

EXAMINATION OF PARTIES TO ELECTRONIC LITIGATION IN THE RELIGIOUS COURTS

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Abstract: Electronic courts basically provide convenience to justice seekers starting from registration, summons, and trial proceedings. On the other hand, electronic trials will also have implications for the effectiveness and efficiency of the litigation process, so that not much time is wasted and costs are not incurred. However, it is interesting to analyze in fact that in Supreme Court Regulation Number 7 of 2022 the author does not find any rules governing the procedures for examining one of the litigants who do not agree to conduct electronic trials, in the case of electronic trials (e-Litigation) Court Regulations Agung Number 7 of 2022 only regulates the exchange of response documents, replicas and duplicates from the parties electronically as well as arrangements for examining witnesses or experts which can be carried out remotely through electronic audio-visual communication media. So a party who refuses an electronic trial is deemed not to have exercised his rights so this is detrimental to that party, there is no procedure available for that party to continue to exercise his rights.

Keywords: Audio Visual; Electronic Trials; Judiciary.

1. INTRODUCTION

Electronic courts provide convenience to justice seekers starting from registration, summons, and trial proceedings. On the other hand, electronic trials will also have implications for the effectiveness and efficiency of the litigation process so that not much time is wasted and costs are not incurred.

In addition, the urgency of developing and needing electronic trials is increasingly needed when at the end of 2019, almost all walks of life in the world are facing a pandemic. Corona Virus Disease-19 (hereinafter referred to as Covid-19). Until now, the virus has massively infected and caused death in large numbers. Various efforts in the health sector continue to be developed to prevent or treat infection with the Covid-19 virus. However, the various drugs or vaccines that have been attempted have not succeeded in warding off the Covid-19 virus. The thing that is considered the most effective in preventing the spread of the Covid-19 virus is implementing health protocols, namely by doing 3 M, namely (1) Wearing a mask, (2) Washing hands, (3) Keeping your distance and avoiding crowds.

However, it is interesting to analyze in fact that in Supreme Court Regulation Number 7 of 2022, the author does not find any rules governing the procedures for examining one of the litigants who do not agree to conduct electronic trials in the case of electronic trials (e-Litigation) Supreme Court Regulation Number 7 of 2022 only regulates the exchange of answer documents, replicas and duplicates from the parties electronically as well as arrangements for examining witnesses or experts which can be carried out remotely through electronic audiovisual communication media. So a party who refuses an electronic trial is deemed not to have exercised his rights, which is detrimental to that party. No procedure is available for that party to continue exercising his rights. Therefore the author feels it is essential to research and discuss a research title, "Examination of Parties to Disputes Electronically (E-litigation) In the Religious Court".

Based on the things mentioned above, this study focuses on two things. First, how is electronic case examination (E-litigation) implemented in Religious Courts if one of the parties refuses an electronic trial? Second, how do the Religious Courts regulate the examination of the litigants at the stages of E-litigation by Supreme Court Regulation Number 7 of 2022?

2. METHODS

The type of research used in this research is normative legal research. The type of research used is Reform-oriented research, which is oriented towards changing the rule of law, which intensively evaluates compliance with the current provisions and recommends changes to any regulations needed. In this case, it is an evaluation of Supreme Court Regulation Number 7 of 2022 concerning Amendments to Supreme Court Regulation Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts, especially in the electronic examination of parties in the Religious Courts. While this study uses a statutory approach (statute approach) and a Conceptual approach (conceptual approach) to obtain clarity on the rules contained in Supreme Court Regulation 7 of 2022. Data sources are primary, secondary, and tertiary legal materials.

3. RESULTS AND DISCUSSION

3.1. Implementation of Electronic Inspection of Matters (E-litigation) in the Religious Courts

According to Supreme Court Regulation No. 1 of 2019, trials are conducted electronically, or litigation is a series of processes of examining and adjudicating cases by the Court, carried out with the support of information and communication technology. E-litigation In short, it is a trial carried out electronically to minimize the parties having to meet face to face and come to the court office (Achmad, 2019).

Technically, the parties can carry out a series of court proceedings in front of a personal computer/laptop. Article 2, paragraph 4 of Law Number 48 of 2009 concerning judicial power states that trials must be done simply, quickly, and cheaply. To realize this Law, changes must be made for reform, which will later help overcome obstacles during the trial process, such as breakthroughs that are then integrated with current information technology advances (Zil, 2020).

