E-Court and E-Litigation: The New Face of Civil Court Practices in Indonesia

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ABSTRACT

To fulfill the principle of simple, speedy and inexpensive justice, the Supreme Court of the Republic of Indonesia launched the e-Court application (electronic court) on July 13, 2018 after previously releasing Regulation Number 3 of 2018 on Electronic Case Administration in the Court as the legal basis for its implementation. The creation of E-Court is aimed at facilitating justice seekers in resolving civil cases in the general courts, religious courts and state administrative courts. After a year, E-Court has now been perfected to become E-Litigation (electronic litigation) through the issuance of Supreme Court Regulation Number 1 of 2019 dated August 8, 2019. Previously, E-Court only facilitates three types of electronic-based case services: e-filing, e-payment, and e-summon, while E-Litigation will enable the delivery of answers, replies, rejoinders, evidences and judgments to be carried out electronically. The implementation of E-Litigation not only significantly changes the face of Indonesian judiciary toward information technology-based modern judiciary, but also radically contravenes the provisions of civil procedural law stipulated in HIR and RBg. This article will focus on analyzing the new face of civil court practices in Indonesia in responding to the demands of the industrial revolution 4.0, while also examining the role of the Supreme Court in establishing civil procedural law that shows a similar trend to the courts in several countries that adhere to the common law system. Through the method of analysis of E-Court/E-Litigation application and regulations as well as comparative studies with other countries, this article is expected to provide ideas how E-Litigation should ideally be carried out and also to present new facts about the role of the Supreme Court in responding to the slow development of civil procedural law.

Keywords: e-court, e-litigation, industrial revolution 4.0, civil procedural law, electronic trial.

Introduction

The Industrial Revolution 4.0 which is now becoming a trend has a wide impact on all sectors of life (Min Xu, 2018), including on Indonesia’s courts. The Advance in information technology necessitates that almost all services must be digital-based in accordance with the recent development. An increasingly sophisticated society also demands all types of services in both public and private sectors to be provided in a modern way.

The progress of information technology is a challenge for the judiciary under the Supreme Court, especially in the case of the procedural civil law. On the one hand, the court must uphold the existing procedural law, but on the other hand the court is also required to be accommodative of the times and increasingly advanced information technology.

As it is known, in settling civil cases, the Indonesian courts use the civil procedural law stipulated in the HIR (Het Herziene Inlandsch Reglement) and RBg (Rechtsreglement voor de Buitengewesten). HIR is a civil procedural law that applies to Java and Madura, while RBg is a procedural law for outside Java and Madura (Yahya Harahap, 2017). HIR was promulgated in 1848, while the RBg was set in 1927 (Sudikno, 1977). Although enacted 170 years ago, these two procedural laws are still effectively used today in examining civil cases in Indonesian courts. There is no law that replaces the two procedural laws. The Civil Procedure Bill, which was drafted since 1987 has not yet been ratified by the Parliament (Elnizar, 2018).

In this context, the Indonesian Supreme Court as the highest court and highest judicial power of the state has a strategic role in the field of judicial power because it not only oversees 4 (four) court jurisdiction (Pompe, 2005) but also management in the administrative, personnel and financial fields.
as well as facilities and infrastructure. The "one-roof" system provides responsibilities and challenges because the Supreme Court is demanded to demonstrate its ability to realize professional, effective, efficient, transparent and accountable institutional organizations.

The Supreme Court is quite responsive in responding to the advances of information technology in the Industrial Revolution 4.0 to provide satisfying services for justice seekers. HIR and RBg, which were created almost two centuries ago, certainly do not accommodate the development of information technology. To fill legal shortcomings or vacancies, the Supreme Court issues a number of rules through the Supreme Court Regulations and the Supreme Court Circular Letters.

Specifically to respond to public demands in line with advances in information technology, on 13 August 2018, the Supreme Court launched an application called E-Court. A year later, on 19 August 2019, the Supreme Court perfected the E-Court application to become what is now known as E-Litigation. The final legal basis for the application is the Supreme Court Regulation (hereinafter called SCR) Number 1 of 2019 on Electronic Case Administration and Trials.

The application of E-Court and E-Litigation has changed the face of civil justice in Indonesia. The practice of civil justice was redesigned towards modern technology-based justice. The application also succeeded in displaying the new face of Indonesian courts which begins to be at the same level as modern courts in other developed countries in the world.

