

ADVOCATE AS LAW ENFORCER IN THE IMPLEMENTATION OF E- COURT

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Advocate as Law Enforcer in the Implementation of E-Court

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The legal basis for implementing the Electronic Court (E-Court) System, which was the Regulation of Supreme Court (Perma) No. 3 of 2018 on electronic administration, Supreme Court Circular Letter No. 04 of 2019 on Obligations of Civil Cases Register Through E-Court, Supreme Court Circular Letter No. 129/K²1A/SK/VIII/2019 on Technical Guidelines for Cases and Trials Administration in the Electronic Court, Regulation of Supreme² Court (Perma) No. 1 of 2019 on administration of cases and trials in the Electronic Court. The purpose of E-court is to facilitate the parties in the process of taking legal action in the court. However, the number of cases assisted in obtaining a registration number is still highly scarce. This is because advocates do not register claims online. Whereas the role of advocates is very crucial in the implementation of E-Court. This article aims to analyse the urgency of advocates as law enforcers in using E-court. This article used a qualitative approach that requires an advocate perspective.

Key words: *E-Court System, advocate.*

Introduction

The provisions of Article 2 paragraph (4) of Law No. 48 of 2009 on Judicial Power states that judicial proceedings carried out quickly, at a low cost, thus to materialise reform must overcome obstacles and resistances in the process of administering justice. Therefore the Supreme Court made a breakthrough in the form of a more efficient and effective case administration service system in court, which is E-Court (Latifiani, 2019). E⁴ourt services include e-Filing; e-Payment; e-Summon, e-litigation with Legal Grounds: Regulation of Supreme Court (Perma) No. 3 of 2018 on electronic administration, Supreme Court Circular Letter No. 04 of 2019 on Obligations to Civil Cases Register Through E-Court, Supreme Court Circular Letter No. 129/KMA/SK/VIII/2019 on Technical Guidelines for Cases and Trials Administration in the Electronic Court, Regulation of Supreme Court (Perma) No. 1 of



2019 on administration of cases and trials in the Electronic Court (Bath et al., 2019; Mason, 2013). E-Court is an instrument of the Court as a form of service to the community in terms of online examples registration, online payment, sending trial documents (Replicates, Duplicates, Conclusions, Replies), and online Summons.

Regulation of Supreme Court (Maeda & Michiue, 2016) (Perma) No. 1 of 2019 is an improvement of Regulation of Supreme Court (Perma) No. 3 of 2018. The scope of electronic court system applications opens the broad practice of electronic justice in Indonesia. At least two indicators illustrate this: (1) e-litigation expands the scope of legal subjects that can utilise the automated justice system. It was initially only for advocates as registered users, thus now includes other users including prosecutors as State attorneys, the Government Legal Bureau/the Indonesian Armed Forces (TNI), the National Police, the Republic of Indonesia Attorney, Directors/Management or employees appointed by legal entities, and incidental attorneys who are eligible as Justice information system users. (2) Utilisation of e-litigation is not only for the trial at the first level, but it can also conduct for appeal, cassation and judicial review of cases using e-litigation at the first level. E-litigation can bridge Indonesia's vast geographical obstacles and consists of a span of thousands of islands. It also reduces the cost of the cases as the procedure is carried out electronically, such as the cost of summons, attendance at the trials for the reply, authentication, and hearing the reading of the decision. No less important, the electronic system increases public confidence in the judiciary. The e-litigation application is an extension of the e-court applied to civil cases, religious civil, military administration, and State Administration. This application will apply to 13 pilot courts consisting of six District Courts, four Religious Courts, and three State Administrative Courts. It is only in 2020 that all courts in Indonesia are expected to have implemented this e-litigation (McBride, Skaperdas, & Tsai, 2018).

E-Court makes it easy to register cases online that are unnecessary to come directly to the court office (Procopiuck, 2018) (Bath et al., 2019). The lawyer in Yogyakarta must not go to Semarang to register a case and settle the payment of court costs in advance. The Supreme Court's E-Court map indicates that the Religious Court accepted 13 instances and the Semarang District Court received 15 cases. E-Court users, known as advocates, are still scarce users of the E-Court online system for some reason, whereas advocates play a role in the implementation of e-court in each court. This article used a qualitative approach, as it requires an advocate's perspective to use the E-Court System. Since April 4, 2018, the E-Court system has been actively serving users (advocates).



Table 1: A Map of E-Court (civil case)

Judicial Board	Court Name	Registration (paid)	Successful Case Number
Public Court	Surabaya District Court	491 Cases	489 Cases
	Semarang District Court	15 Cases	13 Cases
Religious Court	Ciamis Religious Court	1144 Cases	1142 Cases
	Semarang Religious Court	13 Cases	12 Cases

Source : https://ecourt.mahkamahagung.go.id/mapecourt_umum (September 2019)

This article aims to discuss the ground for Advocates as users of the E-Court application ⁴ in the Semarang Religious Courts and District Court in serving E-Court by 13 cases and 12 cases. When compared to the Surabaya District Court and the Ciamis Religious Court, it is very far-reaching as it gains thousands.

