STRENGTHENING THE IMPLEMENTATION OF E-COURT-BASED JUDICIARY AS A LEGAL PROTECTION IN THE IMPLEMENTATION OF E-LITIGATION-BASED TRIALS

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Abstract

E-Court has been implemented in all courts in Indonesia. However, among legal experts, implementing electronic-based trials (e-litigation) raises pros and cons, especially when parties must attend the trial. This situation is interesting and must be investigated immediately to create legal certainty. The issues that will be examined are: 1) the appropriateness of electronic trial arrangements (e-litigation) based on Supreme Court Regulation of the Republic of Indonesia Number 7 of 2022 dated October 10th2020, and 2) the form of strengthening the implementation of electronic trials (E-Litigation) in e-court. The research method used in this research is normative-empirical legal research, also known as applied law research. The data types used to study normative-empirical legal research are primary and secondary. The results show that 1) Electronic trial arrangements (e-litigation) based on the Supreme Court Regulation of the Republic of Indonesia Number 7 of 2022 concerning the Administration of Cases and Trials in Electronic Trial (e-litigation) are appropriate. However, this regulation still needs to be improved and strengthened so that the litigants as e-court users can obtain law enforcement and justice. 2) The

regulation of e-courts needs to be strengthened, as the law must absorb what the community wants in judicial practice. Policy strengthening regarding e-court can be carried out through a) amendments to the Judicial Powers Act, primarily related to regulations for the electronic announcement of decisions as a consequence of legal reforms; b) establishment of the law on the implementation of e-court and e-Litigation; c) establishment of a new Perma to strengthen Perma No. 7 of 2022.

Keywords: E-Court; E-Litigation; Judicial Power Act; Perma.

Introduction

Legal renewal during the development of information technology is inevitable and will continue to occur. As stated by L.J. Van Apeldoorn, progressive (futuristic) legal reform is carried out without eliminating the essence of the law because "law is the society" whose relations will create new regulations.[1] For this reason, legal renewal is carried out by establishing new laws and regulations, known as a legal substance, and by implementing instrumentation in law enforcement and law enforcement infrastructure, which in this case is information technology.[2]

The Supreme Court (MA) made the right breakthrough in law enforcement in Indonesia, especially in the judicial process, to respond to developments in information technology through e-courts.[3] E-court is an online service for Registered Users to register their cases and obtain an estimate of the downpayment of court fees, payment of cases, and summons made via electronic channels. The legal basis for e-court is the Supreme Court Regulation (PERMA) of the Republic of Indonesia Number 3 of 2018 concerning the Electronic Administration of Cases in Courts, which was then amended through Supreme Court Regulation Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts. On October 10th, 2022,

[1] L.J. Van Apeldoorn, Pengantar Ilmu Hukum (Jakarta: Pradya Paramita, 1986), p.18.

[2] Panji Purnama, "Penerapan E-Court Sebagai Salah Satu Cara Mewujudkan Integrated Judiciary Pada Sistem Peradilan Pidana Indonesia" (Universitas Indonesia, 2021), p.1.

[3] Interview with Prof. Zainal Arifin Hoesein, S.H., M.H., on 23 August 2022 at the Hall of the Faculty of Law, As-Syafi'iyah Islamic University

the Supreme Court again improved e-court regulations through PERMA Number 7 of 2022 Amendments to Supreme Court Regulation Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts. With E-court, litigation processes, such as *replik* (Claimant's reply to the defense), *duplik* (Defendant's answer to the reply to the defense), Summary submissions by the parties, Evidentiary hearings, and decisions can now be carried out online (e-litigation). In 2020, we were dealing with the COVID-19 pandemic that hit the world. As a result, human mobility is limited to reduce the transmission rate of the virus. The presence of PERMA regarding e-court during a pandemic is a solution for justice seekers because law enforcement can still be carried out remotely even if the sky falls *(fiat justitia ruat caelum)*.[4]

In addition, e-court is part of implementing the principles of justice in Indonesia, which are regulated and outlined in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, which reads, "Judgment is carried out simply, quickly, and low cost." Nonetheless, implementing the e-litigation process raises debates among legal practitioners and legal experts because e-litigation tends to be closed and cannot be directly witnessed by the public. Open access to the trial process aims to allow the public to supervise the proceedings, listen, and scrutinize the legal facts presented at the trial.

