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RESEARCH ARTICLE

THE LOSS OF THE DEFENDANT'S RIGHTS LEGAL ASSISTANCE IN TRIAL ELECTRONIC CRIMINAL CASES IN INDONESIA

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Abstract

The concept of the Advocate Assistance model which is carried out during online criminal case trials has the potential to reduce or even eliminate the rights of the accused. This research aims to develop the concept of advocacy assistance in online criminal trial that protects the rights of the accused. This research is a qualitative research related to the evaluation of the implementation of legal assistance for defendants in online criminal trial trials. The concept of legal assistance by an advocate for a defendant in an online criminal case trial is the necessity of the physical presence of an advocate beside the defendant in which there is freedom to communicate and a guarantee of the confidentiality of the conversation at every stage of the trial process. defendant. All regulations related to Advocate assistance in online case trials that limit communication and guarantee confidentiality of conversations between Advocates and Defendants must be corrected because they are contrary to human rights.

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Introduction:-

Extraordinary "online" wave is able to change orders and shifts very quickly. The occurrence of an "online" wave in information technology, is able to shift the role of humans in all fields. In the past there was an industrial revolution, now there is an information technology revolution. In the information revolution, the role of humans is quantitatively smaller, but qualitatively it is getting higher. The information technology revolution will change paradigms, concepts and theories, although it will not change philosophy. The ability to quickly adapt is demanded by all fields, including the legal field. Anyone and anything that does not adapt evolutionarily will become a victim. The online wave or information technology revolution is able to change the paradigm and concept of law and all fields including future regulations / laws and regulations must be designed in such a way that their implementation is electronically based.

Judiciary institutions are also affected by this technological revolution, where the administration, services, and judicial processes in the courts from what were originally conventional have gradually evolved by utilizing technology and information technology to become completely automated, making the judiciary more modern. Modern justice is basically a judiciary that is full of advanced technology, which facilitates the way of work, which opens wide access to the public and is easy to access, a judiciary whose system and working methods are effective and efficient, transparent and accountable. Technological developments affect various aspects of life including the justice system. The form of the influence of technological developments in the development of justice is the acceptance of electronic evidence as legal evidence up to the use of video conferencing as a trial medium. The use of

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video conferencing in court allows direct contact via video and sound between the litigants without having to have a physical meeting. (Ligasetiawan et al., 2022)

The goals of this modernization include speed, efficiency and effectiveness in providing services to justice seekers as well as to realize the transparency and credibility of the judiciary. The ultimate goal of the modernization process, among other things, is the impact on increasing the trust of justice seekers and court users in the judiciary. This is in line with the mandate of Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Powers, which states that the Court is obliged to assist justice seekers and try to overcome all obstacles and obstacles to realize a simple, fast and low-cost trial.

The rapid development of development certainly makes law always left behind both in terms of substance, structure and culture. The rules that are made, the institutions, the existing institutions and even the culture seem to be suitable for the time but not forever. The law is required to be a progressive law that can adapt itself. One example is in the field of criminal law, namely material crime, in this case the law of criminal procedure. The Criminal Procedure Code was passed in 1981, at that time the communication technology that was developing was still wire technology in the form of telephone or Telegram, while currently the use of the internet has become part of human daily life known as IOT (internet of things) which is used in all areas of life.

At present the Supreme Court has issued a Supreme Court Regulation (PERMA) concerning the Administration of Criminal Cases and Trials in Electronic Courts, namely PERMA No. 4 of 2020. This PERMA was issued by the Supreme Court with the intention of ensuring uniformity in the application of Criminal Procedure Law in a criminal case trial. PERMA 4 of 2020, which is a breakthrough from the Supreme Court to fill the void in the electronic trial procedural law, has actually clearly reduced the rights of suspects/defendants to legal aid. At least there are some indications to see it:

First: in the case that the preparation of PERMA 4 of 2020 does not involve Advocate Organizations at all, it is true that matters of making PERMA are the absolute authority of the Supreme Court, but when the PERMA which is made involves the legal interests of Advocates it is appropriate for Advocates in this case Advocate organizations are involved in its preparation. Moreover, with the Advocate Law, Advocates are included in law enforcement elements with the same position as other Law Enforcement Officials, namely Police, Prosecutors and Judges. Advocates are as one of the law enforcement agencies outside the government that is authorized to resolve peaceful disputes and others. (Bagir Manan, 2009)

Second: In the articles of regulation related to the phrase accompaniment/without assistance¹ of an advocate, while in the KUHAP itself there is no phrase without assistance of an advocate. When a criminal case the suspect/defendant chooses not to be assisted by an advocate, it becomes his own decision and his own policy, while the Criminal Procedure Code still provides provisions regarding legal assistance.