The discussion of this article used a qualitative approach to analyse legal reality (Suhadi, 2018). One of the grounds for advocates making no use of E-court is that there are still obstacles in the E-Court System. Another reason, the principal concern, is that lawsuit data may be lost due to system error. Following the introduction (section I), section II will define methodology. Furthermore, advocates will be defined as law enforcers using the E-Court system, and an analysis of the urgency for the role of advocates as law enforcers will be explained in section III, and conclusions will be given in section IV.

Methodology

This legal research used a qualitative research approach (Widyawati, 2018). In this legal research, the author uses a type of normative juridical research that is legal research examining the law from an internal perspective, with the object of its research being the legal norm. Normative legal research is legal research that uses secondary data sources in the form of legislation, legal theory, opinions of certain scholars. In other words, normative legal research is legal research conducted by researching library material.

Result and Discussion

Advocate as a law enforcer in the implementation of E-Court

Advocate responses to Regulation of Supreme Court (Perma) No. 1 of 2019 are very diverse. In essence, advocates welcome approvingly, but there are reasons that it is not optimal to use E-Court in case registration. Internal grounds (personal advocates) and external grounds (other than own advocates) are considered in the use of the E-Court system (Lee, 2017).



Internal grounds include:

- 1) No challenge to confront the other party
- 2) Unable to show self-esteem (self-existence)
- 3) Honorarium from the principal is reduced
- 4) E-Court system is more complicated
- 5) Legal Standing Examination, the authentication must be in direct conversation.
- 6) Easier to use manual/counter registration.

External reasons: E-Court system often has errors.

Internal purposes tend to focus on the advocate's personal/casuistic responses. Young advocates pioneering in careers perceive that there is no challenge other than to encounter the opponents. Also, to show their self-existence that there is indeed an advocate who is ready to appear before the judge, advocate of the opposing party, and the client.

Law enforcement (*application*) depends on several matters, which are legal substantive, legal structure, and legal culture (Lee, 2017). For legal substantive related to the contents of the laws and regulations, it might be possible to apply to the society that it regulates (Gerry, Muraszkiwicz, & Iannelli, 2018; Grajzl & Baniak, 2018; Mora-Sanguinetti & Garoupa, 2015; Procopiuck, 2018). If the contents of the rules and regulations are not likely to be used as they are inappropriate and are irrelevant to the dynamics of society, law enforcement will also be obstructed. Legal Structure deals with law enforcement officers in carrying out their duties and functions (Dur & Vollaard, 2019; Fine, Rowan, & Simmons, 2019; Maeda & Michiue, 2016; Metsker et al., 2019). The more non-professional law enforcers are in carrying out their responsibilities and services, the more it will endanger proper law enforcement (Hari, Nor, & Ali, 2019). Meanwhile, legal culture is related to the legal culture of the community. Poor legal culture in society can also inhibit the process of law enforcement. Between legal structure and legal culture, there is often a vicious cycle of the legal mafia.

The function/role of the advocate profession cannot be set aside in the justice system and law enforcement (Harwin, Broadhurst, Cooper, & Taplin, 2019; Hayashi, 2018; Lee, 2017). This is because the advocate profession often intersects with justice-seeker people, polices, prosecutors, and judges (Earnhart & Rousseau, 2019; Lee, 2017; Mesnil, 2018). The preamble of Law Number 18 of 2003 on Advocates states that advocates as free, independent, and responsible professionals in the law enforcement shall be secured and protected by the law for the implementation of law supremacy. To materialise the principles of the legal state in social and country life, the role and function of lawyers as a free, independent, and responsible profession is significant, in addition to judicial institutions and law enforcement agencies such as polices and prosecutors (Lee, 2017). Through the provided legal services,



Advocates carry out their professional duties to uphold justice based on the law for the benefit of justice seekers, including efforts to empower people to actualise their fundamental rights before the law. Advocates as one element of the justice system are one of the pillars in upholding the law supremacy and human rights (Gerry et al., 2018). In addition to the judicial proceedings, the role of the Advocate is also evident in the profession beyond the court. The need for legal services for advocates beyond the judicial process is currently increasing, in line with the growing legal requirements of the community, especially in entering an increasingly open life in inter-states communication. Through the provision of consulting services, negotiations as well as in making commercial contracts, the Advocate profession contributes meaningfully to community empowerment and national law reform, especially in economy and trade, including in resolving disputes beyond the court (Dumitrescu, 2015; Earnhart & Rousseau, 2019; Henseler & van Loenhout, 2018). Article 5 of Law No. 18 of 2003 on Advocates reads that Advocates have the status of free and independent law enforcers guaranteed by the laws and regulations. Therefore, the advocate as a tool in the judicial process has an equal position with the Judge.

