked first for the addition of the most new Covid-19 cases in a day (12 and 13 July 2021), which is still continued in second place on the next day (14 July 2021).⁶

⁴"Pengemis Online Marak di Medsos," Republika, accessed at 20 Pebruary 2021, <<https://www.republika.co.id/berita/qb4rca7417000/pengemis-online-marak-di-medsos>>

⁵ Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional, "Data Vaksinasi Covid-19 Update 15 Juli 2021," accessed at 15 July 2021, <<https://covid19.go.id/berita/data-vaksinasi-covid-19-update-15-juli-2021>>.

⁶ Tiara Shelavie, Editor: Sri Juliati, "Indonesia Ada di Posisi Tiga Besar Penambahan Kasus Covid-19 Terbanyak Dunia 3 Hari Berturut-turut," Tribunnews, accessed at 15 July 2021, <<https://www.tribunnews.com/nasional/2021/07/15/indonesia-ada-di-posisi-tiga-besar-penambahan-kasus-covid-19-terbanyak-dunia-3-hari-berturut-turut>>. Compare to Dea, "Kasus Positif dan Kematian Baru Covid RI Tertinggi di Dunia," CNNIndonesia, accessed at 15 July 2021,

These great threats creates a situation known as VUCA, an abbreviation of Volatility, Uncertainty, Complexity, and Ambiguity. A situation where there are quick changes and dynamics in various things such as social, economic, and politics (Volatility). A situation where it's difficult to predict issues and events that are happening (Uncertainty). A complex situation due to various things being strenuous to solve and finish (Complexity). A situation that everything feels afloat and its clarity is still up in question (Ambiguity).⁷ The existence of COVID-19 pandemic creates a VUCA situation forces us to be able to innovate and to adapt fast as we cannot stay in a status quo position.⁸ To deal with such situation, it takes one's ability to adapt and their intelligence to work around the problem. The combination of both is known as Learning Agility, which include the willingness and ability to learn from experience and applying said learning to work well in the everchanging conditions.⁹

The COVID-19 pandemic, posing a major threat, has affected the rial process in judiciary system. Its emergence is a catalyst that propels the modernization of social life in maximizing the use of information and communication technologies. Said pandemic forces all institutions to continue their work while minimizing face-to-face meetings to reduce the spread of COVID-19 virus. As said virus became a world-wide pandemic, prisons and state detention centres became overcrowded, a wide-spread infections among detainees became inevitable. In response, the government and the Supreme Court have made extra efforts in minimizing the occurrence of continues infections by conducting online trials via video teleconference. These trials is carried out based on a cooperation agreed and signed by 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 the Trial through Teleconference on April 13, 2020.¹⁰

LEGAL PROBLEMS

From the description above, it can be found that there are several legal problems, such as:

1. How to organize the transformation and realization of online trials at the Supreme Court.

<<https://www.cnnindonesia.com/internasional/20210713065854-106-666792/kasus-positif-dan-kematian-baru-covid-ri-tertinggi-di-dunia>>.

⁷ Lihat Rika Binar, "Votality, Uncertainty, Complexity, and Ambiguity (VUCA)," *Binakarir*, accessed at 20 Pebruary 2021, <http://binakarir.com/volatility-uncertainty-complexity-ambiguity-vuca/>.

⁸ Bandingkan Ali Faisal, "Pilkada dalam Pusaran VUCA", *detiknews*, 21 October 2020, accessed at 20 Pebruary 2021, < <https://news.detik.com/kolom/d-5222684/pilkada-dalam-pusaran-vuca>>.

⁹ Compare to Handy Aribowo, "*Strategi Inovasi dalam Rangka Menjaga Keberlanjutan Bisnis dalam Menghadapi Era Volatility, Uncertainty, Complexity, dan Ambiguity (VUCA)*," accessed at 20 Pebruary 2021, <<http://jurnal.stietotalwin.ac.id/index.php/jimat/article/download/153/149>>.

¹⁰ Cooperation Agreement between the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Ministry of Law and Human Rights of the Republic of Indonesia Number: 402/DJU/HM.01.1/4/2020, Number: KEP-17/E/Ejp/04/2020, Number: PAS-08.HH.05.05 of 2020 dated April 13, 2020 regarding the Implementation of Online Trials.

2. How is the imperative power of the implementation of the online trial and the sustainability of the system whether permanent or depending on certain circumstances.

