



# The Influence of the Digital Age on the Development of Private Procedure Law in Indonesia

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**Abstract.** This article describes the relationship between of the development of technology and information with the public service of seeking justice and examination of private dispute in district court, starts from the submission, examination, until the execution of the decision. Finally, this article also explains the practice in private court proceeding by using technology and information, especially in mediation and evidentiary agenda. According to that, the objectives of this article are: 1.) Analyze the effect of the development and improvement of technology toward law of private procedure enforcement in district court; 2.) Analyze the implementation of private court proceeding with the development and advancement of technology. It is normative legal research, using secondary data through its legal materials – it will be analyzed by descriptive and qualitative method. The results of this study are: 1.) The improvement and development of technology have affected the enforcement of private procedure law, even its implementation still depends on disputing parties and need the approval of both parties; 2.) The court proceeding has using the development and advancement of technology, especially on long-range audio-visual communication media that make a possibility to disputing parties join directly in real time, even there are constrain, from the tools or the parties itself.

**Keywords:** District court, Law of procedure, Technology and information.

## 1. Introduction

The judiciary is an institution that should be the last place in settling a case/dispute that occurs in society. The community can resolve their legal issues by themselves through deliberation/non-litigation by way of negotiation or mediation,[1] even so there are disputes that are procedurally material, indeed must be resolved by the court process, for example is divorce case.

Courts, for some circle of society may be a quite foreign place, because they may imagine how bureaucratic-procedural inside of it, all matters in court are complicated. Starting from the stage of registration or submission of cases to court, the examination process which prioritizes the stage of proof, up to stage of implementation of the decision/verdict (execution), all of which have different process characteristics. This is certainly not an easy homework for the Supreme Court

of the Republic of Indonesia (SC) during the emergence of practices of corruption and illegal levies within the SC itself.

In the settlement of private disputes, material law or procedural law applied, which until now through the concordance principle, general judiciary throughout Indonesia still apply the regulation in the *Herziene Indonesisch Reglement* (HIR) and *Rechtsreglemen voor de Buitengewesten* (RBg). According to Soedikno Mertokusumo, the private

The physical meetings that occur between justice seekers and court employees cannot be separated from the practice of corruption and extortion, even the practice of bribery.[2] The last one is the catch right-handed operation case of SC judges and SC employees by the Corruption Eradication Commission of the Republic of Indonesia (CEC). Indeed, the SC in the last five years has made improvements as a form of commitment to service to the community. The basic idea is to combine information technology and minimize physical encounters with justice services through the judiciary

The SC as the highest judicial institution in this country has made various improvements to address these challenges and improve services to the community. One way to do this is to operate one-stop integrated services (PTSP) by optimizing the performance of employees in each registrar (private, criminal, and legal) as well as other service functions. Through PTSP, bureaucratic lines and procedures can be trimmed, minimizing physical meetings between the community and each employee, or at least only meeting one employee for certain matters, and there are even certain district courts that have introduced cell-phone-based services.

Technological advances in the industrial revolution 4.0[3] has brought changes from the business sector and office activities even to everyday life, which is a necessity.[4] The SC responded to this by making various improvements to information and technology-based community services, to minimize the practice of bribery or the like in serving the community as *justiciabelen*.

Efforts to improve are real by issuing SC Regulation Number 3 of 2018 (SCR 3/2018) which is amended and added to SCR 1/2019. This regulation fills the legal vacuum, especially with regard to the application of the principle of a quick, simple, and low-cost trial [5] which places information and technology as the basis for community service in seeking justice in court more effectively and efficiently.[6]

The operationalization of these regulations was tested when pandemic disease caused by Corona Virus Disease (COVID-19) spread massively starting at the end of 2019 in Indonesia. The Government of the Republic of Indonesia subsequently issued a policy of Imposing Restrictions on Community Activities (PPKM) which had an impact on judicial practice. During the implementation of this policy, the SC implemented the New Normal policy, in which all judicial bodies must optimize technology and information in supporting legal services. In other words, all court employees, including judges, are “forced to be technologically literate” in order to mitigate risks while at the same time carrying out the Mandate of the Chief Justice of

the SC on the 74<sup>th</sup> Anniversary of the SC on 19 August 2019 with the theme “Information Technology-Based Modern Justice to Serve.”