The right to obtain legal assistance at every level of examination is also part of the guarantee for the fulfillment of the right to prepare a defense for the suspect/defendant. The existence of guarantees for the protection of human rights in criminal procedural regulations has an important meaning, because most of the series of criminal procedural processes lead to human rights restrictions such as arrest, detention, search, confiscation and punishment. protection of the nobility of human dignity. (Rohman et al., 2017)

The condition and quality of the implementation of the defendant's rights in criminal trials in Indonesia is still not optimal. One of the defendant's rights that is often violated is the right to legal representation. Even though the law provides for the right to legal assistance, in reality there are still many defendants who do not get access to adequate legal assistance. Yahya Harahap said that until now in law enforcement in Indonesia, almost 80% of criminal cases are investigated without the assistance of a legal adviser. This condition is clear evidence of violations of the suspect's human rights that have occurred since the beginning of the investigation (Kaligis, 2007)

Based on data recapitulation of online trials since March 30 2020, there have been 179,912 online trials in general criminal cases. Meanwhile, research conducted by LeiP concluded that there were many objections from advocates regarding the implementation of electronic trials where the defendant attended an electronic trial without being accompanied by a legal adviser. This can happen because the defendant's position is in the prison/remand center where the prison/remand center places restrictions on visits for anyone to prevent the spread of Covid-19. In

addition to these objections, according to LeIP, advocates are also still questioning the guarantee of fulfilling the right to a fair trial that can be adopted in electronic criminal trials. (Triantono, n.d.)

Based on practice regarding the issue of Legal Assistance in electronic trials during a pandemic, it can be divided into 3 (three) conditions, namely:

1. Advocates cannot meet with the accused
2. The Advocate is in a different place from the Defendant
3. Personal communication between the Advocate and the Defendant

Online trials themselves in relation to the right to legal assistance and assistance have of course drastically changed the way of communication between the accused and his legal counsel. There is very, very little research, perhaps even in Indonesia there has not been research on the impact of online trials on personal communication problems between clients and their legal counsel. The use of online trials allegedly makes personal communication between clients and their legal advisors ineffective, perhaps even more extreme, non-existent. The fundamental question is whether online trials actually eliminate or reduce the rights of defendants who have received constitutional guarantees, whereby legal advisers should be essentially without restrictions to communicate with their clients. Direct personal communication between attorney and client must be established and maintained for justice to be served.

Research Methods:-

This research is normative and empirical juridical research with a socio-legal approach (Ishaq, 2017). Primary data collection was carried out by interviewing sources determined through the snowball technique, while secondary data collection was carried out by library research (Alwasilah, 2002). The collected data is then processed through the stages of checking, tagging, compiling, and systematizing. The data that has been processed is then analyzed interactively, which consists of description activities and data reflection (Huberman, 1992).

Discussion:-

1) The Legal Context of Online Trials in Indonesia

The occurrence of the Covid 19 Pandemic throughout the world and also in Indonesia which is happening throughout the world has accelerated the process that has been carried out by the Supreme Court in the context of modern justice. E Court which was originally only for Civil Cases, Administrative Court and Religion/Jinayah then with PERMA 4 of 2020 Criminal cases also use a limited E Court. E-Court itself consists of: E Summon, E Filing, E Payment and E Litigation.

Whereas the term electronic trial (E Litigation) itself is actually part of the E Court system, but the general public and cloud generalize trials in the context of E Litigation as E-Court with various terms of online court (network trial), online trial, trial teleconference, conference video conference. The most appropriate use of the term Electronic Litigation (E-Litigation) translation in Indonesian is directly translated as an electronic trial as used in the PERMA title. However, in this writing, to facilitate understanding, whatever terminology is used, what is meant is electronic trials.

