



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

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Abstract

This research is driven by the need to assess the validity and legality of witness statements delivered via teleconference within the Indonesian justice system. As technology and electronic information continue to evolve, teleconferencing emerges as a novel legal tool. Despite this, the Criminal Procedure Code, which is the foundation of criminal procedural law in Indonesia, does not yet include specific provisions regulating this practice. This absence has sparked a polemic, triggering debates and divergent views on whether teleconferencing harms or benefits the parties involved, or whether it serves as an alternative medium to shield witnesses from external interference and threats to their safety. This research concerns the legitimacy of teleconferencing as a valid means of evidence within the Indonesian justice system. The research explores the various arguments for and against the use of witness testimony via teleconference, comparing its implementation in Indonesia with that in other countries. The research methodology employed is normative juridical, focusing on the analysis of legal norms to understand the issues related to the clarity and validity of teleconference-based witness testimony in court proceedings, as well as the associated pros and cons.



A. Introduction

The 21st century is marked with significant advancements in technology, communication, and information towards the technological globalization. This phenomenon primarily aims to enhance the rate at which technology spreads across various global sectors. Society, as the primary user of technology, leverages these advancements to simplify everyday activities, thereby enhancing quality of life on a broad scale. Additionally, the rapid evolution of technology significantly impacts the legal field, particularly influencing the judicial system in Indonesia in relation to evidence presented in court.¹

These technological developments facilitate progress in the trial system, particularly in the process of evidence presentation, which holds a critical role in determining the outcome for the defendant. Evidence has a pivotal position in court, as it not only influences the verdict but also ensures that justice is served based on verifiable facts. Renowned legal expert Yahya Harahap² emphasizes that evidence serves as a crucial process that delineates boundaries in court proceedings, providing structured and legally sound guidelines that are essential for proving the defendant's guilt or innocence regarding the charges filed. This structured approach to evidence ensures that each case is treated with the rigor and fairness it deserves, reflecting the law's capacity to adapt to technological advances while maintaining judicial integrity.

Under the Criminal Procedure Code, specifically Article 183, a defendant's guilt must be established through legally acceptable evidence, requiring at least two valid pieces of evidence before a judge can convict. Moreover, the judge must be convinced that the crime occurred and that the defendant was responsible. Before a criminal sentence can be imposed, the evidentiary system must adhere to strict terms and conditions as outlined in Article 184 paragraph 1 of the Criminal Procedure Code. This article specifies acceptable forms of evidence, including witness statements, expert opinions, documents, physical evidence, and testimony from the accused.³ For a criminal act to be proven in court, it must be supported by at least two of these evidential elements.

Advancements in technology and the ease of accessing information and communication tools have brought significant changes to the judicial process. For instance, witness statements during case examinations can now be facilitated through teleconferencing. This adaptation leverages developments in communication and information technology, allowing witness testimony without the need for physical presence in the courtroom. This system of remote testimony via multimedia technology, known as teleconferencing⁴, is increasingly utilized in the Indonesian justice system. However, the use of such technology has sparked debates, as the Criminal Procedure Code does not specify or clearly acknowledge electronic evidence, leading to legal ambiguities and challenges in its implementation.

¹ Syariful Alam, Yaris Adhial Fajrin, Sholahuddin Al-Fatih, Merve Ozkan Borsa, Islamic Criminal Law Research 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 Padangsidimpuan). *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)

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

Teleconferencing is a method that enables meetings between two or more people using electronic media like cell phones or computer screens connected to an internet network. This technology supports both audio and video conferencing, allowing participants to interact as though they were meeting face-to-face indirectly.⁵ Given the limitations of the Criminal Procedure Code, which does not explicitly recognize electronic evidence, there is a pressing need for thorough research and clear discussions about the rules governing teleconference examinations.⁶

Furthermore, the introduction of teleconferencing in judicial processes raises concerns regarding the adherence to principles of quick, simple, and low-cost trials. The validity and legality of witness testimony via teleconference remain contentious issues. For instance, the South Jakarta District Court utilized teleconferencing to take testimony from former Indonesian President B.J. Habibie in a case related to irregularities in Bulog's non-budgetary funds, marking a historic first in the use of this technology in Indonesian courts. With the onset of the COVID-19 pandemic in early 2020, significant changes were enforced in the court system, particularly in criminal trials, leading to the development and optimal utilization of an e-court application to maintain judicial processes during periods of mandated social distancing.

