

Application Of Legal Procedures In The Examination Of The E-Court System

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Abstract

The development of Information Technology has entered into all aspects of people's lives. Technology makes everything easier, not least with the world of court governance, it is also required to be able to develop along with the development of society by utilizing technological sophistication in the form of an internet network, which can create a system in forming an application called E-court. E-court is a form of change in the administration of cases that are more transparent and accountability. The problems in this study are: how the rules of legal procedure in the examination of the e-court system, how the effectiveness of the process of settlement of lawsuits in the e-court system in court. Based on the results of research and discussion, the e-court system in the process of settling lawsuits in court courts based on the principle of simple, fast and low cost has been running as its function but in practice the trial is still done manually. And there are still obstacles that are felt by advocates / justice seekers that hinder the legal process to be less effective in its implementation

Keywords: Examination, E-Court System, Procedures.

1. INTRODUCTION

Justice is everything or a process carried out in court that deals with the task of examining, deciding and adjudicating cases by applying the law and/or finding the law "in concreto" (the judge applies the rule of law to real things that are presented to him to be tried and decided) to maintain and ensure the observance of material law, using the procedural means established by formal law. Of the two descriptions, the court is the institution where the subject of law seeks justice, while the judiciary is a process in order to enforce law and justice or a process of seeking justice it self.

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Civil law according to its functions is divided into material law and formal law. Material law is a law that regulates the rights and obligations between legal subjects set forth in the Civil Code (hereinafter referred to as the Criminal Code). While formal law is the law that regulates how material law can be maintained and implemented as it should. Formal law is often referred to as procedural law. Any legal subject who feels a loss for a certain legal act, the legal subject can file a lawsuit or application through the judiciary (litigation) or resolve a problem outside the judiciary (non-litigation).

Information technology over time is growing. The development of Information Technology in Indonesia has a positive impact, such as making it easier to get information anytime and anywhere. All that by connecting a computer or smartphone to the internet network then everything is easily accessible without limits. The development of Information Technology has entered into all aspects of people's lives. Technology makes everything easier, including work that becomes more effective and efficient.

No exception to the world of government. This digital trend is also growing. Many agencies are competing to provide public services to the community with utilizing the sophistication of information and Communication Technology. So that public services can be more transparent and people become more easily connected to government services. In accordance with Presidential Regulation No. 95 of 2018 concerning electronic-based government systems (SPBE),⁵ SPBE are needed to realize clean, effective, transparent, accountable, and quality and reliable governance. Therefore, several factors are needed for the purpose of SPBE to be realized.

The court is also required to be able to develop along with the development of society. Because every year there is an increase in the number of cases or cases that go to court due to the increasing population of the community and changes in the pattern of court life have also used digital technology in information for handling a case that is faster, easier and costs less. The online system is a new breakthrough in the administration of Justice. By utilizing the sophistication of technology in the form of an internet network, it can create a system to form an application called E-Court. With the online operating system, people who seek justice do not need to register by coming directly to the court.

The e-court application is the embodiment of the implementation of Supreme Court Regulation Number 03 of 2018, namely the administration of cases in court electronically.⁹ E-court or electronic court is one of the latest innovations of the Supreme Court which began to be launched since July 2018. The purpose of the establishment of this e-court application is to simplify the proceedings in the judiciary so that all administrative processes

that were previously carried out conventionally with the e-court can be done online media in ecourt.mahkamahagung.go.id.

The existence of the e-court application is expected to improve services from registration to trial and can reduce costs and time and make it easier when registering cases and during trials. Referring to the provisions of Article 2 Paragraph 4 of Law No. 48 of 2009 concerning judicial Power¹¹ which states that "justice is carried out simply, quickly, and at low cost". Therefore, based on these principles, the birth of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2019 concerning the administration of cases and proceedings in courts electronically¹² in the current era of globalization should be able to implement the principles as mentioned above.

