

## **Virtual Witness Testimony in Criminal Cases During the COVID-19 Pandemic: A Study on Evidence in the Banda Aceh Sharia Court**

Mohammad Salim

Shariah Faculty, Kabul University, Afganistan

Mukhsin Nyak Umar

Universitas Islam Negeri Ar-Raniry Banda Aceh

Rahmat Saputra

Universitas Islam Negeri Ar-Raniry Banda Aceh

Wisnu Adiyaksa Dault

Universitas Islam Negeri Ar-Raniry Banda Aceh

Muhammad Hafidh Ath-Thayyar

Universitas Islam Negeri Ar-Raniry Banda Aceh

Email: Omari\_sallim05@yahoo.co.uk

**Abstract:** *This study discusses the legal certainty of electronic criminal trials, particularly the presentation of witness testimony virtually during the COVID-19 pandemic. Guidelines for electronic criminal trials are needed to ensure uniform implementation and to uphold fair trial rights. As a province with the authority of the Syar'iyah Court, Aceh should be able to anticipate the spread of COVID-19 by implementing electronic trials. The research focuses on the regulations related to electronic trials, specifically the presentation of witness testimonies virtually as evidence in criminal cases, and the practices implemented at the Banda Aceh Sharia Court. This research uses a descriptive-analytical method with a qualitative approach. The sources of data for the research are field research and library research. The research results show that the form of legal certainty regarding electronic criminal trials or jinayat during the COVID-19 pandemic is the agreement on cooperation between the Supreme Court, the Prosecutor's Office, and the Ministry of Law and Human Rights on the Implementation of Trials Through Teleconference, which was then established by Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases in Court Electronically. In practice, the Banda Aceh Sharia Court determined that the presentation of witness testimony during the COVID-19 pandemic must be conducted in the courtroom. However, it is still carried out virtually to connect with the defendant in the detention center or prison where he is held.*

**Keywords:** Witness Testimony, Jinayat, Covid-19 Pandemic.

**Abstrak:** Studi ini mendiskusikan kepastian hukum terhadap persidangan pidana secara elektronik khususnya penyampaian keterangan saksi melalui virtual selama pandemi covid-19. Diperlukann panduan sidang pidana secara elektronik agar pelaksanaannya seragam dan memenuhi hak-hak fair trial. Aceh sebagai provinsi yang memiliki otoritas peradilan Mahkamah Syar'iyah, semestinya dapat mengantisipasi penyebaran covid-19 dengan menerapkan persidangan secara elektronik. Fokus penelitian adalah bagaimana pengaturan terkait persidangan secara elektronik khususnya penyampaian keterangan saksi melalui virtual sebagai alat bukti pada perkara jinayat serta praktik yang diterapkan pada Mahkamah Syar'iyah Banda Aceh. Penelitian ini menggunakan metode deskriptif analisis, pendekatan kualitatif. Sumber data penelitian adalah field research dan library research. Hasil penelitian menunjukkan bentuk kepastian hukum terhadap persidangan pidana atau jinayat secara elektronik selama pandemi covid-19 adalah disepakatinya kerjasama antara lembaga Mahkamah Agung, Kejaksaan, dan Kementerian Hukum dan HAM tentang Pelaksanaan Persidangan Melalui Teleconference, yang kemudian ditetapkan Peraturan Mahkamah Agung Nomor 4 Tahun 2020 tentang Administrasi dan Persidangan Perkara Pidana di Pengadilan Secara Elektronik. Dalam praktiknya, Mahkamah Syar'iyah Banda Aceh menetapkan bahwa penyampaian keterangan saksi selama pandemi covid-19 harus dihadirkan di ruang sidang pengadilan, meskipun tetap dilaksanakan secara virtual agar terhubung dengan terdakwa yang berada di Rutan atau Lapas tempat ia ditahan.

**Kata Kunci:** Keterangan Saksi, Jinayat, Pandemi Covid-19.

## A. Introduction

In the 4.0 digital era, in practice, witnesses providing their testimonies in court have undergone development. The advancement of information and telecommunications technology has impacted the theory and practice of presenting evidence, which is increasingly evolving beyond what is stipulated by law. Witness testimony given in several criminal cases is no longer practiced directly (physically) in front of the court. The use of technology in the courtroom has rapidly advanced due to COVID-19 (*Coronavirus Disease* 2019).<sup>1</sup>

Virtual testimony is not regulated in the Criminal Procedure Code (KUHP) or the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat). However, evidence involving electronic media is regulated in several specific regulations. One example can be seen from the addition of circumstantial evidence in corruption crimes, in the form of information spoken, sent, or received

