

ESTABLISHMENT OF INDONESIA CIVIL COURT JUSTICE SYSTEM IN A PROGRESSIVE LAW VIEWPOINT

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ABSTRACT

Since the establishment of the E-Court in Regulations of The Supreme Court of The Republic of Indonesia Number 3 of 2018 concerning the Administration of Cases in Electronic Courts and renewed with Regulations of The Supreme Court of The Republic of Indonesia Number 1 of 2019, the Administration of Cases in Electronic Courts is a form of legal inevitability to continue with the life of humankind so that it has a progressive legal philosophy where the former law is for humans and not humans for the law and it always in a liquid state. The method of writing the research used by the author in this study is of the normative type with a statutory and conceptual legal approach whose output is in the form of deductive analysis. As a result of writing this law, then, there is a philosophical understanding in the formation of Civil E-Court and progressive law, namely, E-Court is the result of harmonizing the alignment between law and human development, and E-Court is also the output of the progressive legal soul to make it easier for people to find justice.

Keywords: E-Court, Civil Case, Progressive Law, Judicial System

INTRODUCTION

Civil procedural law is a legal precept that controls how to ensure the compliance of material civil law through the mediation of a judge. Therefore, to rephrase it, civil procedural law is a legal regulation that decides how to guarantee material civil law implementation (Sudikno Mertokusumo, 2006).

Since issuing the Regulation of the Supreme Court (Perma) of the Republic of Indonesia Number 3 of 2018 concerning the Administration of Cases in Electronic Courts, the civil procedural law in Indonesia has progressed in its process. The government has updated the civil procedural law with the Regulation of the Supreme Court of the Republic of Indonesia of 2019 concerning the Administration of Cases in Electronic Courts because of limited time to be refined regarding trial procedures to balance the law and human development. Perma has presented a website-based application: an electronic court (e-Court), which is a service for registered users to register cases online (e-Filing), get an estimate of the advance of case fees online, online payments (e-Payment), summons made through electronic channels (e-Summons) and trials conducted electronically (e-Litigation) (Aris Priyadi, 2021). Laws in people's lives have a dynamic state, where all existing systems constantly move in the direction of the development of human life that is so complex today.

Every day's complex human development happens because of the current era's globalization, which has implications for changes in the systems in the body of law itself. Changes in the legal system are one of them in the judiciary of civil cases. Initially, the implementation of the civil justice system was conducted conventionally by meeting at a green table involving Plaintiffs, Defendants, Judges, and Attorneys General in order to resolve certain civil cases. In contrast to the civil justice system in the form of the E-Court, the implementation of trials in the judiciary was carried out electronically through the E-Court website of the Supreme Court, and the administration of trial and payment was also carried out with an electronic system so that the implementation of civil trials today becomes more straightforward, faster and more affordable.

Establishing a civil electronic justice system (E-Court Civil) is ideal for supporting the development of increasingly advanced and abundant humans with technology. Judicial institutions must make changes in the implementation of the judicial process so that the implementation of the judicial process can run more effectively and efficiently so that all justice seekers can realize justice (Iga Endang et al., 2021).

The government has begun to implement the use of the Civil E-Court. The Covid-19 pandemic is still sweeping the country. Therefore, in addition to reforming the law in the civil justice system, this Civil E-Court is also a government's effort through its agency, the Supreme Court of the Republic of Indonesia, to reduce the spread of the Covid Pandemic - 19. On the other hand, Covid-19 is also a "blessing" for the Supreme Court to move quickly by reforming the civil justice system toward technological disruption (Mery Christian and Erliana Maria, 2021).

Speaking of the Civil E-Court, if we take a deeper look at the philosophy of law, then the existence of a *quo* system is a form of progressive legal thinking where legal scholars know the most basic concept of progressive law, namely that "Law is formed and implemented for humans and not vice versa."

