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Existence of E-Court Without Proof of Consent in Conducting Civil Trials

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Abstract

The Supreme Court is to improve the provision of electronic services based on technological innovation, namely by creating a case resolution system called Electronic Court (E-court). A simple trial should not be deliberately complicated by the judge, resulting in a convoluted examination process until the examination is postponed for various reasons that are not valid according to law. Legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. Legal research is carried out to produce arguments, which are assisted by new theories or concepts in solving the problems faced. The e-court approval referred to in Article 20 paragraphs (1), (2), and (3) of Perma Number 1 of 2019 does not explain the form of approval, however in the e-court guidebook issued by the Supreme Court regarding approval This must be done in writing and then uploaded in PDF form to the e-court application when registering the lawsuit (for the plaintiff), meanwhile the defendant will give his consent at the hearing after the mediation is declared unsuccessful.

K*eywords:* *Existence; E-court; Civil*

Introduction

Many countries, especially developing countries, continue to adapt and update their justice systems due to the pressing needs of national and international society. This adjustment not only applies to economic activities but also to judicial institutions which are deemed not to have a professional level in handling disputes in society. One assessment that has developed in people's lives is that most people feel reluctant to proceed in court because the procedure is considered too long and takes quite a long time. This assessment of justice by society ultimately undermines the meaning of the law itself, as if access to justice is very difficult for society as justice seekers. What's even sadder is that situations like this open up opportunities for people to take shortcuts in resolving their legal problems in a hurry, such as taking the law into their own hands, civil disobedience or persecution. This situation certainly has the potential to make people reluctant to fight for their rights through judicial law enforcement institutions, where one of the factors is because bureaucratic procedures are considered too complicated.(Suadi 2020)

The Supreme Court is to improve the provision of electronic services based on technological innovation, namely by creating a case resolution system called Electronic Court (E-court). In line with that, the challenge to create justice that is simple, fast and low cost as mentioned in Article 2 Paragraph (4) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law Number 48 of 2009), this is the spirit for the holders There is an interest in the Supreme Court so that the principles of

justice that are simple, fast and low cost can be easily used to simplify the currently slow judicial process. This principle is the premise that good justice is justice that can speed up the judicial process in order to create superior bureaucratic and administrative services for justice seekers, especially in the field of civil case administration.

Seeing this, through Supreme Court Regulation Number 3 of 2018 concerning Electronic Administration of Cases in Court (hereinafter referred to as Perma Number 3 of 2018), and updated by Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court (hereinafter referred to as Perma Number 1 of 2019) which was stipulated on August 6 2019 by the Chairman of the Supreme Court of the Republic of Indonesia Muhammad Hatta Ali, which means that E-court officially has a legal umbrella in Indonesia.

The Supreme Court of the Republic of Indonesia is now similar in terms of providing services to the Supreme Court of the United States, the Supreme Court of England and the Supreme Court of Singapore which first implemented the Electronic Filing System. Based on practice, E-court, which was officially launched on March 29 2018, is carried out in stages in several Class I District Courts such as the Jakarta District Court, Tangerang District Court, Bekasi District Court and Bandung District Court. By implementing the E-court system, it is believed that it can simplify the process. resolving protracted trials starting from the aspects of time, energy and money by facilitating the administrative process of paying down payment of court fees, summoning the parties, registering the lawsuit, until the trial process is carried out in accordance with conventional procedural law which is all carried out online via the E-application courts.(Imron 2017)

The stipulation of Perma Number 1 of 2019 is an effort to optimize the E-court system which is actually inseparable from the emergency situation that shocked the world, including Indonesia at the beginning of 2020, namely Corona Virus Disease 2019 (Covid-19), which started from March 11 2020 Health Organization The world (WHO) officially declared the Covid-19 outbreak a global pandemic. In dealing with the Covid-19 pandemic, the Indonesian government has established various regulations, including Presidential Decree (Keppres) Number 7 of 2020 dated March 13 2020 jo. Presidential Decree Number 9 of 2020 dated March 20 2020 established a Task Force for the Acceleration of Handling Covid-19 with the Chair being the Chair of the National Disaster Management Agency (BNPB).