METHODOLOGY

This writing is based on lecturer-student collaborative research using normative legal research methods, more specifically using the statute approach and case approach.

DISCUSSION

1. Online Trial

In practice, what is meant by an online trial is the holding of an electronic trial, both for the trial of civil cases (civil online courts) and in criminal cases (criminal online courts).

a. Civil Online Trial

The implementation of online trials for civil cases has now been carried out using the following legal grounds:

- 1) Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power states that the judiciary is carried out in a simple, fast, and low-cost manner, which in order to realize this, reforms need to be made to overcome obstacles and obstacles in the process of administering justice and it is necessary administrative and trial reforms in order to overcome obstacles and obstacles in the process of administering justice.¹¹
- 2) PERMA No. 3 of 2018.¹²
- 3) PERMA No. 1 of 2019, which completes PERMA No. 3 of 2018, especially those related to electronic trial procedures, namely a series of processes for examining and adjudicating cases by courts carried out with the support of information and communication technology.¹³

Online trials in cases include: Electronic Case Administration, which is a series of processes for receiving claims/applications/objections/rebuttals/resistance/interventions, receiving payments, delivering calls/notifications, answers, replicas, duplicates, conclusions, receiving legal remedies, and management, submission and storage of documents on civil/religious civil/military/administrative cases by using an electronic system that applies in each judicial jurisdiction.¹⁴

Prior to January 1, 2020, the scope of the civil online trial, according to PERMA No. 3 of 2018, only includes: e-Filing, e-Payment, electronic delivery of court documents

¹¹ Indonesia (1), Law on Judicial Power, Law no. 48, LN No. 157 of 2009, TLN No. 5076., Article 2 paragraph (4).

¹² Supreme Court (1), Regulation Number 3 of 2018 concerning Electronic Court Case Administration, State Gazette No. 454.

¹³ Supreme Court (2), Regulation Number 1 of 2019 concerning Administration of Cases and Trials in Courts Electronically, State Gazette No. 894 of 2019, Article 1 point 7.

¹⁴ *Ibid.*, Article 1 point 6.

and e-Summons. This scope is expanded by PERMA No. 1 of 2019, so that since January 1, 2020, which includes e-Filing, e-Payment, electronic delivery of court documents, e-Summons; and e-Litigation.

In addition to the scope expansion, PERMA No. 1 of 2019 also broadens who can take advantage of online court services in civil cases. If PERMA No. 3 of 2018 regulates that only lawyers and registered individuals¹⁵ can use case administration services, then with PERMA No. 1 of 2019, this service can be used by other users, other than registered users.¹⁶ There is an expansion of who can use it, so that it includes legal subjects other than advocates as long as they meet the requirements to use the court information system with the rights and obligations regulated by the Supreme Court, including: State Attorney, Government Legal Bureau/TNI/POLRI, RI Attorney General's Office, Directors/ Management or employee appointed by a legal entity (in-house lawyer), incidental power of attorney determined by laws and regulations.

However, online hearings in civil cases cannot be simply imposed. Article 3 paragraph (2) PERMA No. 1 of 2019 requires the consent of the parties. Likewise, in its use at the level of appeal, cassation and review can be carried out only with the consent of the parties provided that the administration of the case has been carried out electronically at the first level. Meanwhile, the modernization of the judiciary in hearing civil cases is nothing but adaptation to technological advances.

b. Criminal Online Trial

In contrast to online trials in civil cases, in criminal cases online trials are only held after the Covid-19 Pandemic, as a response to facing threats that have disrupted the trial process. The legal basis is PERMA No. 4 of 2020, which provides limitations that are only carried out in certain circumstances, both from the beginning of the trial of the case and when the case trial is in progress, the judge / panel of judges at the request of the prosecutor and / or the defendant or his legal adviser may establish a trial which is face-to-face or in private electronic. This means that in criminal cases, online trials cannot be treated under normal circumstances and only on the orders of the judge/assessment of judges who tried them. Compare this with civil cases, which are online trials can apply in all circumstances as long as all parties: the plaintiff and the defendant agree.