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<sup>1</sup>Thalia González, "Restorative Justice Diversion as a Structural Health Intervention in the Criminal Legal System," *Journal of Criminal Law and Criminology* 113, no. 3 (2023); Alberto Aziani et al., "COVID-19 and Organized Crime: Strategies Employed by Criminal Groups to Increase Their Profits and Power in the First Months of the Pandemic," *Trends in Organized Crime* 26, no. 2 (2023); Eric Mykhalovskiy et al., "Human Rights, Public Health and COVID-19 in Canada," *Canadian Journal of Public Health* 111, no. 6 (2020); Samuel Larner and Hannah Smithson, "How Can You Punish a Child for Something That Happened over a Year Ago? The Impacts of COVID-19 on Child Defendants and Implication for Youth Courts," *Journal of Criminal Law* 87, no. 4 (2023); Madeleine A. Kirschstein et al., "Technological Innovations in Forensic and Correctional Mental Health: An Introduction to the Special Issue," *Criminal Justice and Behavior* 50, no. 2 (2023).

with optical devices as stipulated in the anti-corruption law.<sup>2</sup> Another regulation is that the provision of testimony through electronic media has been regulated in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.<sup>3</sup> Regulations regarding electronic evidence have been stipulated in the law on information and electronic transactions. Unlike the Criminal Procedure Code, which does not regulate electronic evidence, the Jinayat Procedure Code regulates electronic evidence as one of the valid pieces of evidence stated in Article 180, paragraph (1). However, the regulation of virtual witness examinations is the same as the Criminal Procedure Code, which has not yet recognized virtual court hearings.

The implementation of virtual trials through teleconference is considered appropriate with the policies of social distancing and physical distancing. This is done to curb the spread of the COVID-19 pandemic. Due to these considerations, several related institutions, namely the Supreme Court, the Attorney General, and the Ministry of Law and Human Rights (Kemenkumham), issued their respective circular letters. The restriction of social interactions has caused most Civil Servants, including Judges and Judicial Officers at the Supreme Court of the Republic of Indonesia, to work or carry out their official duties from home (work from home/WFH) in turns.<sup>4</sup> In such conditions, the Supreme Court must make a breakthrough in the form of a Circular Letter, especially regarding the adjustment of court trial patterns, particularly for criminal cases and jinayat and military cases previously held in person.<sup>5</sup>

The establishment of Supreme Court Regulation Number 4 of 2020 concerning Administration in Criminal Trials in Court Electronically serves as the legal basis for the implementation of virtual trials in criminal or *jinayat* cases, particularly in terms of evidence, stating that virtual evidence by the Criminal Procedure Code (KUHP) or the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat) holds the same evidentiary value.<sup>6</sup> In its considerations, this PERMA

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<sup>2</sup>Sandhy Handika, Muhammad Ibnu Fajar Rahim, and Rudi Pradisetia Sudirdja, "Virtual Court Policy For Criminal Justice on Corona Virus Disease Pandemic," *Substantive Justice International Journal of Law* 3, no. 1 (2020), 67; Nevey Varida Ariani et al., "The Implementation of the Law of Criminal Procedure in Judicial Process During the Covid-19 Pandemic," in *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, vol. 549, 2021; Nelvitia Purba et al., "Death Penalty and Human Rights in Indonesia," *International Journal of Criminology and Sociology* 20, no. 9 (2020), 156. Andrew Guthrie Ferguson, "Courts without Court," *Vanderbilt Law Review* 75, no. 5 (2022). Article 26 A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Criminal Acts of Corruption Eradication.

<sup>3</sup>Article 9 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

<sup>4</sup>Maryja Šupa, Vytautas Kaktinas, and Aistė Rinkevičiūtė, "Computer-Dependent or Computer-Assisted? The Social Context of Online Crime in Lithuanian Court Judgements," *International Journal of Law, Crime and Justice* 73 (2023); Aykut Çalışkan, "Crime, Pandemic and Social Mobility: Empirical Evidence from Türkiye," *Crime, Law and Social Change* 81, no. 4 (2024); Andrea Perin, "Criminal Liability for Contagion. On 'Reckless' Exposure to Risk of Infection (Lessons from the Hiv Experience for the COVID-19 Scenario)," *BioLaw Journal* 2020, no. SpecialIssue1 (2020).

<sup>5</sup>Circular Letter of the Supreme Court Number 1 of 2020 Concerning Guidelines for the Implementation of Duties During the Period of Prevention of the Spread of Covid-19 in the Supreme Court and Judicial Bodies Under It.