The government issued a policy in the form of a legal instrument, namely Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in the context of Facing Threats that Endanger the Economy National and/or Financial System Stability, then since May 18 2020 the Perppu has been promulgated as Law (UU) Number 2 of 2020 and Presidential Decree (Keppres) Number 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid) Public Health Emergency -19) which is based on Article 11 paragraph (3) of Law Number 6 of 2018 concerning Health Quarantine which is further regulated by Government Regulation (PP), namely by PP Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (PSBB).

The implementation of PSBB is considered ineffective in dealing with the outbreak, which is why the Government initiated the implementation of Community Activity Restrictions (PPKM), which in the Instruction of the Minister of Home Affairs is called PPKM in the context of controlling the spread of Covid-19. This policy was first implemented by the Government through Instruction of the Minister of Home Affairs Number 1 of 2021 concerning the Implementation of Activity Restrictions for the Implementation of Activity Restrictions to Control the Spread of Covid-19. The Government considers the PPKM policy to be much more effective in tackling the spread of the Covid-19 virus compared to the PSBB policy.(Manan et al. 2020)

The presence of this electronic trial is a response to the Supreme Court of the Republic of Indonesia to control and prevent the spread of Covid-19. The presence of the E-court also received a positive response from all law enforcement circles, especially from advocates and justice circles. 5 The development of the implementation of the e-court does not mean it is running without problems, there are many obstacles as found in the scientific writing carried out by Hamnach et al, which is related to The implementation of electronic or e-court case resolution services, especially in the Religious Courts during the Covid-19 pandemic, was less than optimal due to several obstacles, namely a lack of education and outreach that should have been carried out by the relevant parties. Then, in terms of structure, substance and also legal culture, it is an obstacle factor in the form of electronic case service at the Religious Courts. Furthermore, Aidi wrote regarding the issue of e-court justice that the arrangements related to e-summons violate the existing provisions of the Rechtsreglement Buitengewesten (RBG) and Het Herziene Indonesia Reglement HIR, namely in terms of summoning the parties, but conditions like this are understandable because it requires a process of forming new procedural law laws, and is quite long. The results of the latest scientific writing research conducted by Hisam Ahyani, et al found that "the use of e-courts has not been optimal because in terms of Human Resources (HR) not everyone is used to using technology and server errors often occur."

A simple trial should not be deliberately complicated by the judge, resulting in a convoluted examination process until the examination is postponed for various reasons that are not valid according to law. And what is meant by low costs is that the costs of the case can be afforded by the public, whereas regarding the fast principle it is not explained in the explanation, but the fast principle refers to the time for settling the case where the examination is carried out quickly, meaning that the examination of the case in court is not carried out for a long time. and dragged on. The existence of this principle in the implementation of the judicial process at the court examination level is of course to guarantee the three basic values which are the objectives of law, namely justice, expediency and legal certainty. The application of the principles of simplicity, speed and low costs in relation to the judicial process is interpreted in a broad sense, namely covering the judiciary in its regulatory, institutional and judicial process aspects.(Idris 2020)

Specifically in this writing, there are legal issues in the implementation of E-court, especially at the Serang District Court Class 1A in the implementation of Civil Session Case Number 33/Pdt.G/2021/PN.Srg. Based on preliminary data obtained empirically, it was found that initially the practice of trials involving cases of unlawful acts was carried out in e-court, but in its implementation no agreement was found as it should have been in the minutes of the trial. Of course, this is a discrepancy with the provisions regulated in Article 20 paragraphs (1), (2), and (3) Perma Number 1 of 2019 which require the consent of the parties to the dispute in the use of E-Summons and E-Litigation. . In practice, the parties will be asked to fill out and sign the "Parties' Consent to Proceedings Electronically" form.(Azzahiroh, Zamahsari, and Mahameru 2020)

Based on the provisions of Article 20 of Perma Number 1 of 2019, it can be concluded that electronic hearings can be held with the consent of the parties after the mediation process is completed and conversely, if the mediation is reported to be unsuccessful, then the hearing continues with the agenda of asking the parties, especially the defendant, regarding their agreement to following the follow-up hearing electronically. The parties have agreed, so the panel of judges will prepare a court calendar according to the menu available in the Case Tracking Information System (SIPP) application which is integrated into E-court.

