



Electronic Court in Indonesia: Challenges and Concerns in the Development of Responsive Law Reform

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Abstract— This essay aims to demonstrate the inadequate legal foundation for Indonesia's official adoption of electronic justice. Next, offer suggestions for future regulation and execution. Legal normative research is what this study is. The study's findings demonstrate that the following approaches can be used to implement electronic justice as part of Indonesia's reform of the legal system, particularly the procedural law regime: Digital courts need to be regulated at the legislative level (procedural law regime renewal discourse), as the use of electronic trials is still problematic. Until now, there hasn't been a rigorous legal framework governing how the electronic test should be carried out. Regulations about electronic-based judicial systems still need to be included in Indonesia's procedural legal framework; additionally, they must guarantee that the necessary resources and current technology are available to conduct digital trials.

Keywords— *Electronic Justice; Judicial System; Legal Reform*

I. INTRODUCTION

The requirement of scientific and technological growth poses intrinsic challenges to human life.[1] The advancement of science and technology has significantly impacted various fields, with both beneficial and harmful outcomes.[2] The development of science and technology is also felt in every legal work. For example, in the field of Justice, technological advances also force the judiciary to adopt to improve efficiency and where there is a shift from conventional Justice to technology-based Justice.

On July 13, 2018, in Balikpapan, the e-court application was launched under the auspices of the Supreme Court Chief Justice, S.H. Prof. Dr. H Muhammad Hatta Ali. The person formally introduced the e-court application, emphasizing that its deployment marks the Supreme Court's shift toward electronic justice. It is anticipated that this shift will drastically alter court services and move Indonesia's judiciary closer to the standards of developed countries. The e-court application is expected to improve service delivery and save the public money and time by enabling online case registrations. This investigation concerns the degree to which Indonesia's legal system has adopted e-courts, especially given the worldwide consequences of the COVID-19 pandemic that began in early 2020. This pandemic has profoundly affected the pre-adjudication and adjudication stages of the judicial process. The infection spreads across people, which reduces the adjudication step's effectiveness. It is feared that holding the trial in a physical courtroom could spread viruses more easily.

Changes to computerized trial implementation are noted in several nations worldwide, such as the US and the Netherlands. For instance, the United States has implemented electronic trials—more precisely, video conferencing—for various legal proceedings, such as witness testimony, judge-led court hearings, and therapy sessions. In the Netherlands, electronic trials are allowed in criminal cases, except for involving children, families, and public interest. The current legislative foundation for establishing electronic courts must be strengthened to survive any challenges to its validity. Two regulations serve as the primary legal foundation for the establishment of electronic courts: Supreme Court Regulation Number 1 of 2019, which deals with case administration and trial

procedures in electronic courts, and Supreme Court Regulation Number 4 of 2020, which deals with the administration and trial of criminal cases in electronic courts. Therefore, the crucial question is whether these two domestic legal tools effectively enable Indonesian electronic court control. On the other hand, just as necessary is the investigation into whether these two internal legal mechanisms can protect the rights of litigants, including rights to privacy and human rights.

Investigating this issue is essential because the primary goal of procedural law regulation within the legal system is to guarantee that the administration and operation of law enforcement processes, which are regulated by procedural law, maintain human rights values, protecting people's dignity and welfare. Whatever the two Supreme Court Regulations contain, it is likely adequate. However, according to legal thought, statutory requirements are required to regulate procedural law, especially in judicial chambers. This research aims to provide the ideal structure for future electronic justice systems that respect community rights.