<sup>6</sup>Article 1 paragraph 14 of the Supreme Court Regulation (PERMA) Number 4 of 2020

aims to assist seekers of justice in overcoming all obstacles and hurdles to achieve simple, swift, and cost-effective justice. It hopes that cases hindered by specific barriers, such as the COVID-19 pandemic, require quick resolutions while respecting human rights.<sup>7</sup>

In practice, this PERMA e-litigation for criminal cases addresses issues of coercive or emergency situations such as the COVID-19 pandemic, thereby better ensuring the parties' rights to due process of law or legal certainty are fulfilled. However, on the other hand, there are challenges in its implementation, which result in a lack of fulfillment of human rights for the accused, crime victims, and the general public.

Since the implementation of criminal e-litigation, there have been several issues and obstacles, namely the lack of fulfillment of the principle of openness due to its relatively closed execution, as online access is still limited to the parties involved in the case and not yet fully open to the public. This contradicts the principle of openness in the judicial process as stated in Article 153 paragraph (4) of the Criminal Procedure Code (KUHAP) and Article 149 paragraph (5), which stipulate that if the trial is not conducted orally and understood by the defendant and witnesses; the defendant's or witness's answers are not free from coercion, and the trial is not held openly to the public, it will result in the verdict being null and void by law.<sup>8</sup> In addition, there are technical issues regarding uneven and unstable internet connectivity throughout Indonesia, the capability and knowledge of court officials regarding electronic trial support technology, and the uneven distribution of electronic court equipment and facilities.<sup>9</sup>

As a region granted special rights, Aceh has the privilege to create Qanun Aceh, a regional legislative regulation similar to provincial regulations that govern government administration and the life of the Acehnese people.<sup>10</sup> One of the Qanun products used as a reference by the Aceh Syariah Court in handling Islamic Criminal Law (jinayat) cases is Aceh Qanun Number 7 of 2013 concerning Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat), which was later refined by Aceh Governor Regulation Number 5 of 2018 concerning the Implementation of Islamic

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<sup>7</sup>"Considering" letter (a) the Supreme Court Regulation (PERMA) Number 4 of 2020

<sup>8</sup>Article 153, paragraph 4 of the Criminal Procedure Code.

<sup>9</sup><https://leip.or.id/wp-content/uploads/2020/12/Infografis-PERMA-Persidangan-Pidana-Online-FA.pdf>. Accessed on April 10, 2021

<sup>10</sup>Muslim Zainuddin et al., "Protection of Women and Children in the Perspective of Legal Pluralism: A Study in Aceh and West Nusa Tenggara," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam Hukum Islam* 8, no. 3 (2024): 1948–73; Mohd Din and Al Yasa' Abubakar, "The Position of the Qanun Jinayat as a Forum for the Implementation of Sharia in Aceh in the Indonesian Constitution," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 689–709; ; Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022); Ahyar Ahyar, "Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017): 1313–154; Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah* 5, no. 2 (2021).

Criminal Procedure Law.<sup>11</sup>

The Mahkamah Syar'iyah (Islamic Sharia Court) has the authority to examine, adjudicate, decide, and resolve criminal cases. It has followed the Supreme Court Circular in implementing virtual trials by issuing the Decree of the Chief Justice of the Aceh Mahkamah Syar'iyah.<sup>12</sup> This is a reference for all courts under it to implement virtual court proceedings in all district or city Sharia Courts in Aceh.

The Banda Aceh Sharia Court conducted a jinayat trial. However, this trial differed from previous jinayat trials because it was held virtually. This was done because the defendants could not be brought to the courtroom due to the ongoing COVID-19 pandemic. The cases include the Khamar jinayat cases with case numbers: 14/JN/2020/MS.Bna, 15/JN/2020/MS.Bna, 16/JN/2020/MS.Bna, 17/JN/2020/MS.Bna with the agenda of listening to witness testimonies conducted virtually.<sup>13</sup>

In the brief description above, the use of teleconference technology in trials for criminal and jinayat cases is a legal issue that needs to be examined more deeply because, in formal legal terms, the Criminal Procedure Code (KUHP) and Aceh Qanun Number 7 of 2013 on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat) have not yet regulated it. However, it has already been implemented in practice, especially with the current pandemic conditions that require virtual trials.

The above fact prompted the author to examine the virtual witness examination during the COVID-19 pandemic at the Banda Aceh Sharia Court. The aim is to understand the legal regulations regarding witness testimony through virtual means as evidence in criminal cases and to discover the process of delivering witness testimony at the Banda Aceh Sharia Court during the COVID-19 pandemic.