Article 13, paragraph (1) of Law Number 48 of 2009 concerning Judicial Power requires that trial hearings be open to the public unless the law stipulates otherwise. However, electronic trials seem to be closed, as in the case of announcing decisions and are being debated because they are deemed not following Article 13 paragraph (2) of the law, which stipulates that court decisions are only valid and have legal force if pronounced in a hearing open to the public. Paragraph (3) of the same article explains that the failure to fulfill paragraphs (1) and (2) will result in the decision being null and void. The implementation of e-court-based justice answers the demands of technological developments. However, the suitability of the e-litigation implementation with the Law on Judicial Power is still being questioned. The research method used in this research is normative-empirical legal research, also known as applied law research. The approach used in

[4] Morton Deutsch, "Equity, Equality, and Need: What Determines Which Value Will Be Used as the Basis of Distributive Justice?," *Journal of Social Issues* 31, no. 3 (July 14, 1975): 137–149.

normative-empirical legal research is a modification of the approach used in normative legal research with empirical legal research. The types of data used to study normative-empirical legal research are primary data and secondary data. Primary data in this research is in the form of interviews conducted by the author with parties related to this research, among others, interviews with Judges at District Courts, Religious Courts, Military Courts, State Administrative Courts, FGDs with academics, and questionnaires from advocates who conduct trials through the e-court system and e-litigation as E-Court registered users. Secondary data in this research is books, statutory regulations such as Supreme Court Regulation Number 7 of 2022, journal, etc.

Therefore, there are several formulations of the problem that need to be examined through this study: (1) the appropriateness of electronic court arrangements (e-litigation) based on the Supreme Court Regulation of the Republic of Indonesia Number 7 of 2022 concerning Administration of Cases and Trials in Electronic Courts (e-litigation), and (2) the form of strengthening the implementation of electronic trials (e-litigation) in e-court trials.

Electronic Court Arrangements (E-Litigation) Based on The Supreme Court Regulation of The Republic of Indonesia Number 7 of 2022

1) Judicial Power

Judicial Power is an independent state power exercised by a Supreme Court and judicial bodies under it to administer justice to uphold law and justice based on Pancasila (Five Principles of the Indonesian State) and the 1945 Constitution of the Republic of Indonesia for the implementation of the State Law of the Republic of Indonesia. An integrated justice system is structured to realize independent judicial Power and a clean and authoritative judiciary. The principles of administering Judicial Power are: a. Trials are conducted "FOR JUSTICE BASED ON BELIEF IN THE ONE AND ONLY GOD"; b. The state judiciary implements and enforces law and justice based on Pancasila; c. All courts throughout the territory of the Republic of Indonesia are state courts regulated by law; d. Trials are carried out, quickly, and at a low cost. Judicial Power is regulated in the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

The Supreme Court is the Supreme State Court of all Judiciary, which carries out its duties regardless of government influence and other influences. The Supreme Court has the authority to a. adjudicate at the cassation level against decisions rendered at the final instance by courts in all courts subordinate to the Supreme Court unless the law determines otherwise; b. examine statutory regulations under the law against the law; c. other powers granted by law. The laws governing the Supreme Court are: a. Law of the Republic of Indonesia Number 14 of 1985 concerning the Supreme Court; b. Law of the Republic of Indonesia Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court; c. Law of the Republic of Indonesia Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.

Judicial bodies under the Supreme Court include:

a. General Court

The general court has the authority to examine, try, and decide on criminal and civil cases by the provisions of laws and regulations.

The laws governing general courts are: 1) Law of the Republic of Indonesia Number 2 of 1986 concerning general courts. 2) Law of the Republic of Indonesia Number 8 of 2004 concerning the First Amendment to Law Number 2 of 1986 concerning General Courts; 3) Law of the Republic of Indonesia Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts.

b. Religious Court

The Religious Courts have the authority to examine, try, decide, and settle cases between Muslim people in accordance with the provisions of the legislation.

The laws governing Religious Courts are: 1) Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts, 2) Law of the Republic of Indonesia Number 3 of 2006 concerning the First Amendment to Law of the Republic of Indonesia Number 7 of 1989 concerning Judicial Religion, 3) Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to the Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts.

c. Military Court

The Military Court has the authority to examine, try, and decide cases of military crimes in accordance with the provisions of laws and regulations.

The law governing Military Courts is Law Number 31 of 1997 Concerning Military Courts.

d. State Administrative Court

The State Administrative Court has the authority to examine, try, decide, and resolve state administrative disputes in accordance with the provisions of laws and regulations.

The laws governing the State Administrative Court are: 1) Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court, 2) Law of the Republic of Indonesia Number 9 of 2004 concerning Amendments to the Law of the Republic of Indonesia Number 5 Year 1986 concerning the State Administrative Court, 3) Law of the Republic of Indonesia Number 51 of 2009 regarding the Second Amendment to the Law of the Republic of Indonesia Number 5 of 1986 regarding the State Administrative Court.