In response to the evolving needs of the judicial system, the Supreme Court of Indonesia issued Supreme Court Regulation Number 1 of 2019, which outlines procedures for conducting electronic trials. This regulation aims to ensure that the Supreme Court continues providing legal services, particularly through the adoption of teleconferencing for witness testimonies, enabling what is referred to as Virtual Courts. To address the specific legal challenges posed by teleconferencing, key justice sector institutions, including the Attorney General of the Republic of Indonesia, the Minister of Law and Human Rights, and the Director General of the General Judiciary Agency of the Supreme Court, issued a Memorandum of Understanding (MoU). This agreement specifies the continued use of teleconferencing for criminal case trials during the pandemic, ensuring that the judicial process remains effective and accessible while adhering to public health guidelines, thereby enhancing the resilience and adaptability of Indonesia's judicial system.

The implementation of teleconference trials within the judicial system has sparked debate over its effectiveness and the need for robust regulations to address issues related to witness testimony via teleconference. Critics argue that conducting trials in this manner contravenes Article 154 paragraph 1 of the Criminal Procedure Code, which mandates that a presiding judge should order a defendant to appear in the courtroom physically and in a free condition, emphasizing the necessity for the defendant's physical and direct presence both physically and spiritually. However, the cooperation agreement between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights regarding the use of teleconferences suggests an alternative approach. This agreement, often perceived as falling within the realm of civil law due to its binding nature on the signatories, raises significant questions. In criminal procedural law, the parties involved extend beyond the immediate signatories to include third parties such as the accused and legal counsel, creating complexities and polemics about whether such an agreement can serve as a legal basis for proceedings in criminal justice.

Motivated by the ongoing debates and legal ambiguities concerning the effectiveness and legality of witness statements via teleconference in criminal trials, the author aims to investigate these issues to enhance legal certainty and provide robust solutions. This

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

research intends to scrutinize the legality and validity of teleconferenced witness testimonies and compare their implementation with practices in other countries, thus addressing the problems identified in the formulation of the research.

The research will employ a normative juridical method, focusing on examining how far the Draft Criminal Procedure Code has been discussed and its potential realization as a codification of criminal procedural law in Indonesia. This investigation will include a thorough normative analysis of the controversies surrounding the use of teleconference for witness statements in trials. The primary legal sources for this research will include statutory regulations, specifically analyzing the contents of existing laws and the Draft Criminal Procedure Code, which anticipates future legal codification and its implementing regulations. Secondary legal sources will encompass a comprehensive review of national and international scholarly journals, scientific articles, news reports, websites, books, and related literature. To enhance the robustness of the discussion, the research will incorporate a doctrinal approach—utilizing conceptual and theoretical frameworks—and a Case Approach to align with ongoing legal developments and practical scenarios.

B. Discussion

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

Indonesia is defined as a rule-of-law country under Article 3 paragraph 1 of the Constitution of the Republic of Indonesia, which states that Indonesia is a State of Law. This article implies that all societal and governmental issues must be resolved legally. According to this framework, the law holds supreme authority, aiming to ensure equality and justice for all citizens under the legal system. In the realm of criminal proceedings, a sequential process is essential, starting from investigation and prosecution to the court proceedings.

Within the judicial system, the process of proving evidence is crucial in criminal trials. Here, the public prosecutor is tasked with demonstrating the defendant's guilt based on the charges in the indictment.⁷ Indonesian criminal procedural law utilizes the negative *wettelijk bewijs theorie* system, which prioritizes the establishment of material truth in court.⁸ This material truth serves as evidence in a criminal case, emphasizing that at the core of the criminal trial process is the presentation and verification of evidence. The regulations regarding what constitutes legal evidence are specified in Article 184 paragraph 1 of the Criminal Procedure Code.

