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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



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 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



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 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

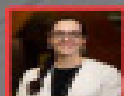
THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



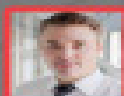
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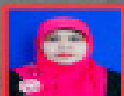
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1. Seminars will be conducted using the Zoom application
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OBJECTIVE

This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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: Comparative Review"*

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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Legal Development Of Events In The Digital Era

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Faculty of Law Sultan Agung Islamic University

Abstract

The era of the industrial revolution 4.0, which is also known as the era of the digitalization industry, has the characteristic of connecting all entities digitally by utilizing information and communication technology that is fast, efficient and effective. The advancement of the digital world has changed the paradigm of society in various fields and will disrupt various human activities, including in the field of law, both in terms of services, settlement methods and law enforcement activities. For example, the legal paradigm that has changed among lawyers / advocates who have been relying on legal consulting services, in this digital era, it has turned into information services, where people who are looking for answers to their legal problems, just click right away. Likewise, the paradigm in service has also undergone a change, previously decisions only belonged to the parties, now a copy of court decisions can be accessed by anyone. This is one of the challenges for the Supreme Court to respond to this digital era by digitizing the system in services and trials in court. As a form of responsiveness to the demands of the times, the Supreme Court issued a legal product, namely Perma No.3 of 2018 concerning Electronic Case Administration in Courts. This regulation eliminates physical contact between the lawsuit registrar and court officials. This was unexpectedly a supporter of the Covid 19 pandemic season. In 2019, Perma No.3 of 2018 was refined to become Perma No.1 of 2019. This regulation was issued as a response to developments in the digital era as well as to create a simple judicial process. , fast and low cost, as mandated by Article 2 paragraph 4 of Law No. 48 of 2009 on Judicial Power. This is a development of procedural law.

Keywords: *Development, Procedural Law, Digital Age.*

I. INTRODUCTION

At this time, people live in a modern civilization that demands everything to be fast, effective, and efficient. The development of science and technology has caused various changes in all areas of life. One of the developments in science and technology that is currently moving rapidly is the development in the field of technology and information, which is marked by the birth of the internet, which is scientifically referred to as cyberspace.¹ With cyberspace, everyone connected via an international network (internet) can interact with anyone, anytime, anywhere, not limited by time and space.

In a healthy business activity there is a balance of legal protection between consumers and producers. The absence of balanced protection causes consumers to be in a weak position.²

1. Peni Rinda, Jurnal Masalah-Masalah Hukum. Jilid 45 No 4. Oktober 2016, page, 285.

2. Anis Mashdurohaturun, Fuji Lestari, and Ukie Tukinah, Consumer Protection Of The Listing Of Standard Clause In E-Commerce Transactions Based On The Value Of Pancasila

The speed of development of science and technology, especially information technology, affects the dynamics of social interaction. Theoretically, using Talcott Parsons' social systems theory approach, that society is an open system, which is involved in every process of social change and its environment, so that there is an exchange with the subsystems in a large system. This means that information technology as a subsystem in a country affects the community subsystem of that country. Thus, current social interaction is influenced by advances in information technology which constantly change / develop from time to time.⁴

The rapid development and progress in the field of technology will of course cause changes in human activities and will also have good and bad impacts in all fields, including in the field of law, which will give birth to new forms of legal action. Through electronic media, people enter cyberspace that is abstract, universal, independent of circumstances, place and time. The internet has formed a society with a new culture, at this time the relations between people in a global dimension are no longer limited by boundaries territorial country (borderless).⁵ This situation will give rise to new legal relations, as a result of this technological advancement. Therefore the law must also follow advances in this technology, by transforming digital law, which is a change in the application of digital technology in the legal aspect. With the use of digital technology, this is the demand of the era in the era of the industrial revolution 4.0.

The era of the industrial revolution 4.0, also known as the digitalization industrial era, has the characteristic of connecting all entities digitally by utilizing information and communication technology that is fast, efficient and effective. The advancement of the digital world has changed the paradigm of society in various fields and will disrupt various human activities, including in the field of law, both in terms of services, settlement methods and law enforcement activities. In a modern justice system, it must respond to the development of this information technology into serving and settling cases submitted to it.

