

The Implementation of Simple, Expeditious, and Inexpensive Principle for Quality Private Court Decision Through E-Court

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Abstract-E-court is one of the attempts in achieving a simple, expeditious, and inexpensive court process. The process of seeking justice in court is done to issue a quality decision to meet sense of equity of justice seekers as well as settling legal problems faced by parties. There are some problems faced by the judge in understanding facts of e-court. Such problems emerge due to the absence of database that can be accessed quickly and easily in order to validate the electronic letter or evidence and limitation in capturing the witness' or experts' statement because e-court's audio-visual quality has not been able to represent an actual trial situation.

Keywords- E-court, Decision, Indonesia.

I. INTRODUCTION

Technology experiences advancement in various sectors, which facilitates inter-individual interaction. One of the examples of the technology advancement is internet activities. Internet activities cover a wide scope of activities. Through electronic media, the community enters abstract, universal, timeless, virtual world. Internet is a layer of technology and service complexity that gradually incorporate a thing that can be enjoyed by many people. [1]

Legal development is highly influenced by the development of community, especially the science and technology development, and vice versa. Rapid development of information and technology highly affects the life of community globally. This era is known as digital era due to massive use of information technology. Various changes that occur due to the changes in community's need and legal development affects the legal system in Indonesia.[2]

Technology development that forms a culture also changes, it should be supported by the development of material law (cyber law) and formal legal instrument, in this case is private procedural law, as a means to carry out material private law. This condition forms a new culture in the community, when inter individual relationship is no

longer limited by territories. Technology offers a range of new services, such as e-commerce. This development does not only need the support of material law but also formal law as a means to implement material law. [3]

The mandate of article 2 paragraph (4) of Law no. 48 on Judicial Authority (hereinafter Judicial Law) ask every trial in any court level is done in simple, expeditious, and inexpensive manner. Therefore, mechanism reform of administrative system in court is necessary. The presence of information technology can be utilized as a means to achieve that idea.[4] Principle of expeditious trial is a universal principle, issues on convoluted procedure and process emerges a problems faced by judicial institutions. Dory Reiling argues there are three problems often faced by courts, namely case delay, difficulty to access, and the apparatus' integrity.[5]

The Supreme Court also attempts to develop a procedural law by utilizing information technology. This legal development is carried out by issuing the Supreme Court Regulation no. 3 of 2018 on Administration of Electronic litigation (hereinafter Perma no. 3 of 2018). PERMA no. 3 of 2018 has not accommodated all needs for electronic litigation because it regulates only about administrative system, namely electronic administrative process and case registration. However it has not regulated matters relating to electronic litigation.[6]

Therefore, the supreme court issues Supreme Court Regulation no. 1 of 2019 on Case Administration and Electronic litigation (hereinafter referred to as PERMA no. 1 of 2019). Considerant views PERMA no. 1 of 2019 shows the Supreme Court's idea to actualize a simple, expeditious, and inexpensive trial. This PERMA serves as a legal basis of technical implementation of e-court. Perma no. 1 f 2019 issued by the Supreme Court on 16 August 2019 makes the Supreme Court seems to be the most prepared institution to face Covid-19 pandemic. In the end of 2019, Covid-19 pandemic forces all elements of community take far greater changes. [7]

In South Korean court, electronic administrative system has been applied since 1986, this system allows the judge to register and rule cases. The system is upgraded continuously, and in 2010, South Korea has applied e-filing system. System changes that utilize technology in Korea also leads to a number of problems.

Process of adaptation and mastery of system emerges as challenges to develop human resources. Another challenge is the provision of technology facilities, which requires huge cost.[8]

The practice of e-court in Korea exhibits an experience of simple, expeditious, and inexpensive trial because the disputing parties can file and receive trial documents online, as well as monitor the trial stage online. Indeed, the provision of e-court facility requires huge cost, but e-court provides long-term savings relating to paper use. South Korea manages to save 221 USD per case by implementing *e-court*. E-court mechanism in Indonesia can also save the trial costs. Technically, e-court removes cost of summons, document copying cost, and allows easier document search. Expeditious trial will lead to cost-savings.