In contrast to online trials of civil cases, online trials of criminal cases are only held after the COVID-19 pandemic as a response to facing threats that have disrupted the trial process. The legal basis for these trials can be seen in PERMA No. 4 of 2020, which provides a limitation that can only be carried out in certain circumstances, both from the beginning of the trial of the case and when the case trial is in progress, the judge or panel of judges, at the request of the prosecutor and or the defendant or their legal adviser may establish a face-to-face trial or in a private online trial.¹⁷ This means that in criminal cases, online trials cannot be treated with normal circumstances and

¹⁵ Supreme Court (1), Op.Cit., Article 4 paragraph (1).

¹⁶ Supreme Court (2), Op.Cit., Article 5 paragraph (1).

¹⁷ Supreme Court (3), Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically, State Gazette No. 1128 of 2020, Article 2.

only on the orders or assessments of the judge(s) who tried them. A stark contrast with civil cases where online trials may apply all normal circumstances if there is an unanimous agreement between all parties (the plaintiff and the defendants agrees)

Online trials in criminal cases include:

- 1) Case Administration is the process of delegating cases of receipt and numbering of cases, appointment of the Panel of Judges, Appointment of Substitute Registrars/Clerks and Substitute Bailiffs/Securityists, Determination of Court Days, determination of trial method electronically, submission of summons/notifications, submission of objection documents, responses to objections, interim decision/decision, claim, defense, replica, duplicate, verdict, excerpt of decision and copy of decision (Article 1 point 10 of PERMA No. 4 of 2020)
- 2) Electronic Case Administration is the process of delegating, receiving and numbering cases, determining the day of trial, determining the trial method, delivering summons/notifications, submitting objection documents, responding to objections, demands, defenses, replicas, duplicates, verdicts, excerpts of decisions, sending a copy of the verdict to the Prosecutor and Investigator electronically (Article 11 of PERMA No. 4 of 2020)
- 3) Electronic Trial is a series of processes for examining, adjudicating, and deciding the Defendant's case by the Court which is carried out with the support of information and communication technology, audiovisual and other electronic means (Article 1 number 12 of PERMA No. 4 of 2020)

The online trial of criminal cases applicable to criminal cases in the Courts is the District Court, the Syariah Court, the Military Court, the High Court, the Aceh Syariah Court, the High Military Court, the Main Military Court, and the Supreme Court.¹⁸ Interestingly, online trials in adjudicating criminal cases have never happened before. For the first time, an online criminal case trial was held at the trial of witness B.J. Habibie in the Rahardi Ramelan case, in 2002, which was carried out from Germany using video conferencing facilities.¹⁹

c. PERMA as statutory regulation

The legal basis for implementing judicial modernization, whether for online trials of civil cases or criminal cases, is PERMA. Is PERMA a statutory regulation?

What constitutes statutory regulations can be seen with the principle of legal fiction, namely: "a statutory regulation has been promulgated then at that time everyone is considered to know (*presumption iures de iure*) and the provisions are binding so that someone's ignorance of the law cannot be free/forgive him from lawsuits (*ignorantia jurist non excusat*)."²⁰ In the Elucidation of Article 81 of Law no. 12 of 2011 concerning

¹⁸ *Op. Cit.*, Article 1 point 3.

¹⁹ Yulida Medistiara, "KPK: Sidang Video Conference Pernah Dilakukan di tahun 2002", detiknews, 8 Juli 2020, accessed at 3 January 2021, <<https://news.detik.com/berita/d-5085029/kpk-sidang-video-conference-pernah-dilakukan-di-tahun-2002>>.

²⁰ Riki Perdana Raya Wawuru, "Penerapan Asas Fiksi Hukum dalam Perma," JDih Mahkamah Agung, 31 Agustus 2017, accessed at 3 January 2021, <<https://jdih.mahkamahagung.go.id/index.php/beranda/kegiatan/9-kegiatan/139-penerapan-asas-fiksi-hukum-dalam-perma>>.

Legislation, it is stated: "With the promulgation of the Legislation in the official sheet as referred to in this provision, everyone is deemed to have known it." There are 7 types of official gazettes, namely: a. State Gazette of the Republic of Indonesia, b. Supplement to the State Gazette of the Republic of Indonesia, c. State Gazette of the Republic of Indonesia, d. Supplement to the State Gazette of the Republic of Indonesia, e. Regional Gazette, f. Additional Regional Gazette, or g. Regional News.²¹

With PERMA promulgated in the State Gazette of the Republic of Indonesia, making it legal into a statutory regulation. PERMA is a rule that contains provisions that are procedural law.²² PERMA is prepared based on at least three provisions of the law, namely:

- a. Article 79 of Law no. 14 of 1985 concerning the Supreme Court: "The Supreme Court can further regulate matters needed for the smooth administration of justice if there are matters that have not been sufficiently regulated in this law". Reflection on Article 24A paragraph (1) of the 1945 Constitution.
- b. Article 8 paragraph (1) of Law no. 12 of 2011 concerning the Establishment of Legislation, regulates "one of the types of legislation as referred to in Article 7 paragraph (1) includes regulations stipulated by the Supreme Court".
- c. Article 4 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power which regulates "The courts assist justice seekers and try to overcome all obstacles and obstacles to achieve a simple, fast and low cost trial".

