



Legal Validity of Teleconference Witness in Indonesia's Criminal Justice System

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Abstract

This research is motivated by the validity and legality of witness statements by teleconference in the justice system in Indonesia. And teleconference is a new invention in legal products in line with the development of technology and electronic information which is growing rapidly and developing. However, in the Criminal Procedure Code which forms the basis of criminal procedural law in Indonesia, there is no article that regulates this matter. So that in this case, it creates a polemic for debate and pros and cons regarding whether this teleconference is detrimental or beneficial to the parties or is it an alternative media to protect witnesses from the intervention of other people and all forms of threats to the safety of witnesses. The legal issue or conflict in the problem of this article is how the legitimacy and legal regulations governing teleconference as a valid means of evidence in the justice system in Indonesia and examines the pros and cons related to the problem of witness testimony via teleconference and compares the implementation of witness testimony via teleconference with other countries. The research method in this article uses a normative juridical research method, namely examining the problems that arise regarding the validity and clarity of the legality



of witness testimony via teleconference in trials at court as well as the pros and cons that arise.

A. Introduction

Developments that are very significant in the 21st century are developments in the fields of technology, communication, and information or also known as the era of technological globalization. The purpose of technological globalization is an increase and also development of the speed of technological diffusion in all global elements. In this case, the subject that uses technology is society, because all people in this world take advantage of the usefulness of technology in living their daily lives with the aim of facilitating all their activities. In other respects too, the development or advancement of increasingly sophisticated technology has an impact on the field of law that is directly related to the use of the technology itself, namely, it has an impact on the judicial system in Indonesia in terms of evidence in court.¹

The developments related to technology have an impact on progress in the trial system and are used in proving cases. Evidence has a significant position during the trial process in court because it determines the future fate of the defendant and only through the process of evidence can a defendant be sentenced to a criminal sentence. From the perspective of the concept of criminal procedural law, the purpose of evidence is a provision in the court trial process to maintain a truth which has the characteristic of being limiting. And according to one of the leading experts, namely what was conveyed by Yahya Harahap² that proof is a process of boundary provisions in court proceedings that contain outlines and procedural guidelines in accordance with the law which is justified in proving wrongdoing by the defendant for any actions committed have been charged.

If adhering to the evidentiary system in accordance with the Criminal Procedure Code listed in Article 183, then the defendant's guilt must have a basis for his guilt to be legally proven with a minimum of two valid pieces of evidence, and the judge must also obtain a conviction and the crime is really occurred and it was the defendant who committed the wrongdoing. Prior to the process of imposing a criminal verdict on the accused, it is necessary to have a system of evidence that takes into account the absolute terms and conditions contained in the provisions of the Criminal Procedure Code, namely in Article 184 paragraph 1 of the Criminal Procedure Code, including Witness statements, expert statements, letters, instructions, and testimony of the accused.³ And of the 5 provisions of this condition, a criminal act must have at least and pay attention to 2 valid pieces of evidence in the trial process before the court.

¹ Syariful Alam, Yaris Adhial Fajrin, Sholahuddin Al-Fatih, Merve Ozkan Borsa, Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future, *JURIS (Jurnal Ilmiah Syariah)*, Vol. 21 No. 2, 2022, p. 143-156

² Pohan, S. P., & Harahap, I. P. (2023). Keabsahan Kesaksian (Keterangan Saksi) Yang Disampaikan Secara Teleconference Di Persidangan (Studi Di Pengadilan Negeri Padangsidempuan). *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik, dan Humaniora*, 7(1), p. 245

³ Undang-Undang R.I, No.8 tahun 1981, Hukum Acara Pidana, L.N.R.I. Tahun 1981 No.76, Pasal 184 ayat (1)

Along with advances in technology and information communication that are very easy to access, currently, even witness statements in the process of examining a case are carried out by teleconference. This is done because of the development of public knowledge regarding the fields of communication and information technology so that the witness testimony given is not required to provide testimony directly or physically at trial. Therefore, there is an examination process system for providing testimony in the world of justice in Indonesia over a distance using multimedia technology or what is called teleconference.⁴ However, up to now, there is still a lot of debate because the Criminal Procedure Code does not regulate in detail and clearly and does not recognize electronic evidence.

