

LAW IN THE DIGITALIZATION ERA

**ICLAS 2019
PROCEEDINGS BOOK**



**Edited by
Murat Oruç**

YAYIN NO: 1221

Law in the Digitalization Era - ICLAS 2019 Proceedings Book
Edited by Murat Oruç

ISBN 978-605-7820-79-2

1. BASKI - İSTANBUL, EYLÜL 2019

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Tel: (212) 269 30 00
Sertifika No: 20179

ICLAS 2019 - Law in the Digitalization Era
6 April 2019, Istanbul-Turkey

Organized by

Fatih Sultan Mehmet Vakif University & International Islamic University Malaysia

In Collaboration With

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PREFACE

We are pleased to organize the 8th International Conference on Law and Society (ICLAS) in Istanbul, Turkey, the beautiful city of cross cultures.

Hosted by Fatih Sultan Mehmet Vakıf University, this year ICLAS 2019 is held under the theme of “Law in the Digitalization Era”. The idea of the theme of the conference is arising from the fact that the digitalization is expeditiously spreading to all the fields of life and it has become an undeniable phenomenon of today’s world. This new phenomenon has also brought new problems, necessities, and new facts that the field of law needs to involve in. Therefore, we aim to monitor and discuss the new challenges to the field of law in this new digitalization era and propose new solutions accordingly.

The conference brings together many academics from different countries from Southeast Asia to Europe, and offers an opportunity for them to meet and discuss such contemporary academic issues under the framework of the conference, which is held in a global metropolitan basin like Istanbul.

I would like to thank all the members of ICLAS organizing committee, scientific committee and student staff for their hard work. Special thanks go to Prof. Dr. Farid Sufian Shuaib, Mr.Serdar öp, Mr. Mustafa Zafer Küçükkurt, Mr. Erol Öz and sponsors for their cooperation and support.

Following the success stories of the previous ICLAS experiences, we hope to contribute to the academic knowledge in this field and carry the ICLAS experience further for the upcoming conferences and other academic works.

Murat Oruç
School of Law
Fatih Sultan Mehmet Vakif University
Istanbul, Turkey

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Digitalization of Court Administration and Access to Justice: The Experience of the Indonesian Judiciary

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Abstract

The development of digitalization in the 21st era has influenced the emergence of new era of court administration in the Indonesian Judiciary. The Supreme Court Regulation Number 03 of 2018 is an innovation as well as a commitment of the Supreme Court of the Republic of Indonesia in realizing reforms in the Indonesian Judiciary that synergize with the role of Information Technology (IT) and Procedural Law (IT for Judiciary). The Supreme Court regulation which was launched in March 2018 is very relevant to the geographical conditions of Indonesia as a maritime country that has a major issue in access to justice. The research aims to discuss the importance of digitalization of court administration in providing a better access to justice to justice seekers. This is a normative legal research with statute and case approach. The result of research shows that digitalization of court administration is necessarily needed in the light of providing a better access to justice to justice seekers. Second, the experience of the Indonesian Supreme Court in modernizing the information of technology of the court administration has proven that the Courts is becoming more transparent and accountable. Third, having good digitalization of court administration, the Indonesian Supreme Court has also shown its strong commitment towards providing a better access to justice to justice seekers.

Keywords: Court Administration, Access to Justice, Digitalization.

1. INTRODUCTION

The implementation of the Indonesian judiciary is based on a simple, fast and low-cost principle.¹ This principle, especially the principle of fast justice, is a universal principle adopted by all courts in the world. In line with the principles stated in Article 2 paragraph (4) of the Judiciary Act, the International Consortium for Court Excellence (ICCE) states that the administration of justice must be carried out effectively and efficiently.²

The International Framework for Court Excellence, a guideline compiled by ICCE, emphasizes that an effective and efficient judiciary is one of indicators for a court excellence. This, in its implementation, is strongly influenced by various factors including the court supporting facilities, including information technology.³

The Judiciary Act outlines a provision that courts must help justice seekers and try to overcome all obstacles to achieve a simple, fast and low-cost judiciary.⁴ The provision is implemented by applying an effective and efficient judicial administration system.

The Judicial Reform of the Indonesian Supreme Court in 2010-2035 has made a program in modernization of case management to achieve the vision of the great Indonesian judiciary. Modernization of case management is closely related to information technology reform which is one of the domains of renewing support functions.⁵

The world civilization has undergone significant changes. This is marked by the development of science and technology, especially information technology (computers and telecommunications). As a result,

¹ Art. 2 paragraph 4 of Law Number 48 of 2009 concerning the Powers of the Judiciary.

² International Framework for Court Excellence, 2013, Purpose and Development of the Framework, taken from <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/The%20International%20Framework%20E%202014%20V3.ashx> accessed on February 2nd, 2019 at 9pm.

³ Ibid.

⁴ Art. 4 paragraph 2 of Law Number 48 of 2009 concerning the Powers of the Judiciary.