2. PERMA as a Tool to Modernize the Judiciary.

a. Law as a Tool

Facing the everchanging times, the law can function both as a tool to adapt to changes brought by time as well as a tool to make changes in time itself. Generally, this has been introduced by Roscoe Pound (1870-1964) that law is a tool, which he then further elaborate law as a tool of social control and law as a tool of community engineering.

According to Roscoe Pound, there are four stages of legal development in the maturing system: (1) the primitive legal stage, (2) the strict legal stage, (3) the stage of justice and natural law, and (4) the legal maturity stage. He then added the fifth stage in which the law has definitely entered into the whole world, which may be called (5) socialization stage. At this stage of socialization, the law enters the world and is accepted in people's daily lives.²³

²¹ Indonesia (2), Law on the Establishment of Legislation, Law no. 12, LN No. 82 of 2011, TLN No. 5234, Article 81.

²² See Attachment to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 57/KMA/SK/1V/2016 concerning Amendments to the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 271 /KMA/SK/X/2013 concerning Guidelines for Policy Preparation of the Supreme Court of the Republic of Indonesia.

²³ Roscoe Pound, *The Ideal Element in Law* [1958], ed. Stephen Presser (Indianapolis: Liberty Fund, 2002), p. 100, <<https://karnatakajudiciary.kar.nic.in/hcklibrary/pdf/7%20The%20Ideal%20Element%20in%20Law.pdf>>, <https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/671/Pound_0094_EBk_v6.0.pdf>.

Roscoe Pound explains that at the beginning of a legal order, the goal was simply to maintain peace. There are no need for law to be more stringent than to regulate and provide substitute for revenge. There are three ways in which the wronged person can get redress:²⁴

- a. self-help, that is, with the help of oneself and one's relatives;
- b. with the help of the gods or their ministers (through religious institutions);
- c. with the help of the state, that is, with the help of the king or judges or officials.

With the development of political organization, public authorities began to take a more active part to prevent the general disturbance of the peace of the community and to maintain self-recovery within the confines of other social control tasks left to other institutions, including through religion and discipline from relatives or public opinion from relatives. A person or his brethren in a primitive fraternity provides the character of this governing body and the means leading to peaceful order.²⁵

The immediate goal sought by law is certainty in the application of remedies. The cases where the state will interfere and the way it will interfere are defined in a detailed way. Law consists of inflexible rules. There are five characteristics, namely (1) Formalism — the law refuses to look beyond or behind forms; (2) rigidity and immutability; (3) the extreme insistence that everyone take care of themselves; (4) refusal to consider the moral aspects of a situation or transaction — to use Ames' phrase, strict laws are not immoral but immoral; (5) rights and obligations are limited to a narrow category of legal entities — all human beings or non-legal persons and legal capacities are arbitrarily limited. Strict laws have evolved into broader notions of security. Therefore he considers the situation before the wrong doing as well as after. Strict law has developed into the idea of creating a peaceful society order. The contribution of strict law is the idea of certainty and uniformity in this order and of rules and forms as instruments.²⁶

Later, Roscoe Pound developed the notion of law by means of social engineering (tool of social engineering), namely law is used as a tool of reform in society. Law is expected to play a role in changing social values in society. Law is not only intended as a form of means of social control, but is also used as a means of social engineering.

Roscoe Pound explained his understanding of the law and goal achievement . He called it social engineering through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and as a social engineer , one may employ the law as a tool for constructing, maintaining, and implementing recurrent and regularized.²⁷ He gave to the notion of law as ' social engineering ' the place in legal thinking and law reform that it still enjoys . His extolling of the power of law as a tool that the social engineer can use in his task of satisfying human wants and interests in a society, it has switched to

²⁴ *Ibid.*, p. 101.