**Definition of E-Court and E-Litigation**

Indonesia is not the first country in the world to apply electronic filing of cases. Since 2000 Australia has begun to use technology in the operation of courts around the country (MacDonald, 2006). The Federal Court of Australia first applied it in 2001 with the release of the e-lodgment system which was then refined in 2014 with an e-courtroom program connected to the Electronic Court File (EFC) system in the internal court system (Qur’ani, 2019). Courts in the United States and Germany also started the electronic litigation system in 2001 (Michael Griese, 2002). Even Singapore first applied online case filing in early 2000 which was then changed to E-Litigation since 2013 (Crimsonlogic, 2016).

E-Court and E-Litigation are two terms that are used interchangeably when Indonesian judicial officers refer to the application that facilitates the administration of cases and trials in court electronically. When launched for the first time in 2018, people knew this application as E-Court. The legal basis used is the SCR Number 3 of 2018 on Electronic Case Administration in Courts.

Before refined in 2019, the E-Court application only had three features, namely e-filing, e-payment and e-summons. This application was developed by the Supreme Court to meet the principles of simple, fast and low cost justice. Using this application, justice seekers will be more facilitated in resolving civil disputes in Indonesian courts.

E-filing is a feature that can be used by registered users to file their cases electronically. A registered user is an advocate/lawyer who has registered through the court information system. By using this e-filing feature, advocates do not need to come to the court office to register their cases.

Meanwhile, e-payment is a feature used by registered users to pay the court fee electronically. The e-payment feature is only used by those who file their cases electronically. The payment is directed to a court’s predetermined bank account.

Whereas e-summons is a feature of the E-Court application which is used to electronically call the plaintiff / applicant to appear before the court. The Defendant can also be summoned electronically if he has stated his written agreement to be called electronically. The calling address is directed to the electronic domicile of the parties in the form of an email address and or a verified cellular telephone number.

Although at that time there were only those three features known, the SCR Number 3 of 2018 actually accommodated the submission of answers to lawsuits, replies, rejoinders and conclusions
electronically. However, in practice, only three facilities are used in the case administration electronically.

The term E-Litigation came out when on 19 August 2019 the Chief Justice of the Supreme Court officially launched the refinement of the E-Court application. The SCR Number 3 of 2018 was then replaced by SCR Number 1 of 2019 on Electronic Case Administration and Trials in Courts. Following the issuance of the SCR Number 1 of 2019, Chief Justice of the Supreme Court produced Decree Number 129 of 2019 as an implementing rule or technical guide of the SCR Number 1 of 2019. Although in the regulations issued by the Supreme Court both in SCR and Chief Justice Decree there is no term for E-Litigation, judicial officers understand E-Litigation as an improvement of E-Court. The mention of E-Litigation refers to what was said by the Chief Justice that SCR Number 1 of 2019 is the legal basis for the implementation of E-Litigation in Indonesian courts. However, the name of the application used is still E-Court.

As defined in Chief Justice Decree Number 129 of 2019, E-Court is an application used to process lawsuits, simple claims, replies, rejoinders, payment of court fees, court summons and notices, trials, reading decisions and electronic remedies and other legal services determined by the Supreme Court, which is integrated and inseparable from the Case Tracking System. With the new regulation, the electronic litigation system is not only applied in case filing, payment of case fees and parties' summons, but also applies in the exchange of answers, replies, rejoinders, interventions, evidences, and delivery of decisions electronically.

Apart from those mentioned above, the significant difference between the 2019 E-Court application and that of the previous application lies in the legal subjects (users) and their use in legal proceedings to a higher court. In 2018, E-Court users were limited to advocates as registered users. Now, everyone can use the application in settling their civil cases. Another difference is that the use of E-Court applications is now not limited to first-instance courts, but can also be used in appeals, cassation and case review at the Supreme Court.

Background of the E-Court

If we explore further, the issuance of the rules regarding E-Court is not merely about fulfilling the principle of simple, fast and low cost justice, but also to meet the demands of the business community both at national and international levels.