Before any evidence can be deemed admissible in court, it must meet specific criteria, including both formal and material requirements. The formal requirement ensures that the evidence presented aligns with legal standards, as specified by laws governing the validity and potency of the evidence, which ultimately influences judicial decisions regarding a defendant's guilt. Material requirements, on the other hand, pertain to the substantive aspects of the evidence.

The following formal requirements for witness testimony must fulfilled.⁹

- 1) There should be no blood/family relationship
- 2) May not be accused together

⁷ Tintong, S. A. (2014). Kesaksian Saksi Melalui Teleconference dalam Persidangan di Pengadilan. *Lex et Societatis*, 2(8). p.62

⁸ Eddy O.S.Hiariej, Teori & Hukum Pembuktian, Jakarta: Penerbit Erlangga, 2012. p.17

⁹ Rena Zefania Ritonga, Vicariya Retnowati Boong, "Keabsahan Alat Bukti Elektronik dalam Hukum Acara Pidana di Indonesia", UPH Surabaya Institutional Repository, 2016

- 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*"

According to Articles 154 paragraph 1 and 162 paragraph 1 of the Criminal Procedure Code, the initial interpretation mandates that a witness must physically appear in court to testify, as the legal system for criminal cases traditionally requires evidence to be presented directly before the court. However, as legal practices evolve, the definition and application of evidence have broadened. This is evident in the Supreme Court of Indonesia's decision in "Decision Number 661K/PID/1988 dated 9 July 1991," which allows that if a witness has given a sworn statement during the investigation phase but is unable to appear at trial due to legal impediments, their previously recorded statement may be read and considered as having the same legal weight as testimony given in court. This precedent supports innovative adaptations in criminal proceedings, suggesting that under certain circumstances, the necessity for a witness's physical presence at trial can be waived, allowing for their testimony via teleconference, provided that the authenticity and validity of the information are preserved.

As the field of information and communication technology progresses, its impacts on evidentiary law are undeniable. Currently, the general legal framework governing criminal procedures, as outlined in the Criminal Procedure Code (*Lex Generalis*), does not explicitly mention teleconferencing. However, more specialized legal regulations, such as Law Number 11 of 2008 concerning Electronic Information and Transactions (commonly referred to as the ITE Law), address developments in electronic evidence. Specifically, Article 5 paragraph 1 of the ITE Law declares that "all electronic information and electronic documents and/or their printouts are valid legal evidence." This provision signifies an expansion and modernization of criminal procedural law, acknowledging the validity of witness testimony via teleconference as a form of electronic evidence. Hence, under the ITE Law, the format of a teleconference, being a type of electronic document, is officially recognized as admissible evidence in court proceedings.

Another perspective suggests that teleconferencing in criminal procedures exemplifies the dualistic nature of evidentiary law. On one side, there are regulations like Law No. 11 of 2008 on Electronic Information and Transactions, which categorizes witness testimony delivered via teleconference as electronic evidence. On the other side, the essence of the teleconference aligns with traditional testimony, where a witness verbally presents evidence. Further legal clarity is provided by Law No. 13 of 2006 concerning the Witness and Victim Protection Agency. Article 9 paragraph 1 of this law states, "Witnesses/victims who feel seriously threatened can, with the judge's approval, testify without being physically present in the courtroom where the case is being examined." This provision legally validates the use of teleconferencing for witness testimony, especially in situations where a witness's safety is at risk, allowing them to provide their testimony remotely.

The apparent contradiction between Article 9 Paragraph 3 of Law Number 13 of 2006 and Article 185 Paragraph 1 of the Criminal Procedure Code raises significant legal nuances. Article 185 Paragraph 1 of the Criminal Procedure Code emphasizes that testimony must be given directly in court by the witness. This requirement underlines the necessity for witnesses to physically present their statements during trial proceedings. However, Article 9 Paragraph 3 of the Witness and Victim Protection Law provides for

exceptions, allowing witnesses to testify via teleconference if they face serious threats or pressure, potentially endangering their safety if required to appear in court. In such cases, the judge plays a crucial role, not only granting permission for teleconferencing but also ensuring that adequate safeguards are in place to verify the authenticity and integrity of the testimony. This judicial oversight is vital to maintaining the reliability of the witness's statement and ensuring it is appropriately considered in the judicial decision-making process.¹⁰