Technological advances in this digital era have changed the way humans are punished. For example, the legal paradigm that has changed among lawyers / advocates who have been relying on legal consulting services, in this digital era, it has turned into information services, where people who are looking for answers to their legal problems, just click right away. Likewise, the paradigm in service has also undergone a change, in the past decisions only belonged to the parties, now a copy of court decisions can be accessed by anyone. The digital era has also changed the understanding of evidence.

This is one of the challenges for the Supreme Court to respond to this digital era by digitizing the system in services and trials in court. As a form of responsiveness to the demands of the times, the Supreme Court issued a legal product, namely Perma No.3 of 2018 concerning Case Administration in Courts electronically, or online or better known as e court. This regulation eliminates physical contact between the lawsuit registrar and court officials. This was unexpectedly a supporter of the Covid 19 pandemic season.

In 2019, Perma No.3 of 2018 was refined to become Perma No. 1 of 2019 which is better known as e litigation. With the issuance of the Perma as a response to the times in the digital era as well as to realize a simple, fast and low cost judicial process, as mandated by Article 2 paragraph 4 of Law No. 48 of 2009 concerning Judicial Power. This e-litigation service marks the beginning of a new era of modern justice that provides transparency and accountability access to justice-seeking people. Along with changes in the global economic order, it also has an impact on the paradigm and challenges of coping in Indonesia.⁶ Based on

Justice, International Journal of Advanced Science and Technology Vol. 29, No. 6, (2020); pp.1520.

3. Sri Endah Wahyuningsih, *The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia*, TEST Engineering and Management, ISSN 0193-4120, Mach-April 2020, P 2797.

4. Supandi, *Masa Depan Sistem Peradilan Modern di Indonesia*, Makalah Seminar Nasional "Kedudukan Peradilan Etik Dalam Sistem Kekuasaan Kehakiman Dalam Rangka Menjaga Kehormatan dan Martabat Hakim di Indonesia, tanggal 21 Maret 2018 di Jakarta, page.,2.

5. Efa Laela Fakhriah, *Bukti Elektronik Dalam Sistem Pembuktian Perdata*, P.T Refika Aditama, Bandung, 2017, page, 4.

6. Anis Mashdurohaturun, Kurnia Halomoan, & Gunarto, *The Urgency Of The Public Policy Of The Construction Service Cooperatives In Realizing The Welfare Of The Community*

the background description above, the problem raised is how is the development of procedural law in the digital era?

II. RESEARCH METHODS

The method used in this research was non-doctrinal legal research methods, namely understanding and researching the law in its social context because the focus is more on the problem of the operation of law in society. The research specifications used are descriptive analytical, namely describing the phenomena that exist in the environment in accordance with the research method. In this study, the data sources used are primary data and secondary data. Sampling in this study used a purposive non random sampling technique (purposive sampling), data collection was done through: Literature and field studies. Furthermore, the data that has been obtained were then analyzed descriptively qualitatively.⁷

III. DISCUSSION

A. Pre-Digital Era Procedural Law

Legal regulations that contain rules or norms that should or should not be done or which regulate the rights and obligations of individuals are called material law. This material law is abstract or seems to be in a state of silence (static), but if there is a violation of the norms in the material law, the “work” is formal law (procedural law). Formal law or procedural law regulates the procedure for proceeding before the court.

This formal law or procedural law, especially civil procedural law that applies in Indonesia, is made (inherited) by the Dutch, which we know as H I R (Het Herziene Indonesische Reglement). Efforts to create a procedural law for products of the nation’s children have actually been carried out since 1967, namely the Draft Law of the Republic of Indonesia concerning Civil Procedure Law and was discussed again in 1984-1985, but until now there has been no follow-up to become a Law as the masterpiece of the Indonesian nation.

Based on Article 5 paragraph (1) of Emergency Law Number 1 of 1951, the civil procedural law in effect in Indonesia is H I R (Het Herziene Indonesisch Reglement) for Java and Madura, while for outside Java it uses RBg (Rechtsreglement Buitengewesten).⁸ Thus, one of the legal bases for proceeding before the court, especially in resolving civil cases, is still using its Dutch products, namely H I R. HIR is enforced as a basis for proceedings in general courts (district courts) and in religious courts, especially for religious courts other than HIR plus the provisions in Law on Religious Courts.

