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## Accountability and Transparency of the Electronic Court and Litigation Systems in Indonesia

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### ABSTRACT

*The research focuses on evaluating and strengthening the electronic justice system in Indonesia, with a particular emphasis on its accountability and transparency. It is motivated by the numerous challenges in the electronic justice system implementation related to regulations, human resources, case management, and other potential emerging problems. This research employed normative and empirical legal methods. The research results reveal that electronic justice systems may be classified within the appropriate category. The most important thing is to strengthen the accountability and transparency in it towards an independence and impartiality of the electronic judiciary system through strengthening the quality assurance of the electronic judiciary system, electronic administration of the judiciary system by a clerk court based on an electronic trial recording (e-records), data security guarantees in e-court and e-litigation processes, and unlimited access assurance to space and time.*

## 1. Introduction

The modern justice system is a judicial enforcement system carried out by judicial powers with a digital approach or based on used information and communication technologies (ICT). Economic dynamics cannot be separated from the development and progress of technology, infrastructure, productivity, and innovation.<sup>1</sup> The rate of development of information technology in this civilization certainly affects the practice of justice.<sup>2</sup> It is the modernization of courts motivated by the rapid development of ICT and changes in various judicial systems worldwide, including Indonesia. Several new terms appear in the judiciary, such as electronic court (e-court), electronic judiciary (e-judiciary), electronic justice (e-justice), and electronic litigation (e-litigation). All these terms

1 Tania Shaumi Rahma, Iftinaity; July Hasiana, Eliza; Lie Cantika, Sian; Octaviona, Indonesian Legal Protection for Consumers on the Validity of Electronic Contracts in the E-Commerce Transactions, *Yuridika* Vol.37 No.3, 2022, page.697–714

2 Silaas Saputra, Rian; Zaid, M; Oghenemaro Emovwodo., The Court Online Content Moderation: A Constitutional Framework, *Journal of Human Rights, Culture and Legal System*, Vol.2 No.3, 2022, page.139–48

are related to using ICT in the judiciary (electronic justice system). ICT is considered an essential tool in the effectiveness and efficiency of effective case management while reducing the pile of cases that become judicial problems worldwide,<sup>3</sup> including in Indonesia.

The Indonesian Supreme Court (Mahkamah Agung Republik Indonesia) built a new direction towards a judicial justice system based on the ICT using two primary approaches, e-court/e-judiciary and e-litigation/e-justice. In 2018, the Supreme Court issued Supreme Court Regulation (Perma, *Peraturan Mahkamah Agung*) No. 3/2018 on e-court, which includes electronic case registration (e-filing), electronic down payment (e-payment) and summons and notification to litigants electronically (e-summons). Perma No.3/2018 was later changed with the issuance of Perma No.1/2019 on Case and Trial Administration in Electronic Court, which includes an e-litigation legal mechanism. It is a renewal innovation in the judicial sector that has a broad impact on the trial system and the behavior patterns of judges in examining, adjudicating, and deciding disputes.

In 2020, the Supreme Court issued Perma No.4/2020 on the Administration and Trial of Criminal Cases in Court Electronically. One of the successes of judicial reform in technical and case management in 2022 is the issuance of regulations encouraging the growth of the e-court service ecosystem. The Supreme Court has added online court services in the form of electronic mediation through Perma No.3/2022. It has also endorsed the rules for filing legal remedies, hearing cassation, and reviewing cases electronically through Perma No.6/2022. Hence, e-court and e-litigation services for civil cases, including religious courts and administrative court cases, which began in 2018, have been further reinforced by the enactment of Perma No.7/2022. It opens more expansive opportunities for implementing e-litigation, one of which is eliminating the requirement for consent from the defendant.

The Supreme Court again strengthened the administrative services and electronic trial of criminal cases by issuing Perma No.8/2022 on the amendment of Supreme Court Regulation No.4/2020 on the Administration and Litigation of Criminal Cases in Court Electronically. The Technical Guidelines for the Administration and Litigation of Criminal Cases in Court Electronically were reinforced by the issuance of Decree No. 365/KMA/SK/XII/2022 by the Chief Justice of the Indonesian Supreme Court. It regulates electronic case administration, integrating the criminal justice process with other stakeholders and law enforcement agencies. The development of modern and innovative judicial powers based on Information and Communication Technology (ICT) is a response to resolve cases quickly, accurately, effectively, and efficiently. It is an alternative solution for accumulating cases that have been a burden on the judiciary and have never been completed. Hence, this system is in line with efforts to fulfill the principles of good governance, the implementation of the case administration that is professional, transparent, accountable, effective, efficient, and modern.<sup>4</sup>

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3 Mohammad Abu Taher & Siti Zaharah Jamaluddin, Enhancing access to justice through e-judiciary in Bangladesh: A study, *UUM Journal of Legal Studies*, Vol.13 No.2, 2022, page. 317-344.