²⁵ *Loc. Cit.*

²⁶ *Ibid.*, p. 103

²⁷ H. Richard Hartzler, *Justice, Legal Systems, and Social Structure*, (Britania Raya: Kennikat Press, 1976), p. 33.

exalting the notion of law as a tool of conscious social control wielded by the law.²⁸ It is not only intended as a tool of social control, but also used as a tool of social engineering.²⁹

Roscoe Pound's thoughts on law as a tool of social engineering were later brought and developed by Mochtar Kusumaatmadja (1929-2021), which the public called the theory of development law.³⁰ In this case, Mochtar Kusumaatmadja translates the word "tool" with the word "sarana" and the word "engineering" with the word "rekayasa."³¹ How about the translation of the word "Law"? Is it understood as a statutory regulation or as a judge's decision? This is where the difference in theory development by Mochtar Kusumaatmadja, when translating "law" as legislation, while Roscoe Pound prefers to include law made by judges (because it comes from the concept of common law with judge made law), which is none other than court decisions. This is natural because court decisions in the common law system are binding on later court decisions due to the enactment of stare decisis. In the conception of law as a means of community renewal, what is meant by law is primarily a law. Because, in addition to the law, Mochtar Kusumaatmadja also recognizes the role of law made by judges (courts).³²

b. Application of PERMA as Control and Social Engineering and its Constraints.

In the discussion of point 1, it has been described about PERMA as a statutory regulation. Following the adoption by Mochtar Kusumaatmadja, the legislation is a law which according to Roscoe Pound can function as a tool of social control, as well as a tool of social engineering. Next will be discussed the difference in the application of online courts in the criminal and civil realms, where one can be controlling while the other is engineering.

Indeed, with the online court setting in PERMA, there is a legal basis for the implementation of case administration and online trials in order to realize professional, transparent, accountable, effective and modern case handling. With the implementation of an online trial, the following benefits are provided:

- 1) A system that is able to serve the community faster and better and improve the performance of Supreme Court;
- 2) An effective E-Court can save the time, cost, and energy of the parties and their attorneys who are willing to queue when they want to meet in court;
- 3) provide easy access to justice seekers, and make courts more transparent, effective and efficient.

²⁸ Walker, Geoffrey de Q. Walker, *The Rule of Law: Foundation of Constitutional Democracy*, (Melbourne: Melbourne University Press, 1988), p. 369.

²⁹ Widodo Ekatjahjana, *Pembentukan Peraturan Perundang-Undangan: Dasar-Dasar Dan Teknik Penyusunannya*, (Bandung: Citra Aditya Bakti, 2008), p. 17.

³⁰ Atip Latipulhayat, "Khazanah: Mochtar Kusumaatmadja", *Padjajaran Jurnal Ilmu Hukum Journal of Law*, 2014, accessed at 1 January 2021, <<http://jurnal.unpad.ac.id/pijh/article/view/7100>>.

³¹ Lilik Mulyadi, "Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja. Sebuah Kajian Deskriptif Analitis", accessed at 1 January 2021 <https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analitis_teor_i_hukum_pembangunan.pdf>.

³² Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan*, (Bandung: Alumni, 2006), p. 83.

To be able to expedite the implementation of online hearings, the Supreme Court has worked hard so that all four judicial environments under the Supreme Court can implement them properly. The construction of infrastructure facilities is carried out, coaching is given and socialization is encouraged. To ensure uniformity of service, the Supreme Court has also standardized online trial facilities.³³ It is not surprising that the seriousness of the Supreme Court to provide a simple, fast and low-cost trial by utilizing information and communication technology through the implementation of online trials has received appreciation, namely in 2019, President Joko Widodo in the 2019 MPR RI Annual Session said the Supreme Court has gone much better by developing the E-Court system to E-Litigation, a judicial system that is carried out electronically in all judicial institutions.³⁴ The award was also given during the submission of the 2020 Supreme Court Annual Report. President Joko Widodo expressed his appreciation for the efforts made by the Supreme Court in expanding the application of E-Court and E-Litigation in criminal cases, military crimes, jinayat, and also upgrading the decision directory version.³⁵

Even though it has been highly appreciated, the implementation of the online trial has also been rejected, which is especially the case in criminal cases. In civil cases, the online trial is more widely accepted by the community and is considered to provide abundant benefits. Denial in criminal cases, usually occurs in cases where the accused is detained. Often the defendants feel that trials conducted online face various obstacles and often end in walkouts.