Teleconference is a meeting relationship that can be carried out by two or more people using electronic media in the form of a cellphone or computer screen connected to an internet network connection. The meeting is divided into two parts, namely by voice (Audio Conference) or also using video (Video Conference) so that both parties make it possible to see each other and meet face-to-face indirectly.⁵ If it is further investigated regarding the Criminal Procedure Code that does not recognize electronic evidence, it is necessary to carry out research and research that clearly discusses the provisions regarding this teleconference examination procedure. Apart from that, the existence of this teleconference examination, if it is associated with the principle of examination and also the principle of a quick, simple, and low-cost trial, is still considered not to have realized these two principles regarding the validity and also the legality of witness testimony in the trial process at court.⁶

One example that has occurred in the trial process is at the South Jakarta District Court on bepf of the defendant Rahardi Ramelan by examining witnesses, namely the 3rd former Indonesian president B. J. Habibie using a teleconference to give his testimony in the case of irregularities in Bulog's non-budgetary funds. In this case, it is the first teleconference examination procedure that has occurred and been practiced in the history of justice in Indonesia.⁷ Then since the Covid-19 pandemic occurred throughout the world in early 2020, changes began to be enacted in the process of implementing the court system, especially criminal case trials, the government even created an e-court application to be used and utilized optimally by the public during the pandemic that was enacted social distancing.

And the Supreme Court issued a regulation, namely Supreme Court Regulation Number 1 of 2019 which regulates electronic trial procedures. This provision is expected to be a solution for the justice system and court institutions under the auspices of the Supreme Court to continue providing legal services. And according to research conducted by the author, that these provisions or regulations can be one of the legalities related to

⁴ Janet V. Denhardt and Robert B. Denhardt, *The New Public Service: Serving, Not Steering*, New York: M. E. Sharpe, 2003. p. 20

⁵ Fathul Wahid. 2002. *Kamus Istilah Teknologi Informasi*, Ed. I. Yogyakarta: Andi. p. 63

⁶ Fajriana, N. (2018). Teleconference Dalam Pemeriksaan Perkara Pidana Di Pengadilan. *Badamai Law Journal*, 3(1), p. 61

⁷ Arsyad Sanusi, et. al. 2003. *Analisis dan Evaluasi Hukum Tentang Pemanfaatan Media Elektronik (Teleconference) Untuk Pembuktian Dalam Hukum Acara Pidana*. Jakarta: Badan Hukum Nasional Departemen Hukum dan HAM RI. p. 3

the application of procedures for providing a witness statement in which giving testimony is carried out via teleconference or also known as Virtual Courts. And other institutions engaged in the field of justice specifically to answer the legal issues above regarding the teleconference, that the Attorney General of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, and the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia issued an MoU or called a Memorandum of Understanding), namely a circular letter of agreement regarding the implementation of criminal case trials conducted by teleconference until the pandemic outbreak ends.

Regarding the link between the implementation of teleconference trials in the judicial process, there is an assumption that this implementation is not considered effective and that strong regulations are needed to solve problems regarding witness testimony via teleconference. Another opinion says that holding a trial in this way is contrary to Article 154 paragraph 1 of the Criminal Procedure Code, and as for the provisions which in principle stipulate that a presiding judge orders a defendant to be summoned to appear before/present in the courtroom in a free condition. This is because, from the article above, a ratio emerges that a defendant must be physically and directly present in the courtroom in a condition both physical and spiritually. However, when viewed from the cooperation agreement between the Supreme Court, the Attorney General's Office, and also the Ministry of Law and Human Rights regarding the implementation of teleconferences, the authors assume that the cooperation agreement made is part of the realm of civil law because the nature of civil law is binding on the parties who make it. Meanwhile, in this case, it should be noted that in criminal procedural law, the parties to the proceedings are not only limited by the parties but also the presence of third parties such as the accused and also legal counsel. so that this becomes a separate problem or polemic that is interesting to study more deeply, whether the cooperation agreement can be used as a principle of legality for proceedings in criminal justice.