4 Muh. Ridha Hakim, 2019, *Implementasi E-Court di Mahkamah Agung Menuju Peradilan Yang*

The presence of the judicial reform movement through the development of the e-court and e-litigation system will make it easier for justice seekers to resolve cases quickly, accurately, effectively, and efficiently. The process is characterized by its quickness and preciseness, with the use of ICT being thorough and meticulous. The concept of effective practicality refers to the ability to achieve desired outcomes within the framework of established goals and legal procedures. For instance, it involves proficiency in effectively presenting witnesses and experts in the context of e-litigation. At the same time, efficiency is related to the right and targeted use of time, energy, costs, and targets (e.g., affordable fees and simple processes).

Launching the e-court and e-litigation system, the Supreme Court and its lower judicial bodies have moved towards electronic justice, which will fundamentally change the practice of serving cases in courts, and trials can be conducted electronically.<sup>5</sup> In the context of e-court regulation, this includes e-litigation. However, in practice, the parties to disputes in the general courts are given the right to choose e-court or conventional court. Notwithstanding the Plaintiff's selection of e-court, the involved parties retain the option to resolve their dispute through e-court plus e-litigation or e-court without e-litigation. Accordingly, e-litigation can be separated or integrated with the e-court system. Dory Reiling and Francesco Contini's view that e-court and e-justice systems, integrated with data exchange information flows and electronically managed judicial procedures, are increasingly becoming a way to handle cases in modern courts.<sup>6</sup>

Over the past few years, the e-court and e-litigation policy has been excellent and increased the modern judiciary in Indonesia. It has provided extensive benefits to all parties: the judiciary, the advocate, and the justice-seeking public. Hence, there are many legal problems with the transparency and accountability of the electronic judicial system. The evaluation and enhancement of the e-court system in Indonesia is essential, considering that the e-court is a new system for the judiciary in Indonesia and the justice-seeking community in general, religious, and administrative courts. Hence, the equitable distribution of ICT policies across all regions in Indonesia remains a major issue. In particular, rural districts need assistance in effectively implementing e-courts, given the necessity for further development of the electronic culture in these parts of Indonesia.

Based on the previous literature, there are several articles, namely: (1) Iwan Satriawan and Tanto Lailam<sup>7</sup>, Digitalisation of Court Administration and Access to

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*Modern*, Jakarta, Prenada Media Group, page.7

5 Sonyendah Retnaningsih, et.all., Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara Di Pengadilan Secara Elektronik dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik (Studi Di Pengadilan Negeri Di Indonesia), *Jurnal Hukum & Pembangunan*, Vol.50 No.1, 2020, page.124

6 Dory Reiling and Francesco Contini, 'E-Justice Platforms: Challenges for Judicial Governance', *International Journal for Court Administration*, Vol.13 No.1, 2022, page.10

7 Iwan Satriawan, Tanto Lailam, Zulfiani Ayu, Faishal Aji Prakosa, *Digitalization of Court Administration and Access to Justice: The Experience of the Indonesian Judiciary*, Law in the Digitalization Era - ICLAS 2019 Proceedings book, Turkiye, On Iki Levha Yayincilik a.Ş., 2019, page.17

Justice. This particular article delves into the matter of access to justice within the context of the e-court system. In addition, (2) M. Beni Kurniawan's<sup>8</sup> article entitled "Implementation of Electronic Trial (E-Litigation) on the Civil Cases in Indonesia Court as a Legal Renewal of Civil Procedural Law" focuses on the implementation of electronic trial (e-litigation) of civil cases in judicial institutions in Indonesia. Several studies examined the use of e-court and e-litigation systems but neglected to address the crucial problems of accountability and transparency.

Accountability and transparency are essential, considering that the e-court is a new system for the judiciary, judges, prosecutors, advocates, and the justice seeker, especially courts at regional levels. Also, the system is fundamental to study comprehensively, considering the many problems of regulation, electronic case management, overlapping authority, and lack of electronic professionalism of law enforcement officers. Moreover, the issue ensures the preservation of data security; a number of court websites have been hacked by unauthorized individuals, indicating that the effectiveness of protecting state court websites against cybercriminal activity has been inadequate. For this reason, this research is carried out with the hope that e-courts and e-litigation will encourage the creation of a modern judiciary that is the pride of the community, independent and impartial of courts and judges in electronic system. It is a fast-accurate, effective, and efficient process and a fair judge's decision.

## **2. Research Methods**

This research in legal science contributes to the development of the modernization of the judicial system based on ICT, particularly in the implementation of e-court and e-litigation, especially accountability and transparency systems. A normative and empirical approach was implemented during library research by prioritizing primary legal materials in the form of legislation and literature studies (journals, books, research results, and others).<sup>9</sup> Meanwhile, empirical legal research was conducted to directly examine primary data from the legal practice of the general courts in the implementation of electronic justice. In addition, a focus group discussion was also held, which discussed the implementation of e-court and e-litigation by presenting all the chairpersons or deputies of the general courts, advocates, and academics. The data analysis in this study employs descriptive qualitative, meaning that the elicited data will be constructed and assessed based on the criteria for accountability and transparency of the judicial system.