This online system later became a breakthrough for the Supreme Court to realize the contents of Law Number 48 of 2009 by launching an E-Court application. E-litigation is one of four groundbreaking features launched by the Supreme Court as part of an integral program E-Court. All litigants can use the feature E-litigation with a condition

determined by the Supreme Court. If classified in general, two groups can access or use the system E-litigation this, the first is the registered user, and the second is another user. What is meant by registered users are Advocates or legal teams who have registered their accounts through the website E-court Supreme Court, Namely court.mahkamahagung.go.id, and have been verified by the relevant High Court. Meanwhile, what is meant by other users are individuals, institutions/BUMN, ministries, or other businesses which incidentally belong to the government. So in terms of running an E-court, when parties do not know the technique of its use, there will be officers specially appointed at the Court to provide services and information on matters relating to its administration (Zil, 2020).

As stipulated in Supreme Court Regulation Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts, it can be seen that electronic trial procedures up to the inspection stage of the parties, namely first, the case registration stage by Registered Users and Other Users can be carried out electronically through the System Court Information. Furthermore, Plaintiff submitted a lawsuit through the Court Information System. And the lawsuit must be accompanied by evidence in the form of a letter or an electronic document (Zil, 2020).

Furthermore, the down payment of court fees is made to the Court's account at the bank electronically, and the addition and return of the down payment of case fees is done electronically. If the case registration is carried out electronically, the Registered User and Other Users pay the down payment for the case fee by the electronic estimate. The Court Registrar processes electronic case registration to the next stage after being declared complete through the verification process (Zil, 2020). Second, the stages of electronic calls and notifications. Call for notification electronically delivered to the Plaintiff who registers electronically. Defendants or other parties who have expressed their consent to be summoned electronically.

3.2. Implementation of Electronic Inspection of Matters (E-litigation) at the Religious Court When One Party Refuses to Confer Electronically

Whereas after the issuance of Supreme Court Regulation Number 7 of 2022, the Perma accommodates trials to be conducted in a hybrid manner, namely trials which are conducted if one of the parties, in this case, the Defendant, refuses to have trials electronically. This refers to Article 20, paragraph 3.

So if one of the parties refuses to carry out the trial electronically, of course, the Supreme Court Regulation Number 7 of 2022 has accommodated the hybrid trial method in the sense that for parties who agree to carry out electronic examinations, of course, facilities and infrastructure are provided according to what has been regulated in the provisions of the Supreme Court Regulation. , while for parties who refuse electronic examinations, procedures are also provided to carry out ordinary examinations at the Religious Courts. Article 20, paragraph 3, states that if the defendant disagrees that the trial is conducted electronically, a printed copy (hardcopy) and soft copy (softcopy) of answers are duplicates. Conclusions are submitted to the Registrar of the Session through PTSP no later than the scheduled hearing to be uploaded into the SIP.

Examination of parties who refuse to conduct e-litigation trials is a problem that may arise in implementing electronic trials in Indonesia. In this case, inspections of parties who refuse to be carried out electronically may occur for several reasons, such as lack of technical understanding or readiness, inadequate internet connection problems, and inability to use technological devices. However, with the Supreme Court Regulation Number 7 of 2022 regulation, all parties involved in the trial must conduct trials electronically unless certain circumstances allow physical trials. If the party refuses to conduct an e-litigation trial, the court may issue a warning or sanction by the applicable laws and regulations (Zil, 2020).

In addition, the court may reschedule hearings to allow sufficient time for the parties to prepare technically and adapt to electronic court proceedings. The court may also offer other alternatives, such as a trial via video conference or audio conference If possible (Sari, 2019).

The theory of legal certainty and the theory of authority to examine parties in a hybrid manner have a relationship in legal proceedings. The theory of legal certainty

emphasizes the importance of clarity, provision, and consistency in making legal decisions so that the parties involved can have strong confidence in the decisions made by the court (Zil, 2020). Meanwhile, the theory of the authority of examining parties in hybrid trials refers to the ability of parties to participate in trials both physically and virtually, as well as the ability of the courts to organize trials effectively and efficiently. Parties must comply with existing provisions in a hybrid trial, including participating in virtual trials. Hybrid party examinations must provide sufficient legal certainty for the parties involved to prepare themselves properly and provide the necessary arguments or evidence in court (Zil, 2020).

In submitting replica and duplicate answers in a hybrid manner (in the context of implementing electronic trials), several procedures need to be followed by related parties, including preparing replication and duplicate answer documents in electronic form and printing them in hardcopy form for submission to the court. Register in the court information system and enter replicas and duplicate answer documents. Sending replicas or duplicate answer documents electronically to the email address provided by the court. Submitting hardcopy documents of replicas or duplicate answers to court officials during the trial.

Ensuring that the submitted replica and duplicate answer documents comply with applicable regulations and meet the technical requirements for electronic trials. Ensure that the internet connection and technology devices function correctly during the trial. Prepare arguments and evidence that will be presented during the trial electronically.