Figure 1. Judiciary in Indonesia

2) Electronic-Based Court (E-Court)

The trial process prior to the entry into force of the e-court always takes place face to face, from registration to the announcement of the decision in court. In this case, all parties must appear before the court, which is time-consuming and costly. As an embodiment of the principles of fast, simple, and low-cost trials, the Supreme Court issued Regulation Number 3 of 2018 concerning the Administration of Cases in Electronic Courts (e-court). However, this regulation does not yet regulate the conduct of electronic trials. For this reason, the Supreme Court issued Supreme Court Regulation Number 7 of 2022 concerning the Administration of Cases and Trials in Electronic Courts. As a result of the issuance of this latest regulation, the Supreme Court made a breakthrough in the e-court application by adding an e-litigation menu (electronic trial).

Supreme Court Regulation (PERMA) Number 7 of 2022 introduces electronic trials, a series of processes of examining and adjudicating cases carried out by the court with the support of information and communication technology. This regulation allows judicial processes to be carried out online through the e-litigation application. This electronic system is applied to case registration and payment of court and summons fees and electronic (online) trials. Thus, sending trial documents such as replik (Claimant's reply to the defense), duplik (Defendant's answer to the reply to the defense), summary submissions by the parties, evidentiary hearings, and decisions can be done electronically. Through the Decree of the Chief Justice of the Supreme Court, Number 129/KMA/SK/VIII/2019 dated August 13th 2019 concerning Technical Instructions for Administration of Cases and Trials in Electronic Courts Jo. Circular Letter of the Secretary of the Supreme Court Number 1280/SEK/HM.02.3/8/2019 dated August 23rd 2019 concerning Notification of Implementation of E-court (e-litigation) and Release of First Level Case Tracing Information System (SIPP) Version 5.2.0. states that courts are required to implement trial features electronically through the e-court application. E-court is a service for Registered Users to register cases online, obtain an estimated down payment for a case, make payments, and fulfill summons via electronic channels (online).

The e-court system is structured as a facility and infrastructure to reduce case costs, such as fees for summons, attendance at *duplik* and

replik trials, evidentiary hearings, and decisions because the judicial process is carried out electronically.[5] The services available in the e-court application are e-filling (Online Case Registration in Court), e-payment (Online Case Fee Down Payment), e-summons (online Summons of Parties), and e-litigation. The application was made with several considerations, one of which is motivated by Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that: "The court helps justice seekers and tries to overcome all obstacles to achieving a simple, fast, and low-cost trial."

Through this application, the Supreme Court of the Republic of Indonesia seeks to answer 3 (three) main issues that have been faced by litigants in court: delay, access, and integrity. The use of information technology can minimize case handling time, reduce the intensity of parties coming to court, canalize parties' interaction with court officials, and prevent the public from lacking information and knowledge about courts.[6]

In the e-court system, e-litigation or trials are conducted electronically (online). In this electronic trial, documents such as claims, petitions, answers, *replik*, *duplik*, and conclusions are submitted electronically. Electronic trials are a series of processes of examining and adjudicating cases by courts with the support of information and communication technology.[7]

The trial process in e-litigation is carried out with the following process:

a) At the first hearing, mediation was carried out face-to-face in court. If the mediation is reported to be unsuccessful (failed), the trial will continue by asking the parties, especially the Defendant, for their consent to participate in the electronic (e-court) follow-up trial. If the parties agree, the judges will prepare a court calendar available in the SIPP application and integrate it into the e-court.
b) The court calendar will determine the following trial schedule:

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[5] Sekretaris Mahkamah Agung Republik Indonesia, *Rencana Strategis Mahkamah Agung Republik Indonesia 2020 – 2024*, (Sekretaris Mahkamah Agung Republik Indonesia: Jakarta, 2020), p. 68

[6] A.S. Pudjoharsoyo, *Arah Kebijakan Teknis Pemberlakuan Pengadilan Elektronik (Kebutuhan Sarana Dan Prasarana Serta Sumber Daya Manusia)* (Jakarta, August 13, 2019).

[7] Mahkamah Agung RI, *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik*, *Berita Negara Republik Indonesia Tahun 2019 Nomor 894* (Indonesia, 2019).

