

# Open Court Principle in the Implementation of Courtroom Television in Indonesia and the Psychological Mind of Defendant

Suprapti<sup>1</sup>, Hartiwiningsih<sup>2</sup>, Widodo Trisno Novianto<sup>2</sup>

<sup>1</sup>Doctoral Student, Universitas Sebelas Maret, Surakarta, <sup>2</sup>Professor, Universitas Sebelas Maret, Surakarta,

<sup>3</sup>Associate Profesor, Universitas Sebelas Maret

## Abstract

This research aims to analyze and carry out theoretical criticism related to the open court principle, in the implementation of courtroom television in Indonesia. There are differences in the implementation of courtroom television in several cases in Indonesia. As in the case of Jessica Kumalawongso, the entire trial process, including the verification process, was broadcasted live. The research method is the social-juridical method. In such events, the presumption of innocence principle and the principle of witnesses being prohibited from communicating with each other were also damaged. The implementation of courtroom television affected the defendant's psychological condition. Thus, this research will conduct a theoretical study related to the open court principle in the implementation of courtroom television in Indonesia and its consequences.

**Keywords:** *Open Court, Courtroom Television, Psychological, Defendant, Principle*

## Introduction

Screening of court proceedings via television or what is known as courtroom television shows the influence of information technology advantages in the legal world. [1] Until now, there is no definite definition of the term courtroom television, but in his book, Paul Lambert states that courtroom television is "...one of central concerns in relation to television courtroom broadcasting is that television cameras or television operators will distract the various people who are required as part of the courtroom process. This includes witnesses, the jury, judges, lawyers, and court staff." [2]

Screening of criminal case trial proceedings has also taken place in America, namely courtroom television of the O.J Simpson case in 1994. [3] Courtroom television is also carried out in Indonesia, in the case of a planned murder trial with cyanide coffee. The defendant was Jessica Kumala Wongso and this event reaped a lot of pros and cons. Also, a courtroom television was held for the blasphemy case against the accused Basuki Tjahaja Purnama or Ahok (ex governor of Jakarta Special Territory).

The implementation of courtroom television is inseparable from the discussion regarding the open court principle. Also, the application of courtroom television certainly has various consequences. Another interesting thing about it is the independence of judicial power in deciding a case amid the multiple public perceptions of the trial process, which is broadcasted live on television. [4] As is known, the truth should not influence a judge to shift their views according to the public or social trust. "Judges are accountable to God, not to social trust." The magnitude of the judges' responsibility to God and the important role of enforcing justice in the society require the realization of judicial power freedom from various influences, especially public opinion. [5]

That's why what is more important is how the power of the media should be used to guard the people, and the media is also expected to have a conscience (the conscience of the press). [6] Courts in the UK also apply the open court principle. *English criminal trials are held in public. A fundamental principle of the law of many modern societies is that justice should be done in public before an open court.* An open court principle is one way to maintain public confidence. [7] Another purpose of the open court principle is "to protect trial fairness

by preventing abuse judicial authority.”<sup>[8]</sup> This certainly affects the court process and it indirectly impacts the evidence. So, the manifestation of the criminal law procedure’s function to seek and to find material truth or to come close to material truth is null and void.<sup>[9]</sup>

The trial process, as a process of law enforcement in the context of prosecution must be independent. It is part of the judicial power duty. The independence, after this referred to as the independence of judicial power, is a complex idea, not merely as a value, but also a useful instrument to pursue other higher values, namely the rule of law. <sup>[10]</sup> Independence implies giving authority to a judiciary that is free from interference from any party and is also free from the influence of other powers.<sup>[11]</sup>

The application of open court principle in the era of information technology development has shifted and may cause multi-interpretations. As a result, there is the trial by the press, which becomes a consequence of this open court principle. It has the potential to violate other principles, such as the principles of legality, the defendant’s presumption of innocence of, and the principle of where witnesses may not communicate with each other. Also, the implementation of the courtroom television is still different in each court in Indonesia. This is because the trial broadcasting permit policy is returned to each related court.