This study uses three methods. *First* is the statute approach, which examines legal principles, legal norms, and regulations derived from laws, books, documents, and official sources. *Second*, the conceptual approach examines literature related to the issues being studied. *Third*, the sociological juridical approach emphasizes empirical legal knowledge to understand the regulations and practices of virtual trials.

## **B. The Concept of Testimony in the Criminal Procedure Code and the Islamic Criminal Procedure Law**

The definition of a witness in Article 1, paragraph 26 of the Criminal Procedure Code and Article 1, paragraph 31 of the Jinayat Criminal Procedure Code is a person who can provide testimony for investigation, prosecution, and adjudication regarding a criminal case they have heard, seen, and experienced. The testimony of a witness holds the first position as evidence in criminal cases. The examination of witness

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<sup>11</sup>Aceh Governor Regulation Number 5 of 2018 Concerning Implementing Jinayat Procedural Law.

<sup>12</sup>Aceh Sharia Court Letter Number: W1-A/1108/HK.01/III/2020 concerning Jinayat Case Trials during the Covid-19 Prevention Period.

<sup>13</sup><https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/ms-banda-aceh-melaksanakan-persidangan-jinayat-via-teleconference>. Accessed on February 17, 2021.

testimony is used as a basis for proving criminal cases, alongside proof from other types of evidence. Witness testimony is considered valid as evidence with probative value if the following rules are met.<sup>14</sup>

1. Taking an oath or making a promise can be done before or after giving testimony (Article 160 of the Criminal Procedure Code and Article 156 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
2. The relationship of the witness with a criminal act, which includes what they have seen, heard, and directly experienced (Article 1 paragraph 27 of the Criminal Procedure Code and Article 1 paragraph 31 of the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat). Not the testimony of a witness obtained from another person (testimonium de auditu) as regulated in Article 185 paragraph 1 of the Criminal Procedure Code and Article 182 paragraph 1 of the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
3. The testimony of the witness given in court. For a witness's testimony to be considered as evidence, the testimony must be presented in court (Article 185, paragraph 1 of the Criminal Procedure Code and Article 182, paragraph 1 of the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
4. The testimony of a single witness is not sufficient. This principle is known as "unus testis nulus testis," which means one witness is no witness (Article 183 of the Criminal Procedure Code and Article 180 of the Aceh regional regulations on Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
5. The testimony of several witnesses standing alone. The testimony of several witnesses standing alone about an event or circumstance can be used as valid evidence that the witness testimony is related to others, justifying the occurrence of a particular event or circumstance. (Article 185, paragraph 4 of the Criminal Procedure Code and Article 182, paragraph 4 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).

#### *Assessment of the Truthfulness of Witness Testimony*

Based on Article 185, paragraph 6 of the Criminal Procedure Code and Article 182, paragraph 8 of the Jinayat Procedure Code, the Judge must diligently consider several aspects in determining the truth value of witness testimony.<sup>15</sup>

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<sup>14</sup>Joseph Hoft, "Forensic Science," in *The Encyclopedia of Research Methods in Criminology and Criminal Justice: Volume II: Parts 5-8*, 2021; Wanodyo Sulistyani, "The Admissibility of Scientific Expert Evidence under Indonesian Criminal Justice System," *Sriwijaya Law Review*, 2019; Elizabeth White, "Closing Cases with Open-Source: Facilitating the Use of User-Generated Open-Source Evidence in International Criminal Investigations through the Creation of a Standing Investigative Mechanism," *Leiden Journal of International Law* 37, no. 1 (2024); Maria Hawilo et al., "HOW CULTURE IMPACTS COURTROOMS: AN EMPIRICAL STUDY OF ALIENATION AND DETACHMENT IN THE COOK COUNTY COURT SYSTEM," *Journal of Criminal Law and Criminology* 112, no. 2 (2022).

<sup>15</sup>Jean Denis David and Megan Mitchell, "Contacts with the Police and the Over-Representation of Indigenous Peoples in the Canadian Criminal Justice System," *Canadian Journal of Criminology and*

1. Integrity, lifestyle, morality, and anything that can influence the quality of the witness's honesty;
2. The consistency between one witness's testimony and another's.
3. The consistency between the witness's testimony and other pieces of evidence.
4. The reasons that the witness might use to provide testimony.
5. In addition, other matters also need to be considered when evaluating the witness's testimony, namely:
6. The defendant's response to the witness's testimony (Article 164 paragraph 1 of the Criminal Procedure Code and Article 160 paragraph 1 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat);
7. The consistency of witness testimony in court with their statements at the investigation stage (Article 163 of the Criminal Procedure Code and Article 159 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).