So, based on the background above, the author is interested in conducting a study in order to discuss and examine the legality and validity of witness statements via teleconference in order to realize the principle of legal certainty and provide good legal certainty in criminal trial trials and provide solutions related to problematic debates on this matter. and compare its implementation with other countries, which aims to answer the formulation of the problem to be discussed.

The research method used in this research uses a normative juridical method. In this normative research, the author will look at and examine the extent to which the Draft Criminal Procedure Code has been discussed so that it can immediately be realized as a codification of the legality of criminal procedural law in Indonesia. Then, this research will also examine the polemic issues that occurred related to the implementation of witness statements via teleconference which will be studied normatively and comprehensively. The legal sources used in this research are primary legal sources and secondary legal sources. Primary legal sources use a statutory approach, namely reviewing various statutory regulations by examining the contents of the Law and the Draft Criminal Procedure Code which is a projection of future legal codification, even related implementing regulations. Meanwhile, sources of secondary legal materials

include studies of national and international scientific journals, scientific articles, news, websites, books, and related literature. Then the approach used to strengthen the discussion in this research uses a doctrinal approach, meaning a conceptual and theoretical approach, as well as a Case Approach to harmonize an event that is happening.

B. Discussion

1. Legitimacy and Legal Regulations of Witness Statements Via Teleconference in Judicial Sessions in Indonesia

Indonesia is a rule-of-law country in accordance with the contents of the Constitution of the Republic of Indonesia contained in Article 3 paragraph 1 which reads that the State of Indonesia is a State of Law the contents of this article adhere to the understanding that the rule of law is all forms of problems that arise in society and government and must be resolved according to law. apply. This understanding means that the position of law is the highest power and its aim is to achieve equality and justice in the eyes of the law that applies to all Indonesian people. And in the process of criminal proceedings, it is necessary to have a series that must be carried out starting from the process of investigation, and prosecution to the process in court.

In court proceedings, there is a process of proof that has a very important role in criminal proceedings. In this case, it is the public prosecutor who has the duty to prove to the defendant to ensnare the article charged with his actions and then it will be included in his indictment.⁸ The evidentiary legal system adopted by the Indonesian criminal procedural law is the negative *wettelijk bewijs* theorie system.⁹ Because in uncovering and proving matters regarding the truth in an event that occurred, when in court it is necessary to have material truth which is used as evidence in a criminal case, in this case, the essence of all the essence of the criminal trial process is the process of proof. And legal evidence according to the Criminal Procedure Code is regulated in Article 184 paragraph 1.

However, before it becomes legal evidence, it is necessary to fulfill the conditions that must be met, namely fulfilling the formal requirements as well as the material requirements. The formal requirement means that a requirement whose relevance is in accordance with the evidence and is guaranteed in the provisions of the law governing the validity and strength of the evidence becomes material for legal consideration later to consider whether a defendant is proven to have made a mistake or not. While the meaning of the material requirements here is related to the substance of a subject matter.¹⁰ And the following are the formal requirements for witness testimony so that it has the strength and validity as legal evidence, namely: ¹¹

- 1) There should be no blood/family relationship

⁸ Tintingon, S. A. (2014). Kesaksian Saksi Melalui Teleconference dalam Persidangan di Pengadilan. *Lex et Societatis*, 2(8). p.62

⁹ Eddy O.S.Hiariej, Teori & Hukum Pembuktian, Jakarta: Penerbit Erlangga, 2012. p.17

¹⁰ Bastianto Nugroho, "Peranan Alat Bukti dalam Perkara Pidana dalam Putusan Hakim Menurut KUHP" *Jurnal Yuridika*, Volume 32, Nomor 1, 2017, p. 30