RESEARCH METHODOLOGY

In writing this legal paper, the author uses the normative research method, which examines legal doctrines, legal principles, judicial decisions, and regulations to answer legal issues raised and is a theoretical rationale presented with deductive analysis (Zainuddin Ali, 2017).

The legal sources used in writing the law by the author are primary legal materials, among others, Law Number 48 concerning Judicial Power, Perma Number 3 of 2018 concerning the Administration of Cases in Electronic Courts, Perma Number 1 of 2019 concerning the Administration of Cases in Electronic Courts, Decree of the Supreme Court of the Republic of Indonesia Number 129/KMA/SK/VIII/2019 concerning Technical Instructions for the Cases and Trials Administration in Electronic Adjudicators, Decree of the Supreme Court of the Republic of Indonesia Number 271/KMA/SK/XII/2019 concerning Technical Instructions for

the Cases and Trials Administration in Court of Appeal, Cassation and Electronic Review. HIR/RBG and secondary legal materials include legal books and journals.

The author uses the statutory approach in writing this legal paper, which reviews all laws related to the legal issues addressed (Peter Mehmet, 2011).

The author uses the legislation approach by looking at those above primary legal material and the conceptual approach that comes from the ideas or doctrines that develop in legal science obtained from the ideas of legal scholarship in legal journals. The use of data collection techniques is together with library techniques. Then all the materials will be processed by the author with deductive analysis techniques based on relevant theories to solve the formulation of this writing problem.

The theory used in this legal paper is the Theory of Progressive Law. The explanation of the Theory of Progressive Law is as follows:

Theory of Progressive Law

According to Prof. Satjipto Rahardjo, progressive law is a law that comes from the primary thought of "law for man," that the meaning of the word "progressive" itself contains the meaning of progress, progress, and the desire to keep up with the times. Thus, if explained, progressive law is a set of rules created by humans, and for humans, the components and substance in the rules must have the desire to keep up with the times and always provide innovations to facilitate human life. Progressive law is not a law in the final view but a fluid law that gives service to man. (Satjipto Rahardjo, 2009: 5). The purpose of progressive law is to protect the people from becoming an ideal law and rejecting the status quo.

RESULTS AND DISCUSSION

Laws establishment is to maintain balance in the life of humankind to create legal harmony and maintain that there are no violations of the norms that live in human life. Laws from the beginning changed in line over time (Faisal, 2014: 2), from the law that God revealed to the people of Adam until today. These changes all have the same function and purpose of controlling human life so that there is no *chaos*. Likewise, today one of the legal reforms that have undergone significant changes is in the civil justice system since the issuance of Perma Number 1 of 2019 concerning the Administration of Cases in Electronic Courts, which replaces Perma Number 3 of 2018 concerning the Administration of Cases in Electronic Courts. The birth of the *e-Court* Application, inseparable from Perma Number 3 of 2018 and Perma Number 1 of 2019, became a milestone in the administrative revolution of cases in court. This Regulation of the Supreme Court is also the foundation of the implementation of *e-Court* Applications in the Indonesian Judicial World (Lisfer, 2020).

E Court, in its definition, can generally be explained as a trial process conducted online to reduce the parties to face-to-face in the conventional courtroom. Hence, to realize the principle of simple, fast, and light cost, the parties can enter sufficiently in the determined web by the court to convene and use a laptop or computer connected to the webcam (Miftakur Rahman, 2020). E-court is a Court instrument that serves the community (Qo' idatul et al., 2022):

1. Registration of case files is carried out by the parties online (e-filing)
2. Number of electronic case fee calculations (e-Skum)
3. Payment Methods for cases online (e-payment),
4. Summons of the parties online (e-Summons)
5. Online trial sending and delivery of trial documents (e-litigation).

Conducting the establishment of E-Court forms a simpler judiciary with a light cost and a non-convoluted examination process as this is one of the principles or souls in the implementation of judicial processes and is meant in Article 4 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power as follows basically:

"The court helps justice seekers and seeks to overcome all obstacles to achieving a simple, fast, and light-cost justice."