The use of teleconferencing in court settings, such as witness testimony via video link, presents both significant benefits and challenges. The implementation of this technology can enhance access to justice by reducing the costs associated with in-person testimony and can facilitate the pursuit of material truth by making it easier for witnesses to testify, especially those who are geographically distant or otherwise unable to attend court physically. However, a research conducted by Locke E. Bowman, Shari Seidman Diamond, Manyee Wong, and Matthew M. Patton, known as the Cook County Bail Study, which covered video conferencing from 1999 to 2009, highlights some of the potential drawbacks. The research suggests that while video conferencing can appear beneficial to defendants, there are concerns about its execution and the quality of justice delivered. Specifically, the case of *La Rose v. Superintendent* illustrated issues with video conferencing where legal protections for the defendant were reportedly insufficient, leading to judicial disputes about the fairness and integrity of the process. The court was skeptical about the lack of tangible evidence on how video usage during trials might negatively impact the legal proceedings, hinting at provocative arguments from judges. This scenario underscores the necessity of carefully evaluating and addressing the legal and procedural implications of teleconferencing in court settings to ensure it truly serves justice and adheres to the principles of a fair trial..¹¹

If witness testimony via teleconference is legally recognized and implemented, several conclusions can be drawn:

First, for teleconferenced testimony to be effective, it must feature high-quality video and clear audio to ensure that the judge can directly observe the witness's facial expressions and gestures, akin to having the witness physically present in the courtroom. This ensures that the essence of the testimony remains intact, providing the court with the same level of insight as if the witness were present in person.

Second, witnesses are required to take an oath before testifying via teleconference, as mandated by Article 160, Paragraph 3 of the Criminal Procedure Code. This provision stipulates that witnesses must swear an oath in accordance with their beliefs prior to making any statements, ensuring that their testimony is truthful and faithful to their testimony in court.

Upon examining the legal frameworks established by the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights through cooperation agreements as described previously, the author adopts a perspective that these agreements fall under the purview of civil law contracts. Consequently, such agreements adhere to Article 1338 of the Civil Code, grounded in the principle of *Pacta Sunt Servanda*, which posits that an agreement legally binds only the parties who enter into it. The author then synthesizes the core essence of this cooperation agreement, which pertains to the three governmental bodies collaborating to conduct trials via

¹⁰ Zainuddin dan Rahmat Ramadhani. (2021). "The Legal Force Of Electronic Signatures In Online Mortgage Registration". *Jurnal Penelitian Hukum De Jure* 2, No. 21.

¹¹ 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

teleconference. It is emphasized that the agreement is specifically applicable and binding only to these parties. Thus, other parties involved in the teleconferenced criminal proceedings, such as the accused and their legal counsel, are neither involved in nor bound by this cooperation agreement and, therefore, it does not constitute robust regulation for the specific case in question (*in casu a quo*).

Following the analysis above, it is pertinent to recognize that while the cooperation agreements are adapted, *mutatis mutandis*, to govern the conduct of trials, an essential distinction arises from the realm of criminal procedural law, which inherently concerns the relationship between individuals and the state, thus falling under public law. Conversely, the author views the cooperation agreement as a manifestation of private law, intended to regulate interactions between private entities. This perspective aligns with Abdul Kadir Muhammad's definition of private law as encompassing "all rules or legal provisions that govern the legal relationships between individuals and are binding on both parties".¹² Consequently, not only does the agreement present a weak regulatory framework, but it also fails to serve as an appropriate legal instrument or safeguard within the procedural law context for criminal cases, particularly concerning the provision of information via teleconference.