¹¹ Rena Zefania Ritonga, Vicariya Retnowati Boong, "Keabsahan Alat Bukti Elektronik dalam Hukum Acara Pidana di Indonesia", UPH Surabaya Institutional Repository, 2016

- 2) May not be accused together
- 3) Proficient in age, namely "at least 15 years old or married and not experiencing mental disorders"
- 4) Testimony must be delivered during the ongoing trial;
- 5) Testimony delivered under an oath that has been pledged;
- 6) Not a "one witness is not considered in one testimony or in Latin, namely *unus testis nullus testis*"

When referring to the provisions of Article 154 paragraph 1 and Article 162 paragraph 1 of the Criminal Procedure Code, the meaning of the interpretation of the contents of the article proves that a witness is obliged to be physically present to give his testimony at trial, because the system of evidence in criminal cases adheres to the system of evidence before the court. But in its development, there are other things that interpret that the notion of evidence begins to experience development and also expands in practice. So, in this case, it can be seen and reviewed in the decision made by the Supreme Court namely, "Decision of the Supreme Court of the Republic of Indonesia Number 661K/PID/1988 dated 9 July 1991" which the basis that "a witness who gives a statement is in the investigation stage and has been sworn in. However, due to a legal obstacle, he cannot be present at the trial and then his statement is read out, the value of his statement has the same value in the eyes of the law as the testimony of witnesses who were sworn in during the trial. So that if adheres to and refers to the provisions above, then the existence of creation regarding a new breakthrough in the practice of criminal proceedings becomes an update so that the presence of a witness physically can be ruled out first if indeed the situation forces a witness to be unable to attend and it is expected that the witness has validity regarding the information he conveyed through teleconference.

Regarding the development and expansion in proving a criminal case, in this case, it cannot be denied that the evidentiary law is indeed influenced by developments in information and communication technology from time to time. Regarding the provisions governing teleconferencing in the Criminal Procedure Code (*Lex Generalis*) until now, there has been no specific article explaining this matter. However, if you look at the development of the law, electronic evidence has been regulated in *lex specialis*, namely Law Number 11 of 2008 concerning electronic information and transactions or commonly known as the ITE Law as stated in Article 5 paragraph 1 explaining that "all electronic information and documents electronics and/or printouts are valid legal evidence". The interpretation in this article means that there is an expansion of the criminal procedure law and a legal breakthrough from the definition of valid evidence regarding witness testimony via teleconference. From this explanation, regarding the provisions regarding the validity of electronic evidence in accordance with Law No. This teleconference is part of the evidence in court because it is clearly stated in the law that the form of the teleconference itself is included in electronic documents.

According to another opinion, this teleconference is a process of proving the dualism that is adhered to in criminal procedural law, because on the one hand, the provisions governing whether or not a witness giving testimony is legal can be categorized as electronic evidence which is regulated in law. No. 11 of 2008 Meanwhile, this teleconference is interpreted as testimony presented and given by witnesses. And

clarity regarding other legalities that a teleconference can be a legal means of evidence in a trial is regulated in Law Number 13 of 2006 concerning the Witness and Victim Protection Agency as stated in Article 9 paragraph 1 which reads "witnesses/victims who feel seriously threatened themselves, and then with the approval of the judge can testify without being present in person at the court where the case is being examined." This verse is one form of manifestation of the application of witness testimony via teleconference.¹² In this case, if a witness who will be confronted or presented at trial feels that he is threatened and feels pressured, then he can give his statement without attending the trial in person.

