

IMPLEMENTATION OF ELECTRONIC TRIAL (E-LITIGATION) ON THE CIVIL CASES IN INDONESIA COURT AS A LEGAL RENEWAL OF CIVIL PROCEDURAL LAW

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Abstract

Civil case trial based on HIR/RBg takes months or even more than a year, which sets a bad precedent for judicial institution because it tends to be complicated, and closed. A proverb voiced, “Reporting the loss of goats instead of missing cows,” increasingly the public’s negative impression towards judicial institution. Responding to these conditions, the Supreme Court issued a Supreme Court Regulation (PERMA) No. 1 of 2019 concerning Case Administration and Court Trials Electronically. The research questions, how is the implementations of electronic trial (e-litigation) on civil cases in Indonesia judicial institutions? The research method used is literature study, in particular normative legal research, which is descriptive analytical. PERMA No 1 of 2019 has provided benefits for internal judiciary and justice seekers. Where case registration is done electronically without needing go to court. The payment of court fees is simply by transferring to a virtual account and the summons of parties are carried out electronically to an electronic domicile. It is not just limited to that the trial is also carried out electronically, from the first trial until the reading of the judge’s verdict. However, there are challenges for the successful of electronic litigation from the aspect of legal substance, the electronic trial regulated at PERMA rule out HIR/R.Bg whose hierarchy is above of that PERMA. In aspects of legal structure, It is needed the completed infrastructure and human resources. As well as aspects of legal culture, the enthusiasm of justice seekers who use e-court services.

Persidangan perkara perdata berdasarkan hukum acara HIR/RBg menghabiskan waktu berbulan-bulan bahkan lebih dari setahun, yang menjadi preseden buruk terhadap lembaga peradilan karena cenderung berbelit, tertutup, dan berbiaya

mahal. Pemeo bersuara, “lapor kehilangan kambing malahan hilang sapi” semakin menggenapi kesan negative public terhadap lembaga peradilan. Merespon kondisi tersebut Mahkamah Agung mengeluarkan Perma Nomor 1 Tahun 2019 Tentang Administrasi dan Persidangan secara elektronik (e-litigasi). Rumusan masalahnya adalah Bagaimana penerapan persidangan secara elektronik (e-litigasi) perkara perdata pada lembaga peradilan di Indonesia? Metode penelitian yang digunakan adalah studi kepustakaan, dengan jenis penelitian yuridis normatif, yang bersifat deskriptif analitis. Perma No 1 Tahun 2019 telah memberikan kemudahan dan manfaat besar untuk internal peradilan maupun para pencari keadilan. Dimana pendaftaran perkara dilakukan secara elektronik tanpa perlu datang ke Pengadilan, pembayaran biaya perkara tidak perlu datang ke Pengadilan cukup dengan transfer ke nomor virtual account, dan pemanggilan para pihak dilakukan secara elektronik ke domisili elektronik (email). Tidak terbatas itu persidangan juga dilakukan secara elektronik, dari sidang pertama sampai dengan pembacaan putusan. Akan tetapi terdapat tantangan untuk suksesnya penerapan persidangan elektronik baik dari Aspek substansi hukum, persidangan elektronik yang diatur di PERMA tersebut mengesampingkan hukum acara yang diatur HIR/R.Bg yang hierarkinya berada di atas PERMA. Aspek struktur hukum, kelengkapan infrastruktur dan sumber daya manusia. Maupun Aspek budaya hukum, antusiasme pencari keadilan yang menggunakan layanan e-court.

Keywords: Electronic Trial, E-Litigation, Civil Procedural Law, Perma No. 1 of 2019

Introduction

Interactions that occur between humans do not always go well even conflict situations cannot be avoided. Conflicts such as land dispute, debts are not paid, damaged goods are commonly happened. In resolving a conflict, actions that violate the law must be avoided. Any person who feels disadvantaged by others, then they can sue to the Court in accordance with applicable procedures. Rules for the settlement of such disputes in court are regulated in the Civil Procedural Code.¹

Civil trial refers to the procedural law contained in HIR (*Het Herzijene Indonesche Reglement*) for regions of Java and Madura, RBg (*Het Rechtsreglement Buitengewesten*) for regions outside Java and Madura. The

¹ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2000), p. 2.

two procedural laws are colonial products that are already more or less a century old. Certainly some of the norms are out of line with society development. Whereas the Civil Procedure Bill has been drawn up by involving academics and practitioners for decades. But until now, the process of drafting and discussing the Civil Procedure Bill is still unclear. On the other hand, in this 21st century developed countries compete in implementing industrial revolution 4.0, where there are five major deficiencies that must be faced namely the aspects of knowledge, technology, economics, social, and law.² In the legal aspect, the use of information technology in a judicial institution is a necessity, so that the court proceedings can be proceed simply, fast, and low cost. The simple principle is reflected in the effective and efficient trials. The principle of fast is the time for settling a case that is not complicated, because a slow trial is a form of injustice itself. Whereas the principle of low cost ensures that court fees do not burden justice seekers, especially those from lower class economic community.

The three points of public protests against the court (slow, complicated and expensive) are a dark history of judiciary Institutions in Indonesia. To answer those complaint, Supreme Court as one of the top holders of judicial authority has issued Supreme Court Regulation (Perma) Number 3 of 2018 concerning Electronic Case Administration. Perma Number 3 of 2018 made an innovation in civil procedural law where case registration, payment of court fees, and summons of parties were carried out electronically. Of course, these provisions are very different from the norms regulated in HIR/R.Bg. The three main components regulated in Perma Number 3 of 2018 are electronic filing (e-filing), electronic payment (e-payment), and electronic summons (e-summoning). Other than that, justice seekers can also send an answer, *replik*, or *duplik* civil case electronically. The application of information technology in the court can provide various benefits, namely 4K consisting of speedy, accuracy, reliability and consistency.³ In addition, it also reduces the intensity interaction between justice seekers and the

² Hoedi Prasetyo and Wahyudi Sutopo, "Industri 4.0: Telaah klasifikasi aspek dan arah perkembangan riset", *J@ ti Undip: Jurnal Teknik Industri*, vol. 13, no. 1 (2018), p. 17.