⁵ Ibid.

the world feels smaller and not distant. Previously, communication between cities and between countries used written letters. However, it is currently using online (internet) media that is faster and more efficient.⁶

Beforehand, public services used manual models and it was difficult to engage for person with long distances. Now they have switched to automation systems, and now discussions are very easy even though it is across provinces, even across countries can also meet face to face by utilizing information technology. Facing these challenges, the world of law is also required to make significant changes in legal institutions; one example is using e-court.⁷

The use of information technology for judicial tasks is currently growing rapidly towards Electronic Court (e-Court), where information technology is used in administering cases and implementing procedural law.⁸ As an example of technological developments in the world of legal justice, in Australia there is an Online Dispute Resolution, in which litigants can resolve their disputes through online.⁹

In the United States, since 1999 Public Access to Electronic Records (PACER) has begun. There is also a Case Management and Electronic Case Files (CM / ECF) system, and various uses of information technology to support judicial duties.¹⁰ In India, The Supreme Court of India on 10 May 2017 launched the Integrated Case Management Information System (ICMIS), and launched a criminal handling information system

⁶ Mycelium Jan Moller, Conference: International Software Development Conference 2014 (Copenhagen, 2014).

⁷ Tarmizi, 2018, CHALLENGES OF DISRUPTION IN THE GLOBAL ERA IN LEGAL EDUCATION, *Jurnal Hukum Faculty of Law*, Universitas Amir Hamzah, p. 7.

⁸ Michael Goldsmith, 1983, The Supreme Court and Title III: Rewriting the Law of Electronic Surveillance, *The Journal of Criminal Law & Criminology*, Northwestern University School of Law, USA, p. 78.

⁹ Hermansyah, 2016, Di Family Court of Australia, Ini yang Dipelajari Para Inovator Pengadilan, taken from <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/di-family-court-of-australia-ini-yang-dipelajari-para-inovator-pengadilan> accessed on February 2nd, 2019 at 9.15pm.

¹⁰ United Nations Court, 2015, Electronic Filing, taken from <https://www.uscourts.gov/courtrecords/electronic-filing-cmecf> accessed on February 2nd, 2019 at 9pm.

integrated with the Indian Police in the form of Crime and Criminal Tracking Network and Systems (CCTNS).¹¹ In line with the previous background, it is interesting to evaluate the importance of digitalization of court administration to the availability of access to justice to people in Indonesia.

2. RESEARCH METHOD

The research is a normative legal research which statute and case approach. This research uses secondary data¹² and normative¹³ methods combined to case and statute approach¹⁴ in analyzing the issue of digitalization of court administration and access to justice's existence and its regulation in Indonesia. In this study, the authors use the method of exploration method that aims to recognize or get a new view of a phenomenon which is often able to formulate the research problem more precisely or to formulate the research hypothesis.¹⁵ Doctrinal method is also used in this research which focusing on reading and analyzing primary materials (such as the legislation) and secondary materials (such as legal dictionaries, textbooks, journal articles, case digest and legal encyclopedias).¹⁶

Source of data in this research were collected by secondary data method. It is a method of research to collect data from the library research or literature study. The data are, namely:

¹¹ Ibid.

¹² Lorraine Andrews, "Classic Grounded Theory to Analyse Secondary Data: Reality and Reflections", *The Grounded Theory Review* 11, no. 1, (2012).

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2007), p. 12.

¹⁴ Gusti Ngurah Wairocana, *Pedoman Pendidikan Fakultas Hukum Universitas Udayana* (Bali: Fakultas Hukum Universitas Udayana, 2013), p. 75.

¹⁵ Sukandarrumidi, *Metodologi Penelitian* (Yogyakarta: Gadjah Mada University Press, 2002), p. 61.

¹⁶ Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2012), p. 47.

1. Primary data is the related legislations, namely: Article 2 paragraph (4) of the Judicial Power Law, and Supreme Court Regulation Number 3 of 2018.
2. Secondary data are books, journals, news, and related articles to the topic.
3. Tertiary data are data that supports the primary and secondary data such dictionary, encyclopedia, internets, etc.

The data were collected by library research such reading, analyzing, and deriving conclusion from related documents (law books, legal journals, internets and other related to the main problem of this research).

The data were analyzed systematically through descriptive qualitative method which means that collecting the data and selecting the data obtained from research with the focus on the problem and then the result were arranged systematically so that it becomes concrete data.

3. DISCUSSION

3.1. The Trends of Technology Transformation in Legal Institutions

Information Technology is a method of processing and storing information. In its development, the term Information Technology is often equated with Communication Technology, which is everything related to the transmission of messages, from sending to receiving. Thus, at this time both terms can be exchanged so that the concept of Information Technology already contains communication, or vice versa.¹⁷

Herbert Maeshall McLuhan stated that the pattern of life of social interaction of society is determined by the development and type of technology controlled by the community concerned. Technology has

¹⁷ Muhammad Alwi Dahlan & Nina Winangsih Syam, 2014, *Komunikasi Peradaban*, PT. Remaja Rosdakarya, Bandung, p. 55-56.

changed the way people communicate.¹⁸ Furthermore McLuhan stated that media technology is the core of human civilization which in its history is divided into four periods, namely: oral period, literature period, printing period, and electronic period.¹⁹ Thus, in today's civilization with an electronic period, every person / community group / country must use electronic media rather its culture is not outdated.