The government must implement the principle of procedural law quickly and at a light cost. Historically it arose when the Governor General gave the Chairman of the Supreme Court of Batavia the task of drafting a draft law on procedural law for the Indonesian class. At that time, the Draft Law was too simple, so several other supreme judges considered it necessary to be supplemented by some provisions of procedural law as regulated in the Rv (procedural law for the European class), but the Chairman of the Supreme Court rejected the proposal. If the other institutions' roles as stipulated in the Rv procedural law in the Indonesian procedural law, the procedural law provisions are no longer straightforward. While in full provisions, the applicant should apply the Rv only. However, in anticipation of future legal problems, anticipatory provisions are added to the provisions of article 393 HIR where, if it is deemed necessary in a civil case, the provisions of civil procedure law in Rv. (Ni Putu, 2019).

Initially, this principle was related to the absence of regulation of merger, guarantee, intervention, and civil recess institutions in the provisions of civil procedural law for Indonesian/indigenous groups, but in practice, this principle developed with the enactment of provisions as stipulated in the Rv in civil justice practice (Moh. Amir Hamzah, 2013).

Based on this understanding, the E-Court is an effort made by the Supreme Court of Republik Indonesia to continue innovating the judicial system to use more examined technological advances. The phrase "overcome all obstacles and challenges" means it attempts to speed up electronic media, simplify, and minimize costs as little as possible (Reza Dwi Ardianto et al., 2021). Moreover, it is to make it easier for the community to serve in the district court so that there are no more problems regarding distance and time (Burhannudin et al., 2021).

The mechanism for the conduct of civil E-Court is all done electronically except for evidentiary siding. The difference between E-Court and conventional hearings is the obligation of the plaintiff and the defendant to upload all stamped evidence into the court information system (SIP) (Rizkah Hikmah Karliana and Muhammad Anis, 2021).

Regarding the execution of the E-Court, the parties initially registered electronically and made a written agreement that the parties agreed to conduct the Civil E-Court. They will determine the day of siding and summoning the parties to attend the trial will be carried out by a bailiff or substitute bailiff by being sent to the parties' respective electronic addresses through the court information system (SIP) (RR. Dwi Anggraeni, 2020) if there are parties who are not in Indonesia, the court concerned will codify

with the foreign ministry. Talking about the trial stages and the general rules, the E-Court remains subject to HIR/ RBG, such as mediation or peace efforts, lawsuit hearing, lawsuit answer hearing, replicative hearing, duplicate hearing, proof hearing, conclusion, and reading the decision.

The author argues that the Civil E-Court embodies this mechanism's principle of a simple, fast, and light-cost judiciary. Whereas the benefits of the E-Court Civil include (Achmad Zacfar Shidik et al., 2022):

1. The justice seekers (the Parties) may allocate time and costs to administrate the case.
2. Payments are made electronically through a bank to reduce the possibility of a judicial mafia
3. Documents can be quickly and concisely viewed and observed by the parties digitally.
4. Transparent, more modern systems and the parties do not have to come conventionally.

Speaking E-Court Civil and the embodiment of the Principle of Simple, Fast, and Light Costs of Justice, an electronic trial can help justice seekers to obtain legal certainty. There is always a risk of betraying justice if the case becomes long (Riyan Ramdhani and Dewi Maryaningsih, 2021). Therefore, the author can say that the meaning of progressive law animates this matter. The author imposes progressive law as a law that does not stop at one point but continues to constantly walk towards new development and can reform its form as a liquid legal form (liquid) following the reality of the changing times in order to create a law that is longed for, upheld, not feared, providing a sense of security and happiness to humans. So it can be concluded that the final point of progressive legal discussion shows itself as "law as a process, the law in the making" (Rian Saputra, 2019), not as "law as the final product and cannot be changed by any business."

