

The Effectiveness Of The E-Litigation Trial Process Based On Perma No.1 Of 2019 In Divorce Cases In The Medan Religious Courts

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Abstract: The study aims to evaluate the effectiveness of the divorce case trial process using the E-Litigation system and to identify the factors that hinder and support electronic trials at the Medan Class IA Religious Court. The research method used is non-doctrinal law, focusing on the effectiveness of a law and the factors influencing it. The research instruments include laws, books, journals, and scientific works. Data was obtained from observations at the Medan Class 1A Religious Court, followed by interviews with judges, expert staff operating the e-Litigation application, and admins at the e-Court Corner desk. The problem formulation is: What is the opinion of the panel of judges regarding the effectiveness of e-Litigation according to PERMA No. 1 of 2019 in handling divorce cases? The research results indicate that the effectiveness of the E-Litigation process in divorce cases is very high. It facilitates the parties involved in the dispute, reduces court costs, decreases the backlog of cases, and limits the spread of the Covid-19 outbreak. The E-Litigation system is very effective without compromising the substance of the court process or the rights of the litigants, ensuring that the truth is reached through formalities. Therefore, it can be acknowledged that E-Litigation is an effective trial method.

Keywords: Effectiveness, E-Litigation Trials, Divorce Cases.

Abstrak: Penelitian ini bertujuan untuk mengevaluasi efektivitas proses persidangan kasus perceraian dengan menggunakan sistem E-Litigasi dan untuk mengidentifikasi faktor-faktor yang menghambat dan mendukung persidangan elektronik di Pengadilan Agama Kelas IA Medan. Metode penelitian yang digunakan adalah hukum non-doktrinal, yang berfokus pada efektivitas suatu hukum dan faktor-faktor yang mempengaruhinya. Instrumen penelitian mencakup undang-undang, buku, jurnal, dan karya ilmiah. Data diperoleh dari observasi di Pengadilan Agama Kelas 1A Medan, dilanjutkan dengan wawancara dengan hakim, staf ahli yang mengoperasikan aplikasi e-Litigasi, dan admin di meja e-Court Corner. Rumusan masalahnya adalah: Apa pendapat majelis hakim mengenai efektivitas e-Litigasi menurut PERMA No. 1 Tahun 2019 dalam menangani kasus perceraian? Hasil penelitian menunjukkan bahwa efektivitas proses E-Litigasi dalam kasus perceraian sangat tinggi. Sistem ini memudahkan pihak-pihak yang terlibat dalam sengketa, mengurangi biaya pengadilan, mengurangi jumlah perkara yang menumpuk di pengadilan, serta membatasi penyebaran wabah Covid-19. Sistem E-Litigasi ini sangat efektif tanpa mengurangi substansi proses pengadilan atau hak-hak para pihak yang bersengketa, memastikan kebenaran tercapai melalui formalitas. Oleh karena itu, dapat diakui bahwa E-Litigasi adalah metode persidangan yang efektif.

Kata kunci: Efektivitas, Persidangan E-Litigasi, Kasus Perceraian

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Introduction

Supreme Court regulations that provide other procedural provisions outside the existing provisions, namely e-litigation or e-court. The presence of the Corona Virus Disease (Covid-19) which has spread throughout the world, including Indonesia, has forced the Indonesian government at that time to issue a new normal life order policy, where people are advised to stay away from crowds and crowds as much as possible. Bearing in mind that in religious courts where a person wants to carry out a divorce divorce, he must recite the Pledge of Talak during the trial directly in front of the panel of religious court judges.¹, because this is in accordance with the provisions contained in Article 66 paragraph 1 KHI and Article 39 Law No. 1 of 1974 and hereinafter referred to as the Marriage Law (UUP).

This research seeks to examine the effectiveness of the E-Litigation Trial Process based on PERMA No.1 of 2019, the case example of which is a family law issue, namely divorce. It has been stated above that a divorce is valid if it is carried out before a trial, which means carrying out the divorce directly in front of a panel of judges (Article 39 of the UUP).