And then when looking at the comparison between Article 9 Paragraph 3 of Law Number 13 of 2006 and one of the contents of the article regulated in the Criminal Procedure Code, namely Article 185 Paragraph 1 of the Criminal Procedure Code, it is considered contradictory, because the contents in article 185 paragraph 1 of the Criminal Procedure Code confirms that, Witnesses are what witnesses state in court. So that the requirements for fulfilling the qualifications in Article 185 Paragraph 1 of the Criminal Procedure Code must be able to be reviewed and balance a situation if a witness experiences pressure or threats if he is asked to be directly questioned in a criminal case trial. Therefore, the role of the judge here is very sacred because he must give consent to the witness to give his statement via teleconference and provide conditions that must be accompanied by an authorized party. The aim is to maintain the validity and purity of the statement so that it becomes a consideration for the judge in deciding the case.¹³

There are distinct advantages if the implementation of this teleconference is carried out by a witness to provide testimony at a court hearing. On the other hand, the fulfillment of the principle of low-cost justice and efforts to materially fulfill the truth can be achieved by implementing this teleconference media. There was a research study conducted by "Locke E. Bowman, Shari Seidmen Diamond, Manyee Wong, and also Matthew M. Patton who came from the research output of the Cook County Bail Study" explaining in it that video conferencing was carried out from 1999 to 2009 gives the assumption that this media makes the defendant feel profitable. In the case study, it was stated that guarantees were not obtained from the applicant which had been regulated in *La Rose v Superintendent*, and there was something that arose in the form of disagreement by the court when the argument had something to do with the legal process of the respondent. So that in this case, the court assumes that it does not have any evidence regarding the use of video during the trial which has negative implications as well as the judge's arguments which are considered provocative.¹⁴

If the provisions or regulations of witness testimony via teleconference can be legally recognized from a legal perspective and can then be implemented, a conclusion can be drawn, namely;

¹² Article 9 paragraph 1 of Law Number 13 of 2006 concerning Witness and Victim Protection Institutions

¹³ Zainuddin dan Rahmat Ramadhani. (2021). "The Legal Force Of Electronic Signatures In Online Mortgage Registration". *Jurnal Penelitian Hukum De Jure* 2, No. 21.

¹⁴ Shari Seidman Diamond, Locke E.Bowman, Manyee Wong & Mattheew M. Patton, "Efficiency and Cost: The Impact of Video Conferenced Hearings On Bail Decisions", *The Journal of Criminal Law & Criminology*, Vol. 100, No. 3, 2010. p. 898

First, in giving testimony in court, if the teleconference requires good picture quality and clear audio without interference from the internet or other obstacles, the aim is for the judge to be able to see facial expressions and gestures directly. demonstrated in testifying at trial. So that the first conclusion means that the position or essence is the same as the witness when he is physically present at the trial.

Second, the witness is obliged to take an oath even though the information he gave was via teleconference. This is in accordance with Article 160 Paragraph 3 of the Criminal Procedure Code, which explains that before a witness gives a statement during the verification process, an oath must be made within him according to the beliefs held in order to ensure that the statement is a true testimony.

If we review the legal regulations established by the Supreme Court, the Attorney General's Office, and also the Ministry of Law and Human Rights in the form of cooperation agreements like those in the background above, the author takes a principle of legal regulation in the form of cooperation agreements included in civil law agreements. So that this cooperation agreement is in accordance with Article 1338 of the Civil Code and is based on the *Pacta Sunt Servanda* principle, which means that an agreement is valid only for those who make the agreement and is binding on both of them. And the author outlines and draws the common thread from this cooperation agreement, namely the cooperation agreement made by the three government institutions regarding the implementation of trials via teleconference, and states at the end that it is explained that the agreement was made and carried out only for the parties. So that in this way, apart from the parties from the three government institutions, the parties involved in criminal proceedings via teleconference, such as the accused and legal advisers, are not included and are not bound by the cooperation agreement and have not been said to be strong regulations for *In casu a quo*.