Teleconference media in criminal trials in Indonesia for the first time occurred at the South Jakarta District Court when former Indonesian President BJ. Habibie gave testimony from Germany with the accused Rahadi Ramelan in the case of misuse of Bulog funds . The trial process for this criminal case from the beginning was an ordinary procedure which was carried out as a direct trial at the Court, in this case the case was carried out at the South Jakarta District Court. Whereas one of the considerations of the panel of judges in this case stated that the use of teleconference technology as a solution for the benefit of the trial, especially for the examination of witnesses who cannot be presented at trial, where such information is very necessary to obtain material truth, so that its existence does not conflict with the Criminal Procedure Code. The public and the mass media immediately, including legal experts, immediately reacted to Habibie's questioning by teleconference. Several opinions pro and cons adorned the mass media after the trial, including issues related to legality issues, issues of procedural law violations, issues related to violations the rights of the accused.

It didn't just stop there after the trial with witness Habibie, the examination of witnesses using teleconference media was used in the trial of examining witnesses in other criminal cases, for example the Abu Bakar Baasir case.

Some of the characteristics of this pre-pandemic trial are:

1. The basis is the Criminal Procedure Code, implementation by the determination of the judge.
2. Facilities and infrastructure are third parties.
3. Basic considerations seek material truth.
4. The reason is that the witness is not in Indonesia, and the witness' statement is very necessary for the case statement.
5. Only at the stage of proving the examination of witnesses.
6. Does not involve all IJCS, only the Indonesian Embassy.
7. The perpetrators of the trial were only witnesses who were not in the courtroom.
8. Using a special application.
9. At the request of the accused.

Based on practice, it can be concluded that there are several advantages and advantages of online trials, quoted from an article entitled Benefits & Disadvantages of Zoom Court Hearings, at least the advantages of online trials are: reducing travel time, saving money, convenient for everyone. Lower the spread of Covid-19 , while the weaknesses and drawbacks are: Lack of control, technical difficulties, confidentiality, and Limited media and public access.

The next development is that the Supreme Court issued PERMA 4 of 2020, as a reaction to the Covid-19 pandemic in Indonesia. The existence of PERMA 4 of 2020 makes the entire criminal case trial process carried out electronically, all processes from the initial registration of the case to the decision ceremony are all regulated under the name of Case Administration Regulations and Procedures for Electronic Criminal Case Trials.

The characteristics of electronic trials after the issuance of PERMA are:

1. Based on the Criminal Procedure Code, trial techniques follow PERMA.
2. All facilities and infrastructure are independent APH.
3. The cause for fear of the spread of Covid.
4. At all stages (from registration to decision).
5. Involve all ICJS.
6. Trial perpetrators varied their presence in participating in trials.
7. Use the zoom meeting app.

Online trials themselves in relation to the right to legal assistance and assistance have of course drastically changed the way of communication between the accused and his legal counsel. It is alleged that the use of online trials has made personal communication between clients and their legal advisors ineffective, perhaps even more extreme. The fundamental question is whether online trials actually eliminate or reduce the rights of defendants who have received constitutional guarantees, whereby legal advisers should be essentially without restrictions to communicate with their clients. Direct personal communication between attorney and client must be established and maintained for justice to be served.

Internationally, the rules related to legal aid are known as the Miranda Rule, In the Criminal Procedure Code itself the right to legal aid is regulated in the provisions of Article 56 paragraph of the Criminal Procedure Code, although on the one hand the Criminal Procedure Code regulates the obligation for legal aid but on the other hand it states that until now in law enforcement in Indonesia, almost 80% of criminal cases are investigated without assistance. Law advisor. This condition is clear evidence indicating a violation of the suspect's human rights that has occurred since the beginning of the investigation (Kaligis, 2007) . A study that was conducted at Class 1 A Padang District Court, obstacles for defendants in obtaining legal aid in the jurisdiction of the Padang Class IA District Court are the imbalance between the number of justice seekers and advocates or legal aid providers, the number of legal aid providers is lacking, the process for obtaining legal aid it is difficult, the obstacles that we encounter during the process of assisting the accused are difficulties in communicating with the accused, financial or funding constraints, due to the need for funds or funds to summon expert witnesses in examining witnesses in criminal cases. (Laksana, 2021)

Even though there are consequences of not having legal assistance for suspects/defendants in the process of investigation, prosecution or trial, then based on the concept of the Miranda rule, investigations and trials can be considered invalid or null and void.