In this way, people who will come to religious courts will give birth to a large cycle for the development of the spread of the Covid-19 virus. This is the idea for the birth of an electronic justice system or e-litigation and e-court. The Supreme Court is trying to optimize technology so that it can resolve all legal problems without having to go to court.

The Covid-19 pandemic has greatly affected the Indonesian justice system, so

the government recommends that everything be done at home and immediately encourages reform of the justice system in Indonesia. Because in reality, the application of information technology can achieve efficiency in the justice system and encourage its development into a modern judiciary in preventing the spread of Covid-19.²

From data obtained from January 2019 to December 2021, a total of 7,940 divorce cases were successfully resolved in PA Medan, with details in 2019 there were 2,757 cases.³ In 2020, there were 2,671 divorce cases⁴, and in 2021 there will be 2,512 cases.⁵ divorce. Among them, there were 4,996 divorce cases recorded in the E-Court system. These divorce cases were in fact carried out virtually.⁶

In fact, this provision regarding e-court existed before PERMA No.1 of 2019, namely PERMA No.3 of 2018 concerning Electronic Administration of Cases in Court. So PERMA No.1 of 2019 is an improvement on the previous Supreme Court Regulation, namely PERMA No.3 of 2018 concerning Electronic Administration of Cases in Court. And this is a step from the Supreme Court in its efforts to modernize the Court amidst the spread of the Covid-19 virus.⁷

This research seeks to examine how technical trials are conducted online via electronic media. Whether it is felt to be effective or not. This is because legally the existence and implementation of PERMA No.1 of 2019 has not been regulated in procedural law as mandated by article 28 of the Judicial Power Law. This could lead to legal harmonization in the future because it

¹ Amiur Nuruddin and Azhari Akmal Tarigan, *Islamic Civil Law in Indonesia*, 1st edn (Jakarta: Kencana, 2004).

² Gracia, 'The Existence of E-Court to Realize Efficiency and Effectiveness in the Indonesian Judicial System in the Midst of Covid 19', *Syntax Transformation*, vol 2 no 4 (2021).

³PA Medan 2019 Year Report

⁴PA Medan 2020 Report

⁵PA Medan 2021 Report

⁶Medan Religious Court data

⁷ Dewi Asimah, 'Electronic Trials as an Effort to Modernize the Judiciary in the New Normal Era', *Peratun*, 4 (2021), 33.

has not been regulated as part of civil, criminal, religious, military and state administrative procedural law, so it does not yet have a strong legal basis.

Literature Review

In a study, several sources of previous research are needed to become the basis and truth for accepting the research so that it can be tested.

The first is a journal written by Yeni Nuraeni and Firman Pratama with the title "Implementation and Impact of E-Litigation in the Perspective of Civil Procedure Law in Connection with Supreme Court Regulation Number 1 of 2019" with its conclusion

1. The implementation of E-Litigation at the Majalengka District Court is in accordance with PERMA No. 1 of 2019, and is supported by a Circular Letter from the Supreme Court as technical guidance for the implementation of E-Litigation.
2. If the cooperation or power of attorney contract with the advocate is terminated by the advocate himself, a replacement attorney will be appointed. If the termination is carried out by the client, the trial will be carried out normally (offline).
3. The legal factor itself is still not detailed regarding this implementation, and also the factor of the lack of socialization regarding E-Litigation justice and the addition of the community's still minimal mastery of technology.⁸

The two journals by Muhammad Irsyad Fattah and Anwar Sadat regarding the Effectiveness of Electronic Trials (e-Litigation) During the Pandemic at the Polewali Religious Court with the conclusion that the effectiveness of electronic trials at

the Polewali Religious Court is not effective. Because the 5 factors for measuring legal effectiveness are not met. Namely: legal factors, law enforcement factors, infrastructure factors, community factors, cultural factors. In electronic trials at the Polewali Religious Court, only legal factors, law enforcement factors and infrastructure factors can be said to be effective, while societal and cultural factors cannot be said to be effective. Because people in the jurisdiction of the Polewali Religious Court generally prefer manual trials to electronic trials. Apart from that, the condition of society before creating an electronic-based legal culture that could support the implementation of electronic trials.⁹

