

Turnitin Nomor 22

by Ahmad Nurcholis

Submission date: 01-Sep-2022 10:06PM (UTC+0700)

Submission ID: 1890688976

File name: NOMOR_22._SCOPUS_Q2._TH._2021_Effectiveness.pdf (335.77K)

Word count: 2548

Character count: 14202

EFFECTIVENESS OF THE PARTIES-WRITTEN-APPROVAL REQUIREMENT FOR CONDUCTING ELECTRONIC LITIGATION THROUGH THE E-COURT SYSTEM IN INDONESIA

² I Gusti Agung Ayu Gita Pritayanti Dinar, Faculty of Law Universitas Warmadewa

I Nyoman Putu Budiarta, Faculty of Law Universitas Warmadewa
Ahmad Nurcholis, IAIN Tulungagung
Muhammad Firdaus Zarkasi, UIN Maulana Malik Ibrahim

ABSTRACT

Technology is highly influential in the evolution of legal services. The system of judicial proceedings, ever developing to keep up with the current changes, has shifted from the previous system in which proceedings were carried out conventionally to a computerized one, and has continued to develop into the more efficient and effective e-Court system. The development of this method is not always properly followed and applied by its users due to several factors such as the users' limited knowledge, limited technological facilities in their area, and the method being considered to be detrimental to any side of the parties. The research questions investigated in this study are: (i) what are the advantages of the concept of electronic litigation administration compared to conventional litigation in Indonesia? (ii) What is the effectiveness of the parties'-written-approval requirement for conducting electronic litigation in Indonesia? This study employs the normative legal research method. A normative legal research is guided by the characteristics of the object of the research, yet remains limited by the expected outcome of the norms initially established. The approaches used in this study are (1) the analytical and conceptual approach and (2) the statutory approach. The theories applied in investigating the problems in this research are the effectiveness theory and economic-legal theory. Through this study, the advantages of the electronic litigation in comparison to conventional litigation can be identified, and the effectiveness of the parties'-written-approval requirement for conducting litigation electronically in Indonesia can be determined.

Keywords: Effectiveness, Principal's Approval, E-Court.

INTRODUCTION

Technology and interconnection-networking play an important role in civilization in the world today. Technology never lags behind fashion and trends. It always develops following the development of the society's needs, too rapidly even, that sometimes it creates an imbalance between developed countries, which are already very well established in terms of the use of technology, and some developing countries that are still very traditional and tend to be

unfamiliar with the use of technology and the Internet. Technology is now pervasive in our world. Consider the number of users of mobile phones (5 billion) and the Internet (3.5 billion) (Richard, 2017). One key challenge for the legal professions, however, is to adopt new systems earlier and to identify and grasp the opportunities afforded by emerging technologies (Richard, 2017). Many more lawyers are inclined to set up fortifications to protect themselves from new developments than to rush forward and embrace them (Richard, 2010). Even though technology is the key challenge of the legal professions today, there are still many legal practitioners who choose to protect themselves from the ongoing changes rather than embracing the new development.

The court administration system in Indonesia also supports the advancement of technology through dissemination of the e-Court system, which has been implemented in several regions by virtue of the Republic of Indonesia Supreme Court Regulation No. 3 of 2018 on The Administration of Court Cases by Electronic Means (here in after referred to as Perma No. 3 of 2018).

Judicial proceedings aim to produce the fairest possible solution and facilitate the proceedings held between the parties seeking justice, and e-Court is one way to streamline old procedures, which have now been refined with the e-Court administration system, as well as a disruption to the previous administration system.

One of the requirements mentioned in Article 12 paragraph (1) item c of the Perma No. 3 of 2018 is that legal attorneys must obtain written approval from the principal to conduct litigation by electronic means. If any one of the parties does not agree on carrying out the administration of the litigation through the e-Court system, the proceedings cannot be held electronically. This could hinder the achievement of the initial objectives of the implementation of the e-Court system in Indonesia.

Research Questions

1. What are the advantages of the concept of electronic litigation administration compared to conventional litigation in Indonesia?
2. What is the effectiveness of the parties'-written-approval requirement for conducting electronic litigation in Indonesia?

RESEARCH METHODS

This study employs the normative legal research method that is examining the law from an internal perspective with the object of research being a legal norm (Diantha, 2016). Legal research is a process to identify legal regulations, legal principles, and legal doctrines in order to address the legal issues at hand (Mahmud, 2005). Normative legal research functions to present legal arguments when there is void, obscurity, and conflicts of norms (Diantha, 2016).

The approaches used in this research are: (1) the analytical and conceptual approach, through which all problems are investigated based on concepts, theories, principles, and the applicable laws and regulations, (2) the statutory approach, which is applied in this study by examining, comparing, and analyzing the Perma No. 3 of 2018 on The Administration of Court Cases by Electronic Means and the relevant laws and regulations.