³ Asep Nursobah, "Pemanfaatan Teknologi Informasi Untuk Mendorong Percepatan Penyelesaian Perkara di Mahkamah Agung," *Jurnal Hukum dan Peradilan*, vol. 4, no. 2 (2015), p. 323.

court apparatus because cases registration and payment of court fees no longer need to come to court instead they can be done electronically in anywhere.

Since the enactment Perma Number 3 of 2018, it has been easier for society to litigate in The court. However, Perma Number 3 of 2018 is still limited in the case administration which does not cover the electronic trial process, as well as the e-court application, it can only be used by registered lawyers. Whereas advocates who are not registered yet or the common people do not have opportunity to use e-court.⁴ Because of that reasons, Perma Number 3 of 2018 was amended by Perma Number 1 of 2019 concerning Case Administration and Court Trials Electronically. The Perma's provisions cover a broader electronic process, not only limited in electronic registration, payment and summons, but also the trial process is conducted electronically or known as electronic litigation (e-litigation). With e-litigation, justice seekers do not have to go to the Court except for the time of hearing/evidentiary agenda, because the civil case trial from registration until the reading of judge's verdict is carried out electronically (except for evidentiary agenda, the parties or their lawyers are required to attend the trial).

Supreme Court's policy, which released two legal products, transformed litigation process from conventional process into electronic ones needs to be appreciated, even though the policy was far too late compared to neighboring countries such as Singapore. Singapore, itself has implemented e-litigation since 2013 with the launching of Electronic Filing System (EFS). This EFS provides 4 main services, namely (1) Electronic Filing Service; (2) Electronic Extract Service; (3) Electronic Service of Documents Service; and (4) Electronic Information Service.⁵

Based on the description of the research background, it is necessary to study further about electronic trial in civil cases at Indonesia Judicial Institutions by conducting a juridical analysis of Perma Number 1 of

⁴ Acho Nur and Amam Fakhur, *Hukum Acara Elektronik di Pengadilan Agama* (Jakarta: Nizamia Learning Center, 2019), p. 7.

⁵ Achmad Cholil, "Belajar dari E-Litigation di Singapura", *Majalah Peradilan Agama Edisi 14* (November 2018), available on https://drive.google.com/file/d/1u0ziSLOlwev6FaH0hXvO6mlzor_BXwKe/view, accessed 29 January 2020.

2019 concerning Case Administration and Court Trials Electronically. For that reason, the issue that will be discussed in this paper is how is the application of electronic trials (e-litigation) civil cases in Indonesia judicial institutions?

The research method used is literature study, with the type of normative legal research, which is descriptive analysis. Normative legal research is a research that examines legal issues from the normative side (analyzing written legal norms), where research data sources used are secondary data or literature studies.⁶ This research compares how the civil trial procedure regulated amongst HIR/R.Bg, Perma Number 3 Year 2018, and Perma Number 1 of 2019. In addition, it compares e-litigation implemented between Indonesia and Singapore.

This study aims to provide a comprehensive understanding about the application of e-court and e-litigation in Indonesia judicial institutions by conducting a juridical analysis to the relevant laws and making a comparison between e-litigation in Indonesia and Singapore. With this research both academics, researchers, and the public can understand electronic case administration, and electronic trials in civil cases.

Civil Case Trial According to HIR/R.Bg

HIR/R.Bg regulates that case registration is filed by the Plaintiff or his Lawyer by coming directly to the district Court in the defendant's residence, or if his residence is unknown, The lawsuit is filed to the district court in his actual place as stipulated in Article 118 verse 1 HIR/ps. 142 R.Bg. After the case registered, the court's cashier estimates the down payment of court fees. Based on the cashier's estimation, the Plaintiff or his lawyer are required to pay the court's fees to the Bank that cooperates with the Court because the principle of civil proceedings is subject to fees.⁷

The court administration officer gives case number after the court fee is paid and then reports it to the Chief of Court. The Chief of Court will decide Panel of Judges who will hear the case. After the Panel of Judges is decided, the Court Clerk will appoint a substituter clerk who

⁶ Sri Mamudji, *Metode Penelitian dan Penulisan Hukum* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), p. 3.

⁷ Sarwono, *Hukum Acara Perdata Teori dan Praktik* (Jakarta: Sinar Grafika, 2016), p. 45.

will charge in recording the trial. The Case that has been decided the Panel of Judges is immediately distributed to the chairman of panel of judges. After studying the case file, the chairman of panel of judges shall determine trial day not later than 7 (seven) working days. In determining trial day, The chairman of panel of judges panel must consider the distance location between parties's residence to the court because it is related to process of summoning the parties, if the location of parties living is far away from the court, it will certainly require a longer time for summoning the parties to attend the trial.⁸ HIR/R.Bg regulates that the summons of parties are carried out through summons letter (*relaas*). The summons must be done by officially and properly. The official definition refers to article 388 and article 390 verse 1 HIR that the summons of parties is carried out by a bailiff according to the chairman of panel of judges's order. While properly refers to article 122 HIR that the grace period between the summons of parties and the trial day is at least 3 (three) working days.

The process of civil trial stipulated in HIR/ R.Bg obliges the parties or their lawyer to come to the trial. In the case if Plaintiff or his lawyer does not appear to the trial even though he has been summoned officially and properly, the lawsuit will be dropped as stipulated in Article 124 HIR. If the Defendant or his lawyer does not appear to the trial even though he has been summoned officially and properly, then the verdict will be handed down without the defendant present by granting the Plaintiff's claim as long as it is not against the right or groundless. In generally, the process of civil trial starts from agenda of reconciling the parties, mediation, reading the lawsuit, the answer agenda, *replik*, *duplic*, evidentiary, conclusions, and reading the judge's verdict.⁹

1. Reconcile the Parties

At the first trial, if both plaintiff and defendant attend the trial, the Panel of Judges is obliged to reconcile the parties in according to norms of Article 130 HIR/154 R.Bg, if both parties attend the trial, then district court, with the chief of court intermediary will try to reconcile

⁸ Mahkamah Agung, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama Edisi Revisi Tahun 2013* (Jakarta: Direktorat Jenderal Peradilan Agama, 2013), p. 45.