## **3. Result And Discussion**

### **3.1. An Evaluation of Electronic Court and Litigation in Indonesia**

Public complaints about the judiciary involve three main issues: difficulty accessing court information, length of case handling process (delay), and judicial corruption. In the past decade, the Supreme Court has proactively addressed these issues through reforms based on modernizing courts. Specifically, technical and case

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8 Kurniawan, M. B., Implementation of Electronic Trial (E-Litigation) on the Civil Cases in Indonesia Court As a Legal Renewal of Civil Procedural Law, *Jurnal Hukum Dan Peradilan*, Vol.9 No.1, 2020, page.43.

9 Mukhtar & Tanto Lailam, Problem Etika Pejabat Negara dan Gagasan Peradilan Etik, *Masalah-Masalah Hukum*, Vol.50 No.3, 2021, page.265–278.

management are the main priorities of judicial reform in Indonesia. The technical reform aims to ensure the independent, effective, and equitable exercise of judicial power. In contrast, case management reform aims to realize the courts' mission of providing equitable legal services to justice seekers and increasing the credibility and transparency of the judiciary. Case management reform is oriented towards process modernization and public services with three indicators: electronic-based case management migration, electronic-based public services, and simplification of speedy case administration.

Modernization of the judiciary with the application of electronic justice and trials conducted by the Supreme Court has been implemented in almost all provinces, regions, and cities in Indonesia. It provides judicial reform in Indonesia at least several important points: *first*, digitization of administration and judicial functions is essential in order to provide better access to justice seekers, which is not limited by space and time; *second*, modernizing information technology administration and trial justice system has proven that courts are more accountable and transparent; *third*, with good digitization of judicial administration, has shown a solid commitment to providing better access to justice for justice seekers<sup>10</sup>. It will also provide greater access to justice for low-income communities and persons with disabilities to fulfill the right to access justice and the law directly.<sup>11</sup> On the other hand, there are challenges related to data security and confidentiality<sup>12</sup> and the still weak ICT capabilities of law enforcers.

The development of e-courts in Indonesia during the pandemic is very rapid; this can be seen from the increase in the use of e-courts in the first-level courts in Indonesia. The following is a comparison of the e-court with the conventional system. In the year 2020, the use of the e-court route for case registrations accounted for 186,987 cases, representing 26.24% of the overall number of cases. In the following year, 2021, this number increased to 225,072 cases, representing 30.48% of the total cases. Subsequently, in 2022, there was a significant increase, with the number of cases rising dramatically to 283,183, contributing to roughly 37.19% of the total cases. Based on the data from 2020-2022, the use of e-court as an effective and efficient judicial solution has increasingly gained trust among law enforcement officers, advocates, the justice-seeking community, and society. The following is a detailed comparison of the number of cases between conventional and e-court mechanisms:

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- 10 Iwan Satriawan, Tanto Lailam, Zulfiani Ayu, Faishal Aji Prakosa., *Digitalization of Court Administration and Access to Justice: The Experience of the Indonesian Judiciary*, Law in the Digitalization Era - ICLAS 2019 Proceedings book, Turkiye, On Iki Levha Yayıncılık a.Ş., 2019, page.17
  - 11 Aju Putrijanti & Kadek Cahya Susila Wibawa., The Implementation of E-Court in Administrative Court to Develop Access to Justice in Indonesia, *Journal of Environmental Treatment Techniques*, Vol.9 No.1, 2020, page.105–109
  - 12 Ahmad Tholabi Kharlie, Achmad Cholil., E-court and E-litigation: The New Face of Civil Court Practices in Indonesia, *International Journal of Advanced Science and Technology*, Vol.29 No.02, 2020, page.2206-2213

Tabel. 1

## Comparison of conventional and e-court cases

No	Courts	2020		2021		2022	
		C	EC		EC		EC
1.	General Court	102.130	82.225 (80,51%)	98.929	90.041 (91,02%)	107.092	102.654 (95,86%)
2.	Religious Court	608.260	102.690 (16,88%)	637.303	132.869 (20,85)	651.624	177.769 (27,28%)
3.	Administrative Court	2.181	2.072 (95,00%)	2.308	2.162 (93,67%)	2.822	2.760 (97,80%)
Total		712.571	186.987 (26,24%)	738.540	225.072 (30,48%)	761.538	283.183 (37,19%)

Note: C = Conventional; EC = Electronic Court

Sources: Laporan Tahunan Mahkamah Agung 2020, 2021, and 2022

Based on the aforementioned statistics, it can be seen that the aggregate number of religious and administrative court cases recorded via the e-court system throughout the entire year of 2020 reached 186,987 cases. This figure represents a significant increase of 295.79% when juxtaposed with the corresponding total of 47,244 cases recorded in 2019. In 2021, there were 225,071 cases, an increase of 20.37% compared to 2020 (186,987 cases). The pace of rise exhibited further acceleration in 2022, with a recorded number of 283,183. This number also resulted in a significant increase of 25.82% compared to the preceding year, 2021 (225,072 cases). The number of cases is not all tried by e-litigation; the following is a comparison of the number of e-court cases with the number of cases tried through e-litigation, namely:

Tabel. 2

## Comparison of e-court and e-litigation cases

No.	Courts	2020		2021		2022	
		EC	EL	EC	EL	EC	EL
1.	General Court	82.225	4.461 (5,63%)	90.041	6658 (7,39%)	102.654	12.948 (12,61%)
2.	Religious Court	102.690	2.2738 (2,6%)	132.869	3181 (2,39%)	177.769	10.978 (6,18%)
3.	Administrative Court	2.072	1.191 (57,48%)	2.162	1978 (91,49%)	2.760	2.760 (100%)
Total		186.987	8.560 (4,58%)	225.071	11.817 (5,25%)	283.183	26.686 (9,42%)

Note: EC: Electronic Court, EL: Electronic Litigation (Percentages)

Sources: Laporan Tahunan Mahkamah Agung 2020, 2021, and 2022

Based on the data above, in 2020, the number of cases registered using the e-court system decided through e-litigation amounted to 8,560 cases or 4.58% of the total 186,987 e-court cases. In 2021, e-litigation comprised 11,817 cases, or 5.25% of all e-court cases. Electronic trials accounted for an increasing number of e-court cases in 2022, comprising 26,686 cases in total. It increased by 79.50% compared to 2021 at 5.25% of total cases.

In the appellate court (a court of appeal/s) in General High Courts, Religious High Courts, and Administrative High Courts. The development of the number of cases in 2020-2022 is increasing. In 2020, the number of appeal cases registered through the electronic appeal feature in the e-court application since it was inaugurated on August 19, 2020, was 294 cases, and 82 cases had been decided. In 2021, there were 1,876 cases and 1,712 cases that had been decided. In 2022, there were 4,017 cases, and 3,090 cases had been decided; in this year, the number of cases increased significantly by 114.13% when compared to 2021 (1,876 cases), while cases that had been decided increased by 80.49% from 2021 (1,712 cases).

Tabel. 3

Comparison of e-court and e-litigation cases

No	Courts	2020		2021		2022	
		EC	VC	EC	VC	EC	VC
1.	General Court	184	67	1.050	959	2.433	1.918
2.	Religious Court	39	11	192	192	412	346
3.	Administrative Court	71	4	634	561	1.172	826
Total		294	82	1.876	1.712	4.017	3.090
Note: EC: Electronic Court, VC: Verdict of Court							
Sources: Laporan Tahunan Mahkamah Agung 2020, 2021, and 2022							

Hence, criminal cases are still in the process of development. The policy of conducting criminal case trials using teleconference facilities. It was first based on a Letter from the Director General of the General Courts Agency No. 379/DJU/PS.00/3/2020 dated March 27, 2020, which was issued based on the Disposition of the Chief Justice of the Supreme Court dated March 26, 2020. For the effectiveness of the implementation of Remote Criminal Litigation, the Supreme Court, together with the Attorney General's Office of the Republic of Indonesia and the Ministry of Law and Human Rights (Kemekumham, *Kementerian Hukum dan Hak Asasi Manusia*), entered into a cooperation agreement Number 402/DJU/ HM.01.1/4/2020 - KEP-17/E/Ejp/04/2020 - PAS-08. HH.05.05 of 2020, dated April 13, 2020. Six months later, the Supreme Court strengthened the legal basis for teleconference trial arrangements by issuing Supreme Court Regulation 4/2020 concerning the Administration and Trial of Criminal Cases in Court Electronically. The number of criminal cases whose trials were conducted electronically throughout 2020 was 115,455 cases. This number reached 57.75% compared to the total number of non-traffic violation criminal cases handled by the district courts in 2020, totaling 199,939 cases. Teleconferencing of criminal cases was conducted by 379 out of 382 district courts (99.21%).

In 2022, the Supreme Court enacted Perma No. 8/2022 on Amendments to Supreme Court Regulation No. 4/2020 on the Administration and Trial of Criminal Cases in Courts Electronically. It enhances the electronic court system for criminal cases being implemented. It strengthens the implementation of electronic integrated criminal case administration as stipulated in Chief Justice Decree (SK-KMA, *Keputusan Ketua Mahkamah Agung*) No. 239/KMA/SK/VIII/2022 on Technical Guidelines for Electronic Integrated Criminal Case Administration. It stipulates that all case file submission and other case administration processes are carried out electronically through the court information system. In contrast, the trial process can be carried out electronically in certain circumstances. Criminal case administration includes applications for permission or approval of search, permission or approval of seizure, detention, permission to visit detainees, application for borrowing evidence, determination of diversion, and transfer of trial venue to another court. All case administration processes are conducted electronically through the e-Berpadu application.