RESULT AND DISCUSSION

The Advantages of the Concept of Electronic Litigation Administration through the e-Court System

A concept is an idea or notion abstracted from a concrete event (Departemen Pendidikan Nasional, 2016, Kamus Besar Bahasa Indonesia Pusat Bahasa Edisi Keempat). The object of thought must be tangible and factual. The concept of the e-Court administration will be explored through the definition of the administration of court cases by electronic means (e-Court) as described in Article 1 item 5 of the Perma No. 3 of 2018, which states that e-Court consists of an electronic court administration process which includes the submission of lawsuits/applications, responses, counterpleas, rejoinders, and conclusions, as well as the management, service, and storage of documents in civil, religious, military administrative, and state administrative cases, by using the electronic system that is applied in the relevant court. In concept, the online litigation system consists of a series of litigation processes combining online and conventional systems, with the online administration being limited to the submission of lawsuits/applications, responses, counterpleas, rejoinders, and conclusions, while examinations of evidence and witnesses still require the presence of the parties before the relevant court. Virtual courts, online courts and advanced online dispute resolution (ODR) deliver a much speedier resolution, quicker even than the reasonable time within which justice requires that a case should be heard, and this may well offset the disappointment of not being vindicated in person (Richard, 2017). If the parties to a case require public justification, the process may not be in keeping with the efficiency of the e-Court system.

Richard Susskind predicted that there would be three stages of change process in the legal professions, namely: (1) denial, (2) re-sourcing, and (3) disruption. In 2007, a crisis began to emerge and businesses started to adjust their budgets for the financing of their legal team, either in-house or from law firms, to make them more efficient. However, during the denial phase, most lawyers denied the fundamental and structural changes happening in the legal market. Upon entering the re-sourcing phase, the market was characterized by the entering of third parties such as accounting firms, legal process outsourcing, and others, which streamlined the costs of legal process. Additionally, at this second stage, law firms and in-house departments would find ways of running their own back offices at far lower costs (Richard, 2017). During the disruption phase, technology would also transform and dominate the legal service sector, for example in the computerization of legal processes. If analogous technologies can transform the practice of medicine and audit, then lawyers should be open to similar overhaul (Richard, 2017).

A science that continues to develop and seek the truth has the distinctive characteristics of constantly basing itself upon the three pillars supporting the scientific development, namely ontology, epistemology, and axiology (Prapti, 2014). Ontology talks about what realities exist in the universe, epistemology talks about the methodology, validation, and validity of a piece of knowledge, and axiology talks about values and goals (Prapti, 2014). A research analyzed based on philosophical elements ought to meet the requirement of using the three pillars of science, so that the results can be of value and can be tested for their validity (Putra, 2013). Ontology discusses what we want to know and how deep we want to know about it, or, in other words, it is a study of the theory of being (Jujun, 2015). The object of this research is the mutual agreement between the parties to a case to carry out an electronic litigation process in Indonesia. The

implementation of the online litigation administration method is a knowledge validation process so that this knowledge will provide benefits for the society with respect to the advantages of this method.

Richard A. Posner in his book *Economic Analysis of Law* presents a legal analysis with the support of the economic science to broaden the legal dimension. He has been said to also rehabilitate Bentham's axiom, albeit in a form that is more modified and made parallel as a normative principle that is comparable to a legal analysis. Posner has also been said to be a driving force of law and economics since his book *Economic Analysis of Law*, which was published for the first time in 1973. Not much different from other law and economic experts, he developed post-Coasian teachings and economics (Fajar Sugianto, 2014). Posner's ideas focused more on the economic efficiency to explain law (common law). He argued that if law was better known it would be easier to analyze the implications of its development. To defend his stance, Posner developed law and economics through his book *The Economics of Justice* (1981) (Fajar Sugianto, 2014). Literally, the concept of efficiency is always associated with the notion of thrift in relation to the economic valuation of goods and services (Fajar Sugianto, 2014). When the legal regulation is able to expedite interactions and transactions, the legal regulation is considered efficient. Posner's idea of efficiency is reflected in the characteristics of the litigation process through the e-Court system, which is often considered to be more efficient compared to the litigation process through the conventional system.

The shift to the online litigation administration system brings significant advantages, namely: speedier litigation process, lower advance court fees, better efficiency for judicial proceedings held in other jurisdictions, and more systematic and organized documentation of dossiers.