It is undeniable that openness by conducting broadcast in court is a demanded for transparency. It is an effort to maintain the integrity of judges as law enforcers, and also to control the proceedings of the judicial process. However, if this openness turns out to have consequences that damage other principles and other rights in a fair trial, <sup>[12]</sup> including the condition where the defendants are disturbed as they receive the public’s judgement before receiving verdict, there needs to be an idea to regulate the implementation of the broadcasting process by the mass media in the judicial process.

Based on the explanation above, it becomes a crucial question for sure, how the meaning of the open court principle shifted in the era of information technology development and the consequences of applying courtroom television in Indonesia. This is the urgency of the research.

## Research Method

The method used in this paper is a legal research

method. This research will explain the shift in the meaning of the open court principle in the era of information technology development and the consequences of the implementation of courtroom television in Indonesia, so that it can find a solutive regulatory model related to courtroom television. This study uses a statutory approach, a conceptual approach, a comparative approach, and a case approach.

## Results And Discussion

### 1. Conceptual Meaning of the Open Court Principle

The principles of law are the basics or directions (*richtlijn*) in the formation of positive law. Regarding that, Meuwissen explained, <sup>[13]</sup> “From that principle, positive law obtains its legal meaning. It also contains criteria by which the quality of the law can be assessed ... the code can be understood against the background of a principle ... a principle that underlies”.

When we come to the discussion of the law principles, we also discuss the most important and the most essential elements of the rule of law. It is reasonable that the principle is interpreted as the heart of the legal regulations.<sup>[14]</sup> Because the legal principle holds ethical requirements, the legal principle is a bridge between the legal regulations and social ideals and the ethical views of the people. So, it can be said that through this legal principle, the rule of law changes its nature and becomes part of the ethical level. <sup>[15]</sup>

Fuller put forward an opinion to fathom whether we can talk about the existence of a legal system. The measure is mentioned in eight principles which he called the principles of legality. Fuller himself said that the eight principles he proposed were actually more than just requirements for the existence of a legal system, but instead, he gave qualifications to the legal system, as a legal system that contained an absolute morality.<sup>[16]</sup>

If we examine, there is a contradiction between the application of the open court principle which is achieved through courtroom television, with the presumption of innocence and also how the defendant’s psychological condition is affected by the public’s judgement. The absence of laws related to the courtroom television implementation subsequently violates the values of the other. The presence of courtroom television’s excessive reports on judicial cases in the process of the trial also has an indirect impact on judges, witnesses, and defendants.

It is what puts pressure on the psychological burden on the defendant regarding the judge's decision.

Besides contradicting the principle of the presumption of innocence, the implementation of courtroom television that has no clear boundaries will also conflict with other provisions. It is contrary to the regulations governing the protection of witnesses and victims to maintain their security, safety, and comfort in providing their statements in the court.<sup>[17]</sup> The domino effect of courtroom television can cause law enforcement to be hampered. It may even be dangerous for the defendant and their psychological mind.

## **2. The Shift in the Open Court Principle Meaning in Criminal Law Procedures**

Criminal law procedure has principles which accompany the act. One of them is the open court principle. Basically, in a criminal case, an open trial is the right of the defendant, namely the right to be tried in a trial that is open to the public. Everyone can see and monitor the proceedings of the trial.<sup>[18]</sup> The law requires the trial to be conducted not only by the parties concerned but also by the public. The purpose is to create a fair trial, to avoid arbitrary or deviant hearings so that the trial process becomes a media of educational prevention. It may also give information to the general public<sup>[19]</sup>.