- The date of submission of answers, *replik*, *duplik*, and conclusions, submitted electronically (e-court);
- The date of submission of evidence from the parties (evidence of letters and witnesses), carried out in the courtroom before the Panel of Judges;
- The decision announcement is carried out in an open courtroom before the Panel of Judges or delivered via e-court.
- The court calendar must be in the case file to control the settlement of cases.

c) The panel of judges and clerks access the e-court account to receive case files. The case file is declared accepted if it is validated by Judges and can be accessed by the Defendant or Plaintiff for a response.
d) Even though e-court has been agreed upon, the evidentiary process is still carried out face-to-face in the courtroom.
e) PERMA allows decisions to be announced through e-courts. However, decision announcements are left to the judges to be carried out through e-courts or trials attended by the parties and the public.
f) If the Defendant does not agree to use the e-court, the panel of judges manually determines the schedule for the subsequent trial according to the procedural law that regulates it.
This condition will cause the effectiveness of the electronic trial process to be unable to be carried out. In practice, almost all litigants agree to use e-Court.
g) If the parties agree, then the trial will be conducted in e-litigation, in which the panel of judges will first make a court calendar and then it will be signed by the parties.
h) As for trials conducted through e-litigation, namely: answers, replicas, duplicates, conclusions, and reading of decisions.
i) For proof of letters and witnesses is done manually, by being present at the trial.

After the Supreme Court made improvements to PERMA, which was originally PERMA No. 1 of 2019 became PERMA No. 7 of 2022, there are regulations that were previously debated, now the following improvements have been made:

a) Article 4 PERMA No. 1 of 2019 Electronic trials apply to the trial process by submitting claims/ requests/ objections/ rebuttals/

resistance/ intervention along with their amendments, answers, *replik*, *duplik*, evidence, conclusions and pronouncements of decisions/determinations. Then perfected in Article 4 PERMA No. 7 of 2022 adds that the scope of appeals can be made via e-Court.

b) Article 24 paragraph (1) previously the judge/presiding judge pronounced the decision/decision electronically. At this moment, the Decision/Determination is signed using a Manual Signature by the panel of judges or judges and court clerks. Then it is explained further in paragraph (3) that currently the pronouncement of the decision is carried out by uploading a copy of the electronic decision into the SIP (its activities: the chairman of the panel uploads the text of the decision, then the Registrar matches the text of the decision with the signed decision with a manual signature, then the clerk signs the text decision electronically becomes a copy of the decision).

3) The place of the Supreme Court Regulation (Perma) in the hierarchy of statutory regulations

The complete hierarchy of laws and regulations in Indonesia is contained in Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, later amended by Law Number 15 of 2019 concerning the Formation of Legislation. In Article 7, paragraph (1) of Law Number 12 of 2011, the types and hierarchies of laws and regulations consist of:

a. The 1945 Constitution of the Republic of Indonesia
b. Decree of the People's Consultative Assembly
c. Act/Government Regulation in Lieu of Law (PERPPU)
d. Government Regulation
e. Presidential Regulation
f. Regional Regulation (Provincial Regulation and Regency/City Regulation).

Furthermore, Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011 stipulates that Other kind of Rules than as intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission established by

Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent. These laws and regulations are recognized as existing and have binding legal force as long as they are ordered by higher laws or regulations or are formed based on authority.

The Supreme Court is a judicial institution that exercises judicial Power, the first-tier institution in the Indonesian constitutional system (primary constitutional organs). Thus, the Supreme Court has the authority and functions mandated directly by the 1945 Constitution of the Republic of Indonesia and the Law. One of the powers possessed by the Supreme Court is the authority to make statutory regulations (Regelende Functie) which form a product of legal norms (rule-making Power) commonly known as Supreme Court Regulations (Perma).[8]

Therefore, if there is a legal deficiency or void regarding a matter in the course of justice, the Supreme Court has the authority to make regulations as a supplement to fill it. Thus, based on this Supreme Court Law, the Supreme Court has the authority to determine arrangements for settling a case that has not been or is not regulated in law.[9]

Perma is a statutory regulation with the following characteristics:

a. It is formed under the legislative authority of delegates;
b. It is formed within the scope of the "rule-making" process, not within the scope of "law-making";
c. It is complimentary
d. It is formed to fill a legal or statutory void;
e. It does not regulate the rights and obligations of citizens;
f. It regulates the procedural law for administering justice.

Thus, the Supreme Court Regulations in the hierarchy of Legislation in Indonesia have been recognized as having binding legal force as long as they are ordered by higher legislation or are formed based on authority. This recognition is stipulated in Article 8, Paragraph

[8] Budianto, Eldist, Daud Tamin, "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (PERMA) Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia," *Lex Administratum* VI, no. 3 (2018): 112–121.

[9] Agus Satory and Hotma, Pardomuan Sibuea, "Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara Materiil Sebagai Peraturan Perundang-Undangan," *PALAR (Pakuan Law Review)* 06, no. 01 (January 2020): 1–27.