Behind the misery that has arisen because of COVID-19, there is great wisdom, which can determine the future of justice in Indonesia that uses technological developments and advances. Previously, in 2010 the SC had determined to become a great judicial body in Indonesia by issuing the 2010-20135 Judicial Reform Blueprint. Efforts to improve in order to become a great Indonesian judiciary, one of which is as a modern judiciary based on integrated information technology.[7] The SC also introduced the public to services for searching data on judicial processes and judicial products, in the form of a case tracking information system (SIPP), in addition to the publication of SCR 3/2018 which was updated with SCR 1/2019.

The existence of developments and advances in technology in such a way, has been responded by the SC with various regulations of the SC that support the operationalization and technicality of proceedings in court, especially regarding private cases in court, it is necessary to further study the influence of developments and technological advances on the enforcement of private procedural law in the court. In other words, this article seeks to find a point of contact between procedural law that is *dwingendrecht* in nature and the very dynamic and flexible development and advancement of technology that is currently commonly used by the public.

Furthermore, this article also wants to discuss related to the implementation of private case trials with the development of this technology. This is interesting to study, considering that country of Indonesia is spread out from land and sea which has different geographical conditions, so the affordability of technology may not be the same. Another thing is related to the culture of society towards the development and advancement of technology which is different from one another, including the readiness of the infrastructure for general judiciary and district courts as information and technology-based trial support agencies.

## 2. Problems

Based on the description in the introductory section, the author proposes the following problem formulation:

- a. What is the influence of technological developments and advances on the application of the law of private procedure?
- b. How is the implementation of private court proceedings with the development and advancement of this technology?

### **3. Method**

The type of research used in writing this scientific article is normative legal research or commonly known as doctrinal research. To answer the problem formulation above, the author will present a statutory approach and a conceptual approach. As primary legal material are applicable laws and regulations (positive law), supported by various secondary legal materials, in the form of books, journals, research reports, legal and social scientific articles, as well as materials for seminars, workshops, and so on.

In normative legal research, document study is the main data collection technique, because the proof of the basic assumptions (hypotheses) of the research is based on positive legal norms, legal doctrine, or teachings, as well as the results of academic research, as well as court decisions. All of them are based on written documents. [8]

The legal materials obtained will be analyzed in qualitative descriptive way, especially in the results of an analysis of the influence of technological developments and advances on the application of private procedural law in court and the implementation of private case trials with the development and advancement of this technology. What is stated by the relevant research objectives is stated in writing or verbally and real behavior.[9] In order to analyze data, once again it will use qualitative descriptive way.

### **4. Discussion**

#### **4.1. The Influence of Technological Developments and Advances on the Enforcement of Private Procedural Law in Courts**

Private procedural law (also known as "formal law") is a part of private law that regulates the procedures and procedures for the use of rights claims by a person in court through a trial mechanism. The preliminary part referred to by Sudikno Mertokusumo includes registration, payment of case fees, and summoning of litigants. This is then followed by the process of having the case heard by the court, with the obligation to take mediation first; if the mediation fails, the parties will end the preliminary part, namely the correspondence.

Talking about this preliminary section, private procedural law clearly and unequivocally regulates the formal requirements of claims of rights, namely regarding the accuracy of absolute competence and the relative competence of the court. Due to the provisions governing the accuracy of these competencies, administrative and bureaucratic services relating to the registration of rights claims were initially only provided in person in the court in question.

If initially the registration was served by a young private registrar consisting of tables 1 to 3, the renewal carried out by the Supreme Court is to issue a decree of the Director General of the General Judicial Agency, Number 77/DJU/SK/HM02.3/2/2018, concerning guidelines for the executive unit for one-door integrated services (PTSP) in the High Court and District Court. (Based on This

thing has been amended with the Director General of the General Judicial Agency Number 3239/DJU/SK/HM02.3/11/2019 regarding of the Amendment of The Change of Director General of the General Judicial Agency Number 77/DJU/SK/HM02.3/2/2018 concerning guidelines for the executive unit for one-door integrated services (PTSP)) One of the considerations in the decision is to realize fast, easy, transparent, measurable, and affordable service, which is one breath with the principle of fast, simple, and low-cost justice.[10] The simple meaning of the principle relates to ease of access and simplification of procedures and bureaucracy, especially for seekers of justice who are open to all. Through the PTSP, the seeker of justice has much easier access and will only be in contact with one employee if the person concerned wants to file a claim for rights, for example by filing an application or lawsuit.[11]

In the same year, MA also published SCR 3/2018, which introduced the public to e-court. [12] services in e-court, consisting of e-filing, e-payment, and e-summons. [13] The Supreme Court recognizes that the service of justice demanded by the judiciary must keep up with the demands and developments of the times, so a revolutionary approach is needed so that the public can put their trust in the agency of the judiciary and under it. Through SCR 3/2018, the Supreme Court cut or even eliminated the service of face-to-face justice demands by changing the procedure for registering online. The condition is that the person has become a registered user who has been verified by the Supreme Court.