For example, the rejection of the online trial in the Habib Rizieq Shihab (HRS) case. In March 2021, related to the case that was indicted against HRS, it was carried out virtually and broadcast live on Youtube. The agenda of the trial at that time was the reading of the indictment related to the six files of criminal health quarantine cases involving HRS. When the Public Prosecutor (JPU) was reading out the six indictments, HRS's attorney expressed objections if the trial was conducted online, the panel of judges then suspended the trial and decided to continue the online trial considering the importance of preventing the Corona virus at this time, friends, which resulted in HRS and caused his legal team to walk out.³⁶

³³ Compare to the Decision of the Director General of the General Court of Justice of the Supreme Court Number 1693/DJU/SK/HMQ2.3/12/2020 dated December 29, 2020 concerning Standardization of Online Court Facilities and Infrastructure in the General Courts Environment.

³⁴ BPMI Setpres, "Apresiasi Presiden Jokowi Kepada Tiga Lembaga Hukum", Presiden RI, 16 Agustus 2019, accessed at 1 February 2021, <<https://www.presidentri.go.id/siaran-pers/apresiasi-presiden-jokowi-kepada-tiga-lembaga-hukum/>>

³⁵ Badan Litbang DIKlat Hukum dan Peradilan Mahkamah Agung RI, "Secara Virtual, Presiden Hadiri Laporan Tahunan Mahkamah Agung RI Tahun 2020," accessed at 1 March 2021, <<https://bldk.mahkamahagung.go.id/id/sekretariat-id/dok-keg-sekretariat-id/1739-laporan-tahunan-mahkamah-agung-ri-secara-virtual.html>>.

³⁶ Rifa Yusya Adilah, "Kronologi Sidang Habib Rizieq Sempat Ricuh Hingga Pengacara dan Terdakwa Walk Out", Merdeka.com, 17 Maret 2021, accessed at 21 March 2021, <<https://www.merdeka.com/peristiwa/kronologi-sidang-habib-rizieq-sempat-ricuh-hingga-pengacara-dan-terdakwa-walk-out.html>>.

Likewise the denial of the online trial in the JERINX case. In September 2020, I Gede Ari Astina alias Jerinx, drummer for the Superman is Dead (SID) Group Band, walked out during a hearing at the Denpasar-Bali District Court. The defendant attended the online trial from the detention house. When the Public Prosecutor was about to read out the indictment, Jerinx's attorney objected because his party wanted the trial to be conducted face-to-face, not online.³⁷

CONCLUSION

1. As a form of judicial modernization, the Supreme Court has realized the implementation of online trials, both for civil cases and criminal cases. The transformation of the trial to online is carried out using the legal basis of PERMA, which is applied as a statutory regulation. In its use to engineer it takes a long time because it passes several tests. Its implementation without forcing it to be carried out directly provides a great opportunity so that the goal of changing the court culture to be online has been successfully achieved. Currently, all handling of civil cases have run online trial (especially for e-filing and e-payment). Especially regarding e-litigation, it still depends on the approval of the parties. Different in its application as social control, its application can lead to rejection as in electronic trials in criminal cases, generally occurs in cases where the defendant is detained. Both properties of these facilities need to be implemented either to anticipate changes that have not yet occurred (social engineering) or to deal with changes that have occurred (social control).

2. The realization of online trials in civil cases can only be carried out with the consent of the parties. This agreement facilitates system penetration and changes the court culture to an online trial. By being regulated, it must be with the consent of the parties to make its application more acceptable though required so that currently all handling of civil cases have carried out an online trial (especially for e-filing and e-payment). Unlike the case in criminal cases, its application is left to the discretion of the judge/assessment of judges who hears them, so that the agreement of the parties is not decisive. That is why they are prone to being rejected by the defendant or his legal advisor. If in civil cases the change of trial to online is indeed designed to last forever, in criminal cases it can only be applied when there are certain conditions required by the relevant PERMA.

³⁷ Kompas.com, "Fakta-Fakta Persidangan Jerinx, Walk Out Hingga Keluhkan Masalah Audio", 11 September 2020, accessed at 1 February 2021, < <https://www.kompas.com/hype/read/2020/09/11/082223266/fakta-fakta-persidangan-jerinx-walk-out-hingga-keluhkan-masalah-audio?page=1>>.

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