The rapid progress of Information Technology has reached the stage of Data Revolution. Data Revolution is a term initiated by the United Nations as a follow-up to the 2015 Millennium Development Goals agenda, which is now intended to support monitoring of the Sustainable Development Goals (SDGs) program. The data revolution according to the United Nations is:²⁰

“the transformative actions needed to respond to the demands of a complex development agenda, improvements in how data is produced and used; closing data gaps to prevent discrimination; building capacity and data literacy “small data” and big data analytics; modernizing systems of data collection; liberating data to promote transparency and accountability; and developing new targets and indicators.”

Data Revolution focuses on four fields, namely Accessible Data, Sustainable Development Goals, Data Innovation, and Landscape Data, which aim to strengthen the data collection system by utilizing information and communication technology, as well as community participation. By applying the Data Revolution, anyone can read and know an event or case completely, starting from the beginning, development, to the final stage. Such data is very important for the government and society to

¹⁸ Ibid, p. 56.

¹⁹ Ibid, p. 57.

²⁰ The UN Secretary General's Independent Expert Advisory Group On a Data Revolution for Sustainable Development, 2015, *What is the 'data revolution'?*, taken from <http://www.undatarevolution.org/data-revolution/> accessed on February 3th, 2019 at 6.15pm.

take actions and solutions that are fast and appropriate for the problems faced.²¹

The rapid development of Information Technology also penetrated the world of law, because basically “law is that society too,” so that “new public relations will form new regulations”.²² The encroachment of advances in communication technology and data in the field of law can be seen from the publication of legal books (law books or treatises) about the influence of technological advances on law and about the use of technology for law (justice), such as *Technology and Justice* by George Grant, 1986; *Future of Law, Facing The Challenges of Information Technology* by Richard Suskind, 1998; and *Technology for justice: How Information Technology Can Support Judicial Reform*, by Dory Reiling, 2009.²³

In addition, the world of justice itself has started using Electronic Courts, such as Online Dispute Resolution in Australia, Public Access to Electronic Records (PACER) and Management and Electronic Case Files (CM / ECF) in the United States, as well as the Integrated Case Management Information System (ICMIS) in India.²⁴

In Australia, the electronic services of the Federal Court of Australia are divided into two: Internal Services and External Services. Internal Services means the use of information technology for court officials, while External Services are the use of information technology for litigants and the public in general. Internal services consist of Case Track (case management application that records case travel), Application of Decision Templates (to facilitate decision making), Document Management System (managing documents used by courts), Electronic Court File (electronic / paperless filing application), Website Portal (portal uploading court decisions), e-Trial (electronic trial service application), and e-Courtroom (online courtroom for Judges and Registrars). Exter-

²¹ Ibid.

²² Van Apeldoorn, 1986, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta, p. 18.

²³ Reiling, Dory, 2009, *Technology for Justice: How Information Technology Can Support Judicial Reform*, *Leiden University Press*, Leiden, p. 17.

²⁴ Ibid.

nal Services involves litigants or the public consist of e-lodgments (applications for sending case files to court), Common law Portal (portal for displaying all court documents / documents) and Court Websites containing schedules of hearings, verdicts, etc.²⁵ Learning from Australia, the e-court is part of the process of modernizing case management in the country. The initial idea of the creation of the e-court was actually the transformation of court cases in physical form into digital based.

Although the Federal Court of Australia (FCA) has long been implementing this electronic based court service, in fact that leaving the paper-based system in handling cases is not easy. Therefore a change management strategy must be developed in making the transition from paper based to paperless. In this regard, the Federal Court of Australia (FCA) takes 8 (eight) steps to change management as follows:

1. Ensure whether the innovation really needs to be done. To innovate must be thoroughly considered. At this stage identification of problems that occur or that have the potential to occur and opportunities for innovation are carried out. In the context of the court, the reasons for the importance of changes are for example many arrears or many complaints about court services.
2. Form a support team for implementing the innovation. Once it is believed that innovation really needs to be done, the next step is to form a team that supports change / innovation. This team must be a group that has sufficient strength to strive for change that includes elements of the central leadership, judges, judicial apparatus and human resources engaged in Information and Communication Technology.
3. Formulate the vision of innovation. The next step after the team is formed is to formulate a vision of innovation that will

²⁵ Joost Breuker, Abdullatif Elhag, Emil Petkov, and Radboud Winkels, 2013, IT Support for the Judiciary: Use of Ontologies in the e-Court Project, *Department of Computer Science and Law (LRI) University of Amsterdam*, The Netherlands, p. 4.

be implemented. In this step, a strategy must be developed to implement the innovation / change.