The e-court system is a form of change in case Administration that is more transparent and accountable in accordance with the demands of the Times and advances in Information Technology have changed the way of life in society. E-court is highly recommended for use because by using it can reduce the cost of calls that should cost tens of thousands to hundreds of thousands of dollars per call can be free because the call of the parties can be done electronically.

In addition, with the e-court, the litigants do not have to come to court so as to minimize the litigants to attend court directly, and make it easier for the community, especially advocates, to obtain information and knowledge. So that its use is felt by the advocates themselves, especially regarding :

- a) Save time and cost in the payment process.
- b) Payment of chargeback fees is done with a virtual account which can be paid through the bank electronically, and
- c) Letters can be stored properly and accessed from various locations and media.

E-court system procedures to simplify the process of hearing examination as an application with the principle of justice is simple, fast and light cost. Registration of civil cases online-based trials are expected to be more effective than the registration of civil cases and trials conducted manually as in general and effective for advocates in the process of proceeding in court. Based on the description above, the researchers are interested in conducting research with the title Application of Legal Procedures In the Examination of the E-Court System.

2. RESEARCH METHOD

This study uses a combined method of normative and Empirical Legal Research and is descriptive of how the effectiveness of the e-court system in the process of settling lawsuits in court. The results of combination research can be useful for making generalizations and understanding meanings.

3. RESULT AND ANALYSIS

Carrying out a job, especially the main task (tupoksi) for the court apparatus by using electronic media is a necessity. Especially for judges, it is highly demanded not to stutter technology (gaptek) when making a decision, input data in The Case Tracking Information System (SIPP) application about the determination of the trial day (PHS), amar verdict, edoc verdict and so on. Therefore, for the current court judges must be able to work to serve the public quickly and appropriately in the field of law electronically.

The Supreme Court of the Republic of Indonesia with its Permana Number 1 of 2019 concerning the administration of cases and proceedings in court electronically. This regulation revokes Perma number 3 of 2018 on the administration of litigants in court electronically, which contains more details in addition to regulating registration (e-filing), payment (e-payment), summons/notification (e-summons) also regulates electronic proceedings (e-litigation).

The implementation of this electronic trial still requires socialization among the judicial apparatus, especially the judges who are obliged to resolve the cases they handle in order to be achieved according to the principle of simple, fast and low cost. As a technical instruction at the same time, the Chief Justice then issued a decree KMA number : 129/KMA/SK/VIII/2019 on technical instructions for the administration of cases and proceedings in court electronically. This is the legal umbrella for judges in electronic proceedings with the following principles, namely simplifying procedures that seem complicated, integrating procedural law that is partial, and automating administration that was manual.

The electronic trial requires the trial process to be carried out more simply, quickly and at low cost. Like business transactions, which do not require face-to-face and are met in cyberspace, electronic proceedings approach the processes that occur in cyberspace. However, although the nomenclature is said to be an electronic trial, the fact is that there is a certain point of the event, for example, in the form of evidence, which must be legally attended by the parties to the case.

According to Mr. Andri Anjhari Lubis, S.H, in the process of settling lawsuits, especially civil cases, not all e-court cases are only partially such as : general civil, tort, Tort (PMH), divorce and inheritance disputes. The legal procedures in E-court examination as in the process of civil proceedings in general as follows:

1. An electronic summons or notice is a summons or notice document generated automatically by the e-court application and sent electronically by the court to the parties. Summons or notices executed electronically are valid.