In supporting the national priority program in the 2015-2019 National Medium-Term Development Plan (RPJMN), the Supreme Court and its lower courts have contributed to the improvement Indonesia’s Ease of Doing Business (EoDB) index. The main target of Indonesian EoDB, among others, is to increase economic growth through increased investment. The EoDB indicator uses 10 (ten) parameters. There are two indicators related to court jurisdiction, namely enforcing contracts and resolving insolvency (World Bank Group, 2019). Business actors have complained about the length of the civil dispute resolution process in Indonesian courts. These complaints directly or indirectly impact on Indonesia's ranking in terms of ease of doing business.

The business ease index in Indonesia in 2019 ranked 73 out of 190 countries (World Bank Group, 2019). Therefore the Supreme Court then issued a number of regulations to help resolve civil disputes quickly, simply and at a low cost. Three of the regulatory packages issued by the Supreme Court that are highly related to this matter are: First, SCR Number 2 of 2015 on Small Claim Court Procedures that have been amended by SCR Number 2 of 2019. Second, SCR Number 1 of 2016 on Mediation Procedures in the Court which replaces SCR Number 1 Year 2008. Third, SCR Number 3 of 2018 on Electronic Case Administration in Courts, known as E-Court. The SCR Number 3 of 2018 was then replaced by SRC Number 1 of 2019 along with the adoption of an electronic trial (E-Litigation) by the Supreme Court to be applied in the general courts, religious courts and state administration courts.
What’s New Court Practices Introduced by E-Court?

E-Court presents a number of new practices in radically changing the practice of civil justice in Indonesia. Some of these changes include: First, case registration is now done electronically both by registered users (advocates) and other users (apart from advocates). Before the enactment of E-Court, those who want to file their cases must come to the court office themselves by submitting the lawsuit manually. It might be not a problem for those residing not far from the court office, but for those who live far from the courthouse, especially those staying in remote parts of the Indonesian islands, lodging a lawsuit in court requires a lot of money, time and energy. Now, the parties can register their cases wherever they are as long as there is an internet network.

The second is about the payment of the down payment of court fees. Traditionally, litigants have to pay court fees at the court office or at a bank near the court office. With E-Court, parties make payments online through virtual accounts provided by each court.

Third, the subpoena does not need to be delivered by the bailiff to the parties' residence anymore because the summons to attend the trial is done electronically by sending them to the electronic domicile of the parties in the form of the registered email address. It is important to note that the largest portion of the case fee that must be paid by the parties for a civil case lies in the cost of this summons. The amount of the case fee is calculated based on the number of parties involved (the plaintiff and the defendant) and the distance of the parties' residence from the court office. The more parties involved and the further the parties live from the court office, the more expensive the costs will be. With electronic summons as specified by the E-Court, the parties do not need to pay for the summons.

Fourth, the submission of answers, rebuttal, replies, rejoinders, intervention suits and conclusions are also carried out electronically. Usually, the panel of judges sets a trial agenda for every single hearing. So, each of the submission of answers, replies, rejoinders and conclusions are conducted in each different hearing day, with the distance between one session to the next session approximately between two weeks to even one month. The parties or their proxies must come to court to attend the hearings. Now, with E-Litigation, the parties do not need to come to court for these agendas. They simply upload answers, replies, rejoinders and conclusions electronically through the court information system (E-Court application) in accordance with a predetermined time by the Panel of Judges based on the agreement of the parties. This is what is referred to as electronic trials. Nevertheless, for the evidentiary trial, it is still carried out manually because the documents which are used as evidence must be seen for authenticity and confronted with the opposing party.

Fifth, the Plaintiff must attach evidence along with the claim letter uploaded to the court information system. In the upcoming evidentiary hearing, the uploaded evidence will be matched with the original ones. The obligation to upload evidence together with this lawsuit makes the litigation process fairer for the parties because defendants can obtain evidence provided by the Plaintiff from an early time. Thus, the Plaintiff before lodging their cases must be fully prepared with all the evidence so that the verification process will not be protracted.

Sixth, with E-Litigation, witness examination can also be done remotely using audiovisual communication media that allows all parties to communicate and participate directly in the trial.

Finally, the hearing for pronouncing the verdict was also conducted electronically. The parties need not be present personally in the courtroom. The hearing to read the verdict is deemed to have been carried out by submitting a copy of the decision by the panel of judges to the parties by sending it through the court information system.