(1) and Paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation.

Forms of Strengthening the Implementation of Electronic Trials (E-Litigation) in E-Court

Forms of strengthening the implementation of trials through electronics (e-litigation) in e-court trials are obtained from:

1. Judges and Judicial Registrars in Indonesia

a. West Jakarta District Court Judge

- West Jakarta District Court judge stated that the Perma that regulates e-court and e-litigation is appropriate and can be implemented. This Perma regarding e-court is to carry out the administration of justice as a result of technological developments. Legal renewal continues to follow the times. The West Jakarta District Court has implemented a Perma regarding e-court, which has been in effect since 2018.
- Even though the electronic announcement of the decision has been regulated in Perma Number 1 of 2019, in practice, it is left to the judges who examine the case. The electronicsubmissionofthedecisionmusthaveanagreementfromthepartiesatthetimeofestablishingthecourtcalendar.
- The Perma on electronic-based justice (e-court) and electronic trials (e-litigation) is appropriate and has been running well. If strengthening the Perma needs to be carried out, the proper form is a Perma which regulates more in-depth techniques for announcing decisions via electronic means.

b. Judicial Judge of the State Administrative Chamber of the Supreme Court of the Republic of Indonesia

- In principle, Perma Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts is appropriate and has been running well. The State Administrative Court has implemented the Perma. From the Application/Lawsuit registration until the trial, Answers, *Replik*, *Duplik*, and Conclusions are carried out via e-court. The evidentiary trial is carried out in the courtroom, and the decision is announced through the e-court.

- Announcement of the Decision through the e-court, as stipulated in the Perma, does not cause problems. The litigants can view the contents of the decision through the e-court application.

c. Registrar of the Jakarta Military Court

- E-court has not been widely implemented in Military Courts because Military Courts are under the Supreme Court, which exercises judicial Power regarding crimes committed by the military.
- However, to implement e-Court in Military Courts, the Decree of the Director General of the Military and Administration Agency No. 461/DJMT/Kep/8/2018 concerning Instructions for Implementation of Supreme Court Regulation Number 3 of 2018 concerning Electronic Administration of Cases in Courts Within the Military Judiciary Environment and Decree of the Director General of the Military and Administration Agency No. 460/DJMT/Kep/8/2018 Concerning Guidelines for Standard One Stop Service (PTSP) at the Main Military Court, High Military Court, and Military Court has been issued.

d. Tolitoli District Court Judge

The Tolitoli District Court Judge stated that very few cases were brought before the Tolitoli District Court. Therefore, electronic trials are still few. The electronic trial process follows Supreme Court Regulation Number 1 of 2019. The regulation is intended as a legal basis for the electronic administration of cases and trials at the court to support the realization of professional, transparent, accountable, effective, efficient, and modern case handling. The evidentiary trial is carried out under the applicable procedural law. Electronic announcement of decisions is still rare. In fact, according to the judge, it can be carried out as regulated in Article 26 of the Perma.

e. Judge of the Pandan Religious Court, Tapanuli, North Sumatra

- E-court system has been implemented at the Pandan Religious Court since the beginning of 2020, even though the Perma e-court regulations have existed since 2018,

namely with PERMA No. Administration of Cases and Trials in Courts Electronically, but has only been implemented since 2020.

- Electronic litigation (e-litigation) has been implemented at the Pandan Religious Court since the beginning of 2021. Of all the cases registered, only one (1) case has implemented e-litigation, this has happened because of the number of cases registered, only a few people use the services of Legal Counsel (Registered Users), while other users, many people who do not understand technology, so they find it difficult, so that until now they are still carrying out e-litigation socialization efforts, for this reason the trial is still being held manually or face to face between the parties.
- The trial process through e-litigation at the Pandan Religious Court has been carried out in accordance with PERMA Number 7 of 2022. The first stage was agreed upon by the court calendar up to the Answer, *Replik* and *Duplik* agenda, and orders to upload evidence in the form of documents that have been stamped (while the original document will be checked manually at trial), the verification is still done manually, then, the court calendar is rescheduled for the agenda for conclusions and the reading of the Decision.
- All judges at the Pandan Religious Court have maximally implemented e-Litigation, as stipulated by PERMA No. 7 of 2022, because the PERMA is procedural law in court. If the Plaintiff/Petitioner has registered by e-Court, after the trial for reading the lawsuit, prior to the response event, the Defendant will be asked for his approval for the e-litigation trial, if the Defendant agrees, then it will be continued according to the e-litigation rules. However, if the Defendant refuses, the trial will continue manually. At the time before the Defendant answers (given optional whether he is willing to trial in e-litigation or still face to face), and if he is willing then it will be explained, what stages will be accommodated in e-litigation, along with the court calendar (trial schedule) which will be signed by the parties and the panel of judges.