2. The first hearing was held in the courtroom according to a predetermined schedule. If at the first hearing the defendant is absent, the judge may postpone the hearing to call the defendant a second time. If at the second trial, the defendant is present (also applies if at the trial the respondent is present), the panel of judges will reconcile the disputing parties in order to resolve the case peacefully like a normal trial process. Peace efforts that do not produce an agreement will be continued at the next stage, namely the mediation process in accordance with PERMA Number 1 of 2019. When mediation is reported to be unsuccessful, the trial continues with the agenda of asking both parties for their agreement to follow the trial electronically. Electronic proceedings can only be held with the consent of both parties after the completion of the mediation process. The consent of both parties is no longer required if then both parties have been represented by a lawyer (Advocate). The presence of the litigants in the courtroom at the hearing with the agenda of reporting mediation results are highly recommended. When the parties have agreed, the panel of judges prepares the court calendar as the menu available in the SIPP application and this is integrated into the e-court. If the parties or the defendant do not agree that further proceedings will be conducted electronically, the panel of judges determines the next trial manually according to the procedural law that has regulated it. According to Perma Number 1 of 2019 concerning the administration of cases and proceedings in electronic courts, every electronic trial must be made a court calendar. The judicial calendar, which is often positioned as a judge's record of the acceptance of cases, is made to facilitate the stages of the trial so that the process of answering, proving, concluding and ruling can be scheduled regularly. E-court calendar is also prepared so that the settlement of cases can be predicted to be completed faster not to exceed the maximum period for 5 months (according to Sema Number 2 of 2014). After the determination of the chairman of the council on the court calendar is read, the next step is the reading of the plaintiff's lawsuit, after it is completed and there is no change, the chairman of the council postpones the hearing until the date set on the court calendar with the agenda of the hearing the answer from the defendant.
3. The chairman sets the electronic court schedule (court calendar) for the delivery of answers, replies, duplicates submitted through SIPP. The parties are obliged to submit the answer, replicas and duplicates in pdf and rtf/doc format in accordance with the established schedule. If the party does not send electronic documents in accordance with the agenda of the trial that has been set without a valid reason, it is

considered not using its rights. The panel of judges checks and verifies the documents sent by the parties, after completion of checking and verifying the panel of judges forwards the documents to the other party. The substitute clerk records all trial data through SIPP.

4. In the process of trial, a third party can propose intervention in the case being heard electronically. The third party applying for intervention is obliged to follow the proceedings electronically. If the third party is not willing to convene electronically, then the panel of judges declared the application for intervention inadmissible through a determination. The process of examining an intervention lawsuit is carried out electronically in accordance with the provisions of the procedural Law. The intervention lawsuit as well as the parties' responses to the lawsuit are submitted electronically. The presiding judge will issue a determination containing the refusal or acceptance of the intervening plaintiff to be a party to the case. Upon such determination, no remedy can be made.
5. Mr. Andri Anjahri Lubis, S.H, as a lawyer at Kantor Hukum Nusantara explained that the trial for proof is still held manually.⁶¹ Like the examination in general, it is carried out in a courtroom attended by the parties with the evidence of witnesses or experts presented. can also be implemented electronically. The trick is to do it remotely using the court infrastructure, a kind of teleconference with live streaming or using tools such as those available in the media center room. The parties who wish to be examined by the witness or expert submitted electronically can apply to the Local Court to be facilitated for that, the Local Court will issue a determination on the substitute judge and clerk who will preside over the trial and witness the swearing and examination of the witness or expert who will deliver the information by telcofrencence. The fee required for the virtual hearing Service is charged to the party who submits the electronic examination of witnesses or experts. Substitute judges and clerks who witness the examination by teleconcrence are not required to make minutes of the hearing.

If at the end of the proof a local examination hearing is required, the local examination hearing (descente) may be attended by the parties. Determination of the chairman of the Assembly and payment of the fee for the local examination hearing is carried out at the time of the evidentiary hearing attended by the parties, as for the discente hearing, it is carried out according to the applicable procedural law (vide Article 153 HIR) and this is not regulated electronically.