In the Indonesian legal system, the use of teleconferencing for witness testimony has not yet been explicitly regulated within the Criminal Procedure Code, nor is there any specific legislation that addresses this matter to date. Currently, the legal foundations that permit examinations via teleconference are only established through jurisprudence. However, the authority of the panel of judges to approve witness statements delivered via teleconference during a trial is enshrined in Article 5 of Law Number 48 of 2009 concerning Judicial Power. This article empowers judges to authorize the use of teleconferencing technology and to adapt to societal values that reflect rapid technological advancements impacting the legal sphere. Thus, the organization of teleconferences in court represents an exercise of judicial authority, enabling the law to be applied effectively within the Indonesian justice system. It follows, therefore, that judges should be afforded considerable discretion in their jurisprudential roles to make decisions that reflect these evolving circumstances.¹³

When judges confer legality upon teleconference procedures for witness testimony, it is crucial to adopt policies that ensure the material truth is thoroughly revealed. Here are several considerations that should be kept in mind to properly implement such procedures and maintain the integrity of witness examinations as evidence::

- 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 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. Hence, teleconference 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

¹² Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung; Citra Aditya Bakti, 1993), p. 1

¹³ Dowell-Jones, M. *International Law and National Law in Relation to Discrimination in Civil Society Political Participation*, 2019. Oxford University Press. p. 11

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 to make 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.

If the aforementioned measures can be implemented with clear regulations, the justice system will become more conducive and effective in providing legal certainty and facilitating broader understanding and acceptance. Given the considerations on the legality of jurisprudence, it becomes evident that the consent and decision-making by a panel of judges to allow a witness to testify via teleconference are crucial. This ensures that such testimony is recognized as valid evidence, and that the process for delivering information by witnesses through teleconference is structured and well-regulated.

To solidify the legitimacy and application of teleconference regulations in court, it is necessary to consider updating or amending the Criminal Procedure Code, which governs criminal procedural law in Indonesia. This amendment would accommodate the rapid technological advancements that have become integral to various aspects of legal proceedings. Current efforts might well focus on establishing clear regulations regarding criminal law policies that specifically govern the provision of testimony via teleconference.

The legislation should serve as the most effective legal framework and policy tool. Thus, in addition to jurisprudence established by judges, accompanying regulations need to reflect updates to the Criminal Procedure Code to align with ongoing technological progress.

2. Controversy Regarding the Issue of Witness Testimony Via Teleconference and Comparisons With Implementation in Other Countries

In this analysis, the author examines the law from a progressive legal perspective, suggesting that law evolves to foster restorative justice in line with societal values that continually develop. This approach underlines the necessity for substantive changes to effectively deliver justice.¹⁴ One significant change is incorporating teleconferences into criminal case proceedings, reflecting societal advancement and technological progress. This adaptation signifies a substantial evolution in Indonesia's justice system and aligns with the goals of progressive law, ensuring that judges can deliver decisions in accordance with procedural norms.

However, the use of teleconferencing has sparked debates, particularly regarding the procedural aspects of delivering testimonies through this medium. Despite rapid technological advancements hoped to support law enforcement, it is crucial to consider the traditional expectations set by Article 1, point 27 of the Criminal Procedure Code, which typically requires witnesses to give their statements directly before the court.

The permissibility of conducting witness examinations via teleconference remains uncertain due to the absence of specific regulations in the Criminal Procedure Code, despite alignment with contemporary advances through the Electronic Information and Transaction Law. This regulatory gap has led to significant debate surrounding the

¹⁴ Suteki, *Desain Hukum di Ruang Sosial*, Yogyakarta: Thafa Media, 2013, p.21

implementation of teleconferencing in legal proceedings. Key issues in this debate include:

- a) Legal policy and law-making refer to positive legal regulations. Therefore, 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.
- b) The existence of a teleconference, this aspect must be approved by the panel of judges to be carried out in trials in Indonesia 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.¹⁵

The concerns surrounding the use of teleconference technology in witness examinations highlight its current incompatibility with Indonesia's general criminal procedural law (*lex generalis*). A legislative solution is proposed to bridge this gap by enacting specific regulations for teleconference witness testimonies, marking a significant step forward in addressing these issues within criminal procedural law. This approach is supported by examples such as the Montgomery Country Circuit Court in Maryland, which has successfully implemented video conferencing technology for remote witness statements in recent years. Their system utilizes computers equipped with microphones, cameras, and speakers that automatically record all video/audio calls, anticipating broader use among the public, lawyers, and courts.¹⁶