Procedural law is a scientific discipline that is applied and is included in dogmatic law science that prioritizes the normative side of the rules, so that civil procedural law becomes a guideline for jurists in carrying out justice as a way of realizing justice. Thus the judge is only tasked with applying in concrete cases, which sometimes creates injustice. The judge carries out the procedure provisions as specified in the HIR or other legislation.

As the definition of procedural law regulates court proceedings, in essence the maker of the HIR wants those who have the case (material party) to go forward on their own in court (the principle there is no obligation to represent), but in developing practice that not everyone understands the law and also Because of his busy life, this material party can ask for the services of other people to represent what

Based On Justice Value , Hamdard Islamicus, Vol. 43 No. 1 (2020), pp.356.

7. Anis Mashdurohaturun, Joramadi Egram,& Teguh Prasetyo, The Legal Protection for Indonesian Migrant Workers Based on National Philosophy Values, TEST, March-April 2020, pp.2754.

8. *op.cit*

is commonly called a power (formal party). So that in civil procedural law, there are material parties and formal parties who have to come to court to file a lawsuit, pay administrative fees, and wait for a court summons from the court. The case administration process is carried out manually which takes a long time.

Summons that are commonly called proper summons or legal summons are fully regulated in the HIR, namely those who convey the summons must be bailiffs, must meet the concerned themselves (the parties) or through local officials, and the most urgent grace period is 3 working days or closely adjusted where the defendant lives. The provisions of this summons are not fast enough, and must be carried out according to the provisions of the regulations, because this proper summons has legal consequences for the parties. This proper summons is a call for the parties to attend the hearing, thus the parties are waiting to be summoned. The trial was conducted face to face (the parties were physically present), to follow a series of trial processes from submitting a lawsuit, answering each other (presenting arguments), proving events to reading the verdict.

At the beginning of the trial process, the judge will apply the principle of open trial to the public, meaning that the public can directly control the proceedings of the trial, and to ensure the implementation of the trial in a transparent and accountable manner. This principle is regulated in Article 13 paragraph (1) of the Law on Judicial Powers. This principle in the current Covid 19 pandemic has experienced a slight shift / restriction, because the people who participate in controlling the proceedings are limited, so that there are not as many people watching as before the pandemic.⁹

In the case of proof it is still based on HIR / RBg, where in the settlement of civil cases in court is based on a formal system of proof, because in general, judges in proof use evidence that has been regulated in law only. Judges in proof are bound to valid evidence, this is in line with the evidence system according to the HIR system.¹⁰ In the digital era, various kinds of modern transactions will develop, so that things that can be used as evidence will also develop.

Thus it can be said that the series of trial processes that have been determined normatively have the impression that the procedural law is certain and cannot be flexed / distorted. In addition, the trial process took a long time.

B. Development of Procedural Law in the Digital Age

As time goes by, which is currently entering the digital era, it has more or less changed the paradigm of society towards various fields including the field of law. Therefore, the law must also keep up with advances in this technology. This started in 2008 which was a milestone for the development of law in Indonesia, namely the promulgation of Law Number 11 of 2008 concerning Electronic Information and Transactions. The presence of this law proves that the Indonesian government must follow the flow of globalization in all fields. The enactment of this law also answers legal challenges in cyberspace or cyber law.¹¹ In line with the rapid advancement of electronic technology, Law number 11 of 2008 has been amended by Law Number 19 of 2016 concerning Electronic Information and Transactions. The new law regulates digital evidence that can be used in court proceedings, such as electronic certificates containing electronic signatures, electronic contracts that can be used as evidence in court. This is a development of procedural law, which so far is known as evidence in civil procedural law as regulated in Article 164 HIR, namely: letters, witnesses, allegations, confessions, oaths.

9. Sri Endah Wahyuningsih, Risto Samodra, Dwi Wahyono, *The Implementation Of Restorative Justice In The Traffic Crime Investigation Procedures In Central Java Indonesia Based On Justice Value*, Man In India, 97 (24) , Serials Publications, P.99.