Electronic litigation of criminal cases conducted through teleconference facilities criminal cases in which the trial was conducted electronically in 2022 totaled 118,313 cases. This number decreased by 29.78% compared to 2021, reaching 168,480 cases. The decrease in the number of electronic trials in criminal cases correlates with the improvement in the pandemic situation, which is one of the reasons for organizing electronic trials. The number of electronic trials in criminal cases in 2022 reached 84.89% compared to the total number of non-traffic violation criminal cases handled by the district courts in 2021, which amounted to 139,368 cases.

Developing the number of cases through the electronic justice system is very significant in Indonesia. It is undoubtedly motivated by the guarantee that the system is an accurate, quick, effective, and efficient modern justice system. Of course, public trust has begun to build regarding the implementation of this system. In addition, COVID-19 has caused restrictions on direct (offline) meetings of the disputing parties in the courtroom, but efforts to seek justice are still being carried out. The research results by Dory Reiling and Francesco Contini indicate that the COVID-19 pandemic had an impact on strengthening the e-court system more effectively.<sup>13</sup> The e-court and e-litigation systems have been carried out quite well in the context of accountability and transparency. Several e-filing, e-payment, e-summons, and e-litigation activities have available information and can be accessed by the public through the website and e-court corners, including various activities to socialize this new system with advocates and other court users. In addition, a case tracking information system is also available, but improvements are required.

An evaluation points for the implementation of e-court and e-litigation systems at the general, religious, and administrative courts include:

First is the electronic case management system. It is the front line in building a reliable system. All data and activities of e-court and e-litigation are the

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13 J.Michael Greenwood & John Brinkema., E-Filing Case Management Services in the US Federal Courts: The Next Generation: A Case Study, *International Journal for Court Administration*, Vol.7 No.1, 2015, page.3-7.



responsibility of the electronic case management team. The existence of problems with registration, payment, summons, and trial is evidence that there is still a need for improvement in the case management system based on accountability and transparency to the parties and the public. Electronic justice system software must be improved and adapted to the needs of judicial users. For example, the electronic system will reject automatically if the user is underpaid, and so on.

Second is the ICT in the court problem. Its development policies need to be maximized, causing several problems related to the stability of the internet network in the court system and others. Based on the Indonesian Internet Service Providers Association (2021) survey, 196 (73.7%) Indonesians have access to the internet, while around 70 million people have yet to be reached by the internet. In a geographical context, more than 12,500 villages in Indonesia still need internet access. However, in the future, the internet will undoubtedly reach all villages and Indonesian people from urban areas to remote areas of the country.

Third is unprofessional human resources. Judges unfamiliar with the e-court and e-litigation system must adapt to a new system that is complicated and full of challenges: advocates who are not used to registering-paying-courting cases electronically and administrators who still need to be professional. It realizes that professional resources are needed for a modern, accountable, and transparent e-court and e-litigation system involving information technology experts in the justice system. If judges need to understand ICT well, it will impact case settlement, legal discovery, and even decisions. Also, the legal culture of ICT usage in the legal system could be more potent and newer to Indonesian society.

Fourth, supporting facilities and infrastructure in the form of agency budgets and the provision of software, internet, servers, computers, and others, which, of course, become problems that cannot be separated from the implementation of this system. Fifth is public trust and confidence in the electronic justice system. It means that public trust (advocates, parties, and the public) is the determinant of the success of this system during increasingly rapid technological developments and has become the primary need of the community (already become part of the constitutional rights or fundamental rights on internet access).

Public trust still needs to improve in e-litigation. It is greatly influenced by the court's performance and the role of advocates using the offline system in the courtroom. At least three things can affect the level of public trust: (1) the quality of electronic information. Electronic information provided through the court's website regarding electronic justice must be quickly and easily accessible. (2) Data accuracy by means of the data submitted through the website must be valid, and the case tracking information system data must also be accurate. (3) Public access to e-court and e-litigation must be accessible to the public without being limited by space and time, meaning that the advantage of the electronic system is time effectiveness. It must be proven that the process is also effective and faster than conventional litigation (face-to-face platform).

### **3.2. Accountability and Transparency of Electronic Justice Systems**

The e-court and e-litigation systems are policies aimed at modernizing the justice system, especially the modernization of case management, electronic

accountability and transparency, and electronic justice. The accountability of the electronic justice system is related to the performance of the judicial institution and the judge's decisions. It aims to realize law and justice based on Pancasila and the 1945 Constitution and build public trust. Accountability is an essential foundation for the rule of law and makes the decisions of the judicial authorities more respected.<sup>14</sup> Meanwhile, transparency contributes very well to changes in the performance of the judiciary and judges. Transparency is not only about accessibility but also about finding and understanding accessible information.<sup>15</sup> It must encourage the independence and impartiality of the judiciary and judges and determine the quality of judicial decisions that the parties and the public respect or trust.