4. Communicate the vision to all judicial apparatus. The vision that has been determined and the strategy to achieve it have been formulated, and then it must be communicated (socialized) on various occasions.
5. Give authority to others to implement innovations / changes according to the vision. Innovation / change is like a virus that must be passed. In order for the implementation of these innovations to spread quickly, many agents must be authorized to do so.
6. Plan and arrange short-term programs (quick wins). It must be ensured that the plan is implemented and immediate evaluation and repairs are carried out if there are any that are not appropriate or not going well.
7. Maintain progress towards innovations that have been implemented and produce other innovations / changes.
8. Institutionalizing change or innovation programs as new approaches. If the short-term program has been successful, duplication in other fields also shows results. The next step is to ensure innovation or change can be maintained continuity.

In addition to these 8 (eight) steps, of course strong leadership is also needed in guarding the Electronic Court (e-court) policy. This is because the implementation of e-court will trigger changes that are still on the side of the administration of justice. In similar with the Case Search Information System (SIPP) application, its presence as a new system, the e-court also has the potential to be revised by some if the implementation readiness is immature. Therefore, the implementation and development of this e-court must be done carefully and every stakeholder is given a good understanding of the benefits of implementing this e-court.²⁶

²⁶ Heru Setiawan, "Pengembangan e-court di Pengadilan Negeri", July 26, 2018, <http://pn-takengon.go.id/pnbaru/pengembangan-e-court-di-pengadilan-negeri/>, accessed on

Electronic Court (e-court) is the future of Indonesian courts. With e-court, the case administration process and court services will be simpler, faster, less costly, transparent and accountable. The e-court application was developed by the Supreme Court since November 2017. At that time, the Supreme Court in collaboration with SUSTAIN EU-UNDP and the Judicial Renewal Team formed a special working principle to review regulations and develop suggestions for their applications. This application is quite complete because it contains modules such as: ²⁷

1. Establishment of individual and online advocates (account / user) (for now only applies to advocates).
2. Calculation of the cost of up-front cases online.
3. Electronic case registration and integrated with the Case Search Information System Application (SIPP).
4. Call the parties electronically.
5. Recording (input) data.
6. Notification of decisions / stipulations electronically.

The e-court application is an embodiment of the implementation of the Supreme Court Regulation Number 03 of 2018, namely the Case Administration in the Court electronically.²⁸ The e-court application is a centralized system, meaning that the application is in the Supreme Court's Data Center that is integrated with the Case Search Information System (SIPP) at the First Level Court, so it does not need to be installed on the server or court website, because it will automatically be connected with databases in the Case Search Information System Application (SIPP) in each court that has implemented e-court. For now, registered users are only addressed to Advocates, and it will be arranged later for individual users and Legal Entities.²⁹

March 13, 2019 at 9.30 am.

²⁷ Aria Suyudi, 2010, Pemetaan Implementasi Teknologi Informasi di Mahkamah Agung Republik Indonesia, *Pusat Studi Hukum dan Kebijakan*, Jakarta, p. 9.

²⁸ Ibid.

²⁹ Ibid.

The Case Search Information System (SIPP) is part of Information Systems Management. Archives of case files that have been found can be recovered quickly and easily, both dynamic files and statistical records. The Case Search Information System (SIPP) application allows a review of a case file so that a case's progress will be known. If there is a problem, it will be seen in this system that there is an incomplete or procedural error. In conclusion: First, (SIPP) can be accessed with case files quickly and easily. Second, SIPP increases the effectiveness of employee performance in the Court. Third, (SIPP) also guarantees the legal rights of citizens to obtain justice in the legal process.³⁰

3.1.1. Procedures for Registering Cases (E-Filing)

The following are things that need to be considered before registering the case electronically:³¹

1. Advocates must make an account / user on the e-court application with an electronic domicile that has been validated by the High Court where he was sworn in.
2. Completing Advocate data such as KTP (Identity Card), Advocate Member Identity Card, and Oath Official Record that must be uploaded to the e-court application.
3. Users who have already registered can register the case electronically at the Court that has implemented the e-court by using 1 (one) account that has been registered and validated in the e-court application.
4. Electronic case registration will get an online barcode and register number (not case number).

³⁰ Faizatash Sholikhah, 2017, *Sistem Informasi Penelusuran Perkara (SIPP): Penelusuran Arsip Berkas Perkara di Pengadilan Agama Temanggung: Jurnal Diplomatika*, Vol. 1, No. 01, p. 45.

³¹ "E-Court Mahkamah Agung RI", <https://ecourt.mahkamahagung.go.id/>, accessed on February 3th, 2019 at 6.15pm.

The following are steps that must be considered when registering cases electronically:³²

1. Understand and agree to the agreement submitted before starting registration.
2. Registering power of attorney electronically.
3. Ensure party data.
4. Upload documents (*petitum, posita*, etc.).
5. Obtain e-SKUM (estimated case costs).
6. Get a payment number (Virtual Account) and complete payment online. In this case the Supreme Court has cooperated with Bank BNI, Bank BNI Syariah, BTN Bank, Bank Mandiri, Bank Mandiri Syariah, and Bank BRI.
7. Waiting for verification and registration of Case Numbers from the Court petitioned.
8. Obtaining Case Numbers.