The third is journal research from Safira Khofifat Salima and Endrik Safudin, Legal Journal, entitled "Effectiveness of E-Court Case Settlement in the Kediri Regency Religious Court in 2021", which contains a discussion of how effective the implementation of E-court is in the case filing process in Kediri Regency Religious Court, and what factors influence the implementation of e-court in the process of submitting e-litigation cases. The research results described by Safira Khofifat Salima and Endrik Safudin in this journal are:

That the implementation of the electronic trial system, known as E-Litigation, has had a good influence on the Religious Courts environment in Kediri Regency. This is based on the desired suitability of the objectives of Article 2 paragraph (4) of Law Number 48 of 2009 concerning the power of the Judiciary. The existence of the E-court system is a new breakthrough in achieving an effective litigation system and providing rapid reform as information systems and

⁸ Yeni Nuraeni and Firman Pratama, 'Implementation and Impact of E-Litigation in the Perspective of Civil Procedure Law Linked to Supreme Court Regulation Number 1 of 2019', *Presumption of Law*, 4 (2022).

⁹ Muhammad Irsyad fattah and Anwar Sadat, 'Effectiveness of Electronic Hearings (e-Litigation) During the Pandemic at the Polewali Religious Court', *Qisthosa*, 3 (2022).

procedural law progress. Several factors that influence the implementation of E-Litigation are:

- a. Age Factors
- b. Technical Power Factors and
- c. Legal Subject Factors.¹⁰

As for the difference between the research from the journal above and this article is that the article above does not provide a concrete example of a case problem, for example the implementation of E-Litigation in inheritance cases, divorce and so on. Meanwhile, this proposal specifically wants to discuss the theme of family law in the implementation of electronic hearings at the Medan City Religious Court, namely divorce cases. Then this proposal research also discusses how to find the truth of the formalities seen in the implementation of electronic hearings or E-Litigation.

Method

This type of research is field research which examines the process of implementing E-Litigation trials at the Medan Religious Courts and discusses the effectiveness of E-Litigation trials according to PERMA No.1 of 2019, and is supported by library research which uses documents, books and all other elements to explain each definition and problem formulation of the entire research. This research is normative juridical empirical in nature. Research using legal documents and various secondary data such as statutory regulations, court decisions, legal theory. Then empirical juridical studies mean research by examining laws or regulations related to conditions that occur in the field (empirical).¹¹

Data analysis using qualitative methods,

to gain understanding in analyzing all variables and other elements in writing so as to obtain a final result or conclusion in the research process.

Result and Discussion

Judicial Power

Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Rule of Law of the Republic of Indonesia.

This independent judicial power contains the meaning of power that is free from interference from other state authorities, and free from coercion, directives or recommendations coming from extra-judicial parties, except in certain cases permitted by law.¹²

Civil Law and Civil Procedure Law.

Regarding the definition of civil law, legal scholars provide different definitions.

- a. According to Sudikno Metrokusumo, civil law is the law between individuals which regulates the rights and obligations of one individual towards another in family relationships and in social interactions.
- b. According to R. Wirjono Prodjodikoro, civil law is a series of laws between people or legal entities regarding each other's rights and obligations.
- c. According to LJ van Apledoorn, civil law is legal regulations whose object are special interests and the question of whether they will be maintained or not is left to the parties concerned.

From the definition above, it can be concluded that what is meant by civil law is the law that regulates the legal relationship

¹⁰ Safira Khofifatus Salima and Endrik Safudin, 'Effectiveness of E-Court Case Settlement in the Kediri Regency Religious Court in 2021', *Legal Anthology*, 1 (2021).