The development of e-court and e-litigation cases in the future will increase along with the development of information and communication technologies in Indonesia. Hence, the awareness of the Indonesian people about the need for the transformation of the e-court and e-litigation system that can resolve cases quickly, accurately, effectively, and efficiently is increasing. Given that judicial modernization at the Supreme Court has been carefully designed since 2018 (e-court) and 2019 (e-litigation), regulated criminal electronic litigation in 2020 and 2022. It requires the integration of the judiciary system and the development of information technology.

The modern judiciary in question is a court that adapts to the development of increasingly vital information and communication technology, especially in the era of Smart Society 5.0. which places humans as the main component during the development of information and communication technology. Judicial accountability is related to the administration of electronic cases and trials that will leave a digital footprint stored forever and can be accessed at lightning speed without being limited by space and time. Accountability in a democratic rule of law is a counterbalance to the principle of judicial independence.<sup>16</sup> While the transparency of the e-court system and e-litigation is needed to create a system that the public can trust, judges acquire good independence and impartiality and fast trials with better and fairer decision quality.

Ronald van den Hoogen stated that a number of tenets must be followed in order for the professional implementation of ICT to enhance the legal system (e-court/e-judiciary). It includes equal access to digital systems, continuity (sustainability), quality of information, data reliability, freedom of the press (open access to information for mass media), public accessibility (public involvement in digital systems), online publishing, system transparency, computerized administration of justice (assurance of digital-based administrative justice), expeditious handling (quick justice), chain-computerization (communication between institutions in a digital system), equality of litigants, and correct to attend (justification of decisions

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14 Ibnu Sina Chandranegara, Defining Judicial Independence and Accountability Post Political Transition, *Constitutional Review*, Vol.5 No.2, 2019, page.294.

15 David Kosař and Samuel Spáč., Conceptualization (s) of judicial independence and judicial accountability by the European network of councils for the judiciary: Two steps forward, one step back, *International Journal for Court Administration*, Vol.9 No.3, 2018, page.37–46

16 Tanto Lailam., *Pertentangan Norma Hukum dalam Praktek Pengujian Undang-undang di Indonesia*, Yogyakarta, LP3M UMY, 2015, page.146

via digital).<sup>17</sup> Some essential points strengthening the development of the electronic justice system in Indonesia are as follows:

The quality assurance of the electronic judiciary system

The e-court and e-litigation system, a new system in the justice system in Indonesia, will impact the quality of justice, both the quality of the system, the quality of the judicial process, and the quality of judicial decisions. The quality of justice in question is:

*First*, the quality of the e-litigation system that is independent and impartial, starting from management, judicial administrators, operators, judges, clerks, and other parties involved as a component of the system, must be guaranteed its independence and impartiality in supporting the settlement of cases. The independence and impartiality of the judiciary are related to two things: the independence inherent in the value of the institution and the inherent in the pattern and behavior of the judge's performance.<sup>18</sup> *Second*, the quality of access to justice for all. It must guarantee access to justice for all urban and rural communities, including people with physical limitations. E-litigation must guarantee this access supported by information and communication technology development in rural areas, including accessible Wifi facilities in government-owned public facilities.

*Third*, the quality of justice related to the e-court and e-litigation process, starting from online case registration, online down-payment, uploading or sending court documents, electronic summons, and electronic trials, must ensure the quality of justice, especially for the parties to the dispute. It is hoped that the presence of e-litigation will not have an impact on new issues of injustice in the community, for example, limited signals, network, and system errors that have a direct impact on the implementation of e-litigation, which is longer than conventional litigation. The main principle is that everyone has the right to a fair hearing, which is open or accessed by the public. In addition, an accurate, fast, effective, and efficient time is guaranteed.

The presence of the e-court and e-litigation system is a solution to the problem of accumulation of cases in offline hearings and the slow settlement of cases (case buildup).<sup>19</sup> R. James Williams views that access in conventional (offline) dispute resolution models is slow, expensive, divisive, and complex – both for litigants and those with lawyers.<sup>20</sup> It means that with the presence of this system, it will realize a fast, accurate, and effective judiciary (for example, witnesses and experts who do not need to be presented in offline court hearings, but only online), budget efficiency (for example, there is no need to spend a budget or cost for witnesses

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17 R van den Hoogen., Will E-Justice Still be Justice? Principles of a Fair Electronic trial, *International Journal For Court Administration*, Vol.18, 2008, page.65–73

18 Iwan Satriawan & Tanto Lailam., Implikasi Mekanisme Seleksi Terhadap Independensi dan Integritas Hakim Konstitusi di Indonesia, *Jurnal IUS Kajian Hukum dan Keadilan*, Vol.9 No.1, 2021, page.112

19 Asep Nursobah, Utilization of Information Technology to Encourage Accelerated Settlement of Cases in the Supreme Court, *Jurnal Hukum dan Peradilan* Vol.3 No.2, 2015, page.323–334.

20 R. Williams, Taking a Shot: Access to Justice, *Judging and eCourt, Family Court Review*, Vol.59 No.2, 2021, page.278–293.

or experts who are far from the location of the court), no summons for a trial, and others.