3.1.2. Procedures for E-Payment

Some provisions relating to the procedure for down payment in litigation at the Supreme Court are regulated in the Supreme Court Regulation No.3 of 2018 concerning Court Administration at the Supreme Court, namely:

a. Article 8: “Down payment of case fees is directed to the Court Account at the bank through available electronic payment channels

b. Article 9: “In the case of electronic registration of cases, registered users pay a down-payment of court fees in accordance with estimated electronic costs

c. Article 10: “Electronic case registration is processed by court clerks after being considered complete through a verification process

³² Ibid.

3.1.3. Procedure for Summoning (E-Summons)

E-summons also greatly summarizes the process and save costs, because calling can be done directly into electronic domiciles including eliminating the need for delegate procedures in the event that the parties reside in different areas.³³ This allows the cost of calls to be pressed as minimum as possible to zero rupiah. Especially for e-summons, according to the Supreme Court Regulation No.3 of 2018, this procedure can only be taken if the parties agree to be made electronically, to anticipate the gaps that may occur in the initial period of introduction of this application.

In the future, the e-court system has been directed to wider use, namely the implementation of electronic litigation, considering Article 5 of the Supreme Court Regulation No.3 of 2018³⁴ has also included the types of documents that can be sent electronically including answers, replicates, duplicates and conclusions. The Chair of the Supreme Court in his speech noted that the form of e-litigation still needed to be developed, and the final form could vary greatly depending on the development carried out by the Supreme Court later.

Within one year, it must be implemented in all courts. Supreme Court Regulation Number No.3 of 2018 has stipulated that the administration of cases in court electronically applies to civil, civil religious, military and state administrative matters, but currently new registrations can be applied to General Courts, Religion and State Administration. Considering the case of Military Administration in Military Courts is not yet operational. Furthermore, given the many preconditions that must be met for the implementation of the e-court application, for this stage the Secretary of the Supreme Court of the Republic of Indonesia based on Letter Number 305 / SEK / SK / VII / 2018 appoints 32 Courts of General Courts, Religion, and State Administration to carry out trial of e-court implementation for this stage.

³³ Ibid.

³⁴ Art. 5 of Supreme Court Regulation No.3 of 2018.

The trial courts included the Central Jakarta District Court, North Jakarta District Court, South Jakarta District Court, East Jakarta District Court, West Jakarta District Court, Tangerang District Court, Bekasi District Court, Bandung District Court, Karawang District Court, Surabaya District Court, Sidoarjo District Court, Medan District Court, Makassar District Court, Semarang District Court, Surakarta District Court, Palembang District Court, Metro District Court. Meanwhile in the religious court, Central Jakarta Religious Courts, North Jakarta Religious Courts, South Jakarta Religious Courts, East Jakarta Religious Courts, West Jakarta Religious Courts, Depok Religious Courts, Surabaya Religious Courts, Denpasar Religious Courts, Medan Religious Courts. For the State Administrative Court, the trial court includes the Jakarta State Administrative Court, Bandung Administrative Court, Serang Administrative Court, Denpasar Administrative Court, Makassar State Administrative Court and Tanjung Pinang Administrative Court.

The Chairman of the Supreme Court in his remarks hoped that within one year of the inauguration of the e-court application, the application of e-court must be applicable to all courts in Indonesia. He also requested that the directors general be able to report the results of this first phase of the trial within 6 months.

3.1.4. Access to Information of Process

Access to the process / stage of the trial with this electronic system will be managed properly, the parties will know the judicial process to what stage, for example the replication stage. Access to the trial stage is managed by the clerk at the local court. This is based on Article 19 of the Supreme Court Regulation No.3 of 2018 which states that: "The court clerks record and record case information in the court's Information System, both for cases that are registered electronically and that are registered directly with the court registrar". In addition, case information contained in the Court's Information system has the same legal force as the case register book as referred to in legislation.

3.1.5. Access to Decision

Public can access court decisions both at the district court level, appeals, and cassations at the Supreme Court through <https://putusan.mahkamahagung.go.id/>. However, access to these decisions is not yet complete. In some cases, in fact, the judicial decisions cannot be found (such as an appeal), even there are many previous decisions (before 2017) cannot be accessed. With the existence of this electronic system, the Court will publish a copy of the decision / determination electronically. The Supreme Court Regulation No.3 of 2018, Article 17 explains that: "Copies of court decisions / stipulations issued electronically are sent to the parties no later than 14 (fourteen) days after the verdict / stipulation is pronounced" and specifically in bankruptcy cases / PKPU a copy of the court decision / determination is sent to the parties no later than 7 (seven) days after the verdict / stipulation is stated.

3.2. The Influence of Court Administration to Access to Justice

The access to justice debate has traditionally been founded on key notions of legality and legitimacy, in particular, the rule of law and equality. The idea of equal application of law has a rich pedigree³⁵ and equal access to justice has been a clarion call for progressive lawyers and legal pressure groups alike. As Cappelletti and Garth observe, 'the possession of rights is meaningless without mechanisms for their effective vindication.'³⁶

Rapid technological developments bring progress to almost all aspects of human life.³⁷The machines are coming. They have been slowly taking up positions in our courthouses for more than a quarter of a cen-

³⁵ R. Cranston, 'Rights in Practice' in *Law, Rights and the Welfare State*, eds. C. Sampford and B. Galligan (1986); T. Goriely and A. Paterson, *A Reader on Resourcing Civil Justice* (Journal of Law and Society: 2003), p. 5.