Initially, the matter of legal aid was regulated in several articles in the *Herziene Indische Regulation (HIR)*. These legal aid arrangements are part of legal service activities. Specifically, arrangements regarding legal services for groups of people who can't afford it, in the sense of being unable to pay court fees and honoraria for advocates are regulated in Article 237 HIR through Article 242 HIR and Article 250 HIR.

Article 237 HIR to Article 242 HIR regulates requests for litigation in court without paying court fees. Meanwhile, Article 250 HIR specifically regulates provisions regarding the right to obtain legal services free of charge for those who are poor who are involved in criminal cases.

The definition of "legal aid" in Law Number 18 of 2003 is narrower than that described above and what is meant in the Criminal Procedure Code. According to Article 1 number 9 of Law Number 18 of 2003, what is meant by legal aid is legal services provided by advocates free of charge to clients who can't afford it.

In the Criminal Procedure Code, a person who provides legal assistance is not referred to as an advocate, but is called a legal adviser. The definition of a legal adviser according to article 1 number 13 of the Criminal Procedure Code, is a person who fulfills the requirements determined by or based on law to provide legal assistance. (Sudarto, 1997)

In its development, legal aid arrangements have also been regulated in various forms of regulations ranging from laws to decrees. As explained in Article 35, Article 36 and Article 37 of Law Number 14 of 1970 concerning Main Provisions of Judicial Power along with their amendments in Law Number 35 of 1999 confirms that everyone involved in a case has the right to obtain legal assistance. whether in criminal or civil cases. (Ramelan, 2006)

At present the Supreme Court has issued a Supreme Court Regulation (PERMA) concerning the Administration of Criminal Cases and Trials in Electronic Courts, namely PERMA No. 4 of 2020. This PERMA was issued by the Supreme Court with the intention of uniform application of Criminal Procedure Law in a criminal case trial, As is known before this PERMA was issued, there was an MOU signed by the Supreme Court, the Attorney General's Office and the Ministry of Law and Human Rights of the Republic of Indonesia (KEMENKUMHAM RI) signed Cooperation Agreement No. 402/DJU/HM.01.1/4/2020, no. KEP.17/E/Ejp/4/2020 and No. Pas-06.HH.05.05 of 2020 concerning Conducting Trials via Teleconference (Suriani & Ismail, 2020). The MOU is a response to the impact of the spread of covid, which has disrupted the course of trials, while trial cases must continue to be carried out bearing in mind that many prison terms will expire while Correctional Institutions and Detention Centers do not dare to release detainees to attend trials at Courts because of the risk of contracting Covid-19.

The implementation of criminal trials must be based on legal principles that cannot be violated, including the implementation of online criminal trials. When it comes to the principles of Criminal Procedure Law, there are several principles that cannot be fully applied in online criminal trials, such as the principle of the defendant being present at the trial, the right to obtain legal assistance, trials that are open to the public, the principle of examining judges orally and directly. (Adisti et al., 2020)

Basically the ultimate goal of the criminal justice system is due process of law as a legal process that is fair and impartial, appropriate and constitutes a correct judicial process, which has gone through existing mechanisms or procedures, so that substantive conditions can be obtained (Tampi et al, 2021)

The Importance of Right to Legal Assistance in Trials

The principle of equality before the law is a manifestation of the rule of law (*recht staat*), the application of this principle requires equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*). In essence, the elements inherent in the principle of equality before the law mean equal protection before the law and equal justice before the law. (Lilik Mulyadi, 2010)

Equal treatment must not only be interpreted in dealing with suspects/defendants who are different in position or wealth, but must be more than that. This principle is similar to that contained in Article 6 and Article 7 of the Universal Declaration on Human Rights (UDHR), and Article 16 of the International Covenant on Civil and Political Rights (ICCPR). Therefore, understanding the term "same" means that it is mandatory to avoid discrimination based on "race, color, sex, language, religion, political or other opinion, national or social, origin, property, birth or other status." (Sunardi & Wijaya, 2011)

In practice, the application of the principle of equality before the law as mandated by the constitution has not been implemented properly. This is because it is difficult to position the law fairly in a different social condition in society. Social inequality, both from political, economic and legal aspects, is very visible in society.