The process of proof in the electronic trial is as follows, namely:

1. Evidence of letters or writing can simply be interpreted as everything that contains punctuation marks that are intended to pour out the contents of the heart and mind that can be used as evidence, which indicates that people have been accustomed to pour events in their lives in writing.⁶³ so whatever does not contain signs, nor does it contain signs, but it does not contain thoughts, is not of the understanding of written evidence or letters. A letter containing the outpouring of someone's heart but its function is filed in front of the hearing may not be as letters or writing but just an object to convince, because what is needed by the court in that context, incidentally, is the existence of the letter in whose hands (for example, the letter has been stolen by someone). Written evidence can be both authentic deed and under hand. An authentic deed is one that is made by an official authorized by the sovereign, according to established provisions, either with or without the help of the interested party, which records what is in it by the interested party. While the deed under hand is a deed or letter made by the parties without the intervention of officials. At the stage of electronic evidence the parties are required to upload / upload documents evidence letter or writing (electronic document) stamped into the Information System, the original document of the evidence is shown in front of the trial that has been set in the trial. Electronic document is any electronic information created, forwarded, transmitted, received or stored in analog, digital, electromagnetic, optical, or similar forms that can be seen, displayed and/or heard through a computer or electronic system, but not limited to writing, sound, drawings, design maps, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand it. If the electronic information submitted in the trial is an image file data that is identical to the original data, then the electronic document can be used as valid evidence to prove a case. In the trial of civil cases, evidence in the form of electronic documents, can stand alone as evidence or can be as evidence of instructions to strengthen the evidence of letters and witness statements.
2. As mentioned above, it is the plaintiff who must prove his arguments first through the means of evidence specified in Article 164 HIR/246 Rbg, which in judicial practice is preceded by written evidence, then other means of evidence including evidence in the form of witnesses. In civil cases, witnesses can be divided into 2 (two), namely: fact witnesses and expert witnesses.
3. A conjecture is a conclusion drawn by law or by a judge from a known event in the direction of an as yet unknown event. The presumption of

understanding is used when the legal events postulated are not obtained from witnesses, meaning not direct witness testimony, but inferred from witness testimony or other evidence. Suspicion is divided into 2 (two), namely: suspicion by the judge and suspicion in law.

4. In articles 174-176 HIR and 1923 of the Civil Code, it is explained that the definition of recognition that has the power of proof as evidence is evidence in the form of statements/information submitted by one party to another in the examination process carried out in front of the judge in the trial, where the recognition contains information that what is argued by the opponent is true in part or in whole. The Supreme Court has explained the recognition in the trial electronically in the trial technical instructions which states that the evidence with the agenda of examining witness and/ or expert testimony can be carried out remotely using the medium of audio-visual communication/teleconference, so that the parties can see and hear each other directly and can provide their participation in the trial.
5. The oath can be interpreted as a person's statement of *khitmad* related to the matter spoken before giving information by remembering the omnipotence of God where whoever does not give untrue information will receive punishment from God. There may be some truth, fear of God's wrath or punishment will influence honest people to tell the truth. But on the contrary, for the dishonest oath is not a guarantee of telling the truth, because for such a person lies have become an integral part of his life. Especially for people who do not believe in God, lies for him are a matter of course, because people who do not believe in God, do not know and do not fear God's punishment. In theory and practice, then, no one can vouch for the truth or falsity of the oath as a means of proof. Materially, it is impossible for anyone to guarantee that what is sworn or recited in an oath at a court hearing is indeed a sure truth. However, because the law has determined, if a person has taken an oath in a trial in a position in his capacity as a party to the case being heard, formally, the sworn statement must be considered true. And Article 1936 of the Civil Code prohibits to prove the falsity of the oath. Also Article 177 Hir confirms that no other evidence should be requested to prove what has been promised in the oath. That is why the oath has the value of perfect evidentiary power, binding and decisive. Therefore, the truth or falsehood of the party who swore the judge is prohibited from judging it as a false oath, unless it can be proved by a criminal verdict that has permanent legal force. Oath evidence is regulated in Article 155-158, 177 HIR/article 182-1185, 314 Rbg. Based on HIR, the oath can

be divided into 3 (three), namely: suppletioir oath (additional) and assessment oath.