### *The Concept of Evidence*

Evidence in criminal procedural law plays a vital role in the examination process in court hearings. Evidence in criminal cases aims to establish the existence of a crime and the defendant's guilt. In practice, proof is the action of the public prosecutor to obtain the Judge's conviction based on minimal evidence regarding the existence of a crime and that the defendant is the one who committed it.<sup>16</sup>

The law of evidence is the rules regarding evidence, exhibits, methods of collecting and obtaining evidence, presenting evidence in court, and the probative value of evidence. The system adopted by the Criminal Procedure Code and the Jinayat Procedure Code is a negative statutory proof system (*negatief wettelijk*), which is a proof system based on at least two valid pieces of evidence accompanied by the judge's conviction. This system is outlined in Article 183 of the Criminal Procedure Code and Article 180 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).

### *Principles of Evidence*

1. Common facts that do not need to be proven (*notoire feiten*). This principle is found in Article 184, paragraph 2 of the Criminal Procedure Code, and Article 181, paragraph 2 of the Jinayat Procedure Code. For example, fire is hot, a condition generally known by everyone.
2. Witnesses must provide their testimony; they may be sanctioned if they refuse.

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*Criminal Justice* 63, no. 2 (2021); Monang Siahaan, *Falsafah Dan Filosofi Hukum Acara Pidana* (Jakarta: Raja Grafindo Persada, 2017); Kukuh Dwi Kurniawan, "Porn Videos as Evidence of Adultery: A Comparative Study of Indonesian Criminal Law and Islamic Law," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (2022).

<sup>16</sup>Maro Polykarpou, "Prosecutorial and Police Disclosure Ethics in Criminal Evidence Review in the UK and the US. A Comparative Account," *Criminal Justice Ethics* 41, no. 1 (2022); S Bahri, *Hukum Pembuktian Dalam Praktik Peradilan Pidana* (Yogyakarta: P3IH FH UMJ Totalmedia, 2009).

Witness must provide their testimony; if they refuse, they may be subject to sanctions. This is regulated in Article 159, paragraph 2 of the Criminal Procedure Code, and Article 155, paragraph 2 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).

3. One witness is not a witness (*unus testis nullus testis*). This principle is found in Article 185, paragraph 2 of the Criminal Procedure Code, and Article 182, paragraph 2 of the Jinayat Procedure Code. Specifically, the crime of adultery must be proven by 4 (four) witnesses who have directly seen it, as stipulated in Article 182, paragraph 5 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
4. The defendant's confession does not absolve the public prosecutor from proving the defendant's guilt (Article 189 paragraph 4 of the Criminal Procedure Code and Article 188 paragraph 4 of the Jinayat Procedure Code). The defendant's confession does not absolve the public prosecutor from proving the defendant's guilt (Article 189, paragraph 4 of the Criminal Procedure Code and Article 188, paragraph 4 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).
5. The defendant's statement is only binding on themselves (Article 189 paragraph 3 of the Criminal Procedure Code and Article 187 paragraph 3 of the Jinayat Procedure Code). The defendant's statement only applies to himself (Article 189, paragraph 3 of the Criminal Procedure Code and Article 187, paragraph 3 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat)).<sup>17</sup>

### C. Arrangement of Virtual Trials During the COVID-19 Pandemic

The trial may be postponed in urgent circumstances or during a natural disaster (*force majeure*). Still, specifically for criminal or jinayat cases, the defendant is bound by a limited detention period. Although the detention period can still be extended, the defendant or their legal counsel, based on the defendant's right, demands that the prosecution process be conducted swiftly, so the court, in certain situations, must hold the trial online.

The conduct of online criminal trials during the COVID-19 pandemic is the most appropriate breakthrough. It must continue to be perfected by the Supreme Court to guarantee the legal rights of every individual facing the law. In addition, more detailed and permanent regulations and a higher legal framework are needed to make the online trial process ideal and not harm the defendants' rights in presenting their defense.

*Salus populi supreme lex esto*, which means the safety of the people is the highest law (*Cicero*), is an adage that is very appropriate in making policies during the

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<sup>17</sup>Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP-Pemeriksaan Sidang Pengadilan Banding, Kasasi, Dan Peninjauan Kembali* (Jakarta: Sina Grafika, 2012), 276; Sasangka, *Hukum Pembuktian Dalam Perkara Pidana* (Bandung: Mandar Maju, 2003); Djoko Prakoso, *Alat Bukti Dan Kekuatan Pembuktian Di Dalam Proses Pidana* (Yogyakarta: Liberty, 1988); Gift Dorothy Makanje, "The Admissibility of Expert Evidence in Criminal Proceedings in Malawi: A Call for Reliability Safeguards," *Journal of African Law* 67, no. 1 (2023).