10. *Ibid.* page, 39

11. Syafrinaldi, *Tantangan Hukum di Era Revolusi Industri 4.0*, http://uir.ac.id/opini_dosen/tantangan..

The development of information and telecommunication technology also has an effect in terms of proof, because the existence of the internet media will make it easier for people to interact that is not limited by time and space, which creates new legal relationships. In the civil sector, trade conducted electronically known as e-commerce will arise, this of course will lead to new evidence (beyond what HIR has so far determined), in the event of a dispute. Thus evidence has developed in the form of electronic documents. Likewise in the criminal field, cctv, microfilm or microfiche recordings can be used as legal evidence in criminal cases in court.

Apart from the development of this evidence which arises due to the impact of technological developments, as well as developments in terms of services and settlement of cases in court. In 2018 there was an idea from the judiciary to implement a case digitization using an e-Court application.¹² E-court is part of the court's effort to provide easy access to the public and justice seekers besides that it also saves the time, cost and labor of the litigants and makes the courts more transparent, effective and efficient.

E-court is a service for Registered Users for online case registration, obtaining estimated down-payment of court fees, payments and summons made by electronic channels. The services available in the e-Court application are e-Filling, e-Payment and e-Summons.

E-Filling (online case registration) can be used to register cases electronically in lawsuits and / or civil applications and also enter electronic documents and can be used for uploading or downloading documents in the context of replications, duplicates and conclusions.

E-Payment (online court fee down-payment), can be used for the down-payment of court fees determined through the E-SKUM application. This e-SKUM application will automatically estimate the down payment and Payment Number that can be paid via electronic channels available after online registration.

Whereas e-Summons (online Party Summons), this was done to the Plaintiff who registered electronically and had written evidence, while the Defendant in the first summons was made through a bailiff (provisions in the HIR), and electronic summons could also be made. If the defendant states his written consent to be summoned electronically, the attorney must also have written consent from the principal to proceed electronically.

This e-court has a legal umbrella as stipulated in PERMA No. 3 of 2018 concerning Case Administration in Courts Electronically, this is motivated by Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power which states that: "Courts help seek justice and try to overcome all obstacles and obstacles to achieve it. simple, fast and low cost justice".¹³ In the context of realizing a simple, fast and low cost judiciary, reforms are needed both in the field of administrative services and trial administration.

In 2019, Perma No.3 of 2018 was refined to become Perma No. 1 of 2019 which is better known as e litigation. E-litigation can be said to be a follow-up to e-Court, from services to case examination or trial. We can read this in Article 1 paragraph (2) PERMA No. 1 of 2019 which has introduced the term court information system, namely the entire information system provided by the Supreme Court to provide services to justice seekers which include administration, case services and electronic trials. . Meanwhile, case administration electronically includes a series of processes for accepting a lawsuit / application / objection / objection / case / intervention, receiving payments, submitting calls / notifications, answers, duplicates, conclusions, receiving legal remedies, as well as managing, submitting and storing civil case documents. by

12. Artikel DJKN, *E-court, Berperkara di Pengadilan Secara Elektronik*, <https://www.djkn.kemenkeu.go.id/>

13. Artikel DJKN, *E-court, Berperkara di Pengadilan Secara Elektronik*, <https://www.djkn.kemenkeu.go.id/>

using an electronic system. Previously, the litigants or their attorneys did this by coming directly to the court to carry out a series of proceedings in court.

The application of information technology is actually an effort to realize the principles of a simple, fast and low cost judiciary, as well as an effort to encourage the development of improved management and administration towards a modern justice. This is a big leap from the overall efforts of the Supreme Court to overcome three obstacles that are often faced by the judiciary, namely slow case handlers, difficulty in accessing court information, integrity of judicial officials, especially judges. The application of e-court directly impacts the efficiency of judicial administration as well as the transparency of the justice-seeking process and encourages professional, transparent, accountable, effective and efficient law enforcement behavior.¹⁴

The use of the e-court application has the convenience of online case registration, which saves time and costs, payment of court fees can be made in multi-channel channels, documents are properly archived and accessible. In addition to the ease of implementing the e-court application, it also has problems, including the network system / signal being interrupted or loading too long, it will interfere with the proceedings of the trial process. If the Registered User (advocate) uploads his identity, power of attorney document, other documents, the lawsuit is unclear or what should be a word document is uploaded in pdf form. Apart from that, there are obstacles in human resources that must be prepared and trained in implementing the e-court application from judges to administrative staff.