Based on the above explanation, it is clearly illustrated that E-Litigation drastically changes the practice of conventional civil justice to be much more modern, more effective and efficient.
The Benefits of Electronic Case and Trial Administration

The implementation of E-Court benefits not only justice seekers but also the courts officers themselves. For justice seekers, this E-Court provides benefits in at least three ways (Supreme Court, 2018). First, E-Court makes the justice system simpler and faster. The parties do not need to come to court either to file a case or attend a trial. They do not need to wait in line from morning to evening to just wait for attending the trial. This is what has been widely complained of by justice seekers. By using this application, the trial process will be faster. The parties can also save time, energy and money in following their case settlement process in court.

Second, E-Court can bridge Indonesia's vast geographical constraints consisting of tens of thousands of islands stretching from Sabang to Merauke. For people who live in remote areas, this application will greatly assist them in accessing the court. Third, because almost all cases are carried out electronically, the use of the E-Court application will significantly reduce the amount of court fees to be paid by the parties. The cost of summons and the cost of attending a court trial can be reduced or even eliminated altogether.

Meanwhile for court officers, the use of an electronic litigation system through E-Court provides at least two major advantages. First, E-Court will greatly assist the process of case resolution so that the case backlog in the court will be avoided. The electronic litigation process will make it easier for court employees to manage case administration, especially for courts where the number of employees is not proportional to the existing workload.

Second, the electronic litigation system will increase public confidence in the judiciary. The reason for this is because this system will limit direct interaction between court users (justice seekers) with judges and other court officials. The lack of direct interaction will impact on the minimal possibility of deviations from the code of ethics or violations of the law such as bribery, corruption and others (See Prakasah, 2014).

The E-Court application version 2018 has been implemented in all courts in 3 (three) court jurisdictions: general courts, religious courts and state administrative courts, with details of 382 district courts, 412 religious courts/sharia courts and 30 state administrative courts. Meanwhile, the 2019 E-Court application (E-Litigation) has now only been applied to 13 pilot courts, consisting of 6 district courts, 4 religious courts and 3 state administrative courts. The implementation of the new 2019 E-Court will be comprehensively applied in every first-instance court in Indonesia in 2020.

The presence of E-Court has been welcomed by the wider community. This can be seen from the number of cases filed online. According to data as of September 25, 2019 compiled by the Supreme Court, since the enactment of the online litigation system in July 2018, there have been as many as 25,007 cases that have been tried to be registered online. However, those cases who managed to be numbered by courts were 18,435 cases from 3 (three) court jurisdiction. The case registration was carried out by 18,927 advocates who are registered and verified. The large number of case registrations shows the enthusiastic reception of justice seekers so that their cases can be resolved simply, quickly and at low cost.

However, the implementation of E-Litigation in courts under the Supreme Court also faces several challenges. Among the challenges are data security and confidentiality, some parties' resistance to the use of technology, costs for providing facilities and infrastructure, and lack of understanding of the use of information technology, especially for people living in remote areas.

If we compare the implementation of electronic litigation between Indonesia, Australia and Singapore, there is one interesting thing to note. Australia and Singapore need approximately 13 (thirteen) years to move from just registering a case online (e-filing) to an electronic trial (E-Litigation/E-Trial), but Indonesia only takes one year to depart from e-Filing to E-Litigation. This rapid movement raises a number of questions as to whether the court human resources and justice seekers are all ready for the implementation of E-Litigation. Has there been a thorough evaluation of the implementation of E-Court in the past year? If these questions have not been answered comprehensively, it is feared that the implementation of E-Litigation will face even greater obstacles in the future.
Although electronic litigation is not a mandatory requirement for justice seekers, the Indonesian Supreme Court has tried to bring the practice of case registration and trial proceedings from manual to digital and from face-to-face to online/electronic. This ‘radical’ change certainly collides with the rules of civil procedural law stipulated in the HIR/RBg. This can be understood because the existing procedural law was issued about two centuries ago during the Dutch colonial period. In the language of the Chief Justice of the Supreme Court, the implementation of this E-Court redesigned the practice of civil justice in Indonesia to be equivalent to the practice of justice in developed countries in the world.