The practice of courtroom television in the narrow sense is by broadcasting the proceedings of the trial directly, whether it is a translation by the press in interpreting the open court principle or not. [20] As a principle, of course, the sentence has an intense philosophical foundation.. The nature of technology in a mediating position changes from the quality of transparency in the relationship to the quality of opacity in the hermeneutical relationship.<sup>[21]</sup>

The development of courtroom television in response to the demands for openness in the era of information technology development turned out to be a boomerang for the parties in the trial. Judges, defendants, witnesses, and victims were targeted by the community's opinion and the media to be discussed during the trial process. Public enthusiasm about the trial's direct broadcast became very high. These methods of press reporting can lead to "trial by press or trial by masses opinion" and because this contradicts the principle of presumption of the defendant's innocence, where a person must be deemed as not guilty before a definitive ruling from an

unauthorized public judge.<sup>[22]</sup>

Although sometimes the coverage made by the mass media related to a case is not entirely true, with the continuous reporting through various media, it can ultimately lead to public opinion and make people believe that the defendant must be guilty.<sup>[23]</sup> This phenomenon is also influenced by what is called the post-truth, which can turn a thousand lies into a truth<sup>[24]</sup>. At this stage, justice begins to experience siltation. Justice only becomes a textual narrative and is separated from the context. Justice brings about simplification, which reduces various details of the value it contains, because it is covered by the post-truth reality. <sup>[25]</sup> As an illustration, there is an artificial reality in the tangible court, in the emergence of various kinds of public opinion regarding negative opinions created by the mass media related to the defendant which affects the truth value of the community, that the defendant must be convicted.

## **3. Ideal Concept of the Courtroom Television Implementation in Indonesia**

Openness is a human right and is a means to maintain the spirit and integrity of the judiciary. The government and all law enforcement devices have committed to carrying out justice based on the open court principle. <sup>[26]</sup> With regard to the process of applying the open court principle in America, the United States also did not allow coverage in any form in the courtroom, but in 1994 in the O.J. Simpson case was broadcasted due to the demands from public to access the progress of the case. Finally, the court conducted courtroom television for the O.J. Simpson's case.<sup>[27]</sup> But, the trial process which was broadcasted live by the mass media was apparently able to lead the opinion of the public that O.J. Simpson was innocent. The public opinion was able to influence the decision of the jury who has the authority to determine someone guilty or innocent. On October 3, 1995, O.J Simpson was found not guilty.<sup>[28]</sup>

Therefore, in the implementation of the principle to open to the public in Poland, the practice of courtroom television is common. The courtroom television project is referred to as the Re Court Project. The difference between the implementation of courtroom television in Poland and other countries is that the witnesses who are asked for witness evidence by judges can directly see the recording of themselves live on the live broadcast appearance screen.<sup>[29]</sup> Based on the implementation of courtroom television in the United Kingdom, America,

and Poland, it can be concluded that they apply strict rules and restrictions for the application of courtroom television for trial processes. These strict limits are aimed to maintain a noble court spirit, to minimize the misuse of recording results, and to protect the identity and security of all parties in the court.

Based on comparison with several countries, Indonesia must also make strict rules and limits related to the reporting and broadcasting mechanism of the trial process that is open to the public. So, the authors provide recommendations for setting courtroom television in Indonesia as follows: The strict regulation on the mechanism of courtroom television in Indonesia is expected to be able to prevent and minimize various interventions in the trial process. It is hoped to guarantee the fulfillment of the presumption of innocence principle, to protect the psychological mind of defendant from public judgement, and to protect the safety of the parties in the trial. These regulations are also aimed to create a fair trial.

### **Closing**

### **Conclusions**

The meaning of the open to the public trial principle underwent a change along with the development of the information technology era. At first, the meaning of 'open to the public' meant that the general public could attend and witness the proceedings in the courtroom. In its development, the public wishes to be able to witness the trial process anywhere, both inside and outside the courtroom, and also anytime. Then courtroom television came as an answer to the demands of openness in the trial process in the era of information technology development.

However, in its practice, the implementation of courtroom television in Indonesia, has various consequences. These consequences include broadcasting the trial process directly by the media and that the press can continuously create public opinion, which can then lead to trial by the press. It may also disturb the psychological condition of the defendant. In addition, the limitless courtroom television violates the defendant's rights and may disturb the principle of presumption of innocence. In fact, broadcasting the trial directly which highlights the parties in the trial also endangers the security of these parties, both directly and indirectly.

**Conflict of Interest : No**

**Ethical Clearence : Yes**

**Source of Funding : Authors**

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