Social differences greatly affect the process of law enforcement, differences in social status between the poor and the rich and between the weak and those in power, are very decisive in obtaining access to justice. Thus, the term appeared that "the law is only sharp downwards and blunt upwards". or in kuti signs "sharp downwards", but "not upwards". This term has a meaning as a satire (majas of cynicism) indicating that justice in this country punishes the lower middle class more sharply than those in power and businessmen. Justice is a basic need for humans which is always coveted by everyone, whether rich or poor. not infrequently it is used as a means to oppress the poor. This situation eventually creates the perception that law is only for the rich and not for the poor. (Bambang Sunggono and Aries Harianto, 1994)

As a basic need in human life, it is only natural that efforts are made to equalize access to justice and fairness for every member of society. If all this time the rich are content enough to taste the sweetness of justice, on the other hand the poor are getting further away from justice, then it is time for this situation to end. This means that justice must be obtained by everyone equally, without distinguishing between the poor and the rich.

Legal aid for the poor is the answer to social inequality in obtaining access to justice, so that equality before the law according to the mandate of the constitution can be implemented properly. Legal aid is believed to be one of the means and efforts to create a fair trial in the criminal justice process. The achievement of legal objectives, namely the creation of justice, is closely related to the implementation of free legal aid programs provided to the community, especially the less fortunate.

Once the importance of legal aid in the context of realizing an honest and fair trial (fair trial), legal aid is accommodated in various laws. Article 18 paragraph (4) of the Human Rights Law stipulates that: "Every person under investigation has the right to receive legal assistance from the time of investigation until a court decision has obtained permanent legal force". Furthermore, in Article 56 paragraphs (1) and (2) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Law), it is emphasized that: "Every person who is involved in a case has the right to obtain legal assistance". In paragraph (2) it is stated that "the state bears the costs of cases for justice seekers who cannot afford it".

Realizing an honest and fair criminal trial, in the criminal justice process several principles of criminal procedure law are adhered to as contained in the provisions stipulated in Articles 50 to 64 of the Criminal Procedure Code which can be concluded as part of the rights of suspects or defendants. Among the rights of a suspect or defendant is the right to obtain legal assistance from legal counsel which can be given at every level of examination and in the framework of equal distribution of justice for everyone (equality before the law), which is carried out quickly, cheaply and simply. This is even more complex if the party dealing with the law holds the status of the poor. On the one hand, the poor's access to justice (access to justice) is vulnerable to being neglected or deliberately ignored. (Chrisbiantoro, et. Al, 2014)

Providing legal assistance to suspects or defendants apart from being the rights of suspects or defendants, is also one of the efforts for suspects or defendants to gain access to justice and obtain justice from an honest and fair trial. This is in accordance with the purpose of legal aid regulated in Article 3 of Law Number 16 of 2011 Concerning Legal Aid (hereinafter referred to as the Legal Aid Law) which states that the purpose of legal aid is to guarantee and fulfill the rights of Legal Aid Recipients in obtaining access justice.

Taking into account the purpose of legal aid mentioned in Article 3 of Law Number 16 of 2011 concerning Legal Aid, it can be said that the purpose of legal aid is no longer based purely on charity and humanity. More than that, the provision of legal assistance, especially to the less fortunate is a right that must be obtained and given to every citizen in every law enforcement process for the sake of upholding justice. According to Muladi and Barda Nawawi Arief, the purpose of providing legal aid like this, citing Cappelletti, is that it is difficult to determine clearly the purpose of legal aid programs in developing countries. (Agustina et al., 2021)

The protection and enforcement of human rights is regulated in Article 27 paragraph (1), the 1945 Constitution of the Republic of Indonesia which states: Every citizen is equal before the law and government and is obliged to uphold the law and the government without exception.

The purpose of legal aid (Agustina et al., 2021) in a narrow sense leads to the objectives of the Prisoners Aid Society which states:

- a. Assist in solving legal and social problems faced by lawbreakers.
- b. Helping to raise awareness of the law of justice for lawbreakers
- c. Assist correctional management in its efforts towards achieving social integration between the wider community and convicts.

The purpose of legal aid in a broad sense apart from teaching matters contained in the objective of legal aid in the narrow sense can be divided into several parts:

- a. Building a unified national legal system;
- b. The realization of human rights protection
- c. Making legal breakthroughs that can lead to just social change;
- d. Community empowerment and strengthening of their rights to law and human rights.