⁹ R. Soesilo, *RIB/HIR dengan penjelasan* (Bogor: Politea, 1985), p. 82.

them. If reconciliation is not successful, then the case will be proceed to mediation process.

2. Mediation

Mediation etymologically is taken from Latin's word "*mediare*" which means "in the middle". According to Article 4 PERMA Number 1 of 2016 concerning Mediation, Mediation is an alternative dispute resolution through negotiation process to obtain an agreement that benefits both parties (win-win solution) facilitated by a third party as Mediator. In principle, all civil disputes must be resolved through mediation, except for commercial court disputes, industrial relations court disputes, objections to KPPU's decisions, objections to Consumer Dispute Resolution Board's decisions, annulment plea to arbitration's decisions, objections to the Information Commission's decisions, settlement of political party disputes, small claim court and other disputes where their process is limited by the time that is determined by law.

If mediation process is successful, there are two choices to settle the case. First, the Plaintiff or his lawyer withdrew his lawsuit. Secondly, a reconciliation agreement was signed by both parties and mediators. This agreement was later strengthened by Panel of Judges with a verdict of reconciliation certificate.¹⁰ otherwise if mediation process is unsuccessful then The case proceeding will be continued to answer, *replic*, and *duplic agenda (jawab-jinawab)*.

3. The Answer, Replic, Duplic Agenda (Jawab-Jinawab)

The answer agenda is a continuity of trial process when mediation process is declared unsuccessful. The answer is the Defendant's response to the Plaintiff's claim. Before the Defendant gave an answer, the Plaintiff's claim letter was read first. Then the Panel of Judges will confirm to Plaintiff whether to preserve the lawsuit, or if there is a change or even revoke the lawsuit. If the Plaintiff preserve in his lawsuit, the Panel of Judges gives the Defendant an opportunity to submit an answer to the lawsuit. HIR wants the answers to be submitted verbally, but in practice the Defendant's answers are often done in writing. With Defendant's answer, the Plaintiff is given the right to respond with a

¹⁰Yahya Harahap, *Hukum Acara Perdata Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, 2nd ed. (Jakarta: Sinar Grafika, 2017), p. 265

replic and to the Plaintiff's *replic*, Defendant's can submit a duplicate. The procedure for submitting replicas and duplicates is the same as submitting answers that can be done in verbally or writing.

4. *Evidentiary agenda*

Evidentiary agenda in civil procedural law occupies a very crucial position in the trial because it is granted or rejected by a lawsuit depending on evidences and facts found in trial. Who must prove? According to HIR, the Plaintiff's argument that is disputed by the Defendant must be proven, while the Defendant is obliged to prove his objections. Referring to Article 164 HIR/Article 284 RBg in a civil case there are five types of evidences, namely:¹¹

1. Document evidence, HIR/RBg divides document evidence into three types. Firstly, an authentic deed is a deed made by or in front of an authorized official. Authentic deed has a binding and perfect evidentiary value, if it is objected by opponent's evidence, the evidentiary value is turned into preliminary evidence (Article 165 HIR). Secondly, the Under hand deed is a deed that was made and signed without involving an authorized official. An under hand deed has same evidentiary value as an authentic deed if the contents and signature are acknowledged, if it is objected the evidentiary value is turned into preliminary evidence. Thirdly, one-sided recognition deed is a deed form by one party who made the deed that he will pay off debt or will do something or give up something (Article 1878 of the Civil Code/Article 291 RBg). In HIR/RBg, examination of document evidence is carried out directly in trial. The Plaintiff or Defendant, who wishes to submit a document evidence, must submit a photocopy of that document that has been *naazegelen* by the post office and they must show the original document along with photocopy document. If the parties cannot show the original document, then the evidence must be rejected.
2. Testimony, Testimony is an information given about events that is experienced, heard and seen by witnesses. The conditions for accepting witness's testimony are regulated in

¹¹ Enju Juanda, "Kekuatan Alat Bukti dalam Perkara Perdata Menurut Hukum Positif Indonesia", *Jurnal Ilmiah Galuh Justisi*, vol. 4, no. 1 (2016), p. 27.

articles 145-146 of the HIR i.e. (1) The witness is presented at the trial at least two people, in accordance to the law's adage *Unus testis nullus testis* (one witness is not a witness), (2) The testimony must be provided at a court trial, (3) The witness are not included groups of people who are prohibited from becoming a witness such as children, parents, wife or husband even though they are divorced, (4) take an oath for Muslim's witnesses and make a promise for witnesses who embrace other religions.

3. Presumption, evidence of presumption is a conclusion drawn from a proven event towards an unproven event. There are two types of presumption that are recognized in civil procedural law, namely the law presumption and the judge presumption. The law presumption is drawn from a specific provision of law, and then linked it to certain acts or events. Judge's presumption must be considered carefully by a Judge before making a verdict, if the presumption is important, needed, certain and related to each other then he can make it as evidence in a trial.¹²
4. Confession, is a statement or one-sided statement from one party to another party in a case where he confess what is claimed or stated by the opposing party (Article 174 HIR/Article 311 RBg/Article 1923-1928 Civil Code). The conditions for confession can be accepted by the Judge are the confession is conveyed directly at the court trial by the party or his lawyer in oral or written form. The confession given is related to the dispute case. The confession is not a lie or untruth, and does not conflict with legal norms, moral values, and religious teachings.
5. Oath, Oath is a statement uttered solemnly using the name of God (Allah S.W.T) accompanied by a belief that those who provide a lie or false information will be punished by God (Articles 182-185 and 177 HIR,/155-158 and 314 RBg, and 1929-1945 BW). In principle, the oath evidence is carried out because the parties cannot submit other evidence, while the case must be decided.