### 3.2.1 The independence and impartiality of the electronic judiciary system

Independence and impartiality in the electronic justice system are necessary because it opens the faucet for judges not to take actions that violate the law and code of ethics in electronic courts. The attitude and behavior of judges in electronic trials recorded in the electronic system will impact the assessment of the judge's behavior in examining, adjudicating, and deciding cases. The implication of increased accountability and transparency of the electronic justice system has an impact on increasing the independence and impartiality of judges.

The electronic justice system equipped with e-records in the future can provide convenience to justice seekers that the judicial process is legal and believes or accepts the court's decision, even in a vulnerable (civil) position. These e-records are also valid evidence if there is a judge's behavior that is not fair or violates procedures, is not fair and transparent in conducting examinations, does not apply the principle of *audi el alteram partem* (civil case) or partiality in examining cases, committing psychological violence against the accused (criminal cases), and other violations. In addition, courts of appeals may use recordings to review electronic trial proceedings in courts of the first instance and ensure their procedural integrity. The enhancement of judges' decision-related quality assurance will be facilitated by the growing levels of independence and impartiality.

Judges in e-litigation will be trustworthy and full of responsibility because judges are no longer the leading players in building justice construction as in conventional courts. However, all elements of e-court and e-litigation are decisive in every judge's decision because the public does not directly supervise judges, and the public will review the decision based on the YouTube or trial record process. If the decision is controversial, it will undoubtedly have an influence on the judge's controversial assessment.

### 3.2.2 Electronic administration of justice

In the electronic litigation process, in addition to the role of the judge in examining and adjudicating a case, there is also the role of a substitute clerk, whose function is crucial. The substitute clerk assists the judge in recording the trial process and typing the decision based on the draft verdict. In this context, the role of the substitute clerk is to become an essential informant for judges in examining and adjudicating cases. The implications of the electronic justice system, the accountability and transparency of clerks will be even more potent when coupled with the ICT system in court recording and transcribing. The court recording system by the clerk and the ICT system will become an effective archive management system while simultaneously ensuring the accountability and integrity of the court that provides services to the broader community and serves as a strategic resource for implementing court modernization. It is an electronic-based registrar system that will impact the process of law enforcement and justice. Therefore, access to justice is wide open to the broader community.<sup>21</sup>

### 3.2.3 Electronic trial recording (electronic records or e-records)

The e-litigation activities can be recorded as electronic records or e-records, which serve as a means for clerks and judges to verify trial-related information based on the recordings. The full record and transcription of this trial by the general, administrative, and religious courts have not been fully executed to its utmost potential. Electronic trials provide the advantage of recording the trial process from the beginning of the trial to the verdict. Especially if access to the videotape is not only owned by the litigants but also by the public. It can be accessed through YouTube channels and other social media. It is an effective electronic records management to ensure that reliable, accurate, and timely information is needed to enforce law and justice for judges.<sup>22</sup>

Nevertheless, there are situations when it becomes imperative to establish proportionality within electronic courts that are accessible to the public in general. This is due to the fact that considerations regarding the personal rights of the involved parties can further impose limitations. According to Peter Winn, there are pragmatic reasons that support the need for public access (for example, the need to ensure the credibility and accountability of the judicial system), but these reasons must be balanced with pragmatic reasons that support the need to limit public access (for example protecting the personal rights of those who litigation in a fair trial, protecting individual privacy rights, and protecting individuals from the dangers of misuse of personal information,<sup>23</sup> quality, and integrity.<sup>24</sup>

In Indonesia, the 1945 Constitution authorizes the Constitutional Court/ Mahkamah Konstitusi Republik Indonesia (hereinafter MKRI).<sup>25</sup> Constitutional Court established as a state institution is designed to guard the constitution within the purview of constitutional democracy.<sup>26</sup> The best practice can be seen in the role of the Indonesian Constitutional Court, which has made e-records of every case it has resolved, providing live streaming of the trial, which can be watched on the Constitutional Court YouTube channel. Hence, the Supreme Court has also been done in the case of general courts deciding controversial cases in the community, such as the case of Sambo et al. However, this is still limited to certain district courts and controversial cases. Even the recordings can be accessed by the public indefinitely. This practice is also carried out in other

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21 Mark Dillon & David Beresford, Electronic Courts, and the Challenges in Managing Evidence. A View from Inside the International Criminal Court, *International Journal for Court Administration* Vol.6 No.1, 2014, page.29

22 Mohamed Issa & Justus Wamukoya., The Role of Electronic Records Management in Promoting the Delivery of Justice in Tanzania: Perspectives from Dar es Salaam, *Information and Knowledge Management*, Vol.8 No.2, 2018, page.30–35.