¹¹ Jonathan Sarwono, *Quantitative & Qualitative*

Research Methods (Yogyakarta: Graha Ilmu, 2006).

¹² CST Kansil and Christine ST Kansil, *Constitutional Law of the Republic of Indonesia I* (Jakarta: Rineka Cipta, 2000).

between the rights and obligations of one person/legal entity and another in social life, with emphasis on the interests of the individual/individual.¹³

Then, according to Sudikno Metrokusumo, the meaning of Civil Procedure Law is the law that regulates how to ensure compliance with material civil law through the mediation of a judge. In other words, civil procedural law is a legal regulation that determines how to guarantee the implementation of material civil law. According to Wirjono Prodjodikoro, civil procedural law is a series of regulations that contain how people must act towards and before court, and how they must act with each other to implement civil law regulations.¹⁴

E-Litigation

Electronic hearings are a series of processes of examining and adjudicating cases by the court which are carried out with the support of technology. Starting from electronic summons or e-summons. This electronic trial is carried out with the consent of the parties in a case. Still pursuing a mediation process in dispute matters, the panel summoned the plaintiff electronically but the defendant remained present and attended the trial manually. In fact, this provision regarding e-court existed before PERMA No.1 of 2019, namely PERMA No.3 of 2018 concerning Electronic Administration of Cases in Court. So PERMA No.1 of 2019 is an improvement on the previous Supreme Court Regulation, namely PERMA No.3 of 2018 concerning Electronic Administration of Cases in Court.

The Supreme Court, as the determinant

in supervising the policies of the Religious Courts in Indonesia, issued PERMA Number 1 of 2019 concerning case management and electronic trials which makes it easier for the public to seek judicial assistance to resolve cases. However, the e-Litigation application menu appears in the latest PERMA, namely PERMA RI No. 1 of 2019.

The presence of PERMA Number 1 of 2019 complements the existence of PERMA Number 3 of 2018, several features have been added, such as adding electronic trials (e-Litigation). PERMA Number 1 of 2019 concerning electronic trials is the Supreme Court's answer to the demands of contemporary developments in the Covid-19 era as well as the development of technological sophistication in this era of globalization so that it strives to create effective courts.¹⁵

In the PERMA regulations contained in No. 1 of 2019 in article 3 paragraph 1 regulates that "all stages of trials in the religious, state administration, military administration and general criminal courts use the Court information system contained in the e-Court application from case registration to verdict, including evidence."¹⁶

Before implementing E-Litigation, it has become an obligation to register trial cases in the E-court system. Where the files to be heard are uploaded to the website electronically. The files entered can include data on plaintiffs, defendants, witnesses and replicas and duplicates.

The decision is read or announced electronically in a hearing that is open to the public by a panel of judges. Reading decisions via electronic court applications on the public internet is closely related to the principle of

¹³ PNH Simanjuntak.

¹⁴ Martha Erthi Safira, Civil Procedure Law (Ponorogo: Nata Karya, 2017).

¹⁵ Retnaningsih, 'Implementation of E-Court According to Permahan Number 3 of 2018 concerning Electronic

Administration of Cases in Court and Journal of Law and Development', Law and Development, vol 50 no 1 (2021).

¹⁶ Article 3 PERMA No. 1 of 2019 concerning "Electronic Administration of Cases and Trials in Court", p. 6

being open to the public. The parties may or may not be present when the decision is determined or announced. By uploading a decision electronically to the case tracking information system (SIPP)¹⁷. Then it is copied by the Session Registrar, it can be accessed by the parties directly in pdf format via e-Court, then the process of reading the decision or determination is deemed to have been attended by the parties and in accordance with applicable procedural law. The court can issue a decision or determination in the form of a copy in either printed or electronic form.