II. FINDINGS AND DISCUSSION

1. *Simple, Expeditious, Inexpensive Principle*

Judicial Law states that a trial should be carried out in simple, expeditious, and inexpensive manner. "Simple" means that the investigation and rulings of the case is carried out efficiently and effectively. Thus, the trial is performed in an easy, simple procedure. The fewer the formality procedure, the better. In contrast, many formalities to perform, or that are difficult to understand, or many regulations leading to various interpretation leads to worse legal certainty and unwillingness to solve problems in courts. Consequently, there is potential to vigilantism.[9]

"Expeditious" is measured from the duration of the trial. Too much formality procedures results in more time needed to hear a case. Such procedures include administration of claim, making court reports. Expeditious court process will improve the court institution's authority and the community trust. Expedition in settling a case in a trial also implies that the judge should finish the investigation and issue the decree in timely manner.[10]

The duty and authority of the court institution in private field is to receive, investigate, and judge, as well as to settle disputes between two parties, which leads to contentiosa jurisdiction. In addition, the institution's authority is also to solve cases related to voluntair cases. In article 2 paragraph (4) of. Law no. Judicial law, it is stated that trial is done in simple, expeditious, and inexpensive manner." Based on the elucidation of article 2 paragraph (4) of Judicial Law, "simple" means that the investigation and settlement of a case is carried out efficiently and effectively. [11]

"Inexpensive" means that the case cost should be affordable, while the principle of "expeditious" is not explained. However, the principle of "expeditious" refers to the time of case settlement, which means that the trial process is not protracted and time-consuming. The presence of these principles in court process ensure the three basic values of purpose of law, namely, legal equity, usefulness, and certainty. In addition, the implementation of simple, expeditious, and inexpensive principle in court

process is widely interpreted, it covers the aspect of court regulation, institution, and process. [12]

"Inexpensive" demands affordable case cost for the community. Case cost should be measured using certain rational variable and justice seeker cannot be charged by costs other than those determined before. However, the simple, expeditious, and inexpensive court process does not set aside thoroughness and accuracy, thus leading to a quality decision. [13]

2. *E-Court in Indonesia*

E-court mechanism, as a case administrative system, allows better court mechanism, especially in private case because it simplify and accelerate the process of registration and trial in court. One of the advantages of e-court is that the plaintiff does not need to come before the court, the disputing parties only need to access the e-court website online. This system cut the procedure and time, which allows the court to realize a trial process based on simple, expeditious, and inexpensive principle. This electronic system maintains accountability and transparency of the court. It minimizes the opportunity of court officials to meet the disputing parties, thus preventing illegal levies and collusion involving court officials. [14]

E-court system in Indonesia is carried out based on PERMA no. 1 of 2019, compared to developed countries that has applied electronic trial system, for instance, Singapore, Indonesia's is left behind. In Singapore, every citizen who possess SingPassID (for individual) and CorpPassID (for legal entity) can access electronic justice to litigate. The use of *SingPass ID* provides the disputing parties with easiness to access the trial data. The presence of e-court in Indonesia is still new, its use needs adjustment to the court's working system in Indonesia. Various improvements are needed, considering that currently, the user who can register the case are lawyers who have been validated by the Supreme Court. E-court can be effectively applied if all lawyers in Indonesia have been registered and have their own account. [15]

In addition, based on article 5 of PERMA no. 1 of 2019, electronic case administrative service can be used by a lawyer or an individual, however for individual it is ad hoc in nature. One of the weaknesses of e-court is that only verified lawyer that can access e-court application to litigate. This system is made as if only for lawyer so that other users (non registered lawyer) faces difficulties and are forced to use lawyer services. This condition, of course, contradict the principle stating that the investigation of private case should not be represented. After the phase of case registration administration, the next procedure is electronic private case investigation. After the mediation process fails, electronic private case investigation can be carried out if the plaintiff registers his/her claim to trial, and the defendant agree to try the case electronically. [15]

If the plaintiff and the defendant agree to carry out electronic trial, the judges determine the schedule of the e-trial to state answer, reply, rejoinder, and conclusion. The trial is done electronically at the predetermined day

and hour. After receiving the document, the judge sends the electronic document to the parties. E-trial is different from the conventional trial regulated in *Herzien Inlandsch Reglement* (HIR), where in e-trial, the filing of evidence letter is done at the beginning of the trial.