23 Peter A. Winn., Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information, *Washington Law Review*, Vol.79 No.1, 2004, page.307–329

24 Giosita Kumalaratri & Yunanto., Urgency of the Personal Data Protection Bill on Privacy Rights in Indonesia, *Jurnal Hukum UNISSULA*, Vol.37 No.1, Mei, page.2

25 Putri Lailam, Tanto; Anggia,. The Indonesian Constitutional Court Approaches the Proportionality Principle to the Cases Involving Competing Rights, *Law Reform*, Vol.19 No.1, 2023, page.110–27

26 Mustafa; Ibrahim Nur AsrulLutfi., Reconstruction of Norm in Selection System of Constitutional Court Judge Candidates from the Perspective of the Paradigm of Prophetic Law, *Legality: Jurnal Ilmiah Hukum*, Vol.30 No.1, 2022, page.116–30.

countries, such as Malaysia. The Malaysian Court records the entire trial process to save the entire e-litigation process in audio-video format for long-term reference and evidence. The app also allows automatic transcripts to be generated quickly. One of the unique features of court recording and transcribing at the Malaysian Courts is the use of audio and video recordings of the trial process. This type of recording offers many more advantages, such as allowing experts to review the facial expressions of witnesses or defendants as they testify. Because the recording is considered a public document, lawyers can have a copy of the tape to take back to their office. If there is a complaint or dissatisfaction on the part of the lawyers, they cannot make such a complaint again on the allegation that there was a misunderstanding during the trial.<sup>27</sup>

#### 3.2.4 Data security guarantees

The e-litigation process is a judicial process through electronic devices. All case resolution processes are done through an online system or special devices on computer networks and the internet. The main problem is the number of hacking cases that occur in Indonesia, thousands of hacking cases, and even data leaks in a year, which will impact the justice system in Indonesia. For example, hacking may occur under certain circumstances (e.g., eliminating or replacing evidence in the online system and others).

In Indonesia, the e-litigation system is currently still in the process of being developed. Naturally, it is essential to proactively consider the circumstances surrounding technology offenses that potentially jeopardize the principles of justice. For example, in the future, courts will be able to have a digitalized trial management system and secure data from hackers. Technological intelligence is needed to manage internal systems and security from outside interference (court management). This case often occurs in the United States Supreme Court, in the case of e-court and e-litigation system of hacking related to data on the case management or electronic case file system owned by the Supreme Court. It has been hacked thousands of times by hackers, but the hack was unsuccessful because of the guarantee of good security. This data security is the key to the electronic justice system in the world.<sup>28</sup> However, the process of an e-litigation system that could provide data security guarantees requires a long process, which falls within the responsibility of the Supreme Court.

#### 3.2.5 Unlimited access assurance

The electronic justice system must be able to guarantee that each litigating party or the public can access the process of the case being resolved without any limitations on space and time through the court's website. The court must be able to update the changing position of the case through the online system. General, religious, and administrative courts have accessed this process through the Case Tracking Information System (SIPP, *Sistem Informasi Penelusuran Perkara*). Employing an information application system for litigants and the public ensures

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27 Wan Satirah Wan Mohd Saman & A. Haider., E-court: Information and Communication Technologies for Civil Court Management, *Proceedings of PICMET 2013: Technology Management in the IT-Driven Services*, page.2296–2304.

28 J. Michael Greenwood & John Brinkema, *Op.Cit.*, page.3

accountability and transparency in the administration of court cases. Users and the public can access and use this application for research and other activities.

The information contained in the SIPP has been adapted to the applicable laws and regulations. It includes information on case numbers, case registration date, case classification, parties (civil cases), defendants (criminal cases), public prosecutors, advocates, judges, indictments (criminal cases), case status, trial schedule, evidence, case chronology, case costs (civil cases), and the initial processing time until a decision is rendered, and the availability of decision-related information for retrieval from the Supreme Court decision repository. Consequently, the provision and safeguarding for this accessibility has been enacted. However, in the future, it will take a particular time to guarantee the certainty of a time frame during which a self-reliant and impartial court administrator will provide updates on changes to the case.

#### **4. Conclusion**

The electronic justice system has become a community that needs to access law and justice quickly, accurately, effectively, and efficiently. This system has run well in Indonesia's general, religious, and administrative courts. The technology is currently in its nascent stage and remains incompletely comprehended by law enforcement authorities. Numerous challenges and issues impede its effective adoption, including (a) an electronic case management system, (b) imperfect electronic court policies and inadequate ICT development policies, (c) unprofessional human resources, (d) supporting facilities and infrastructure in the form of agency budgets and software provision, and (e) public trust. The accountability and transparency of e-courts and e-litigation encompass several crucial aspects. These include quality assurance of the electronic judiciary system, independence and impartiality of the electronic judiciary system, electronic administration of the judiciary system, electronic trial recording (e-records), data security guarantees in e-court and e-litigation processes, and unlimited access assurance to space and time. It has enormous potential to change public trust in the judicial system in Indonesia. However, it is essential to emphasize the need for meticulous planning in the future, which entails the integration of several systems with Information and Communication Technology (ICT). These systems include case management, human resources, software (ICT systems), data security regulations, and the involvement of professional law enforcement officials.

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