¹² Yahya Harahap, *Hukum Acara Perdata ...*, p. 769.

5. *Conclusions*

At this stage, the parties, both the Plaintiff and Defendant are given same opportunity and time to deliver their final opinions which conclude of all trial stages that have been passed in according to their respective views. Conclusions can be submitted orally or in written form.

6. *Reading of Judge's Verdict*

After the case trial is finished, the Panel of Judges will deliberate to render the verdict. There are three kinds of verdicts in terms of their contents: firstly, the granted verdict If The Plaintiff can prove the truth of his lawsuit, then his claim will be granted entirely. However, if only some of his claims can be proven, then his lawsuit just will be granted partially. Secondly, the rejected verdict if the Plaintiff is unable to submit evidence and can not prove his claim, then his lawsuit is rejected. Thirdly, the unacceptable verdict (*Niet ontvankelijk verklaart*) because there are some reasons that are justified by law such as the lawsuit is obscure, error in person, *nebis in idem*, so on and so forth.¹³ After the verdict is read, the plaintiff and the defendant who are not satisfied with the contents of verdict can file an appeal within 14 days after the verdict is read or 14 days after the verdict notified If the plaintiff or defendant is absent when the verdict is read at the trial.

Based on the explanation about civil procedural law based on HIR/R.Bg, the author's argue that there are some weaknesses in terms of the principle of simply, fast and low cost justice:

1. Filing a lawsuit, the Plaintiff or his lawyer must come directly to the Court. In the condition that the Plaintiff is domiciled in City A and the Defendant is domiciled in City B, the lawsuit must be filed in District Court at City B. Transportation costs that must be paid by Plaintiff to commute from City A to City B certainly are not small, as well as in terms of energy spent, and time . Of course this is contrary to the principle of inexpensive justice.
2. The Court fees payment requires the Plaintiff to pay it directly to the Court and it is not in accordance with the information technology development. IT progress should be able to be

¹³ Mahkamah Agung, *Pedoman Pelaksanaan Tugas...*, p. 98.

applied to court fees payment through transfers, internet banking, mobile banking, and so on.

3. The summons of parties is carried out directly by bailiff to the parties's domicile, in the condition, if the parties's domicile are outside of city, or abroad, or its location is difficult to access, of course this will take a lot of time. Which is not in accordance with the principle of fast justice. In fact, with information technology advancement, it can be utilized in summoning the parties by sms, social media, or e-mail.

Some of these weaknesses triggered the Supreme Court to issue Supreme Court Regulation No. 1 of 2019 which transformed the conventional trial to electronic administration and trial, which the Author will discuss in the next sub-chapter

Electronic Trial (e-Litigation) in Civil Case as a Legal Renewal of Civil Procedural Law in Indonesia

The implementation of civil proceedings based on HIR/R.Bg is no longer relevant to the public's demands who want a simple, speedy, and inexpensive justice. Stigma towards judicial institutions that tend to be complicated, closed, expensive, and require a long time continue to haunt justice seekers. This condition is not linear with the principle of simple, speedy, and inexpensive.¹⁴ This is what spurs judicial institutions to optimize information technology in administrative and trial processes. The policy that becomes a big step forward is the issuance of Supreme Court Regulation Number 3 of 2018 concerning Electronic Case Administration in the Court. It is not satisfied with electronic case administration, the Supreme Court issued new Supreme Court Regulation Number 1 of 2019 which was not limited to electronic case administration but also trial process could be conducted electronically (e-litigation).

The concrete step from this regulation, Supreme Court released an application such as e-court. E-court is an application that facilitates to registrate cases electronically, pay court fees electronically, sending trial documents like answer, replicas, duplicates, and conclusions electronically and summons the parties electronically. With The Issued

¹⁴ Asep Nursobah, "Pemanfaatan Teknologi Informasi...", p. 334.

of Supreme Court Regulation Number 1 of 2019 e-court application has been upgraded with the addition of new features *i.e.* e-litigation. E-litigation make a civil trial carried out electronically as such lawsuit readings electronically, electronic answers, electronic conclusions, electronic verdict, and sending verdict electronically.

Who can use e-court services? Firstly, Registered User is advocates who qualify as a user of e-court information system with rights and obligations regulated by Supreme Court. Secondly, other users are legal subjects other than advocates who fulfill the requirements to use e-court information system with rights and obligations regulated by the Supreme Court, including State Attorney, Government/*TNI/POLRI* Legal Bureau, Directors or employees appointed by legal entities, incidental attorney determined by law.¹⁵

1. *Electronic Case Administration*

In general, electronic case administration is divided into 3 (three) processes, namely:

a. **Electronic Filling (E-Filling)**

Case registration by Registered Users (advocates) and other Users (besides advocates) can be carried out electronically through e-court applications. Registered users or other users access to e-court application by logging into their account. Then choose authorized court to file a lawsuit and upload a special power of attorney. Users will get an online registration number (it is not the case number). The next step users input parties data, uploading the lawsuit soft file as well as the principal approval letter for proceeding electronically. After case registration successful registered, users or other users will receive an estimated down-payment court fee (e-SKUM) and immediately make electronic payment.

Electronic case registration have to pay attention to principal agreement that the principal concerned his willingness, this agreement is important because it provides a significant impact on civil procedural law that will be applied, namely electronic trial. Beside of ordinary cases registration, third-party interventions on progressed cases must be

¹⁵ Supreme Court Regulation No. 1 of 2019 concerning Case Administration and Court Trials Electronically State News No 894 of 2019, Article 1.

registered electronically. If an intervention lawsuit is not registered electronically, while an progressed case is registered electronically, a third party intervention lawsuit must be declared unacceptable.¹⁶

Electronic case registration gives an easier access to justice seekers because they do not have to come to court anymore but it is enough to register a lawsuit anywhere by online.

b. Electronic Payment (E-Payment)

The Payment of court fee is addressed to court bank account electronically. After the case is registered through e-court application, an *e-skum* and virtual account (VA) code will be seen and used to pay the court fee. Advocates or other users must pay off the amount of court fee by transferring it to VA number at the bank appointed by the Court.¹⁷ The advantage of Virtual Account system is that Advocates or other users can pay court fees anywhere and through anything such as SMS banking, *ATMs*, internet banking or other banking transactions.