Users registered by SCR 3/2018 are advocates who pass verification by the MA, in addition to individual communities that can practically use court employee accounts. Advocates who have passed the verification can use the e-filing service anywhere and anytime in the context of registering rights claims within the private scope, so that if the authorized court is outside the legal domicile or position of the advocate's office, by using technological developments through the e-filing feature, they can register without having to go to the court in question.[13]

Then there was the electronic payment option. The comparison of the payment process for cases before the issuance of SCR 3/2018 with cases after the issuance of SCR 3/2018 is as follows: Calculated manually Based on the existing regulations, court clerks at the Office of the Young Private Registrar will calculate how much the plaintiff must pay. The calculation is based on the number of litigants and the domicile of each party. A power of attorney to pay (SKUM) will be issued, and the plaintiff will pay the amount stated in the deposit slip through the designated bank. This procedure can take up to 2-3 hours because, in addition to waiting for the SKUM, the plaintiff must also visit a bank, which is frequently located far from the court. Since the e-payment feature is integrated with e-court, the information system will naturally calculate the cost of the case, and payments can be made in any way: by going to a bank teller, through an ATM (automatic teller machine), or even using e-banking or mobile banking.

Advocates who register cases through e-court will then have the call carried out electronically, that is, through a previously verified electronic domicile. This electronic domicile uses electronic mail (e-mail), and the practice is simply to wait approximately 24 (twenty-four) hours after payment of the case (unless registration is

made on a holiday or national holiday) before receiving electronic calls (e-summons) by the plaintiff's attorney. Meanwhile, the summons to the defendant is still sent using the method of a written summons; it can be a regular summons or a delegation summons if the defendant is domiciled outside the jurisdiction of the court that will examine the private case. The defendant can also then use the e-court feature if the person concerned gives his consent in writing, so the person concerned can be called through the e-summons feature.

Before SCR 3/2018 came into force, the Supreme Court's adaptation to technological developments and advances was also clearly regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts (SCR 1/2016). One of the things stipulated in SCR 1/2016 is the obligation of the litigants, either with or without the assistance of each of their attorneys, to be present in the mediation process themselves. If these parties are unable to attend mediation in court, SCR 1/2016 regulates limited reasons that can be used, including: health conditions as evidenced by a doctor's certificate; guardianship; residence abroad; or carrying out state duties. However, SCR 1/2016 provides flexibility for litigants if they are unable to attend in person in the mediation process. The mediation meeting can then be conducted through a remote audio-visual communication medium that allows all parties to see and hear each other directly and participate in the meeting. [14] If this happens, SCR 1/2016 says that the party who is present with the help of information and technology is there in person. This is done so that the mediator does not say things in bad faith during the mediation process.

The development of technology and information as well as the implementation of mediation in this court led the Supreme Court to issue Supreme Court Regulation Number 3 of 2022 concerning Mediation in Electronic Courts (SCR 3/2022). In this SCR 3/2022, all activities and arrangements in SCR 1/2016 are enforced through electronic media with the consent of the parties. This means that the court is starting to move some parts of the dispute resolution process into a virtual meeting space. The same thing has also been developed by Thailand[15] and China[16] through various existing regulations, slightly superior to Indonesia, because it also regulates criminal cases that can be mediated.

Following the publication of SCR 3/2018 and the Supreme Court's encouragement that the number of case registrations through e-court always rises, one of the factors for the issuance of SCR 1/2019, namely improvements in the context of e-litigation or electronic trial procedures, became one of the factors for the issuance of SCR 1/2019. The development of this also rise SCR 7/2022. Prior to the publication of SCR 1/2019, all trial activities were always conducted face-to-face in trials that were open to the public, except as otherwise stated by law. The reading of each case file from lawsuit to duplication and submission is carried out in the trial process, which is very time-consuming because, in practice, the start of the trial of private cases is influenced by the completeness or presence of the parties and the readiness of the panel of judges and substitute clerks. After SCR 1/2019 is published, and if desired by the parties, e-litigation can be applied, namely by uploading the case file in accordance with the agenda of the hearing that has been agreed upon in the trial calendar. Matters related to information and technology accommodated by SCR

1/2019 are remote evidence to examine witnesses and/or experts through audio-visual communication media that allow all parties to participate in the trial. This evidentiary agenda is carried out with the infrastructure in the court, and the costs arising from the electronic trial are charged to the plaintiff.