II. LITERATURE REVIEW

The rapid progress of scientific and technological developments in telecommunications, information, and computing has led to a convergence in their respective uses. As a result, a junction is observed in the human experience. In tandem with the progress of society and advancements in technology, individuals are progressively employing digital technology tools for many purposes, including interpersonal interactions. Digital technology has ushered in a new era, prompting the judicial system to adapt and progress accordingly. The utilization of technology in court services within the realm of administration, specifically in civil proceedings when the physical presence of litigants is not necessary, serves as substantiating proof for this claim.[4]

A previously presented notion in the Indonesian court system is using digital trial methods. This is explained by the requirements stated in Law No. 48 of 2009's Article 5, paragraph (1), which deals with judicial power. This statute requires judges to continuously work toward understanding the material truth in law as agents of legal enforcement, progressively shifting away from a reliance only on formal features.[5]

Provisions on electronic trials can be observed in legal frameworks beyond the realm of Substantive Law of Procedure, such as KUHAP, HIR, and RBG. Specific specialized provisions, known as *lex specialist* provisions, will play a role in establishing a legal framework for virtual trials. For instance, Article 27, paragraph (3) of the Child Criminal Justice System Law (SPPA Law) allows the Judge to utilize electronic recording or remote direct examination for child victims or witnesses who cannot physically appear in court to provide testimony. Moreover, the provision outlined in Article 9 Paragraph (3) of Law No. 13/2006 on Witness and Victim Protection stipulates that when a witness or victim provides testimony by electronic means, they must be accompanied by an authorized official.[6]

Electronic trials have become a sociological imperative, prompted by the global impact of the COVID-19 pandemic or the rapid progression of technical advancements. Particularly during the ongoing pandemic, law enforcement officials had a tangible predicament involving the decision to either address cases by virtual means or defer trials, potentially exacerbating the accumulation of pending cases in the future. In response to the circumstance mentioned above, the legal system demonstrated a period of adaptability after the promulgation of several regulations that, while not possessing the status of legislation, were effectively enforced to establish a sense of legal assurance.[7]

III. METHOD

The present study employs a normative legal research methodology, incorporating a comparative approach, statutory analysis, and conceptual analysis. The statutory method involves conducting a comprehensive examination of all existing laws to ascertain the jurisdiction of the judicial institution in implementing electronic Justice in Indonesia. The comparative technique was employed to assess the deployment of electronic courts in other nations, such as the United States and the Netherlands, to gauge the prevalence of electronic court systems in these jurisdictions.[3]

IV. RESULT AND DISCUSSION

According to the stipulations outlined in Article 2, paragraph (4) of the Law on Judicial Power, Justice can be defined as the thorough examination and resolution of cases effectively and efficiently. This essentially refers to a judicial process characterized by its expeditious nature, minimizing unnecessary delays within the framework of the Indonesian judicial system.

The deployment of electronic criminal trials is still a problem, and there is currently no complete legislative framework that specifies the exact standards that must be met for electronic tests to be carried out. The approach above is the only practical option for criminal procedures. The need for more regulation on the issue above in the procedural law regime can be ascribed to the incapacity to anticipate such situations during its inception. Rapid advancements in science, technology, and information have created new circumstances that need careful attention when cases are resolved, especially when putting Indonesia's procedural legal system into place.

In the context of legalistic analysis, characterized by its strict and formal nature, teleconferencing capabilities are deemed unsuitable for judicial proceedings. However, in contrast to the stipulations outlined in Article 28, paragraph (1) of Law No. 4 of 2004 (now governed by Article 5, paragraph (1) of Law No. 48 of 2009 on judicial power), judges are mandated to delve into the substantive truth, thereby granting them the authority to prioritize substance above form. However, the inquiry pertains to the status of law enforcement entities within alternative judicial systems. It is imperative to consider this matter to mitigate potential doubts regarding the legitimacy of digital-oriented criminal justice systems in the future.[8]

Establishing an efficient legal system that aspires to the highest level of justice in law enforcement is the significance of overhauling the comprehensive procedural law framework. This reform accommodates legal changes and technological advancements while ensuring law enforcement professionals align with their specific tasks, responsibilities, and powers. Therefore, it is essential to achieve synchronization and harmonization when developing Indonesia's comprehensive procedural law system. In the end, the implementation of Indonesian procedural law is based on introducing the conception above and creating a novel procedural legal framework, which is widely expected to be formally sanctioned and implemented as favorable legislation. This advancement will likely lead to notable changes in law enforcement, with the ultimate goal being justice for all.