And then, after the description above, the rules or cooperation agreements are made *mutatis mutandis* which regulate the conduct of trials, it is necessary to know that the concept of criminal procedural law regulates a relationship between individuals and the state or also known as public law. Meanwhile, the authors assume that the cooperation agreement made is private law that regulates the relationship between individuals and other individuals. According to Abdul Kadir Muhammad, Explaining the concept of private law, namely "All rules or legal provisions governing the legal relationship of one person to another and are binding on both".¹⁵ So that not only is the regulation not strong, but this cooperation agreement has not yet become an appropriate legal product or legal umbrella for procedural law in criminal cases when providing information via teleconference.

And in the legal system in Indonesia, witness testimony via teleconference has not been explicitly regulated in the Criminal Procedure Code, even in special laws that regulate this matter until now there is still no law, while the regulations that form the legal basis related to teleconference examinations are only listed in jurisprudence. The authority of the panel of judges, when there are witnesses whose statements are conveyed via teleconference in front of the trial, has also been regulated in the law contained in

¹⁵ Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung; Citra Aditya Bakti, 1993), p. 1

Article 5 of Law Number 48 of 2009 concerning Judicial Power. In this article, it is interpreted that the panel of judges has the authority to give approval if the information will be conveyed via teleconference and always revive the values that exist in society regarding technological advances that are developing rapidly and affecting the world of law. So, in this case organizing a teleconference in court is a form of judges exercising their authority so that the law can be applied in the justice system in Indonesia. Therefore, it can be concluded that the role of the judge in giving his jurisprudence must be given broad freedom to determine his decision.¹⁶

And the judge's assertion in giving legality, the policies that must be taken to reveal the truth materially must be considered. The following are a number of things that must be considered in the implementation procedure in order to fulfill matters relating to the examination of witnesses as evidence, namely:

- a) Category of crime. The purpose of the crime category is that the type of crime in which a witness gives testimony or testimony must have a restrictive nature. So, the category of crime according to the author is a crime that is categorized as an ordinary crime so that it usually threatens the safety of a witness. For example, such as drugs, terrorism, corruption, murder, and other gross human rights violations.
- b) The setting used as the place for holding the teleconference must have strict provisions. So that later it is clear that the place will be the place for the teleconference to be held so that it will not be held at the witness' house. Therefore, the recommended place to hold a teleconference is in the government building in the area where the witness lives. And if the witness is outside the territory of Indonesia or abroad, it will be carried out at the Indonesian Embassy in the area where the witness lives. And regulations regarding important places to be regulated and laws have the right to regulate the right places for their implementation.
- c) The apparatus accompanies the witness in giving his statement via teleconference. The point here is that law enforcement officials are obliged to provide bodyguards for witnesses, both from the prosecutor's office and the court. This is very important so that witnesses feel safe in giving their testimony and avoid interference from other parties. Because various negative factors can threaten the safety of a witness, it is necessary to regulate the procedures and procedures for their implementation and update the justice system.

And if these three things can be implemented and have clear regulations, the world of justice will be more conducive and effective in providing legal certainty and easy to socialize.

Based on the explanation above regarding the legality of jurisprudence, it can be concluded that the importance of a determination and decision by the panel of judges to give consent to the witness to give his statement so that it becomes valid evidence and can carry out the statement via teleconference. So that in this case the process of

¹⁶ Dowell-Jones, M. *International Law and National Law in Relation to Discrimination in Civil Society Political Participation*, 2019. Oxford University Press. p. 11

information given by witnesses via teleconference is not regulated impulsively and can be applied as one of the provisions that can be applied in court.

Thus, so that the legitimacy and position regarding teleconference regulations can be clearly implemented in court so that they are recognized as valid evidence, it is necessary to update or amend the Criminal Procedure Code which is the umbrella of criminal procedural law in Indonesia. This is so that it adapts to today's rapidly developing technology because it cannot be denied that the law has used technology to facilitate all matters in solving a case. And the effort that might be expected is the existence of regulations regarding criminal law policies that clearly regulate criminal law in the formulation of giving testimony via teleconference in the future. Because the legislation is the most effective legal umbrella and legal policy. And the author concludes, besides the existence of jurisprudence made by the panel of judges, the regulations accompanying this jurisprudence must have an update of the Criminal Procedure Code in regulating this matter so that it can keep up with rapidly developing technological developments.