³⁶ M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* (Cardiff University: 2003), pp. 6-10.

³⁷ Man Suparman Sastrawidjaja, *Perjanjian Baku Dalam Aktifitas Dunia Maya, Cyberlaw: Suatu Pengantar* (Jakarta: Elips, 2002), p. 14.

ture. With each passing year, they are becoming faster and more powerful. They are evolving intelligence and the ability to communicate with each other.³⁸

With their assistance, the justice system is becoming more efficient and integrated network. Soon the court, justice agencies, law enforcement, correctional facilities, social services, and treatment providers will be able to interoperate seamlessly.³⁹ With the assistance of the machines, the myriad and diverse members of the justice and public safety communities together with the public will evolve into a single complex whole that could dedicate itself to create a more humane and just society comprised of better informed individuals to whom they are genuinely accountable.⁴⁰

The implementation of e-court greatly helped the Supreme Court Vision to realize the Modern Judicial Agency with integrated Information Technology.⁴¹ In an effort to realize the Vision, the Supreme Court has declared the Case Management Modernization, starting from Electronic Based Case Reporting, Migration to Electronic Based Case Management, to Online Courts.⁴²

The Supreme Court is innovating in the Justice Reform sector especially by implementing Technology for Judiciary. With the ratification of the Supreme Court Regulation Number 03 of 2018 concerning Case Administration in the Electronic Court, this has become the beginning of the realization of modern information technology-based justice.⁴³

³⁸ Ibid.

³⁹ Gregory M. Silverman, 2004, Rise of the Machines: Justice Information Systems and the Question of Public Access to Court Records over the Internet, *Washington Law Review Association*, USA, p. 175.

⁴⁰ Ibid.

⁴¹ Mahkamah Agung, 2010, *Cetak Biru Pembaruan Peradilan 2010-2035*, Mahkamah Agung RI, Jakarta, p. 13-14.

⁴² Ibid, p. 35.

⁴³ Ibid, p. 39.

On July 13, 2018, Chairman of the Indonesia Supreme Court, Prof. Dr. H. M. Hatta Ali has officially launched the e-court application. The release of the e-court application is considered to be able to increase value (ranking) Ease of Doing Business in Indonesia and also the presence of E-Court applications can be a trigger to realize a simple court principle, fast and low cost. The inauguration of the e-court application was symbolically carried out by the Chairperson of the Supreme Court of the Republic of Indonesia in front of no less than 1,000 judicial citizens who received certificates of Quality Assurance Accreditation and invitations, which included representatives of court payment partners.⁴⁴

The purpose of the e-court application is to improve the Ease of Doing Business (EODB) in Indonesia, one of which is the simplification of judicial events. This is in line with the Presidential Instruction of 2016, in which the President hopes that Indonesia can reach 40th place in the 2018 business ease survey conducted by the World Bank.⁴⁵

E-court application is part of a modernization effort. The e-court application is broadly divided into 3 main items, namely, *e-filing* (filling in data - case registration data), *e-payment* (payment in advance cases), *e-summons* (calling the parties through the domicile address). E-court can be interpreted as an application that is used to process, claim or request, pay court fees electronically, make trial and notification calls electronically as well as other case service applications that are electronic in nature.⁴⁶

The e-court application can be accessed from anywhere, and by anyone (as long as you have an account / user) armed with an internet connection and a device that has a web browser. Through the e-court application the lawsuit registration / application by an Advocate can be done from anywhere and at any time without having to come directly to the court, as long as the advocate has been validated as a registered user

⁴⁴ <https://nasional.kontan.co.id/news/ma-semua-pengadilan-akan-terapkan-e-court-september> , accessed on February 9th, 2019 at 11pm.

⁴⁵ Ibid.

⁴⁶ Heru Setiawan, *Op.Cit.*

in the e-court application system. Aside from being a manifestation of simple, fast, and low-cost justice principles, technological transformation in the case administration system in court is also a form of support for national priority programs in improving ease of business, namely enforcing contracts.⁴⁷

At the end of 2018, the Chief Justice of the Supreme Court stated that less than half a year since the launch of the e-court application, apart from 85 courts that had just been formed, 100% (one hundred percent) of General and Religious Courts were ready to implement e-court, while the State Administrative Court has reached 68% (sixty eight percent). The number of registered users up to December was 11,224 advocates, while the number of cases registered using the e-court application up to December 2018 was 389 cases in the general court, 289 cases in religious court and 17 cases in the State administrative court, so that the total number of e-court cases that have been registered is 695 cases.⁴⁸

The data shows that the application of e-court is very influential on the development and progress of the legal justice process in Indonesia, and the community is also helped and greatly facilitated in the case of filing a case in court. In addition to these achievements, the Supreme Court also received an award from the Ministry of Empowerment of State Civil Apparatus and Bureaucratic Reform as an institution that has succeeded in establishing an integrity zone towards a Corruption Free Area and a Clean and Serving Bureaucracy Region in the context of accelerating the bureaucratic reform program. In addition, the Supreme Court also received an award for the best Budget Performance from the Indonesian Ministry of Finance.⁴⁹