- The trial for the announcement of the decision has been carried out electronically, but there are records that it has not yet become legally enforceable. The electronic announcement of the decision is deemed by law to have been attended by the parties and carried out in a trial open to the public. It is due to the decision is announced through an e-court application that uses a public internet network. The Religious Courts will publish decisions handed down through the decision directory of the Supreme Court of the Republic of Indonesia on the day the decision is issued (one day publish).
- E-court and e-litigation system strongly supports the principle of easy, fast and low-cost trials, because it makes it very easy to access anywhere (there is an internet network) without having to visit the court, there is also a manual book. In terms of speed, the parties do not have to queue for a long time at the registration stage, trials can also be agreed more quickly, even though the distance between the parties and the office is relatively far. In terms of low cost, the parties are no longer burdened with summons fees according to the radius, because with e-summons (electronic summons), the parties will be summoned according to their electronic domicile (Rp.0,-)and free from the cost of attending an automatic trial (transportation and accommodation costs, etc.).
- E-court and e-litigation systems are very effective and efficient in relation to case administration and trial services in court. The trial process through e-litigation according to the Pandan Religious Court Judge is in accordance with the provisions in the Judicial Powers Act, and is still in the process of being perfected, because the legal rules that are developed in accordance with the demands of the times, will undergo changes, and even become the first consideration in the formulation PERMA Number 1 of 2019 was renewed with PERMA Number 7 of 2022, namely the provisions of Article 2 paragraph (4) of Law No. 48/2009 concerning Judicial Power.

f. Penajam District Court Judge

The Penajam District Court has implemented e-court and e-litigation since 2020-2021. The electronic trial system has been running well despite the obstacles. The application of e-court and e-litigation based on the Supreme Court Regulation (Perma) is appropriate to fill the regulatory vacuum regarding electronic courts and trials. The announcement of the decision is left to the judges' discretion examining the case. However, there needs to be reinforcement for things that have not been regulated in the Perma.

2. Constitutional Law Expert

a. Prof. Dr. Zainal Arifin Hoesein, S.H., M.H.

- The purpose of implementing e-court is to strengthen the principles in the administration of justice, which is a simple, fast, and low-cost trial. The Supreme Court interprets the issuance of the Perma on e-court as part of the technical guidelines for procedural law. Therefore, the principles of e-court procedural law remain as in the Law onJ udicial Power, the Law on General Courts, the Law on Religious Courts, the Law on State Administrative Courts, the Law on Military Courts, andthe Law on the Supreme Court.
- Implementation of this e-court will actually facilitate a number of things, including:
  a) **Early warning**, if the case is a sensitive matter and concerns the public interest, there will be a priority code. This is also part of the warning to judges, starting from the Supreme Court Justices down to the Judges below them, they will receive notifications about case handling, if the parameters are too long. It can be said that there is control over matters.
  b) **Access to justice**, this convenience is provided mainly for the public in submitting law suits or requests, so there is no need to come to court.
- According to the Expert, the application of e-court in case trials (e-litigation) is quite good. Even though trials can be carried out through e-courts, examination of evidence in court, primarily written evidence, still needs to be carried out directly in the court room since the Panel of Judges must

directly examine the authenticity of the written evidence. In addition, the examination of witnesses and experts can becarried out via teleconference or zoom application as long as the technical equipment is ready.

- The experts agree that if the decision is announced without the parties or the general public, but is still known by everyone through the e-court application, the decision has essentially been announced publicly.
- However, according to the Expert, the Perma regarding e-court needs to be strengthened. The law must absorb the will of society and the practice of justice. Thus, it is necessary to strengthen e-court policies through amendments to the Law on Judicial Powers, the Law on the Supreme Court, the Law on the Religious Courts, the Law on State Administrative Courts, the Law on Industrial Relations Courts, and the Law on Military Courts, since the implementation of the judicial proceedings is based on the law.
- Implementing this reinforcement may only change 1 (one) paragraph regarding e-court in the Law on Judicial Powers and the Law onthe Supreme Court be cause the 4 (four) courts under it will automatically follow suit. Perma's position in legislationis as a delegate from the law as stipulated in Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation.

b. Dr. Heru Widodo, S.H., M.H.