2. Controversy Regarding The Issue Of Witness Testimony Via Teleconference And Comparisons With Implementation In Other Countries

In this case, the author wants to review from a progressive legal perspective, in which this theory explains that law is formed to create restorative justice, which means that justice is formed from values that develop and grow in society. So in this case, to realize the goals of progressive law, it is necessary to make changes in an effort to substantially present justice.¹⁷ And when it is associated with proving criminal cases through teleconferences, it is included in the embodiment of values that develop in society and are closely related to the progress of the times in the field of technology. And this teleconference is a new finding on legal products in the development of the justice system in Indonesia and also the achievement of progressive law in society, and judges who have the authority to give decisions so that they are carried out in accordance with applicable procedures.

And a polemic emerged regarding the procedure for providing information via teleconference. Due to the rapid development of technology, it is hoped that assistance from technological tools will facilitate and assist law enforcement officers. When referring to Article 1 point 27 of the Criminal Procedure Code, the explanation from the witness broadly means that the witness is meant to give his statement directly before the court hearing. However, it needs to be underlined that the community also experiences and knows about technological developments from time to time.

Regarding the problem of whether it is permissible for the examination of witnesses by teleconference to be carried out, it is still uncertain. As stipulated in the special laws and regulations in the Electronic Information and Transaction Law with the assumption that this is considered to keep up with the times in the field of information technology, even though the Criminal Procedure Code does not yet have relevant regulations. Therefore, because it has not been clearly regulated in the Criminal Procedure Code, it has raised pros and cons in its implementation. And here are some factors regarding the application of teleconference technology which in practice are still being debated, including:

- a) Legal policy and law-making refer to positive legal regulations. So that the logic regarding these consequences is centered on formal legal law enforcement, in which there is a relatively sharp gap in seeking justice. Because the justice of a country is based on legal justice.

¹⁷ Suteki, *Desain Hukum di Ruang Sosial*, Yogyakarta: Thafa Media, 2013, p.21

- b) The existence of a teleconference, this aspect must be approved by the panel of judges to be carried out in trials in Indonesia so that it is not viewed negatively by the public.
- c) The Criminal Procedure Code *lex generalis* does not regulate teleconferences. This is a polemic debate because it is still being studied whether the application of this technology can harm or benefit each party.¹⁸

So that the three factors above confirm that teleconference technology is still contrary to the *lex generalis* criminal procedural law in Indonesia. The solution is to present legislation regarding witness testimony via teleconference as a step forward towards a milestone in overcoming teleconference problems in order to fill the void in criminal procedural law. This is in accordance with a study conducted by Susan Ledray which explains that the Montgomery Country Circuit Court in Maryland has used a technology base in the form of video conferencing in providing witness statements remotely in recent years. And in this web-based video conferencing service, there is the use of a computer equipped with a microphone, camera, and speakers which automatically record all video/audio calls. And then the Maryland courts anticipate also regarding the use of this technology to a wider and larger level against the public, lawyers, and also the courts.¹⁹

Juridically, if a person is asked about what happened to him and then an examination report is made, then in this case the statement cannot be said to be witness testimony. Because what is meant by witness testimony is if the witness states before a court hearing. Meanwhile, if a person gives testimony outside of court, then he cannot be called a statement but is classified as a witness or person. Because witness testimony is very important in proving a case, usually in addition to proof with other valid evidence, it is necessary to have witness testimony and it is still very much needed to help judges uncover and make decisions on a case.²⁰

Thus jurisprudence will be used as legality to obtain material truth. Judges who agree to use the teleconference medium as a media for witnesses to give their statements need to have special provisions in this matter. So it can be concluded that the process of providing information via teleconference cannot be used automatically and instantly. The differences in the views described above are very important material because they have implications for the model of testimony in other criminal cases. And then the guarantee for the testimony given via teleconference is that if it turns out to be not valid evidence, then all decisions decided and taken by the panel of judges at the district court level can be annulled at the appeal level at a higher court.