The Supreme Court also received the 2018 National Procurement Award for its commitment in implementing the 2014 electronic procure-

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ <https://www.hukumonline.com/berita/baca/lt5bd6d11999924/e-court--prospek-cemerlang-masa-depan-peradilan-indonesia-oleh--raffi-fadilah-achmad>, accessed on February 10th, 2019 at 10pm.

ment services standard and the State Property Award in an award for the category of State Property reporting compliance. The Chief Justice of the Supreme Court said that all of the achievements were the result of the hard work and intelligent work of all judicial citizens throughout Indonesia.⁵⁰

President Joko Widodo when delivering the opening of the annual plenary session of the Supreme Court on Wednesday 27 February 2019 in Jakarta said that until now there was still a lot of assumption in the community that law and justice in Indonesia could be traded. Therefore, the Supreme Court needs to make a breakthrough in the justice system in order to restore people's trust in the justice system in Indonesia. For this reason, the Supreme Court continues to develop performance and make the judicial system in Indonesia continues to develop into a simple and transparent judicial system. The Chairman of the Supreme Court, Prof. Dr. H. M. Hatta Ali, on the same occasion also highlights that during 2018, his party succeeded in establishing an online justice system. At the beginning of 2018, the application of the Case Search Information System (SIPP) was made version 3.2.0., which functions to control the process of settling cases and information sources on the development of ongoing cases. In addition, the realization of the E-Court application in mid-2018 is also clear evidence of the Supreme Court's efforts to continue to improve modernization efforts in the Indonesian justice system and also to achieve a simple, fast and low-cost judiciary.⁵¹

3.3. The Problem Facing the Digitalization of Court Administration

The e-court process is used to realize the efficiency and effectiveness of the judicial process, namely a simple, fast and low-cost trial. The view of British politician William Gladstone "Justice delayed is justice denied", which illustrates how important the principle of justice is fast.

⁵⁰ Ibid.

⁵¹ Muhammad Ashari, "Jokowi: Perlu Terobosan Peradilan", 27 February 2019, <https://www.pikiran-rakyat.com/nasional/2019/02/27/jokowi-perlu-terobosan-sistem-peradilan>, accessed on March 14, 2019 at 1:35 pm.

The process of resolving protracted cases is tantamount to neglecting justice itself. The fact is that the e-court system aims to amputate judicial bureaucracies that are complicated.

Before the implementation of the e-court, many cases could be used as examples in this context, For example, a case in 2007 concerning parking dropped by the Supreme Court, the Supreme Court sentenced a parking service company (Secure Parking) to pay a compensation of one thousand rupiah to David Tobing, a consumer who uses parking services. In this case the plaintiff waited for four years before finally being decided by the Supreme Court. Even more ironic was the cost of the case to be paid was five hundred times the value of compensation. Another case was as expressed by Former Chief of the Supreme Court Bagir Manan, that he had examined the dispute about two hoes, where the parties had to wait up to five years before finally being decided by the Supreme Court. The case of the dispute over two mango trees has also reached the cassation level. These phenomena often occur and lead us to the conclusion that the judiciary is still not simple, not fast, and also not cheap at all.

The issues before the existence of e-court can be used as a valuable lesson to improve the system of judicial bureaucracy in Indonesia, especially to realize simple, fast and low-cost basic principles contained in Article 4 paragraph (2) Law No. 48 of 2009 concerning Judiciary Act. The law stated that “courts help justice seekers and try to overcome all obstacles and obstacles to achieving a simple, fast and low-cost justice system”. But this policy is not yet perfect, some weaknesses faced in its implementation, such as, firstly, human resources in charge in the e-court are not well prepared, so that knowledge reinforcement in the form of training and others is needed.

Secondly, the utilization of e court is still limited to the parties (especially advocates). On the other hand, advocates’ understanding and skill regarding e-court is also still weak, especially for senior advocates.

4. CONCLUSION

The implementation of e-court is important because it greatly helped the Supreme Court Vision to realize the Modern Judicial Agency with integrated Information Technology. E-court application has significantly given easier access to justice seekers to get information regarding the information they need in the court administration. Having this easy access to court means also gives an opportunity for justice seekers to access justice. No justice without proper information to justice seekers. The research also shows that since the e-court application began to be implemented, the e-court application has a profound effect on the development and progress of legal justice processes in Indonesia and the community is also assisted and greatly facilitated in filing cases in court.

However, there are still some obstacles that can occur. First, human resources in charge in the e-court are not well prepared and therefore there is a need to have more training for the human resources. Second, the utilization of e court is still limited to the parties, especially advocates. On the other hand, advocates' understanding and skill regarding e-court is also still weak, especially for senior advocates.