- PERMA's position is not explicitly stated in the Supreme Court or Constitutional Court regulations. However, to fill the legal vacuum, Perma is allowed according to Article 8, paragraph (1) and paragraph (2) of Law Number 12 of 2011. In other words, Perma is under PP and above PERDA.
- In principle, e-court trials are open to the public, but in exceptional cases, they are closed. However, the principles of a fast, simple, and low-cost trial were fulfilled in practice. Therefore, there is no longer any reason to delay. The philosophy of openness in the e-court electronic trial process is that the parties can be given the right to equal access where each party has an e-court account. The e-court

system in civil case trials can be completed more quickly. Meanwhile, if carried out conventionally, the trial process is often delayed.

- Regarding the announcement of decisions via electronics, a hybrid system can be an option. The announcement of the decision is interpreted broadly, which has the same status as uploading a decision (publication of a decision). What matters is that when the decision is published, it can be accessed by the public, not limited to the parties. However, it is not the case in the Constitutional Court's procedural law. Even though the application is submitted online, it must be submitted audio-visually (including answers, evidentiary, and verdict).
- According to the Expert, only uploaded decisions do not meet the requirements for being open to the public, so they still need to be announced. Thus, decisions announced online must still be heard by the parties. There should be no change in legal considerations from when the decision was announced to when it was printed; there must be control.

c. Dr. Abdul Haris Semendawai, S.H., L.L.M.

- According to the Expert, the announcement of decisions in e-litigation through e-court is still not appropriate because there is a possibility that the implementation will not be open to the public. The e-litigation process is principally fulfilled: easy, simple, and low-cost. However, another principle that the trial is open to the public also needs to be met. The principle of being open to the public is essential in trials because it allows the public to assess whether the trial process is being carried out in a fair, professional, and independent manner. According to the Expert, the implementation of electronic decision announcements needs to be specifically regulated in the Perma so that the decision is announced and not only sent online, which is considered inappropriate.
- Perma regarding e-court was created to fill the legal vacuum. Thus, it needs to be further regulated in laws and regulations so that they have more substantial binding Power and legal consequences.

- The expert suggests that as much as possible e-court is used especially for courts with a high number of cases (a lot), because having to be physically present is inhumane and unhealthy. For example, 1 (one) judge can handle dozens of cases per day, so that the litigants who have arrived from the morning but only start the trial at night, even though it is only for a delay. Then, the trial was ineffective.

d. Dr. Mulyono, S.H., S.IP., M.H.

Some people say that the e-court is not open to the public. However, if we look at the future and the demands of the times, and in relation to the principle of quick, easy, and low-cost settlement of cases, implementing an e-court is appropriate. Announcement of decisions via e-court, as long as it can be accessed through the directory, is considered to be done openly. As for evidentiary matters, they must follow the applicable law, which must be carried out in the courtroom attended by the Panel of Judges and the parties. Thus, the evidentiary cannot be held through e-court. According to the Expert, it is necessary to strengthen the law through changes to procedural law.

e. Dr. Sonyendah Retnaningsih, S.H., M.H.

- Implementing electronic trials in court (e-court) is appropriate in accordance with procedural law. The existence of an e-court can minimize the parties' interaction with the court, transactions, and accumulation of people in court.
- Strengthening the law is needed through improving the Perma, not through a special law since e-court is not a new norm, but a technical guideline for proceedings.

3. *Focus Group Discussion* (FGD)

The FGD was held on June 24th 2022 in the Hall of the Faculty of Law of Universitas Islam As-Syafi'iyah and was attended by academics (Dean, Deputy Dean, Head of Study Program, Secretary of Study Program, and Lecturers at the faculty.

The FGD specifically discussed electronic announcements of decisions (e-court) based on Perma Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts. Academics believe that the issuance of Perma Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in

Courts is correct to fill the vacuum. Since its nature is to fill a legal vacuum, the Perma must be strengthened as a law. At least, an amendment is made to Article 13 of the Judicial Powers Act or the Perma so that the principles of electronic announcement of a Decision are under the Judicial Powers Act and other laws related to judicial procedural law. These changes are related to the contents of the decision submitted via e-court, where it is necessary to add regulations regarding the electronic announcement of a complete and intact Decision. The contents of the decisions announced through the e-court are usually only the verdict without any legal considerations. Thus, the parties who access the contents of the decision via electronic means (e-court) must be well aware of the considerations of the Panel of Judges in deciding cases. It can facilitate the parties in compiling legal reasons for filing an appeal or cassation. However, even though an electronic trial has been arranged, it would be better if the decision is announced in the courtroom (face to face) and heard by the parties.