Based on the advancement of existing technology, it appears that procedural law adapts without losing its essence or principles. This can be seen in the provisions of the summons of the parties when the provisions of Article 122 HIR and Article 146 RBg are considered. All developments in the private procedural law provided for in the rules of the Supreme Court consider the principle of speedy, simple, and low-cost justice.[17] and the obligation of the courts to overcome any obstacles as mandated by law. However, the evidence carried out remotely as regulated by Article 24 of SCR 1/2019, apart from depending on the readiness of the court infrastructure, has also not been regulated in detail as to the process and procedures of witnesses who will give their testimony remotely. The next note is that the electronic meaning of the trial through the court information system has legally complied with the principles and conditions of the trial being open to the public, not in accordance with the principle of *lex superiori derogate legi inferiori*. [18] Because the rules of trial are open to the public and clearly regulated in the Judicial Power Act, with the argument that the public as a reviewer of the trial indirectly has no right to know information about the process, even the outcome of the trial in question. [19]

#### **4.2. Implementation of Private Case Trials With Technological Developments and Advances**

According to the Supreme Court's annual report for 2019, after the implementation of SCR 3/2018, the number of cases that use electronic administration for case registration in each judicial body environment reached 14,552 cases. This means that the MA's policy to encourage society to behave in modern ways by taking advantage of technological developments and advances in the courts can be said to have succeeded.

The success of the e-court application with its various features has been supported by the existence of an e-court corner that helps the justice-seeking community register cases. In the corner room of the e-court, court employees oversee providing briefings and guidance on how to register until the case is decided by the court.

Apart from that, the awareness of advocates, especially millennial advocates who can be said to have sufficient literacy towards the internet and technology, allows them to register each other as registered users, as referred to in SCR 1/2019. With more and more registered user accounts, it will certainly be able to break the chain of COVID-19 spread and be able to form communal immunity. [20] Another benefit is that the operational costs of advocates can be reduced, so for the justice-seeking community, information about e-court and e-litigation and registered users is important and necessary to know. This is so that people can choose affordable advocacy services while still prioritizing professionalism and idealism in law enforcement.

Meanwhile, the implementation of mediation remotely cannot be said to be effective. The use of audio-visual communication technology through various platforms such as Zoom, Google Meet, and WhatsApp video calls has been used by mediators; however, the obstacles are constraints on networks, quotas, facilities, and infrastructure. Because the parties are unable to put themselves in the situation described by the mediator, there is no good two-way communication.

SCR 3/2022 has indeed been effectively implemented, but again the problem is on the technical side of implementation because the facilities and infrastructure are not ready. Another challenge is limited internet and network access in Indonesia, which means that every judicial body in Indonesia has an uneven infrastructure constraint. [12]

The lack of these facilities is also coupled with the constraints of the geographical conditions in Indonesia, which are scattered, limited by mountains, rivers, and even vast waters. This has something to do with how hard it is for people who have been hurt by the problem to get justice.[21]

The most important issue is with the parties because mediation is carried out remotely, audio-visually, but there is also no right place to carry out the mediation. It is not uncommon for the parties to consider mediation a side agenda or unimportant, so as not to pay attention to the mediation process and the mediator itself.

Even so through the concept of remote justice like this there are many benefits in term of budget and funding. The consequence of implementing remote justice in total is flexibility work and remote work as said by Jason Fried. [22]

Regarding remote trial in examining witnesses, HIR still state that witness testimony can be testified inside court room. The obstacles that occur in remote trial are in the form of technicalities, technicians, facilities, and infrastructure. The lack of uniformity in the infrastructure owned by each court in Indonesia has resulted in the failure to examine the testimony of witnesses or experts. However, empirically, the Yogyakarta District Court has facilitated the Bogor District Court in facilitating expert examinations in civil case number 144//Pdt.G/2020/PN.Bgr.

## 5. Conclusion

Based on the result of studies above, here is the conclusion:

- a. Advances and technological developments affect the application of private procedural law in Indonesia, although it is still optional and requires the consent of the parties.
- b. The conduct of the trial has used technological advances and developments, in particular the use of remote audio-visual communication media that allows the parties to participate in real time. Although there are empirical obstacles caused by both the tools and the parties

By this research, the suggestions for Supreme Court of Indonesia are preparing the society who seeking justice through court, to recognize and familiarize themself



with using information and technology in searching case data and filing claims in court.

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