6. The conclusion can be interpreted by the conclusion, or the resume of the lawsuit from the entire outcome of the trial, which the plaintiff/defendant submits at the end of the trial. The actual conclusion is not known in HIR / Rbg, but in practice the conclusion is submitted by the litigants. Before the conclusion is submitted, the judge will ask the parties whether they are still submitting evidence or not and whether there are still things that need to be submitted or not. In other words, the conclusion is made after the judge asks the parties (plaintiff/defendant) whether the evidence presented is sufficient or not and whether they still intend to present evidence or not. When the parties say Enough is enough, the trial proceeds to the conclusion. The parties submit the conclusion in the form of an electronic document via e-court. After the panel of judges receives and examines the document, the panel of judges then verifies the document through the menu that is available on the e-court. As for the party that does not submit the conclusion on the date that has been set electronically, it is considered that it has not fulfilled its right to submit the conclusion and there is no rescheduling for it. The conclusion document will be sent to the opposing party, when the chairman of the Assembly closes and sets the adjournment of the hearing for the reading of the verdict.
7. In accordance with the provisions of Article 178 HIR, Article 189 RBG, when the examination of the case is completed, the panel of judges because of their position conducts deliberations to take a decision that will be handed down. The examination process is considered complete, if it has taken the answer stage from the defendant in accordance with Article 121 HIR, Article 113 Rv, which is accompanied by a replica of the plaintiff under Article 115 Rv, as well as a duplicate of the defendant, and continued with the process of proof and conclusion. If all these stages have been thoroughly completed, the tribunal declares the examination closed and the next process is the imposition or pronouncement of the verdict. Before pronouncing the decision, it is the deliberation stage for the Assembly to determine what decision to impose on the disputing party. The final pronouncement of the decision or determination is read or spoken by the panel of judges electronically in a trial that is open to the public.
8. Legal remedies are legal steps taken by legal subjects or parties to object to a case, whether it is a case that is still ongoing or has been decided by the court. The legal remedy is a reaction of the legal subject or a response to a case that has been decided in the first instance and/or in the framework of the implementation of a court

decision addressed to the court of first instance. In addition, the remedy is carried out by the objecting party to the court decision submitted to a higher court. The purpose of the legal remedy is a request to the court to decide in accordance with the legal interests or rights of the applicant.

For parties who litigate electronically from the beginning, they can apply for legal remedies electronically. Legal remedies are filed within a grace period in accordance with applicable regulations. All stages of action against legal remedies conducted electronically, also electronically submitted, include the issuance of a deed of statement of legal remedies, notice of statement of Appeal/Cassation/PK, submission of memory band/Cassation/PK, submission of counter memory appeal/Cassation/PK, inzage, submission of bundles A and B, as well as notification of decision appeal/Cassation/PK, pal - ing later than 14 (fourteen) days since the decision was handed down electronically. But in practice as explained by one of the advocates of the archipelago law office, Romy Rohadi Saragih, S.H among others: “ There is no regulation that specifically regulates the deadline for sending the appeal memory, but in the e-court process, once we register automatically, the e-court has given us time for the comparator to complete the administration of the appeal for 7 (seven) days. While in the provisions there are no binding regulations governing it”.

4. CONCLUSION

Implementation of basic tasks for the court apparatus using electronic media is a necessity. The Supreme Court of the Republic of Indonesia with its Permana Number 1 of 2019 concerning the administration of cases and proceedings in court electronically which contains more details in addition to regulating registration(e-filing),payment(e payment),summons/notification (e-summons) also regulates electronic proceedings (e-litigation). The legal procedures in the E-court examination as in the civil case trial process in general are as follows: electronic summons (e-summons), trial for the stage of peaceful efforts (mediation), trial for the electronic answer-answer stage, electronic third party intervention, trial for the electronic proof stage, trial for the electronic conclusion stage, trial for the electronic reading of the verdict and electronic legal remedies.

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