The implementation of the advocate's duties is regulated in the Advocate Law as a form of an honorary profession (*officium nobile*) (Gerry et al., 2018). In carrying out the job, an advocate must have freedom based on the honour and personality of an advocate who holds fast to honesty, independence, confidentiality, and openness, to prevent the emergence of non-commendable attitudes and dishonourable behaviour (Earnhart & Rousseau, 2019; Henseler & van Loenhout, 2018; Mesnil, 2018). As per Act Number 18 of 2003, an advocate is a professional in providing legal services, both inside and beyond the court, that meets the requirements based on the provisions of this law. "Advocates with the status of law enforcers" are one of the legal instruments in the judicial process of which position is equivalent to that of other law enforcers, for the sake of enforcing the law and justice. More explicitly, it is one of the pillars of the law supremacy and the protection of human rights in Indonesia. Advocates carry out their professional duties for the sake of upholding justice based on the law for the benefit of the justice seeker people, in addition to the judicial proceedings, the role of the Advocate is also evident in the profession beyond the court. The need for legal services for advocates beyond the judicial proceeding is currently increasing, in line with the growing legal requirements of the community, especially in entering an increasingly open life in inter-states communication (Earnhart & Rousseau, 2019; Mora-Sanguinetti & Garoupa, 2015).

So that e-litigation can be implemented nationally from January 2020 to run smoothly, all interested parties, including advocates as active users of e-Court must be able to take legal action in court electronically or online. The Supreme Court, in collaboration with the Indonesian Advocates Association (Peradi), carried out e-litigation socialisation activities aimed at introducing what and how to apply e-litigation. This system is perfect from the



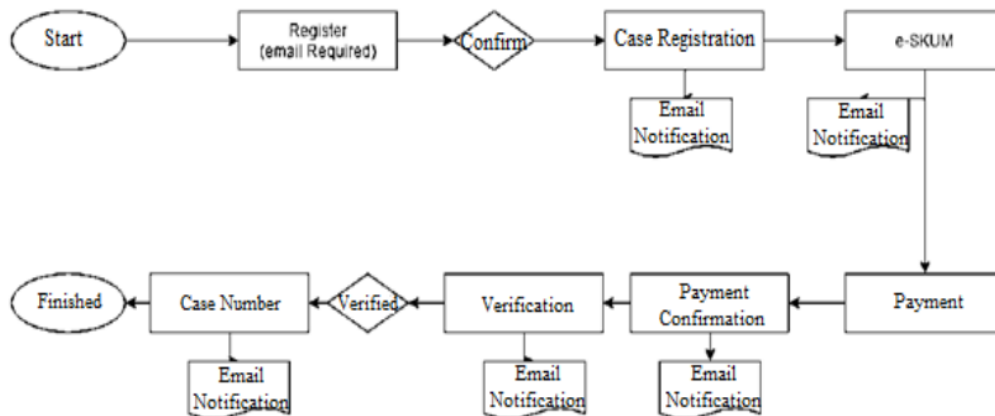
perspective of the Supreme Court, and the electronic trial system cannot run without the support of the users. Its users are advocates. The Supreme Court cooperated with Peradi organisations and other advocates to disseminate information on E-Court. Advocates must be technology literate due to the IT-based E-court system. The E-Court system is excellent if maximally used so that it will cut costs incurred by advocates when handling case registration manually. Furthermore, it also saves time.

Through the provided legal services, Advocates carry out their professional duties to uphold justice based on the law for the benefit of justice seekers, including efforts to empower people to materialise their fundamental rights before the law. Advocates, as one of the elements of law enforcement in criminal justice, are one of the pillars in upholding the law supremacy and human rights (Mora-Sanguinetti & Garoupa, 2015).

Advocate Urgency Analysis in the use of the E-court System

Efforts have been made by the court to disseminate information to advocates by coordinating with advocate organisations. The registration work process with E-Court is shown in the following chart.

WORK PROCESS



E-Court of the RI Supreme Court includes services and can be accessed on the ecourt.mahkamahagung.go.id site:

- ⁴ (1) **E-Filing (Online Case Registration in the Court)**. Online case registration is currently specialised in advocates. Registered users, after registering and obtaining an account, must go through an advocate validation mechanism by the high court in which the advocates take the oath. Advocates as registered users and justice seekers (non-advocates)



as other registered users can proceed in all active courts in the selection when they want to register new cases. Online case registration is conducted after being registered as a registered user by choosing the active district court, religious court, or TUN court in conducting e-court services. All registration files are sent electronically via the Indonesian Supreme Court E-Court application.