In addition, parties also need to pay attention to the rules and technical requirements that apply in electronic trials, such as procedures for using electronic court applications and technical requirements for participating in online trials. Parties also need to follow instructions from court officials and adhere to the ethics of good behavior during the trial (Zil, 2020).

Parties conducting hybrid trials, namely a combination of face-to-face and electronic trials, have the same legal certainty as conventional trials conducted face-to-face in court. This is because hybrid trials are conducted based on the rules and

requirements stipulated in Supreme Court Regulation (PERMA) No. 7 of 2022 concerning the Electronic Administration of Cases and Trials in Courts.

Parties conducting hybrid trials have the same rights to submit requests, defend themselves, submit evidence, give statements, and take other legal remedies permitted in conventional trials. However, to ensure optimal legal certainty, parties must comply with all technical requirements and rules in hybrid trials. Parties also need to ensure that the documents and evidence submitted comply with the rules have been technically verified and that technology during the trial runs smoothly (Zil, 2020).

Hybrid trials can be linked to the theory of legal certainty because the use of technology in trials can increase the efficiency and effectiveness of the legal process, thereby providing better legal certainty for the parties involved. In hybrid trials, technology allows parties to access and process information quickly and accurately, thereby minimizing errors and increasing the speed of the trial process. In addition, the use of technology also allows parties to access trials from different locations, making it easier for parties to attend trials without having to physically come to court (Masyhudi, 2021).

Overall, hybrid trials can reinforce the theory of legal certainty by increasing the efficiency and effectiveness of the legal process, strengthening the principle of equality before the law, and ensuring the security and privacy of the parties involved. If parties wish to submit answers to a hybrid trial, they can submit those responses electronically through the e-litigation platform or via e-mail or electronic mail (e-mail) that has been determined by the court PTSP officer (Masyhudi, 2021).

After the answers are submitted, the PTSP officer will process the document, enter it into the e-litigation system, or make a physical copy for use during the hybrid trial. Parties can confirm with PTSP officers whether or not their responses have been received and processed correctly. In a hybrid trial, the answer document can also be uploaded by a substitute clerk or a PTSP officer appointed by the court. Parties who will upload documents can provide these documents to PTSP officers directly or via e-mail or electronic mail (e-mail) (Masyhudi, 2021).

Hybrid trials are trials that combine elements of conventional trials and e-litigation. In a hybrid trial, parties can attend the trial physically in the courtroom or attend the trial virtually through the e-litigation platform provided by the court (Anggreini & Dewi, 2020).

Hybrid trials allow parties to save time and money in attending trials but still maintain trial quality and legal certainty. Courts must ensure the availability of adequate infrastructure and resources to carry out hybrid trials and provide clear guidance to the parties involved regarding procedures and procedures for hybrid trials.

As an innovation in the justice system, hybrid trials receive responses from various parties. Below are some possible responses regarding hybrid trials. Effectiveness and efficiency: Hybrid trials are expected to increase the effectiveness and efficiency of trials by reducing the time, costs and administrative burden that usually occur in conventional trials. However, some parties may be concerned about the effectiveness and efficiency of trials which may be affected by technical factors such as the internet network or the technological tools used (Anggreini & Dewi, 2020).

Hybrid trials are an alternative to carrying out trials during the COVID-19 pandemic, limiting physical gatherings. In a hybrid trial, several parties may be physically present in the courtroom, while others may participate via video conferencing technology or other electronic media. Thus, a hybrid trial allows the parties to attend the trial without being physically present in the courtroom, thereby minimizing the risk of spreading the COVID-19 virus. In addition, hybrid trials can also speed up the trial process because parties present virtually do not need to travel far to attend hearings (Anggreini & Dewi, 2020).

3.3. Examination of the Disputing Parties at the Stages E-Litigation By Supreme Court Regulation Number 7 of 2022 by the Religious Courts

The Supreme Court of the Republic of Indonesia issued Supreme Court Regulation Number 7 of 2022 concerning Amendments to Supreme Court Regulation Number 1 of 2019 concerning the Electronic Administration of Cases and Trials in Courts through this latest Supreme Court Regulation. electronic. Through Supreme

Court Regulation Number 7 of 2022, the Supreme Court of the Republic of Indonesia changed several provisions previously regulated in Supreme Court Regulation 1 of 2019, namely where electronic proceedings are conducted based on the parties' agreement. Still, in Supreme Court Regulation Number 7 of 2022, for every case registered electronically, the trial will be carried out electronically.