Juridically, the distinction between in-court witness testimony and statements given outside the courtroom is critical. A report of an examination where a person describes their experience does not qualify as witness testimony unless stated before a court hearing. Statements made outside of court are not considered formal witness testimony but are seen as personal accounts or statements. Given that witness testimony plays a crucial role in case resolution—usually in conjunction with other valid evidence—the need for clear and direct witness testimony in court remains paramount to assist judges in uncovering facts and making informed decisions on cases.¹⁷

Jurisprudence employs legal principles to ascertain material truth. Judges who authorize the use of teleconferencing as a medium for witness testimonies must adhere to specific regulations in this area. Consequently, the adoption of teleconference for delivering testimony is not immediate or automatic. The varying perspectives on this issue are crucial as they influence the approach to witness testimonies in other criminal proceedings. Furthermore, should the evidence from a teleconference testimony be deemed invalid, any decisions made based on such evidence by a district court panel can be overturned on appeal in a higher court.

The following examples illustrate how witness testimony via teleconference has been implemented in various countries:

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

Research conducted by Diamond and colleagues in 2010 explored the impact of using teleconferences for witness testimonies from 1999 to 2009. Their research found that defendants often had an advantage when testimonies were delivered via teleconference,

¹⁵ Lilik Mulyadi. 2008. Bunga Rampai Hukum Pidana: Perspektif Teoretis dan Praktik. Bandung: Alumni. p.125

¹⁶ Susan Ledray. 2013. "Virtual Services Whitepaper". Harvard Journal of Law & Technology, Occasional Paper Series February 2013. p. 15

¹⁷ Lilik Mulyadi, 2010. Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana. Bandung: PT. Citra Aditya Bakti, p 76

primarily because the courts observed no detrimental effects on the judicial process, including any bias in the judges' opinions towards the defendants. This led to the conclusion that the United States, in adopting these practices, aligns with a positivist approach within its justice system. With technological advancements, such practices have been optimized to enhance the legal process in criminal cases. The procedure for providing witness testimony via teleconference also involves careful interpretation of the testimony, which then forms the basis for the judge's decision-making.

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

In 2012, Salyzyn conducted research examining the implementation of teleconferences, specifically focusing on video conferencing in trials in Ontario, Canada.¹⁸ This technology has been employed in the civil justice system there for over a decade. The regulation of witness testimony via video conference is outlined in Article 1, Paragraph 8 of the Ontario Civil Code. This article stipulates that "Oral evidence from a person who serves as a witness in a trial may be received via video conference if the parties to the dispute obtain approval. Even without approval, video conference evidence remains valid if the court decides to accept it, thereby making it subject to the court's established policies."

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

A research 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 as legal evidence.¹⁹

C. Conclusion

Based on the results and discussion described above, it can be concluded that teleconferences have not yet been fully recognized in the Criminal Procedure Code due to conflicts with existing articles that mandate physical presence of witnesses in court. However, the rapid development of information technology cannot be ignored, necessitating governmental consideration of these advancements. Special laws and regulations acknowledge the use of teleconference media as electronic media, stipulating that such evidence can be admissible in court if it meets regulated conditions such as displaying good image and sound quality.

Furthermore, the legality and validity of evidence obtained via teleconference must be considered by judges when making decisions. Additionally, witnesses must be sworn in according to Article 160 paragraph 3 of the Criminal Procedure Code, and their statements must comply with Article 1 point 27, detailing personal observations such as what they heard, saw, and experienced.

Given the variations in implementation across different jurisdictions, there is a need to update the Criminal Procedure Code and special laws governing the use of teleconferencing in trials. External systems often demonstrate a significant concern for the protection of witnesses and victims, particularly those vulnerable to threats and safety risks. It is hoped that legislators will pay close attention to the needs of witnesses and formulate legal policies that balance these considerations with technological advancements, ensuring an updated and relevant legal framework for the future.

¹⁸ Salyzyn, 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

¹⁹ Van der Vlis, Evert-Jan, *Videoconferencing in Criminal Proceedings*, Guildford: University of Surrey, 11-25

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