It is clear that the connection between human rights and law has been spelled out, that the government through its statutory regulations must guarantee the protection of human rights, where human rights can also be translated as the highest rights, for each individual in society which is assumed to be equal to the sovereignty of the individuals concerned. The goal is that these regulations can fulfill the ideals of justice as a manifestation of people's sovereignty. (Nasution, 2014)

Every citizen has the same position before the law without exception which includes the right to be defended (access to legal counsel), equal treatment before the law (equality before the law), justice for all. Protection of human rights (HAM)) is given to everyone, including people who are suspected and or have been proven to have committed a crime. To a person who is suspected of having committed a crime (as a suspect or defendant) attention needs to be given to his rights as a human being, because with his status as a suspect or accused of committing a crime, he will be subject to certain actions that reduce his human rights. Article 1 point 1 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid states that, Legal Aid is legal services provided by Legal Aid Providers free of charge to Recipients of Legal Aid. Juridically, it is written in Article 1 point (9) of the Law -Law No. 18 of 2003, that legal aid is the provision of legal services provided by advocates free of charge to clients who can't afford it.

The legal basis for providing legal aid is: (Pitriani, 2015)

1. Law Number 48 of 2009 Concerning Judicial Powers
2. Articles 54-57, 62 (1) (2) of the Criminal Procedure Code and Chapter VII articles 69-74 of the Criminal Procedure Code
3. Law Number 16 of 2011 Concerning Legal Aid
4. Law Number 18 of 2003 concerning Advocates
5. Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning terms and procedures for providing Legal Aid and Distribution of Legal Aid funds.
6. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2013 concerning Procedures for Verification and Accreditation of Legal Aid Institutions or Community Organizations.
7. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 22 of 2013 concerning implementing regulations of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds.
8. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH- 03.HN.03.03 of 2013 concerning Amount of Fees.
9. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-02.HN.03.03 of 2013 dated 31 May 2013 concerning Announcement of Verification/Accreditation Results of the Implementation of Legal Aid Provision.
10. Implementing Instructions Concerning Supervision of Legal Aid.

3) The Impact of Losing the Right to Legal Assistance in Online Trials

As for the Criminal Procedure Code, it does not regulate the legal consequences of trials that do not carry out the obligations as stipulated in Article 56 of the Criminal Procedure Code, which can also be interpreted that it does not explicitly regulate what the legal consequences will be if the judge does not carry out his obligation to appoint legal advisers for the accused, even though the obligation is imperative in nature. so that in order to fulfill an obligation imposed on a person it cannot only rely on the awareness of legal subjects in carrying out their duties to carry out these obligations, but requires a legal consequence or legal implication that can be imposed if this is not carried out. Legal consequences are necessary so that the fulfillment of this obligation is not neglected so that it is unfortunate that with the unclear legal consequences or legal implications for the criminal justice process or legal sanctions against officials in authority for not carrying out the obligations as outlined in Article 56 paragraph (1) the Criminal Procedure Code formulates the word "compulsory" in this article loses its imperative nature.

Even though the Criminal Procedure Code does not regulate legal consequences for proceedings that do not carry out the obligations as stipulated in Article 56 of the Criminal Procedure Code, there are several Supreme Court jurisdictions that can be used as references in this matter, namely: Decision of the Supreme Court of the Republic of Indonesia Number 1565 K/Pid/1991 dated 16 September 1993 which basically states "if the conditions for an investigation are not met, such as when the investigator does not appoint legal advisers for the suspect from the start of the investigation, then the demands of the public prosecutor are declared unacceptable."

Decision of the Supreme Court of the Republic of Indonesia Number 367 K/Pid/1998 dated 29 May 1998 which basically states "that if the defendant is not accompanied by legal advisers at the investigative level then it is contrary to Article 56 of the Criminal Procedure Code, so that the Minutes of Investigation and indictment of the public prosecutor are null and void and therefore the demands of the public prosecutor cannot be accepted, even though the examination at the trial court is accompanied by a legal adviser."

Decision of the Supreme Court of the Republic of Indonesia Number 545 K/Pid.Sus/2011 which principally stated "that during the examination of the Defendant he was not accompanied by Legal Counsel, while the Minutes of Search and Statement of 15 December 2009 turned out to have been made by an official who did not commit the action but by another officer; therefore the Minutes of Examination of the Defendant, the Minutes of the Search are invalid and legally flawed so that the Prosecutor's Indictment made on the basis of the Minutes is also invalid and legally flawed." From the three jurisprudence mentioned above, it can be concluded and interpreted that if the Judge does not carry out his obligation to appoint legal advisers for the accused as in Article 56 paragraph (1) of the Criminal Procedure Code, the decision can be canceled.