Examining the trial conduct procedural requirements in the United States reveals one such connection. As per the provisions of the Sixth Amendment to the United States Constitution, it is ideal for trials to take place in a physical courtroom. This step was taken to enable direct communication between the parties and allow them to address the witnesses and experts that were presented right away. It also allowed the jury to assess the testimony of these witnesses and experts personally. Additionally, it maintained the defendant's privilege to speak with their attorney directly throughout the trial.[13] But in light of the pandemic's difficulties, the US government has established rules that permit tests to be conducted electronically. This clause is found in the specially prescribed COVID-19 management guidelines in the United States, namely in the legally mandated Coronavirus Aid, Relief, and Economic Securities (CARES) Act.[9]

In practical application, electronic trials are implemented wherein the Judge, Public Prosecutor, and Legal Counsel participate in the prosecution remotely from their separate residences. At the same time, the defendant engages in the proceedings from their place of detention. In specific regions, such as Texas, where private automobile usage facilitates convenient movement, Judges can monitor court proceedings remotely from the courtroom. The process described above contrasts the courts in Manhattan, where public transportation is the primary means of transportation, and the judge participates in sessions virtually from their home. A dedicated court phone line will be established so that the public can follow the trial's proceedings, and a complete list of trial information will be posted on the court's official website as part of the measures taken to guarantee the trial's accessibility. Moreover, it is essential to remember that American courts provide stenographer services, which entail hiring someone to take thorough notes and record court proceedings. Transcripts of the meetings are then provided to the parties concerned.

Based on an analysis of the regulatory structure that oversees digital justice in the US, it can be concluded that electronic criminal justice in the nation is governed by laws found in the Coronavirus Aid, Relief, and Economic Securities (CARES) Act. These clauses cover the COVID-19 epidemic scenario and more general rules about electronic-based criminal justice. The use of electronic trials is subject to several requirements, including a) the presence of a public emergency, b) the decision of the Court President to adopt electronic trials, and c) the defendant's consent.

It can be concluded that, in the United States, electronic-based criminal trials are permissible as long as the Chief Justice approves and the defendant gives their agreement. The option of electronic-based criminal proceedings is still available even after the COVID-19 outbreak has ended, and it is backed by solid legal precedent because statutory provisions govern it. Using this as a comparative and pilot study for legal reform in the Indonesian setting is imperative. This accomplishes two goals: it provides a basis for the legality of electronic-based criminal justice and offers safeguards against future recurrence of the same crimes.[10]

A thoughtful and long-term project, legal reform aims to create a complete legal system that includes legal institutions and substantive (or content-related) features. Law is relevant to every part of human life with its normative and practical aspects. It is crucial to remember that there are other ways to create barriers besides the law. Therefore, to guarantee the law's progressive character and well-coordinated integration with other fields of study, embracing a holistic viewpoint that encompasses all aspects of human existence is essential. Legal reform aims to liberate people from the constraints of their cognitive and behavioral interactions with the law, allowing it to function more efficiently for both people and society. It follows logically that there will undoubtedly be revolutionary and evolutionary changes in the legal realm.

Law reform, often known as the endeavor to reform the law, is an expression of modifications to legal regulations with an emphasis on renewal. When enacting legal reform, legislation is a more effective tool than using jurisprudence or customary law. According to academics, legal reform planning can be made more accessible if laws and regulations are thoughtfully created. The objective of legislation extends beyond that of merely updating pre-existing laws.[11]

Modernizing customary law, customary customs, and jurisprudence can all be accomplished through legislation. Among other goals, one of the updates to the statute is to bring the legislation passed by the Dutch East Indies' government up to date. National laws and regulations passed after the country gained its independence

must be updated to reflect new developments and requirements. Legislation significantly influences customary law, which replaces or modifies outdated customs with modern circumstances. Customary law is very amenable to alteration through legislation since it frequently needs to be more cooperative in specific contexts, necessitating legislative action.