The plaintiff must provide his/her written evidence when filing a claim, while the defendant files the evidence along with the answer. The evidence must be filed in electronic form. Bigger challenges in evidencing emerge because Indonesia has not had a database that can be accessed by the judge in real time manner. This database is important for the judge to validate the evidence filed during the trial. In addition, as stipulated in article 26 of PERMA no. 1 of 2019, the decision/ruling stated by the Judge in electronic trial by delivering the copy of electronic decision to the parties through the court's information system. Although it is done electronically, the parties are considered attend the trial. As a consequence, the time for parties who attempt to legal action is counted since the day of the decision reading. [16]

3. Quality Decision

A quality decision refers to an accountable decision in terms of legal certainty and usefulness for the disputing parties, also reflects equity and humanity values. Binsar Gultom argues that a quality judge's decision refers to a decision that is based on legal consideration in accordance with the facts found during trial, comply with law and the judge's belief without affected by internal and external intervention, thus achieving the truth and justice. A good judge's decision should reflect equity, truth, and usefulness for the community and the state. Besides, a judge should be visionary so that his/her decision is not outdated. Based on the description above, it could be concluded that in order to obtain a quality decision, a justice-seeking process and judge's accuracy.[17]

In addition to the factor of justice-seeking, the judge's impartiality serves as a key to obtain a quality decision. The basic form of judge's impartiality is the decision's autonomy, which refers to the judge's skill in leading the trial, investigating, and analyzing the court facts and decide the case autonomously without others' intervention. Adi Sulistiyono and Isharyanto propose an idea to maintain the autonomy of the judges. First, the autonomy of the judge is not an ultimate value, it is merely instrumental. The goal is the judge's impartiality. Guarantee of judge's independence is used to protect the court from external intervention. Second, autonomy of judges is not an abstract value, it is determined by cultural and historical value. History of separation of justice from executive authority is the government (executive) attempt to put its influence.[18]

This influence is put through control toward salary, case distribution, mutation, and promotion selection, which greatly harms the autonomy of judges. Third, there is no universal method that serves as a standard of "judge's independence." Accordingly, the independence of judges can be measured in three main forms, namely, the independence of decision-making, administrative independence, and personal independence. E-court limits

the interaction between the judges and the disputing parties, maintaining the autonomy of judges. [19]

The judge's function is to lead a trial, ensuring the trial run well, overcoming and removing obstacles of the trial. Technology used in carrying out trial can help the process to be faster and easier. However, it can also act as hindrance for judges to capture all material facts of a case due to limited facility and technical regulation concerning these matters. In the trial process, the plaintiff and the defendant will state their argumentation. In this process, the judge must be able to decide the concrete event so that he/she can understand the object of the dispute. [20]

After that, the judges conclude the concrete events described by the plaintiff and defendant. The judge must also check the evidence to conclude the concrete event and state that the concrete event does occur. Without evidence, the judge cannot conclude which concrete event that occurs. In the next phase, the judge constitutionalizes the proven facts. Finding law does not only deal with seeking regulatory legislation that can be applied to a concrete event. The judge should adjust the concrete event to the legal event stipulated by law. The output (i.e., quality decision) always goes through an investigation process that requires the judge's accuracy. In principle, the process should aim to obtain the expected output. E-court is a process that is expected to achieve a simple, speedy, and inexpensive trial without degrading its output quality. E-court system brings positive influence in the form of easiness and speedy process, transparency and document administration. However, there is no study showing that e-court can deliver a quality decision.

III. CONCLUSION

E-court is one of the attempts to realize a simple, speedy, and inexpensive trial process and to open wider access to information. However, such an attempt should aim to deliver a quality decision. The technical guideline of electronic trial has not been fully stipulated in procedural law, revealing a legal gap. This may hinder the judges in investigating the court facts, verifying the evidence, and assessing the witness and the experts during e-court.

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