- (2) E-Payment (Down Payment of Online Case Cost). By registering a case online via e-court, the registrant will automatically obtain an estimated down payment (e-Skum) and payment number (virtual account) paid through the available electronic channels (multichannel). After the registrant has made the payment according to the estimated down-payment (e-Skum), the court gives the case number on working days and hours, then the e-court application will provide notification that the case has been registered in the court.
- (3) E-Summons (Online Summons), Court summons, and notification of decisions are conveyed to the parties via electronic channels to the parties' email addresses, and information on the summons can be seen on the e-court application.
- (4) E-Litigation (Online Trial). The application supports the electronic trial case (online) that it can be sent to trial documents such as replicates, duplicates, replies, and conclusions electronically.

Law enforcement is the work of an advocate and it is the mission of his profession. One view underlines that law enforcement is always emphasised on the aspect of the order. This is because the law is still identified with law enforcement (Popa, Niță, & Hălălișan, 2019; Tacconi, Rodrigues, & Maryudi, 2019). That assumption is incredibly wrong. Theoretically, the law is one of the elements of the legal system not only consisting of legislation, thus one of the consequences to be perceivable is that if there are areas of life that have not been regulated in these laws, then it is said that the law lags behind the development of the legal needs of the community. A further consequence is that legal certainty is always identified with law certainty, thus in the process of law enforcement, it is carried out without regard to the development of existing communities as the reality of the applicable law. Law enforcement in principle must be able to provide benefits or be valid for the community, besides achieving justice. Accordingly, Radbruch stated, "that the law must meet various prices referred to as the basic value of the law that is justice, usefulness and legal certainty (Salihu & Gholami, 2018; Wienhues, 2018)." However, the three basic values have the potential to attract each other. Therefore, the judiciary is a stronghold of justice, which is the implementation of various basic human rights, having regard to the Basic Law of Justice No. 14 of 1970 and the amendment of Law No. 35 of 1999, in which it acknowledges/regulates several principles relating to justice. A solid justice system built-in harmony both vertically and horizontally will provide assurances in materialising a sense of justice desired by the community. Such a system requires the protection of the rights of the people and demands good and fair service from the state, in this case, the law enforcement elements.



The urgency for the advocate's authority in carrying out its functions and duties in the law enforcement system rests with the advocate's authority. The authority is given to support the implementation of good law enforcement. Based on the provisions in Law No. 18 of 2003 and (Eamhart & Rousseau, 2019; Kazun & Yakovlev, 2017; Skead, Rogers, & Doraisamy, 2018; Toledano, Peleg, & Drori, 2017), it was stated that the rights and responsibilities of advocates include, among others: 1. Advocates are exempted from issuing opinions or statements in defence of cases as their responsibility in court proceedings while still adhering to the professional code of ethics and statutory regulations. 2. Advocates are exempted from carrying out their professional duties to defend the cases they are responsible for by sticking to the professional code of ethics as well as the laws and regulations. 3. Advocates cannot be prosecuted for both civil and criminal in carrying out their professional duties in good faith on behalf of the client's defence in the court proceedings. 4. In carrying out his profession, the advocate has the right to obtain information, data, and other documents, both from government agencies and other parties related to these interests that are required to defend the interest of their clients under laws and regulations. 5. Advocates in carrying out their professional duties are prohibited from discriminating treatment of clients based on gender, religion, politics, ancestry, race, or social and cultural background. 6. Advocates cannot be identified with their clients in defending their client cases by the authorities and the community. 7. Advocates are required to hold back everything known or obtained from their clients due to professional relations, unless otherwise specified by law. 8. Advocates are entitled to keep the confidentiality of their relations with clients, including protection of their files and documents against confiscation or inspection and protection against wiretapping of electronic communications of the advocates. 9. Advocates are prohibited from holding other positions that are contrary to the interests of the duties and dignity of their profession. 10. Advocates are entitled to receive honorariums for legal services that have been provided to their clients.

Conclusion

Advocates as users of the E-Court System have a role in implementing E-Court. Supreme Court Regulation No. 1 of 2019 requires lawyers to use E-Court in registering a lawsuit since August 19, 2019. However, there are internal and external reasons, which inhibit advocates from using E-Court to its full potential. The apparent goal in the form of E-Court System is often system error. While internal reasons; (1) No challenge to confront with the other party, (2) Unable to show self-esteem (self-existence), (3) Honorarium from the principal is reduced, (4) E-Court system is more complicated, (5) Legal Standing Examination, the authentication must be in direct conversation, (6) Easier to use manual/counter registration. The urgency of the existence of an advocate's authority in carrying out its functions and duties in the law enforcement system lies in the advocate's power by Law Number 18 of 2003.



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