Effectiveness of the Parties'-Written-Approval Requirement for Conducting Litigation by Electronic Means in Indonesia

Article 12 paragraph (1) item c of the Perma No. 3 of 2018 states that legal attorneys are required to obtain written approval from the principal to conduct litigation electronically. In concept, the approval for electronic litigation serves as a written statement of each party to the case that he or she has acknowledged, understood, and agreed on the electronic court proceedings. Article 2 paragraphs 4 of Law of the Republic of Indonesia No. 48 of 2009 on *Judicial Powers*, which serves as one of the legal bases outlined in the considerations for the establishment of the Perma No. 3 of 2018, requires the justice system to be simple, quick, and low-cost. The procedure requiring the parties' approval shows the inconsistency between the implementation of the Perma No. 3 of 2018 and the objectives of the issuance of this Perma as well as the principle of simple, quick, and low-cost justice system. This is because if one of the parties does not approve of the administration of the case by electronic means the panel of judges will carry on with the trial under the conventional procedure.

According to Soerjono Soekanto, the effectiveness of a legal product is determined by five (5) factors, namely: (1) the legal product itself (the law), (2) the law enforcement authorities, i.e. those who establish and enforce the law, (3) the facilities supporting the law enforcement, (4) the society, i.e. the environment in which the law is enforced or implemented, and (5) the culture, as a product of humans' work, creativeness, and imagination, based on their will in their social life (Soerjono, 2008). The Perma No. 3 of 2018 cannot be implemented effectively with

the existence of Article 12 paragraph (1) item c, owing to such factors as the norm itself and the users or those implementing the law. The provision requiring the parties' approval to use e-Court has a direct effect on or implication for the successful implementation of a simple, quick, and low-cost justice system, as it tends to impede the process that has been updated according to the technological development and the society's needs, rendering it ineffective in supporting the principle of a simple, quick, and low-cost justice system. Rather, the government should increase dissemination, information, and legal counseling to all levels of society concerning the advantages and benefits of the e-Court system so that the public have the correct understanding. This way, the procedure for electronic litigation will be able to be well implemented, as expected by the state.

CONCLUSION

The shift to the online litigation administration system brings significant advantages, namely: speedier litigation process, lower advance court fees, better efficiency for judicial proceedings held in other jurisdictions, and more systematic and organized documentation of dossiers, all of which are in line with the principle of simple, quick, and low-cost justice system. The provision requiring the parties' approval to use e-Court has a direct effect on or implication for the successful implementation of a simple, quick, and low-cost justice system, as it tends to impede the process that has been updated according to the technological development and the society's needs, rendering it ineffective in supporting the principle of a simple, quick, and low-cost justice system. The government should increase dissemination, information, and legal counseling to all levels of society concerning the advantages and benefits of the e-Court system so that the public have the correct understanding of the system. This way, the procedure for electronic litigation will be able to be well implemented, as expected by the state and those who seek justice.

REFERENCES

- Diantha, P.I.M. (2016). *Normative legal research methodology in legal theory justification*. Kencana, Jakarta.
- Jujun S.S. (2015). *Knowledge in perspective, pustaka field Indonesia foundation*. Jakarta.
- Jujun, S. (2015). *The future of the professions how technology will transform the work of human experts*. Oxford University Press, Great Britain.
- Mahmud, P.M. (2005). *Legal research, fajar inter pratama offset*. Jakarta.
- Prapti, D.R. (2014). *Pancasila legal culture*. Thafa Media, Yogyakarta.
- Putra, W.I.B. (2013). *Philosophy of science: Philosophy of Law*. Udayana University Press, Denpasar.
- Richard, S. (2010). *The end of lawyers? Rethinking the nature of legal services*. Oxford University Press, Great Britain.
- Richard, S. (2017). *Tomorrow's lawyers: An introduction to your future*. Oxford University Press, Great Britain.
- Soerjono, S. (2008). *Factors affecting law enforcement*. Raja Grafindo Persada, Jakarta.

Turnitin Nomor 22

ORIGINALITY REPORT

17%

SIMILARITY INDEX

14%

INTERNET SOURCES

2%

PUBLICATIONS

7%

STUDENT PAPERS

PRIMARY SOURCES

1	www.conventuslaw.com Internet Source	4%
2	doaj.org Internet Source	4%
3	Submitted to Fakultas Hukum Universitas Lampung Student Paper	3%
4	www.legalwatercoolerblog.com Internet Source	1%
5	Submitted to University of Liverpool Student Paper	1%
6	issuu.com Internet Source	1%
7	www.bircu-journal.com Internet Source	1%
8	Bunyamin Muhammad Yafid, Abd. Kahar Muzakkir. "The Role of the Supervision and Observation Judge on Guidance for Inmates", Sovereign: International Journal of Law, 2020 Publication	1%

9

eprints.ubhara.ac.id

Internet Source

1 %

10

Submitted to National University of Ireland,
Maynooth

Student Paper

1 %

11

core.ac.uk

Internet Source

<1 %

Exclude quotes On

Exclude matches < 4 words

Exclude bibliography On