Regarding evidentiary trials, PERMA Number 1 of 2019 stipulates that the implementation must be under procedural law. Submission of Decisions via e-court currently only contains Verdict orders, without the legal considerations of the Panel of Judges. This condition allows the court to change the contents of the considerations.

4. Opinions from Advocates

Advocates' opinions were obtained through interviews and questionnaires distributed via Google form to 32 informants.

Based on questionnaires and in-person interviews, the advocates have used and are well aware of the e-court system currently used in the judiciary (PN, PA, and PTUN).[10] The advocates also stated that the implementation of the e-court had been going well and smoothly. However, there are still problems when uploading data to the e-court application due to an error in the system. Thus, it takes quite a long time to register a lawsuit/application or upload case files such as answers, *replik*, *duplik*, and conclusions. In addition, the implementation of e-court is quite efficient in terms of time and cost. People no longer have

[10]Advokat yang di wawancara belum pernah ada yang beracara di Pengadilan Militer.

to wait long for hearings. Even so, there are still advocates who have not used e-litigation.

Even though advocates believe that arrangements regarding trials through e-litigation are under the provisions in the Judicial Power Act, it is still necessary to change regulations regarding e-court in PERMA or the Judicial Power Law, especially in terms of announcement of decisions in trials that are open to the public.

The interviews with Judges at District Courts, Religious Courts, Military Courts, State Administrative Courts, FGDs with academics, and questionnaires from advocates who conduct trials through the e-court system and e-litigation as E-Court registered users lead to several conclusions. 1) all Judges from District Courts, Religious Courts, and State Administrative Courts stated that the implementation of electronic-based justice (e-court) through the Supreme Court Regulation of the Republic of Indonesia Number 7 of 2022 concerning Amendments to Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts is appropriate. As for the implementation of the electronic announcement of the decision, even though it has been regulated in the PERMA in Article 24, the implementation is left to the panel of judges handling the case; 2) Based on the results of the interviews, the judges stated that there was no need to strengthen Perma Number 7 of 2022 concerning Administration of Cases and Trials in Electronic Courts (e-litigation).

The results of interviews with constitutional law experts, FGDs with academics, and questionnaires with advocates state that it is necessary to strengthen Perma Number 7of 2022 in the form of:

a. Amendments to the Law on Judicial Powers, particularly regarding arrangements for electronic announcements of decisions as a consequence of legal reforms;
b. Changes to other laws or regulations relating to judicial procedural law;
c. Formation of the Law Concerning the Implementation of e-court and e-litigation;

Conclusion/Concluding Remarks

a. According to judges from District Courts, Religious Courts, State Administrative Courts, and Military Courts, the implementation of electronic-based justice (e-court) through the Republic of Indonesia Supreme Court Regulation Number 7 of 2022 concerning Administration of Cases and Trials in Electronic Courts (e-litigation) is appropriate. The purpose of issuing the Perma is to fill the void in the procedural law of electronic courts. Four judiciary institutions have carried out electronic courts (e-court) and electronic trials (e-litigation) under the auspices of the Supreme Court, namely the District Court, Religious Court, Military Court, and State Administrative Court.

   PERMA's position in the hierarchy of statutory regulations as binding regulations. PERMA in legislation is as a delegate from the Law, as regulated in Article 7 and Article 8 of Law Number 12 of 2011 concerning Formation of Legislation.

   Article 79 of Law Number 14 of 1985 concerning the Supreme Court as last amended by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, it is emphasized that the Supreme Court can further regulate the matters required for the smooth administration of justice if there are matters which have not been sufficiently regulated in this Law.

   However, regarding the Supreme Court Regulation (Perma) Number 7 of 2022, of course, it still needs to be corrected as a form of strengthening this rule, so that parties in litigation as e-court users can feel law enforcement and justice.

b. Strengthening the implementation of electronic court proceedings (e-litigation) in electronic-based courts (e-court) is indispensable for implementing e-court-based trial processes that are more effective and acceptable. Judicial institutions can carry it out under the auspices of the Supreme Court. The regulation on e-court needs to be strengthened because the law must absorb people's aspirations and judicial practices. Strengthening e-court can be done through a) amendments to the Judicial Powers Act, especially regarding arrangements for the electronic announcement of decisions as a consequence of legal reforms, b) amendments to laws or other regulations related to judicial procedural law, c) establishment of

laws regarding the implementation of e-court and e-litigation, and d) establishment of a new PERMA to strengthen PERMA No. 7 of 2022.

The implementation of strengthening can only change 1 (one) paragraph regarding e-court in the Judicial Powers Act and the Supreme Court Act, and automatically 4 (four) courts under will follow the existing rules.

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