5. REFERENCES

5.1. Books

- Gusti Ngurah Wairocana, *Pedoman Pendidikan Fakultas Hukum Universitas Udayana* (Bali: Fakultas Hukum Universitas Udayana, 2013).
- Man Suparman Sastrawidjaja, *Perjanjian Baku Dalam Aktifitas Dunia Maya: Suatu Pengantar* (Jakarta: Elips, 2002).
- Muhammad Alwi Dahlan & Nina Winangsih Syam, 2014, *Komunikasi Peradaban*, PT. Remaja Rosdakarya, Bandung.
- Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: PT. Raja GrafindoP-ersada, 2007).

Sukandarrumidi, *Metodologi Penelitian* (Yogyakarta: Gadjah Mada University Press, 2002).

Van Apeldoorn, 1986, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta.

5.2 Journals

Tarmizi, 2018, Challenges of Disruption in the Global Era In Legal Education, *Jurnal Hukum Faculty of Law*, Universitas Amir Hamzah.

Faizatush Sholikhah, 2017, *Sistem Informasi Penelusuran Perkara (SIPP): Penelusuran Arsip Berkas Perkara di Pengadilan Agama Tembung: Jurnal Diplomatika*, Vol. 1, No. 01.

Gregory M. Silverman, 2004, Rise of the Machines: Justice Information Systems and the Question of Public Access to Court Records over the Internet, *Washington Law Review Association*, USA.

Joost Breuker, Abdullatif Elhag, Emil Petkov, and Radboud Winkels, 2013, IT Support for the Judiciary: Use of Ontologies in the e-Court Project, *Department of Computer Science and Law (LRI) University of Amsterdam*, The Netherlands.

M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* (Cardiff University: 2003).

Michael Goldsmith, 1983, The Supreme Court and Title III: Rewriting the Law of Electronic Surveillance, *The Journal of Criminal Law & Criminology*, Northwestern University School of Law, USA.

Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2012).

Prianter Jaya Hairi, "Antara Prinsip Peradilan Sederhana, Cepat dan Berbiaya Ringan Gagasan Pembatasan Pembatasan Perkara Kasasi", *Jurnal Negara Hukum* Vol. 2, No. 1, Juni 2011

Reiling, Dory, 2009, *Technology for Justice: How Informaton Technology Can Support Judicial Reform*, Leiden University Press, Leiden.

R. Cranston, 'Rights in Practice' in *Law, Rights and the Welfare State*, eds. C. Sampford and B. Galligan (1986); T. Goriely and A. Paterson, *A Reader on Resourcing Civil Justice* (Journal of Law and Society: 2003).

5.3 Internets

"E-Court Mahkamah Agung RI", <https://ecourt.mahkamahagung.go.id/>, accessed on February 3th, 2019 at 6.15pm.

<https://nasional.kontan.co.id/news/ma-semua-pengadilan-akan-terapkan-e-court-september>, accessed on February 9th, 2019 at 11pm.

<https://www.hukumonline.com/berita/baca/lt5bd6d11999924/e-court-prospek-cemerlang-masa-depan-peradilan-indonesia-oleh-rafli-fadilah-achmad>, accessed on February 10th, 2019 at 10pm.

Heru Setiawan, "*Pengembangan e-court di Pengadilan Negeri*", July 26, 2018, <http://pn-takengon.go.id/pnbaru/pengembangan-e-court-di-pengadilan-negeri/>, accessed on March 13, 2019 at 9.30 am.

Hermansyah, 2016, *Di Family Court of Australia, Ini yang Dipelajari Para Inovator Pengadilan*, taken from <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/di-family-court-of-australia-ini-yang-dipelajari-para-inovator-pengadilan> accessed on February 2nd, 2019 at 9.15pm.

International Framework for Court Excellence, 2013, *Purpose and Development of the Framework*, taken from <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/The%20International%20Framework%20E%202014%20V3.ashx> accessed on February 2nd, 2019 at 9pm.

Muhammad Ashari, “Jokowi: Perlu Terobosan Peradilan”, 27 February 2019, <https://www.pikiran-rakyat.com/nasional/2019/02/27/jokowi-perlu-terobosan-sistem-peradilan>, accessed on March 14, 2019 at 1:35 pm.

The UN Secretary General’s Independent Expert Advisory Group On a Data Revolution for Sustainable Development, 2015, *What is the ‘data revolution’?*, taken from <http://www.undatarevolution.org/data-revolution/> accessed on February 3th, 2019 at 6.15pm.

United Nations Court, 2015, Electronic Filing, taken from <https://www.uscourts.gov/courtrecords/electronic-filing-cmec> accessed on February 2nd, 2019 at 9pm.

5.4 Miscellaneous

Mycelium Jan Moller, Conference: International Software Development Conference 2014 (Copenhagen, 2014).

Aria Suyudi, 2010, Pemetaan Implementasi Teknologi Informasi di Mahkamah Agung Republik Indonesia, *Pusat Studi Hukum dan Kebijakan*, Jakarta.

Mahkamah Agung, 2010, *Cetak Biru Pembaruan Peradilan 2010-2035*, Mahkamah Agung RI, Jakarta.

Lorraine Andrews, “Classic Grounded Theory to Analyse Secondary Data: Reality and Reflections”, *The Grounded Theory Review* 11, no. 1, (2012).