Meanwhile, the trial process using the e-litigation application begins with a statement or prior approval to the court admin to be willing to carry out the trial process electronically. This is offered to the parties because not everyone understands / is proficient in using electronic devices, so that the trial is carried out as usual which is attended by the parties in court. However, considering the situation of the Covid 19 pandemic, the trial was conducted according to established health protocols.

As for the trial process that uses electronic trial (e-litigation), before the trial schedule is determined, the judge must make a court calendar that is agreed upon by both parties on the day of the hearing on the agenda for the reading of the lawsuit, after which there must be an agreement on a schedule for response, replication, duplicate hearings. and proof. Submission of answers, replicas and duplicates must be in accordance with a predetermined schedule, all of this is done online. Meanwhile, in the evidentiary program, the parties will be tried as usual, namely the parties, the witness is present at the trial (offline), but if desired and approved by the parties, it can be carried out by teleconference if the witness is out of town and cannot attend the trial.

In practice, e-court and e-litigation applications are very useful in the globalization and digital era, because people want to fulfill their needs and resolve cases quickly, easily and at low cost.

The Supreme Court's efforts in following the development of information technology, namely by implementing online services and trials, although not in their entirety, it turns out that during the Covid 19 pandemic, it turned out that during the Covid 19 pandemic, it became a supporter of preventing the transmission of Covid 19, because the litigation process in court has made maximum use of the e-court system since Issued Perma No. 1 Tahun 2019. In this pandemic season the court can still provide legal services for the community seeking justice, even though the parties are not present in person.

Supreme Court of the Republic of Indonesia and the Judicial Bodies in Under it. SEMA No. 1

¹⁴. *E-court dan Masa Depan Sistem Peradilan Modern di Indonesia*, <https://ptun-yogyakarta.go.id/index>

of 2020 instructs judges and judicial apparatus to carry out their duties at home (Work From Home) and implement social distancing in providing services directly within the institution and implementing health protocols in the work environment. Thus, the service system and case examination uses the e-court and e-litigation applications.

In its development in connection with the Covid outbreak that hit Indonesia, the Supreme Court issued Circular Number 1 of 2020 concerning Guidelines for Implementation of Tasks During the Prevention Period for the Spread of Corona Virus Disease 2019 (COVID-19) within the Although the Supreme Court implements e-litigation to replace conventional trials that present parties in the courtroom, not all hearings can be conducted by e-litigation. Criminal case trials at the District Courts, military crimes at the Military Courts, Islamic crimes at the Religious Courts are still carried out specifically if in that case the defendant is being detained, while his detention period is not possible to be extended again during this Covid epidemic. However, in cases where the defendant is legally allowed to extend his detention period, the trial is postponed until the end of the Covid pandemic. Based on SEMA RI No.1 of 2020, the e-litigation application is only intended for civil case trials at the District Courts, Religious Courts and at the State Administrative Courts¹⁵

IV. CONCLUSION

The advancement of the digital world has changed the paradigm of society in various fields and will disrupt various human activities, including in the field of law, both in terms of services, settlement methods and law enforcement activities. This is one of the challenges for the Supreme Court to respond to this digital era by digitizing the system in services and trials in court. As a form of responsiveness to the demands of the development of information technology, the Supreme Court issued a legal product, namely Perma No.3 of 2018 concerning Electronic Case Administration in Courts, known as e court. Perma No.3 of 2018 was refined into Perma No. 1 of 2019 which is better known as e litigation, which embodies a simple, fast and low cost judicial process, as mandated by Article 2 paragraph 4 of Law No. 48 of 2009 concerning Judicial Power.

The development of information and telecommunication technology also has an effect in terms of proof, because the existence of the internet media will make it easier for people to interact which creates new legal relationships. In the civil sector, trade conducted electronically known as e-commerce will arise, this of course will lead to new evidence (beyond what HIR has so far determined), in the event of a dispute. Thus evidence has developed in the form of electronic documents. Likewise in the criminal field, cctv, microfilm or microfiche recordings can be used as legal evidence in criminal cases in court.

Apart from the development of this evidence, there are also developments in terms of service and settlement of cases in court. E-court and e-litigation are part of the court's effort to provide easy access to the public and justice seekers as well as save time, cost and labor of the litigants and make the courts more transparent, effective and efficient.

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