After the payment completed, the lawsuit will automatically be seen in e-court system at the aimed court. The assigned apparatus will verify the data, input e-court's data on the case tracking information system (SIPP) to get the case number. After the data verified, the users will automatically get a notification that says "your lawsuit has been successfully registered".

c. Electronic Summons (E-Summons)

Different from HIR/Rbg where the summons of parties is carried out directly by a bailiff to the parties's domicile through summons letter (*relaas*) as stipulated article 388 and article 390 verse 1 HIR. The summons of parties according to Article 16 PERMA Number 1 of 2019 is enough by sending summons letter to registered electronic domicile (e-mail). The Party who is domiciled outside of the court jurisdiction besides

¹⁶ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 23.

¹⁷ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 10.

being summoned via electronic domicile, it is also forwarded to email of the Court where he is domiciled.¹⁸

2. *Electronic Trial (E-Litigation)*

The urgency for implementing electronic trial is to answer public's demands who want a simpler, speedier, and cheaper trial process. Electronic trials can be analogous to online business transactions (e-commerce), which do not require a physical contact but sufficient in cyberspace, electronic trial approaches a process that occur at electronic commerce. In general, electronic trial (e-litigation) is consist of:

a. First trial

During the first trial, the Plaintiff and Defendant were summoned into the courtroom. The Panel of Judges ordered the Plaintiffs to show his original of lawsuit, the original power of attorney letter, and the original principal approval letter that were uploaded previously in e-court application. In this session, the chairman of panel of judges explained to parties the rights and obligations related to electronic trial.¹⁹

The Panel of Judges offered to Defendant about electronic trial. Article 20 verse 1 PERMA Number 1 of 2019 explains that electronic trial was held with the Plaintiff's and Defendant's approval after mediation process was declared to be unsuccessful. Why is Defendant's approval needed? It is to protect the Defendant's rights in an impartiality hearing. With the Defendant's agreement, it means that the Defendant submit himself and bind to electronic trial, so that there is no reason for the Defendant to declare that electronic trial is invalid, because the Defendant agreed. The Panel of Judges will reconcile the parties to settle the dispute peacefully if the reconciliation is unsuccessful, The case will continue in mediation process according to Perma Number 1 of 2016.

If mediation failed, at the next hearing, the Panel of Judges will reassert to the Defendant whether to proceed electronically. if the Defendant who is not an advocate

¹⁸ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 17.

¹⁹ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 19.

approves to electronic trial, then the Defendant is asked to sign a writing agreement to proceed electronically as it had been done by the Plaintiff. On the contrary, if the Defendant states that he disapproves electronic trial, then the electronic trial cannot be continued and the next trial will be conducted manually as stipulated in HIR/RBg.²⁰

How are the Defendants more than one person?, must the agreement still be signed by all Defendants? In author's opinion it is yes, the agreement must still be signed by all Defendants because every defendant has their own right to approve or disapprove electronic trial. In the case if one of the Defendants signed the agreement while the others did not want electronic trial? The author argue that both Plaintiff and Defendant who agree with electronic trial applies to electronic trial provisions (summons, submission of answers, replicas, duplicates, conclusions, as well as reading of judge's verdict done electronically). Whereas for the Defendant who disagrees to electronic trial applies to normal trial as regulated in HIR/RBg.

b. Court Calendar

In electronic trials, court calendars are defined as the schedule and agenda of trial. The chairman of panel of judges prepares a court calendar and reads it in front of the parties. The parties study the court calendar and conveyed their agreement by signing the court calendar. Court calendar that has been agreed by the parties will help the trial running smoothly.²¹

According to Article 21 PERMA Number 1 of 2019 court calendar contains an electronic trial schedule from submission of answers, replicas, duplicates, evidences to the reading of judge's verdict. In the determined trial schedule, if the Plaintiff does not send a replica and conclusion, or the Defendant does not send an answer, duplicate and conclusion electronically without a valid reason, then it is considered that he does not use his rights. Except for a valid reason, the trial may be

²⁰ Acho Nur & Amam Fakhur, *Hukum Acara Elektronik ...*, p. 7.

²¹ Amran Suadi, *Pembabaruan Hukum Acara Perdata di Indonesia Menakar Beracara di Pengadilan Secara Elektronik* (Jakarta: Prenamedia Group, 2019), p. 78.

postponed once. By making a court calendar the Panel of Judges can control the trial proceedings, get an image of trial agenda and when the case can be decided. So that the trial proceeding becomes simpler and the case can be decided in a short time as mentioned by principle of simple and speedy justice.

c. Answered, replica, and duplicate (*jawab-jinawab*) in electronic trial

At the electronic answer-replica-duplicate stages, the trial is not attended by the parties. Even though the parties did not attend to the trial, the Panel of Judges continued to convene as they should in the courtroom. Electronic proceedings with submission of answers, replicas, duplicates and conclusions are carried out with procedures:²²

1. The parties are required to submit electronic documents (answers, replicas, duplicates and conclusions) no later than the day and time of trial according to the set schedule.
2. After receiving and checking the electronic documents, the Panel of Judges shall forward the electronic documents to opposing party.
3. The substituter clerk is obliged to record all activities at the electronic trial in Electronic *dossier*.
4. The parties who do not submit electronic documents (answers, replicas, duplicates and conclusions) according to the schedule and proceedings without a valid reason based on the judge's judgment, are considered not using their rights.

d. Evidentiary Process in Electronic Trial

For evidentiary proceedings in electronic trial carried out in according to applicable law (Article 25 PERMA Number 1 of 2019). Referring to these provisions, the evidentiary proceeding follows to procedural law stipulated in HIR/RBg, because of that the parties must be present at courtroom. Before the evidentiary proceeding, the parties are required to

²² Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 22.

upload first their documents evidence that will be submitted in e-court application. Other users (other than advocates) who do not yet understand the use of e-court applications can request assistance from e-court desk officials to scan and upload documents evidence at their own accounts. The importance of why the parties have to attend at the evidentiary trial as an instrument to show the original documents from the documents evidence. The original document evidence is not only as a matter for the Panel of Judges to examine the evidence, but also for the interests of opposing party to see whether he denies the evidence or not.