COVID-19 pandemic because the law that will be applied must truly protect its people. As a quick response from the Supreme Court in ensuring the protection of judicial apparatus, seekers of justice, court users, including defendants facing the law, on March 23, 2020, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 1 of 2020 concerning Guidelines for Task Implementation During the Prevention of Covid-19 Spread in the Supreme Court and the Judiciary Under Its Authority.<sup>18</sup> Then, the Attorney General of the Republic of Indonesia on March 27 also issued the Attorney General's Letter Number B-049/A/SUJA/03/2020 2020 regarding the Optimization of Task, Function, and Authority Implementation Amid Efforts to Prevent the Spread of COVID-19. In connection with the online criminal court proceedings mechanism, the Supreme Court, through the Director General of the General Court Administration, has also issued Letter Number 379/DJU/PS.00/3/2020 dated March 27, 2020.

In addition, as a court authorized to handle first-instance cases among Muslims in *al-Ahwal al-Syahshiyah* (Islamic Civil Law), *Mualamah* (Civil Transactions), and *Jinayat* in the province of Aceh. The Aceh Syar'iyah Court, based on the Supreme Court Circular Letter Number 1 of 2020 and the Director General of Badilag's letter, issued Letter Number W1-A/1108/HM.01/III/2020 regarding the Trial of Jinayat Cases during the Prevention of Covid-19 Spread. Considering the three law enforcement institutions, namely the Supreme Court, the Prosecutor's Office, and the Ministry of Law and Human Rights, on April 13, 2020, they signed a cooperation agreement No. 402/DJU/HM.01.1/4/2020, No. KEP-17/E/EJP/04/2020, No. PAS-08.HH.05.05 regarding the Implementation of Trials via Teleconference. The MoU regulates the authority and responsibilities of the three institutions and the implementation of trials through teleconferencing.

Supreme Court Regulation Number 4 of 2020 on the Administration and Trial of Criminal Cases in Court Electronically is a breakthrough made by the Supreme Court in addressing certain obstacles that require the resolution of criminal trials as soon as possible without delay while still upholding the principle of 'Salus populi supreme lex esto,' which means the safety of the people is the highest law of a country. That principle aligns with the conditions during the COVID-19 pandemic, where certain situations exist, such as natural disasters and other emergencies. The basis is the conditions during the COVID-19 pandemic, where certain circumstances exist, such as natural disasters and other emergencies.

#### **D. Witness Examination**

Context: B. Witness Examination Based on PERMA No. 4 of 2020. Based on PERMA No. 4 of 2020, Article 10, Paragraph (1): witnesses/expert witnesses and

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<sup>18</sup>Circular of the Supreme Court (SEMA) Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Period of Preventing the Spread of Covid-19 in the Supreme Court and Judicial Bodies Under It.

interpreters are required to take an oath/promise. Verse (2): witnesses/expert witnesses examined from the prosecutor's office are still sworn in. Verse (3): The recitation of the oath/promise and the procedure for administering the oath are carried out by procedural law. Article 11, Paragraph (1): The procedure for examining witnesses and/or experts is carried out by procedural law provisions. Verse (2): witnesses/experts are examined in the courtroom electronically. Paragraph (3) witnesses/expert witnesses, under certain circumstances, are examined at the prosecutor's office, the court of jurisdiction, the embassy, or other locations. Paragraph (4) The Chief Justice of the jurisdiction where the witness/expert is located provides electronic trial facilities and appoints 1 (one) Judge and 1 (one) Deputy Registrar as supervisors of the witness/expert examination. Paragraph (5) The Indonesian Embassy/Consulate General provides electronic trial facilities and appoints 1 (one) embassy staff member as the supervisor for the examination of witnesses/experts. Paragraph (6) The party presenting the witness/expert, before the examination is conducted, is required to inform/send the number of witnesses/experts to be given; the account where the witness/expert will be examined that can be connected to the trial application; and other necessary documents. Paragraph (7) The Judge/Panel of Judges examining the witness/expert must be in the court's courtroom handling the case. Article 12 states that for witnesses whose identities must be kept confidential, the Panel of Judges must instruct the Substitute Registrar to turn off the video feature in the witness display on the trial implementation application. The witness only provides testimony in audio format with an altered voice or listens to the witness's testimony without the defendant's presence.