However, it is interesting to analyze in fact that in Supreme Court Regulation Number 7 of 2022, the author does not find any rules governing the procedures for examining one of the litigants who do not agree to conduct electronic trials in the case of electronic trials (e-Litigation) Supreme Court Regulation Number 7 of 2022 only regulates the exchange of answer documents, replicas and duplicates from the parties electronically as well as arrangements for examining witnesses or experts which can be carried out remotely through electronic audiovisual communication media. So a party who refuses an electronic trial is deemed not to have exercised his rights; this is detrimental to that party; there is no procedure available for that party to continue to use his rights.

The judge must look for the lawmaker's will because he cannot make an interpretation that does not follow that will. Each interpretation is an interpretation limited by the will of the lawmakers. Judges are not allowed to interpret the Law arbitrarily. People cannot arbitrarily interpret binding rules; only the interpretation by the lawmaker's intention is the correct interpretation. Judges have several obligations that must be fulfilled, including listening and treating both sides equally without favoring anyone, being polite in speaking and acting, examining matters wisely, carefully and patiently, deciding matters based on the law and a sense of justice, and maintaining the dignity and honor of judges.

If it is linked between the arrangements for the implementation of the examination of the parties contained in the Supreme Court Regulation Number 7 of 2022 with the theory of the judge's authority. In Supreme Court Regulation Number 7 of 2022, there is still legal ambiguity regarding accountability arrangements regarding examining parties in electronic trials, including the validity of testimony and evidence. It is possible that both the statement and the testimony of one of the parties were given

not objectively, whether there is an element of coercion or pressure from one of the parties because it will affect the judge's consideration in deciding a case.

In this case, the Supreme Court Regulation Number 7 of 2022 does not state who has the authority to ensure that each party is examined objectively in examining the parties who are responsible. Without coercion from anyone, but according to the judge's authority, it is the judge in this matter. Those who have the authority to ensure this in a good way collaborate with various parties to ensure starting from the availability of comfortable rooms and good internet access so that it supports the implementation of inspections of the parties, which are carried out electronically and coordinated with the security forces to ensure the security and comfort of the parties in providing information so that objective information is obtained. The decisions can provide legal certainty and a sense of justice in society.

To overcome legal obscurity regarding the regulation of Supreme Court Regulation Number 7 of 2022 to continue to examine parties electronically if the panel of judges examines parties for now with the theory of judge authority relying on Supreme Court Circular Letter 1 of 2020 concerning Guidelines for Implementing Duties During the Prevention Period The spread of Corona Virus Disease 2019 (Covid-19) within the Supreme Court and the Judicial Bodies under it as a basis for examining the parties so that the judge's decision does not become null and void and maintains the dignity of the court. Whereas the rules of Supreme Court Regulation Number 7 of 2022 have so far not contained rules regarding the electronic examination of parties so that Religious Court Judges are within their authority and, for legal certainty, rely on the electronic examination of parties on the rules of Supreme Court Circular Letter Number 1 of 2020 so that an examination is carried out fair and complete parties.

4. CONCLUSIONS

The implementation of e-court in Indonesia is guided by PERMA Number 7 of 2022 concerning Amendments to Supreme Court Regulation Number 1 of 2020 concerning Electronic Administration of Cases and Trials in Courts. One of the changes in PERMA Number 7 of 2022 is to accommodate the interests of the Defendant, who

refuses to hold hearings electronically. If Defendant does not agree to have an electronic hearing, then the trial will be conducted in a hybrid manner (Article 29 paragraph (3) PERMA Number 7 of 2022). However, the regulation still does not fully explain the procedure for hybrid trials, especially related to procedural law, for submitting documents to parties who agree to conduct electronic proceedings or those who do not agree electronically. Whereas PERMA Number 7 of 2022 still does not explain the rules for examining parties in electronic litigation, even though the PERMA regarding electronic trials has changed three times since 2018, this has caused the Religious Court Judges to examine cases at the Religious Courts in their legal considerations in examining the parties electronically, they cannot rely on PERMA Number 7 of 2022 as a legal basis, but currently only rely on SEMA Number 1 of 2020 concerning Guidelines for Implementing Duties During the Period to Prevent the Spread of Corona Virus Disease 2019 (Covid-19) within the Supreme Court and the judiciary under it.

5. SUGGESTION

It is hoped that there will be legal reforms related to electronic trials to improve several provisions, especially in trial procedures where the defendant refuses to carry out electronic trials to not cause problems in practice, primarily related to procedural law. There is a need for a legal basis and clear rules contained in PERMA Number 7 of 2022 regarding party inspections because currently, there are only electronic inspections that can only be carried out for witnesses/experts. This is to avoid objections to the litigants when questioning the validity of the examination of the parties. parties electronically which result in the judge's decision being null and void and also so that the court's dignity is maintained.

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