Furthermore, in practice, especially in the dispute in Decision Number 33/Pdt.G/2021/PN.Srg, in case number 33/Pdt.G/2021/PN.Srg, the trial agenda is still continued by the panel of judges via the E-court system even though There is no agreement from the defendant to conduct the trial in E-court after empirically examining the bundle of case files. This condition will certainly result in the non-implementation of the mandate provisions regarding approval in the E-court trial process so that it has not

yet been maximized and creates legal uncertainty regarding the implementation of Perma Number 1 of 2019.

Research Methods

Legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. Legal research is carried out to produce arguments, which are assisted by new theories or concepts in solving the problems faced. Research methods include types of research, nature of research, research approaches, types and sources of legal research materials, techniques for collecting legal materials and techniques for analyzing legal materials.(Imron 2017)

Discussion

Law regulates all human interests and behavior in order to create security, order and harmony. One of the laws that regulates this matter in the field between individuals and each other is civil law as material law. According to Sudikno, material law is a guideline for each individual regarding how a person behaves regarding what people do and do not do. otherwise, he should compensate the loss to the person who was harmed. All these provisions are intended so that the interests of every citizen are protected and guaranteed by the state. Civil procedural law is formal law that regulates the implementation of procedures for enforcing civil law. Civil procedural law regulates implementation starting from filing claims for rights by the aggrieved party, trial examinations up to the implementation of the judge's decision. Abdulkadir Muhammad also provided a definition of Civil Procedural Law that civil procedural law is a legal regulation that functions to oversee the proper enactment of civil law where the resolution of cases is requested through the judiciary (judge). Civil procedural law is formulated as legal regulations that regulate the process of resolving civil cases through the courts, from the filing of a lawsuit to the implementation of the judge's decision.(Ahyani, Makturidi, and Muharir 2021)

In order to realize the implementation of civil law enforcement as material law, a formal legal instrument is needed, namely civil procedural law. The regulation of civil procedural law in Indonesia, which was initially only regulated in the Herzien Inlandsch Reglement (HIR) and Rechtreglement voor de Buitengewesten (Rbg), is now experiencing changes with Indonesia's entry into the era of globalization and the era of digitalization.

This improvement is an advantage of Perma Number 1 of 2019 because with this legal basis, Indonesia now not only allows for the processing and sending of court administrative files electronically but has actually added to the existence of electronic trials (e-court). Perma Number 1 of 2019 has also implemented several application services, including case registration (e-filling), payment (e-payment), summons/notification (e-summons) and electronic hearings (e-litigation). All types of applications are called e-court systems.(Syarifuddin 2020)

The implementation of these bureaucratic services was not formed without a purpose, that all services were formed to answer 3 (three) main problems that have been experienced by the supreme court as a judicial body, namely firstly regarding access to justice, secondly integrity, and The third is related to the problem of delays. 4 The implementation of this service makes it easier to implement civil procedural law at this time, coupled with the shift from work from office to work from home since the Covid-19 pandemic. During work from home, the e-court application is used for service tasks including carrying out trial administration and meanwhile the E-Litigation application is used for carrying out trials within the Supreme Court. 5 This situation occurred because on March 23 2020 the Supreme Court issued Circular Letter Number 1 of 2020 concerning Guidelines for Implementing Duties During the Period of Preventing the Spread of Corona Virus Disease (Covid-19) within the Supreme Court and Subordinate

Judicial Bodies (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was then amended by SEMA No. 2 of 2020 and amended again with SEMA No. 3 of 2020. SEMA No. 1 of 2020.

The e-court approval referred to in Article 20 paragraphs (1), (2), and (3) of Perma Number 1 of 2019 does not explain the form of approval, however in the e-court guidebook issued by the Supreme Court regarding approval This must be done in writing and then uploaded in PDF form to the e-court application when registering the lawsuit (for the plaintiff), meanwhile the defendant will give his consent at the hearing after the mediation is declared unsuccessful. The judge will ask about his willingness regarding the implementation of e-court. Based on the phenomenon of e-court trials without approval, the author considers this to also be a problem because of the inconsistency with the a quo article, where specifically the provisions of the a quo article clearly regulate consent and its form in the e-court guidebook issued by the Supreme Court.

Conclusion

The reason the Judge continues to carry out e-court trials without approval, as regulated in the form described in Perma Number 1 of 2019 and stipulated in the Supreme Court's e-court guidebook is because the Judge interprets the presence of the parties in the e-court trial as an indirect agreement. , because the judge was not aware of the existence of e-court guidelines without reducing the quality of conventional evidentiary trials.

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