4) Efforts to overcome the loss of the Right to Legal Assistance in Online Trials

The right to obtain legal assistance at every level of examination is also part of the guarantee for the fulfillment of the right to prepare a defense for the suspect/defendant. The function of legal advisors is to realize and enforce the legal rights of the litigants. (Jayadi, 2018) The conditions and quality of the implementation of the defendant's rights in criminal trials in Indonesia are still not optimal. One of the defendant's rights that is often violated is the right to legal representation. Even though the law provides for the right to legal assistance, in reality there are still many defendants who do not get access to adequate legal assistance. This is due to constraints of cost, accessibility, and a lack of understanding of these rights.

Some of the problems that hinder the implementation of legal aid for the community are (Triwulandari, 2020) :

- a) Normative Legal Framework for Providing Out-of-Work Legal Aid.
- b) Lack of Legal Awareness among the Poor.
- c) Access to Court is only a formality.
- d) Discrimination and Complicated Procedures in Legal Aid Funding.
- e) There is no Supervision in the Application of Legal Aid.

Talking about the legal protection given to each individual, the state has an obligation to be able to realize the implementation of a fair trial by guaranteeing the creation of a condition where each individual has the right to obtain justice. After the Amendment to the 1945 Constitution of the Republic of Indonesia, it was seen that there was a change in the organizers in the field of legal aid. Thus, the government made laws and regulations that regulate legal aid or Law Number 16 of 2011 concerning Legal Aid. Legal aid, whether in the form of case

assistance, legal consultation or legal counsel during trials, is still an institution that is not accessible to the community.

The state's obligation to provide legal assistance to suspects or defendants can be seen in the formulation of Article 56 of the Criminal Procedure Code which reads: (1) In the event that a suspect or defendant is suspected or charged with committing a criminal offense punishable by death or fifteen years or more or for those who are incapable who are threatened with imprisonment of five years or more who do not have their own legal counsel, the official concerned at all levels of examination in the judicial process must appoint a legal adviser for them; (2) Every legal adviser appointed to act as referred to in paragraph (1) provides legal assistance free of charge

One thing that becomes a dilemma, where the Law on Legal Aid requires providing free legal assistance to the poor from the State Budget and Regional Budget and in Perma No. 1 of 2014, the legal aid budget also comes from the local court budget.

Conclusion:-

In the ever-evolving digital era, information technology has changed various aspects of life, including in the legal world. In many countries, including Indonesia, online trials or online trials have become an increasingly common option in facing challenges such as time, distance and cost constraints. However, there are concerns related to how the rights of the accused are guaranteed in online trials, especially in relation to legal assistance. Legal assistance is a basic right that is guaranteed for the accused in undergoing a fair legal process. This right allows defendants to seek the assistance and advice of an experienced lawyer, who can help them understand the legal process, provide an effective defense and protect their interests and rights. However, in online trials, legal assistance can face new challenges. In this context, several things need to be considered to ensure effective legal assistance for defendants: among others, clear regulations, facilities and infrastructure, sources of funding and oversight.

The importance of the Right to Legal Assistance in Trials apart from being the right of suspects or defendants, is also an effort for suspects or defendants to gain access to justice and obtain justice from an honest and fair trial.

The impact of the loss of the Right to Legal Assistance in the Online Trial can be seen by the existence of Supreme Court jurisprudence which can be concluded and interpreted that if the Judge does not carry out his obligation to appoint legal advisers for the accused as stated in Article 56 paragraph (1) of the Criminal Procedure Code, it can result in the cancellation of the decision.

Efforts to overcome the loss of the Right to Legal Assistance in Online Trials is to make good regulations for legal assistance in online criminal trial, must ensure that the rights of the accused are protected and that the judicial process runs fairly, as well as by increasing the legal aid budget, so that everyone involved in legal matters can obtain legal assistance. Good regulations for legal assistance in online criminal trial must reflect the principles of justice, protection of human rights, and the availability of fair access to legal assistance. These regulations must address challenges and ensure that judicial processes continue to run fairly and effectively in the digital age.

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