The presence of parties is also needed during witness testimony. The parties will be given a turn to ask witnesses through the Panel of judges. Of course this opportunity will not be obtained if the parties are not attended the trial. Regarding to witness testimony hearing, in the case of witnesses lives in the outside of court jurisdiction, the witnesses hearing can be carried out by teleconference.²³ The Chief of court asked assistance to other chief of court where the witness domicile, in order to appoint a judge and a clerk who would take the witnesses oath and supervise the witnesses when giving testimony through videos teleconference.

e. Electronic Conclusions

Different from HIR/Rbg where both Plaintiff and Defendant explain their conclusions in orally or in writing form. The Conclusions according to PERMA Number 1 of 2019 is done paperless by upload electronic documents (conclusions) to e-court application no later than the day and time of trial according to the set schedule.

f. Electronic Verdict

The stages of reading judge's verdict are carried out through electronic proceedings without attended by the parties. The panel of judges convened by opening the trial then reading out the verdict as usual. After the verdict is read out, the chairman of panel of judges is responsible for uploading a verdict's copy to e-court application and sending it to the

²³ Supreme Court Regulation No. 1 of 2019 concerning Case Administration ..., Article 24.

parties according to their electronic domicile address. This is an official document that the verdict has been sent to the parties legally. If the parties are not satisfied with the contents of verdict they can file an appeal within 14 days after a copy of the verdict sent to their electronic domicile.²⁴

For more details, the comparison of civil procedural law regulated in HIR/RBg and Perma Number 1 of 2019 can be seen in the table below.

Table 1. Comparison of civil procedural law in HIR/RBg and Perma Number 1 of 2019

No	Difference aspect	HIR/RBg	Perma number 1 of 2019
1	User	Everyone can access court services (physically). principal or his presentative (advocate, state Attorney, Government, TNI, Police Legal Bureau, Directors, incidental power of attorney) (Article 118 HIR/142 R.Bg.)	<ul style="list-style-type: none"> ▪ Registered Users (advocates), ▪ Other users, besides advocates including state Attorney, Government, TNI, Police Legal Bureau, Directors, incidental power of attorney (Article 1 point 4 and 5 Perma 1 of 2019)
2	Case registration	For case registration, the plaintiff or his lawyer must come to the court directly (Article 121 HIR/145 R.Bg.)	plaintiff or his lawyer doesn't have to come to the court, The case can be registered anywhere electronically via e-court application (Article Perma 1 of 2019)
3	Payment of court fees	The payment of court fees is paid at the court through cashiers and banks that work with the court (Article 121 ayat 4 HIR/145 ayat 4 R.Bg.)	Payment of court fees is paid to court accounts electronically (virtual accounts) through transfers, internet banking, sms banking and so on. (Article 10 Perma 1 of 2019)
4	Summons of parties	Summons directly to parties's domicile or residence (Article 122 HIR/146R.Bg)	Summon to parties's electronic domicile (e-mail). (Article Perma 1 of 2019)

²⁴ Acho Nur & Amam Fakhur, *Hukum Acara Elektronik ...*, p.139.

5	Submission of answers, replicas, duplicates, and conclusions	Answers replicas, duplicates, and conclusions delivered directly to the court in verbally or writing. (Article. 125, 132, 135 HIR/145, 149, 158 R.Bg.)	submit answers, replicas, duplicates and conclusions documents electronically by uploading to e-court application, no later than the day and time of trial according to the set schedule (Article 22 Perma 1 of 2019)
6.	Documents evidence	Held at the trial that was attended directly by the parties (Article. 163,164, 165 HIR/ 283,284,285 R.Bg.)	Almost same as HIR/Rbg, However, before the evidentiary proceeding, the parties are required to upload the soft file of documents evidence that will be submitted in e-court application (Article 25 Perma 1 of 2019)
7	Witness statement hearing	Witness statement is heard directly in the trial (Article. 145,172 HIR/ 172,308, 309, R.Bg.)	Witness statement can be heard via audio visual or video visual/ Teleconference (Article 24 Perma 1 of 2019)
8	Reading of Judge's Verdict	Read out in court and attended by both parties. (Article 178, 179 HIR)	Read out electronically without the parties presence. (Article 26 Perma 1 of 2019)
9	Verdict's Copy	A copy of verdict taken directly at the Court	a verdict's copy uploaded at e-court application and sending it to the parties electronic domicile address.

Problematic in Implementing Electronic Administration and Electronic Trial (E-Litigation)

Electronic administration and trials contain great benefits for justice seekers to get simple, speedy and low-cost justice, but in author's opinion, there are problems and challenges that will be faced. Especially related to transform of procedural law from manual to electronic, completeness of infrastructure and technology, limited human resources, facilities that support data connectivity with all of stakeholders and relevant agencies, and the enthusiasm of public or justice seekers who use e-court services. To see the effectiveness in implementing electronic administration and electronic trials, it can be seen from Lawrence Friedman's effectiveness theory. As quoted by Lutfil Ansori, Lawrence Friedman argued for the effective of law

application, then the three legal sub-systems must work well. The three sub-systems are legal substance, legal structure, and legal culture.²⁵

1. Legal Substance

The legal substance includes legal material which is stated in the regulation. Good rule is a responsive and aspirational rule to public's demands. The rules on Electronic Administration and Electronic Trials have been responsive to public's demands who want a quick, simple, and low-cost trial.²⁶

These rules make major changes in civil procedural law from manual trial as regulated in HIR/R.Bg into electronic trial. However, legal products concerning to electronic administration and electronic trial are only in the form of Supreme Court Regulations. Which if seen from the level of statutory regulations, it is categorised as secondary rules and it is not included in hierarchy of statutory regulations referred to article 7 verse 1 Act Number 12 of 2011 concerning Legal Forming.