Therefore, from the perspective of legal reform, it is imperative to recognize the significance of electronic-based criminal justice. Technological developments and changing social dynamics supporting the fundamental principles of electronic-based criminal justice justify this acknowledgment. Therefore, it is necessary to implement electronic-based criminal justice in the future, either by changing the current Criminal Procedure Code or by passing specific legislation that provides a legal framework and a valid basis for carrying out electronic trials.

Internet facilities that efficiently offer flexibility, convenience, and speed up trial processes without requiring face-to-face encounters must be improved architecturally and developmentally. Access to Justice can be enhanced by algorithms, improved cost-effectiveness, and the remarkable uniformity displayed by automated systems.

A robust and secure network infrastructure is required for electronic trials to protect confidential information and reduce the risk of cybercrime. One major issue that hinders the implementation of electronic tests is the network's robustness. Adopting electronic courts or trials successfully requires that all stakeholders thoroughly understand how the apps and technology work. Law enforcement agencies are advised to use service providers or initiatives created explicitly for electronic criminal justice or enforcement in particular circumstances. In electronic fairness, this step is essential for protecting the parties' or defendants' right to privacy.

The author's perspective aligns with the notion of due protection of the privacy rights of parties or defendants in electronic criminal judicial processes, particularly in the digital sphere. This point of view backs the "digital constitutionalism" theory, which holds that in a digital society, the government and other powerful entities can impact an individual's rights. The author advises that specialist applications for electronic criminal proceedings be developed to ensure that privacy rights are protected in this situation. A modern-day example of the Leviathan in the digital age is the proliferation of private companies that create, manage, and market digital technology goods and services. Regarding Internet service providers, Laidlaw (year) correctly refers to them as "online gatekeepers" in the context of search engines.[12]

Search engines have control over who can access information. Viewing the removal or downranking of search results as a type of digital erasure could limit people's access to publicly available content and impede their right to information. More broadly, Laidlaw's portrayal is appropriate for all technology-related businesses. Users can affect how these tools are used by adding access controls to digital technologies. This means they could influence how we use our fundamental rights similarly to how nation-states do so.[13]

Within this framework, discussions emerge over the applicability, degree, and manner in which established constitutional norms about exercising governmental authority should be applied to private entities, specifically technological corporations. As the last chapter demonstrated, constitutional frameworks have developed to limit the power possessed by influential organizations and guarantee the protection of fundamental individual liberties. On the other hand, their historical mission was primarily to challenge state power. No clear regulations limit the ability of private companies in the present constitutional principles. Still, there is a tendency among scholars to extrapolate these ideas to the private sphere, given the similarities between how the government and private businesses can affect individual rights. This tendency is vital when considering a private sector that maintains society's fundamental values.[14]

Legally speaking, private organizations are not required to follow international human rights norms. States also must ensure that private firms uphold these rights. A paper known as the "Ruggie principles" was produced in 2008 by John Ruggie, the United Nations Special Representative. It addressed the relationship between business actions and human rights. This paragraph highlights the responsibility of private organizations in defending human rights while simultaneously reiterating states' obligations to stop non-state actors from violating those rights. Although this agreement is not enforceable in court, it signals the beginning of a legal response to limit the power private entities can exercise. Therefore, creating specific tools for electronic justice is essential to successfully protecting the parties' rights

V. CONCLUSION

Implementing electronic courts as part of the judicial Reforming Indonesia's legal system, particularly its procedural laws, can be accomplished by using the following strategies: As was mentioned in the discussion of the reform of the procedural law regime, digital courts must be regulated at the legal level. The deployment of electronic trials presents some obstacles that still need to be resolved. A thorough legal structure dictating the exact standards for the conduct of electronic trials is still required. Laws about electronic-based judicial systems must be included in Indonesia's current procedural legal framework. Furthermore, the infrastructure and resources needed to support the execution of digitally based trials must be established.

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