#### **E. Virtual Evidence in the Banda Aceh Sharia Court**

Based on the interview with Yusri, a Banda Aceh Sharia Court judge, the testimony is as follows.<sup>19</sup>

Testimony in court via teleconference can be considered valid evidence if it meets the requirements for being a legitimate witness. According to the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat), the evidentiary value of witness testimony via teleconference is still assessed. Furthermore, the evidentiary strength of witness testimony as evidence indeed refers to the general evidentiary strength of witness testimony as regulated in Article 182 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).<sup>20</sup> As for the provisions regarding witnesses that must be fulfilled, among others:

1. Must comply with the provisions regarding witness testimony as evidence, namely:
  - a. The use of teleconferencing must present detailed images and clear audio. This will make it easier for the judge to see the witness's face, eye contact, and body

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<sup>19</sup>Interview with Yusri, Judge of the Banda Aceh Sharia Court on Tuesday, June 28, 2021.

<sup>20</sup>Interview with Fauziati, Judge of the Banda Aceh Sharia Court on Tuesday, June 29, 2021.

gestures directly during the trial, even if the witness is in a different location from the judge. Thus, the principle of witness testimony that must be presented in court or the requirement of physical presence has been fulfilled by using a teleconference. As stipulated in Article 182, paragraph (1) of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat).

- b. The witness must be sworn in when providing their teleconference testimony. Article 156, paragraph (3) of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat) stipulates that the witness must take an oath or make a promise before giving testimony. Utilizing teleconference technology is not much different from a regular trial.
  - c. The witness present is a witness whose testimony is based on their own experience, what they heard, and what they saw themselves (nontestimonial de audit), as stipulated in Article 1, paragraph 31 of Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat). Similarly to general criminal trials, witness testimony can be considered valid evidence when the witness has heard, seen, and personally experienced the criminal event, providing reasons for their knowledge. This teleconference can be valid evidence if the concerned party does not deny it.
2. Witnesses who will provide testimony via teleconference are accompanied by authorized officials, namely the Public Prosecutor and Legal Counsel, if needed by the defendant.
  3. The witness must be provided with a proper and comfortable place. This is because it ensures that the witness does not feel pressured and provides a guarantee of protection to the witness.

If the witness's testimony meets the requirements outlined above, then the testimony has evidentiary value, namely:

1. Accepted as a valid piece of evidence;
2. Having valid evidentiary power;
3. Dependent on the Judge's assessment;

Teleconferencing in providing witness testimony must adhere to the principles outlined in criminal procedural law, namely the principles of swift, simple, and cost-effective justice and the principle of public accessibility.

1. Teleconference meets the principles of swift, inexpensive, and simple justice. Because bringing witnesses to the trial can expedite the discovery of the material truth, the trial will be conducted more quickly without having to postpone it due to the witness being unable to attend. In addition, the judicial process will be more efficient, as there will be no need to bring witnesses from the country/region where they reside. Then, for simplicity, it is defined as teleconferencing to present witnesses in court. It is straightforward because this technology is advanced and easy, allowing the trial to proceed like a regular trial. The principle of low cost is

defined as using teleconferencing to provide witness testimony, which is relatively cheaper. Thus, with the affordable price of organizing teleconferences, anyone involved in court proceedings can also use the technology.

2. Teleconference also meets the principle of being open to the public. This principle is used to ensure the objectivity of the examination. In this principle, it is intended that during the trial, it can be monitored by the public, and the Judge can make decisions objectively and fairly. Thus, teleconferencing allows the public to be present and witness the proceedings. Except for cases of morality, khalwat, ikhtilat, adultery, rape, and sexual harassment, which are closed hearings, the verdict reading stage must be held in an open court for the public. So, the public can observe or attend the trial while still adhering to health protocols, maintaining order, and observing decorum. So the public can see or attend the trial while still adhering to health protocols and maintaining order and decorum. Based on the above explanation, teleconferencing has met the witness statement requirements as evidence and has fulfilled the general principles in criminal procedure law.

Based on the above explanation, the teleconference has met the requirements for witness testimony as evidence and has adhered to the general principles of criminal procedural law. However, the Qanun Hukum Acara Jinayat does not regulate teleconferencing regarding evidence presentation. However, the evidentiary value of witness testimony through teleconference has the same strength as witness testimony given directly in court. This is based on the legal umbrella of Supreme Court Regulation Number 4 of 2020. The evidentiary value of witness testimony via teleconference is free, but it does not possess perfect and determinative evidentiary strength and is not binding on the Judge. So, the Judge is free to assess its perfection and truthfulness. It depends on the Judge's assessment whether to consider it perfect. However, that freedom is not absolute because the decisions made by the Judge must not be arbitrary and must be truly accountable.