And the following are some of the applications of witness testimony via teleconference that have been carried out by other countries, including:

1) *Implementation of witness testimony via teleconference in the United States*

Research on this matter was conducted by Diamond and his friends in 2010 who studied the impact of using teleconferences. And according to their research study, it was stated that the defendants tended to be in an advantageous position if witness testimony was carried out via teleconference which was held from 1999 to 2009. Because the court did not find evidence of the use of teleconference and had a negative impact related to the judge's opinion which was biased towards the defendant. So when referring to this

¹⁸ Lilik Mulyadi. 2008. Bunga Rampai Hukum Pidana: Perspektif Teoretis dan Praktik. Bandung: Alumni. p.125

¹⁹ Susan Ledray. 2013. "Virtual Services Whitepaper". Harvard Journal of Law & Technology, Occasional Paper Series February 2013. p. 15

²⁰ Lilik Mulyadi, 2010. Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana. Bandung: PT. Citra Aditya Bakti, p 76

research, the United States is categorized as a country that adheres to positivism in its justice system. And with these technological advancements, it is able to maximize the legal process in resolving a criminal case. and the procedure for providing witness testimony includes the interpretation of the witness testimony given and used as the basis for the judge to make a decision.

2) *Implementation of witness testimony via teleconference in Canada*

This research was researched by Salyzyn in 2012 who examined the implementation of teleconferences focused on video conferencing in trials in Ontario, Canada.²¹ In this country, video conferencing technology has been used for more than a decade in civil justice. The procedure governing witness testimony by video conference is regulated in Article 1 paragraph 8 of the Ontario Civil Code which emphasizes the contents of the article namely "Oral evidence of a person who is used as a witness in a trial can be received by video conference if the parties to the dispute obtain approval, and if do not get approval, the video conference remains valid evidence if the court takes the initiative to accept the evidence so that it is subject to the policies established by the court".

3) *Implementation of witness testimony via teleconference in Europe*

A study conducted by Van der Viis in 2012 regarding video conferencing in criminal justice explained that several countries that are almost members of the European Union practice teleconference media as a medium for giving testimony which is used as legal evidence.²²

C. Conclusion

The Based on the results and discussion described above, it can be concluded that teleconferences have not been recognized in the Criminal Procedure Code because there are still many articles that conflict with teleconference examinations. The articles contained in the Criminal Procedure Code mean that witness testimony is given physically in a court session. However, laws cannot stop the revolution related to the development of information technology and development, so the government must consider this. In special laws and regulations, it is stated that teleconference media is used as electronic media, meaning that evidence can be used in court if it meets the conditions that have been regulated such as the quality of the displayed image. good quality and also good sound quality. It is clear that the validity and legality of the evidence from the teleconference can be considered by the judge in making a decision. In addition, the witness must first be sworn in according to Article 160 paragraph 3 of the Criminal Procedure Code, and the contents of the statement given by the witness regarding what he heard, saw, and also experienced himself in accordance with Article 1 point 27 of the Criminal Procedure Code.

In this case, in reviewing and comparing the implementation of witness testimony via teleconference with other countries, it is necessary to update the amendments to the Criminal Procedure Code as well as special laws governing the use of teleconferencing in trials. Because in general, if you look at the system implemented externally, the court is considered to be very concerned about the protection of witnesses and victims who are vulnerable to threats and their own safety. And it is hoped that legislators in this country

²¹ Sazylyn, Amy, A New Lens: Reframing The Conversation About The Use of Video Conferencing in Civil Trials in Ontario, Osgoode PI Law Journal, Vol. 50, Issue 2 (winter 2012), p. 433

²² Van der Vlis, Evert-Jan, Videoconferencing in Criminal Proceedings, Guildford: University of Surrey, 11-25

will also pay attention to the interests of witnesses to create legal policies that balance technological developments in the future.

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