Drawback of E-Court: Electronic But Not Paperless

The E-Court is designed not only to make it easier for justice seekers to resolve their disputes but also to assist court apparatus in managing case administration. In addition, as stated in the consideration of SCR Number 1/2019, the E-Court was also created to provide a more effective and efficient case and court administration services. Unfortunately, those effective and efficient goals seem to apply merely to justice seekers because they are really helped in terms of cost, time and energy. However, for the court officers, this E-Court has a weakness because the court officer is burdened with additional work to print all documents uploaded by the parties into the court information system (E-Court application).

The obligation to download and print out all documents is regulated by Chief Justice Decree Number 129/2019 page 11 which states that “the Registry officers shall download the documents available in the E-Court Application as backup data in hardcopy form”. Furthermore, this is confirmed by the provision in the same decree on page 20 stating that “all documents produced electronically are printed out for filing purposes by the Deputy Registrar of the relevant courts”.

The obligation to download and print out all documents is quite burdensome in terms of budget especially if there are many documents in one case, while the court does not have such budget to print the document. If later a budget is provided to print the document, the budget will be very large considering the number of courts throughout Indonesia which is not less than 800 courts. Several court leaders and registrars whom the Writers met gave confirmation of the burden to print the entire document, especially in terms of cost and effectiveness.

In the electronic digital world, management of case file administration should be done paperless without having to print in hardcopy. The obligation to print documents in an electronic administration will likely make the system of E-Court and E-Litigation in Indonesia ineffective and inefficient, especially for courts officers.

In order to make E-Court and E-Litigation better and more effective and efficient, the Supreme Court of Indonesia must have the courage to abolish the stipulation to print the documents uploaded by litigants so that the system becomes paperless. This way, the objective of effective and efficient judicial administration can be realized both for justice seeker community as well as for court employees themselves.

Role of the Supreme Court in Creating Civil Procedural Law

Discussing the redesign of civil court practices in Indonesia, one interesting thing to note is that the Supreme Court takes a dominant role in changing the face of this civil justice. As a country that adopts the Civil Law system, the Supreme Court does not rely on legislative institutions to produce laws that will be used as guidelines in court proceedings. The Supreme Court actually takes the initiative to make a number of new rules to respond to the dynamics of the era and the latest development of laws. These rules are contained in the form of Supreme Court Regulations and sometimes also in the form of Supreme Court Circular Letters.

This Supreme Court step is not without foundation. Article 79 of Law Number 14 of 1985 on the Supreme Court, which was last amended by Law Number 3 of 2009, states that the Supreme Court
can further regulate matters needed for the smooth running of justice if there are things that are not sufficiently regulated in This law to fill legal shortcomings or vacancies. Deficiencies and legal vacuum referred to here is about lack of procedural law. Then Article 7 and Article 8 of Law Number 12 of 2011 on the Formation of Laws and Regulations whose revision was approved by the Parliament on September 24, 2019 states that the Supreme Court Regulations are one of the types of legislation.

From the information that can be accessed, within a period of 20 years from 2000 to 2019 alone, the Supreme Court has issued SCRs pertaining to procedural law as many as 75 regulations (Supreme Court, 2019). This means that every year, the Supreme Court issues an average of 4 SCRs. Not to mention the many circular letters issued which sometimes also contain procedural civil law norms.

What is done by the Supreme Court is similar to what is done by courts in countries that adhere to the Common Law system. In Australia for example, the issuance of court rules does not have to wait for rules in the form of laws that are enacted by parliament. Federal Courts and State Courts in Australia issue Practice Notes or Practice Directions for procedural law (Sheryl Jackson, 2007). The rules are similar to the SCR issued by the Supreme Court in filling vacancies or lack of procedural law that has not been regulated in the law.

Conclusion

E-Court/E-Litigation has brought a new face to the practice of civil justice in Indonesia. The community also enthusiastically welcomes the implementation of this new regulation. However, the implementation of the 2019 E-Court has not been tested because it will only be enforced in all courts in Indonesia in 2020. Although E-Court/E-Litigation is created to provide a more effective and efficient court services, the obligation to print all documents as stipulated by Chief Justice Decree seems to hinder that objective to meet its goal. The challenges faced by internal courts are quite heavy, starting from the readiness of human resources, infrastructures, and the mentality of court officials. Apart from all of that, what the Supreme Court has done should be appreciated as an effort to enforce the principle of simple, fast and low cost judiciary, whose main targets are satisfaction from justice seekers and increased economic growth for the welfare of Indonesian society.

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