Progressive law was born from the dissatisfaction of legal scholars with the evolving theory and practice of traditional law. The legal scholars criticized the magnitude of the "dividing gap" between the law practiced and the theory of law (Lutfil Ansori, 2017). Based on that, Prof. Satjipto Rahardjo formed a progressive legal idea. The development of the process of shaping progressive law is also inseparable from the ideas of Nonet and Philipi Szelnik, who speak of "responsive law," which explains repressive law, autonomy law, and responsive law (Philippe Nonet and Philipi Szelnik, 2003). The idea of progressive law appeared intended as an antithesis to modern law. Progressive law rejects the flow of *rechtsdogmatiek* (dogmatic law) and analytical jurisprudence. This flow emphasizes the law as a building of rules (Wildan Nafis, 2020).

In the frame of mind of Prof. Satjipto Rahardjo, Progressive law has several core items (Romly Atmasasmita, 2012) :

1. Progressive law does not follow the "analytical jurisprudence" framework of thinking
2. Progressive law does not agree with the assumption that "order" will always be obtained from law enforcement by the state through its institutions.
3. Progressive law has a lofty ideal of protecting the people towards an ideal legal status.
4. Progressive law rejects static states that have no regard for morality.
5. Progressive law is an institution that aims to create justice, welfare, and human happiness.
6. Progressive laws are laws that are close to their people.
7. The law is for man.
8. The law always goes hand in hand with the development and change of human life.

Progressive Law positions the law for certainty, justice, and benefit in a line. The progressive law in his body has several characteristics, including:

1. The law is not in an inactive state, such as "*Panta rei*." The statement's meaning means that the law will continually change. In the concept of Progressive Law, the changes in question may be dynamic, whether this change occurs automatically or changes itself (potential) without action (*actus*) (Hyronimus Rheti, 2016).
2. The law is for man, in the sense that it is not as central to man's turn, but instead, the man who is at the point of the law.
3. The progressive law is not in the status quo. It continues to rattle to find out about the meaning of justice and how to deliver that justice to people.
4. The law pays attention to the law that lives in the community (living law) and the community's soul, along with good values about life and justice called *volkgeist*.

According to the author, the idea of settling this Civil E-Court, in the end, is the Republic of Indonesia Supreme Court's action and effort always to form the understanding that the law does not exist in a silent state. However, the law will and must constantly change human civilization advances. If it does not, then the law must change for the good of all legal systems so that it can accommodate justice for justice seekers, so that in the end, justice seekers who want to get their rights back by settling in civil justice can more easily have access to the court. E-Court is now a role model of the justice reform system whose goal is to make it easier for justice-seeking communities to process in court (Abd. Muni, 2022).

Thus the main objective of progressive law, which law must make people happy, can be achieved. The presence of the E-Court is also a necessity of the demands of global society in Indonesia (Muhammad Ghofir and Hisam, 2021). Furthermore, in order to deal with the increasingly advanced era of technology and result in the existence of interdependent problems, law enforcement officials should have made legal breakthroughs in the implementation of the law (Benard L. Tanya et al., 2013). The breakthrough of the Supreme Court by modernizing the judicial work process by utilizing the advancement of information technology is a historic step. Modernization that brings transparency and work accountability is needed to restore public confidence in Indonesia's law and judicial system. Modern justice based on information technology is also an essential factor in supporting sustainable economic growth in development.

CONCLUSION

The E-Court establishment from a progressive law point of view is an attempt of the law itself to adapt it to the progress of the times. In addition, the E-Court is one of the outputs of legal products to make life easier for people. It is in line with the philosophy contained in progressive law itself, namely that the law is created by man and for man and always adapts with the modernization civilization.

ADVICE

The Supreme Court is expected not to stop at this point and to constantly reform the judiciary to a more advanced direction so that it follows the spirit of progressive law and the progress of human civilization.

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