The problem is can an electronic trial regulated in a Supreme Court Regulations be able to override the procedural law regulated in HIR/R.Bg. Normatively-juridical HIR/R.Bg has a higher standing than PERMA based on hierarchy of statutory regulations. So that applied the principle of *lex superior derogate lex inferior* (higher rules override lower rules).

To solve this problem, the author suggests two options: First option: there is no need to contradict Perma Number 1 of 2019 with HIR/RBg because it is complementary and Perma Number 1 of 2019 does not completely nullify the provisions regulated in HIR/RBg. Because Perma Number 1 of 2019 does not require to all citizens to proceed electronically, those who do not wish to proceed electronically can proceed manually as stipulated in HIR/R.Bg.

Second Option, new regulations regarding electronic trials need to be made in the Act form. Currently the government is working on Civil Procedure Code Draft, so the author believes it is necessary to include

²⁵ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif", *Jurnal Yuridis*, vol. 4, no. 2 (2018), p. 148.

²⁶ Wahyu Nugroho, "Rekonstruksi teori hukum pembangunan Kedalam pembentukan perundang-undangan lingkungan hidup dan sumber daya alam pasca reformasi Dalam bangunan negara hukum", *Jurnal Legislasi Indonesia*, vol. 14, no. 4 (2017), p. 370.

electronic administration and electronic trials in Civil Procedure Code Draft to resolve the debate over PERMA overruling the Act. With the electronic trial contained in the Civil Procedure Code Draft, the debate was finished. The author also encourages the government to immediately ratify Civil Procedure Code Draft considering that HIR /R.Bg is a colonial product that has been 1 century old which is no longer suitable with society's demand. Besides the rules of civil procedural law are also scattered in several law products, so for the sake of creating legal unification, the ratification of Civil Procedure Code Draft is a certainty.

2. Legal Structure

Legal structure is a component or organ that moves within a mechanism in implementing a policy. The legal structure relates to institution, personnel (HR), and infrastructure.²⁷ For the effective of electronic administration and electronic trials (e-litigation), it is necessary to have an up to date information technology as supporting instruments for electronic administration and electronic trials (e-litigation). As well as the data encryption system, so that the case data in e-court application is protected and not easily hacked by irresponsible parties.

Another problem is the lack of human resources (court apparatus) who understands information technology. Whereas for the effective in implementing e-court, it is necessary to have expert resources in technology and information systems considering the use of e-court applications can be at any time, during working hours, and also outside working hours. As well as for the judge, the Judge who hears electronic trial, inevitably have to master information technology, and e-court applications. Because the case documents are no longer in hard file but in soft file. The judge must know how to make a court calendar in the case tracking information system (SIPP), download answers, replicate, duplicate, conclusions soft documents at e-court application and then send them to the opposing party, witnesses statement hearing with audio or video visual, and uploading and sending electronic verdict to the parties electronic domicile. But in fact, there are many Judges who

²⁷ Iman Pasu Purba, "Penguatan budaya hukum masyarakat untuk menghasilkan kewarganegaraan transformatif", *Jurnal Civics: Media Kajian Kewarganegaraan*, vol. 14, no. 2 (2017), p.146.

are old and not mastered information technology at this time. Therefore, to improve court human resources, especially Judges, there are needs to hold sustainable trainings.

To make electronic administration run effectively, it also requires population data connectivity. Integrated population data becomes a keyword to make it easier to use the data because to know the parties data, it is enough with taking the data from integrated data bank. Data integration management needs to be done in collaborating with the Ministry of Home Affairs, the Ministry of Communication and Information, the Ministry of Finance, and the Ministry of Foreign Affairs.

3. Legal Culture

In the context of whether effective or not a law, legal culture becomes a very important element. The law made is ultimately determined by the community legal culture.²⁸ If legal culture is ignored, then the law will fail. People choose not to follow these laws and prefer to continue behaving according to what are their values and views.

Therefore, for the effective of electronic administration and electronic trial, it is necessary to improve legal culture aspect and justice seekers understanding towards electronic trial. So far, the authors see Supreme Court has been intensively disseminating information about the enactment of Supreme Court Regulation No. 1 of 2019 to the wider community and Advocates. With this socialization, it will cause stretches and enthusiasm of the public to litigate electronically, because there are many benefits received by litigation electronically.

So far, the number of courts that have implemented e-courts. District Court there were 382 District Courts. Totals of 33,707 cases have been registered; the number of cases that court fee has been paid is 22,370, and managed to get a case number is 22,143 cases. Whereas in Religious Courts, 412 religious courts have applied e-court and totaling 34,878 cases have been registered; which has been paid the court fee is 25,349 cases; and managed to get a case number is 25,088 cases.²⁹ If we are seen from the data, it seems that the enthusiasm of

²⁸ Jawardi, "Strategi Pengembangan Budaya Hukum (Strategy of Law Culture Development)", *Jurnal Penelitian Hukum De Jure*, vol. 16, no. 1 (2016), p. 93.

²⁹ Aida Mardatillah, "24 Ribuan Advokat Resmi Masuk Sistem E-Court", *Hukum Online* (Friday, January 10, 2020), available on

justice seekers to litigate electronically is quite high. The author hopes that the using of e-court in the future will increase even further for creating an excellent, fast, simple, and low cost justice.

Comparison of E-litigation in Singapore Judicial Institutions.