The evidentiary value of witness testimony via teleconference is the same as witness testimony given directly in court. The difference lies in the position of the witness, who is far from where the trial is being held. Thus, teleconferencing is merely a means to still present witnesses directly in court through a monitor screen.

In practice, the panel of judges at the Banda Aceh Syar'iyah Court requests the prosecutor to present witnesses in the courtroom at the Banda Aceh Syar'iyah Court to hear their testimony in front of the panel of judges while still adhering to health protocols. Before entering the room, the witnesses' body temperature is checked, they must wear a mask, and social distancing is maintained. The examination is conducted virtually so the testimony can be seen and heard by the defendant in custody and the Legal Counsel in their office. However, the Judge can still examine the witness directly in the courtroom. However, if the witness being examined is a crown witness who also serves as a defendant in a different case number, they

cannot be present in the courtroom. This is because, besides being a witness, he is also a defendant bound by regulations prohibiting defendants from leaving their detention facility. As for witnesses other than the crown witness, in practice, the panel of judges at the Banda Aceh Sharia Court has requested that witnesses be present in the courtroom, with electronic trials.

If, at any time, the witness cannot be present in the courtroom due to unavoidable circumstances, the Panel of Judges may order the examination of the witness to be conducted at:

1. The prosecutor's office within its jurisdiction;
2. The court where the witness is located;
3. The Indonesian Embassy;
4. Other places determined by the Panel of Judges

There is a case being handled by the Banda Aceh Judges' Council related to the virtual examination of witnesses outside the court session at the Banda Aceh Sharia Court. The alcohol case involved 4 (four) defendants, each of whom was prosecuted separately and served as a crown witness. Case number 14/JN/2020/MS.Bna on behalf of R.H bin S (initial), case number 15/JN/2020/MS.Bna on behalf of RR bin AM (initial), case number 16/JN/2020/MS.Bna on behalf of RS bin JS and case number 17/JN/2020/MS. Bna on behalf of FP bin MS (initial). In the case of providing their testimony, they cannot be presented in the Banda Aceh Syar'iyah Courtroom. Still, they will be examined where they are detained under the supervision of the Prosecutor. In cases where witnesses will be reviewed to hear their testimonies, the Panel of Judges has the authority to decide while still adhering to the existing regulations.

The obstacles faced in the teleconference trial at the Banda Aceh Sharia Court, among others:

- a. Network disruptions, which result in;
- b. Intermittent sound;
- c. The displayed image is unclear;

The above obstacles can be overcome by switching to using a mobile phone due to network issues on the computer or laptop, and the uncertain court session times caused by connectivity issues between the court's internet connection, the Prosecutor's Office, and the detention center where the defendant or crown witness is held. The session is adjourned and will resume after the network disruption ends, or the session is postponed and continued according to the court information system's court schedule.

## **F. Conclusion**

The use of electronic devices in the form of teleconferencing as a technological tool that broadcasts witnesses giving testimony in criminal trials is a legal evidence tool

to obtain material truth, which is the complete truth, by applying the provisions of PERMA NO.4 of 2020, as well as the joint agreement (Memorandum of Understanding) between the Supreme Court, the Prosecutor's Office, and the Ministry of Law and Human Rights. Such matters were indeed not previously regulated in the Criminal Procedure Code (KUHP) and also the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat), or other legal regulations, because they did not account for natural disasters and other emergencies such as the COVID-19 pandemic.

Proving in criminal cases during online trials still follows the provisions of criminal procedural law and has the same value or evidentiary strength as offline trials. In the theory of the evidentiary system, the Judge's conviction cannot stand alone. Still, it must be based on evidence or at least 2 (two) valid pieces of evidence, according to Article 180 of the Islamic Criminal Procedure Law (Qanun Hukum Acara Jinayat). Regarding the examination of witness testimonies in criminal cases at the Banda Aceh Syar'iyah Court during the pandemic, in practice, it has been conducted by PERMA Regulation Number 4 of 2020 by holding virtual trials, whether witnesses are examined in the courtroom or outside the courtroom, according to the applicable regulations. However, it should be noted and taken into consideration that online trials often result in technical obstacles such as unstable internet connections, unclear audio and video, and so on. This makes the process less than optimal and can potentially disrupt the principle of a fair trial, which is an honest and fair judiciary.

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