Supreme Court of Singapore launched The Integrated Electronic Litigation System (eLitigation) in 2013. This electronic litigation system is a birth of a new era in the evolution of electronic case management systems in this Lion City Country. E-litigation in Singapore is designed based on 4 main principles: (i) smarter information; (ii) holistic/integral case management system; (iii) consolidating different systems to streamline case management; and (iv) increasing accessibility for justice seekers.³⁰

Singapore has required to all parties to submit their cases online through the EFS (electronic filling system); it is a different situation from e-Court in Indonesia, which does not require to the parties to submit their cases or lawsuit electronically. The policy that requires online case registration through EFS in Singapore has succeeded in changing the public mindset towards the using of technology in litigation. Singapore's high legal culture is a key factor in the smooth transition from manual litigation to electronic litigation.

Since its launching seven years ago, e Litigation in Singapore has provided great facilities and benefits for both internal and external parties. For internal party like judicial officer. E-Litigation enhances accessibility for judicial officers: the "Pack-n-go" function permits judicial officers to download case files into their own devices like laptop or tablets. For instance, judicial officers can read case files easily on their personal tablets, even when they are outside of the office. For registry staff, e-Litigation creates efficiency for the registry staff by simplifies of workflows and increases productivity through the automation of routine tasks. For instance, before of that, the trial dates had to be fixed

<https://www.hukumonline.com/berita/baca/lt5e1874aa88443/24-ribuan-advokat-resmi-masuk-sistem-e-court>, accessed 19 January 2020.

³⁰ e-Litigation Singapore, SAL Training eLitigation Training Form 2015", *eLitigation* (21 May 2015), available on https://www.elitigation.sg/Documents/SAL_Training_eLitigation_Training_Form_2015_for_Family_CBS_dd_21May15.pdf, accessed 19 January 2020.

manually. With e-Litigation, lawyers can select the trial dates and judicial officers can assign these dates directly without going through the registry staff as intermediaries.

For the lawyer, e-Litigation enhances efficiency by offering the lawyer a better overview of the case. By allowing lawyers access to the case file, at one glance a lawyer can have a birds-eye view of the cases. Additionally, e-Litigation provides proactive management of case files by allowing lawyers to sign up for e-mail and SMS as a reminder alert once new documents have been filed in the case file. These technology ensure that lawyers can consistently kept up to date on the latest developments in the case via diverse modes of electronic communication. E-Litigation has also given flexibility for lawyers in terms of filing court document because it can now be completed online. Lawyers also get flexibility in the selection of trial dates through a Calendaring and Trial Management Module.³¹

However, some issues that arise related to the implementation of e-Litigation in Singapore are unavoidable. The first problem is related to the portion of the budget needed to succeed e-litigation is quite large. The second problem, the lack of human resources, the large quantity of cases that enter and the lack of human resources are the main challenges for the judiciary to handle cases that enter to EFS (electronic filling system) system. The third issue that is a common concern is security and authentication. The protection and authentication of the system and the data uploaded to e-Litigation system must be protected. Of course, to guarantee this data, an acceptable and up-to-date infrastructure is needed.³² Even though there are some issues and problem faced in Singapore Judicial Institutions. However they do not stop to innovate, They Possible future innovation step would be the creation of a mobile device version of e-Litigation (for instance an e-Litigation App for mobile phone) to facilitate usage on tablets and smart phones in Singapore.

³¹ Supreme Court of Singapore “The Evolving Role of Electronic Case Management Systems Fourth Judicial Seminar on Commercial Litigation 2013”, <https://www.supremecourt.gov.sg/Data/Editor/Documents/The%20Evolving%20Role%20of%20Electronic%20Case%20Management%20Systems.pdf>, accessed 23 January 2020

³² Achmad Cholil, “Belajar dari E-Litigation ...”, p. 45.

Indonesia, which only started the electronic litigation system this year. Compared to Singapore, which first implemented e-litigation, it must be admitted that the neighboring country has taken several steps forward. However, judicial institutions in Indonesia under the Supreme Court of the Republic Indonesia need to be optimistic that the modernization of the judicial institutions based on information technology will be successful, for the sake of creating an excellent court that is based on simple, speedy and low cost justice.

Conclusion

The enactment of Supreme Court Regulation No. 1 of 2019 has transformed manual trial process to electronic administration and electronic trial. Case registration is done electronically without the need to come to court, payment of court fees does not need to come to the court simply by transfer via internet banking, sms banking and so on to a virtual account number, and the summons of the parties are carried out electronically to an electronic domicile (email). Not limited to that the trial is also conducted electronically (e-litigation), from the first trial, the answer phase, the conclusion, to the reading of verdict. Electronic proceedings have provided great benefits both for internal and external parties to make quick, simple and low-cost justice. On the other hand, there are problems and challenges faced. The aspect of the legal substance of an electronic trial regulated in Perma override the procedural law regulated in the HIR/R.Bg whose hierarchy is higher than Perma. Aspects of the legal structure, the completeness of infrastructure and technology, limited human resources. Legal cultural aspects, enthusiasm from the public or justice seekers who use e-court services.

For the successful electronic trial (e-litigation). First, new rules regarding electronic trials in the act format need to be made. Currently the government is working on the Civil Procedure Code Draft, therefore the author believes it is necessary to include electronic trials in the Civil Procedure Book Draft to resolve the debate over the Perma overruling the Act. Secondly needed human resources who are experts in technology and information systems. Likewise, the Judge who hears the case electronically, inevitably he have to master information technology, and e-court applications. therefore to increase judicial officers abilities, especially judges, it is necessary to hold sustainable

training. Third, the need for security and authentication case data. The protection and authentication of the system and the data uploaded to the e-Litigation system must be protected. to guarantee the data needed an acceptable and up-to-date infrastructure. Fourth, there needs to be a comprehensive socialization to justice seekers to encourage them for using e-litigation services. Fifth, the need for up to date facilities and infrastructure certainly requires a sizeable portion of the budget because of that it needs the support of relevant stakeholders.

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