However, it needs to be underlined that in practice not all files submitted via E-Court will also be continued through virtual hearings. Sometimes there are parties who refuse to hold virtual hearings and prefer face-to-face hearings.¹⁸

In PERMA No. 1 of 2019 as the latest regulation that regulates this issue, it is stated that submitting E-Litigation is not only limited to proposals from legal representatives. However, legal entities and individuals can also participate in submitting E-Litigation. This is different from the previous regulations, namely In PERMA No.3 of 2018 concerning Electronic Administration of Cases in Court, electronic hearing requests (E-Litigation) can only be submitted and carried out by legal counsel. If an advocate wants to litigate virtually, he is obliged to apply for permission to the high court to convene virtually.

E-Litigation in Medan City PA

In terms of civil law, several writings and opinions from legal experts agree that regulations regarding rules that are outside

other than applicable procedural law cannot be obeyed. Sudikno Metrokusumo defines Civil Procedure Law as legal regulations that regulate how to ensure compliance with material civil law and through the mediation of judges.¹⁹ For example, a husband who wants to divorce his wife must have it done in court so that the divorce is considered legal (Article 39 of Law No. 1 of 1974). The need for attention from the legislative and executive bodies of the government of the Republic of Indonesia in the current era, to issue an e-litigation trial law, to help the development of the law so that it is more easily accessible through electronic media and accountable administration

Next is in terms of evidence in electronic trials. In article 4 of PERMA No.1 of 2019, the trial process applies to various events such as: Submission of lawsuits, requests, objections, rebuttals, resistance, intervention and amendments, answers, replicas, duplicates, conclusions and pronouncement of decisions/determinations.²⁰ It can be seen from this that PERMA No.1 of 2019 tries to make things easier for the public and law enforcers. In Indonesia there are 3 law enforcers, Police, Advocates or Legal Advisors and Judges. The author took a sample from the Scientific Journal article compiled by Julianto, the results of his research illustrate that in Batam City there are still many advocates who do not know in detail how the e-litigation trial mechanism works. This occurs due to a lack of outreach to all levels of advocates regarding the e-litigation trial mechanism.

Then the community factor is still very minimal considering that this is a more

¹⁷ Dewi Kumalaeni Faizatush Sholikahah, 'Case Tracking Information System (SIPP)', *Diplomatika*, vol 1 no 1 (2017).

¹⁸ Interview with Junior Law Clerk, Husnah Ulfa, SH

¹⁹ Endang Hardian and Lukman Hakim, *Civil Procedure Law in Indonesia Execution and Mediation Issues* (Yogyakarta: Deepublish Publisher, 2020).

²⁰ Supreme Court, PERMA No.1 of 2019

modern legal phenomenon. However, it needs to be understood that not all people understand the e-court application created by the government. In the results of this research, both advocates and the public found that PERMA No.1 of 2019 still felt that there were many obstacles, because the public and advocates are both fighters and enforcers of justice.

It is said that a court policy is successful if its effects are well felt by both lawyers and the public. Moreover, the community departs from Article 1 Number 2 of the 1945 Constitution which states that "sovereignty is in the hands of the people and is implemented according to the Constitution". Therefore, it can be concluded that society is the determining factor regarding the effectiveness or not of a law or other legal regulation that will be implemented in society.²¹

The Medan Religious Court as a judicial institution is participating in the implementation of e-litigation, but it is unfortunate that there are no clear details regarding the number of cases being carried out virtually. none of these cases are carried out virtually.²²

From data obtained from January 2019 to December 2021, a total of 7,940 divorce cases were successfully resolved in PA Medan, with details in 2019 there were 2,757 cases.²³ In 2020, there were 2,671 divorce cases²⁴, and in 2021 there will be 2,512 cases.²⁵ divorce. Among them, there were 4,996 divorce cases recorded in the E-Court system. These divorce cases were in fact carried out virtually.²⁶

If we calculate that 4,996 out of 7,940 cases can be resolved using E-Litigation, we

get a result of $4,996/7,940 \times 100\%$, so we get a result of 62.91%, if rounded up to 63%, it can be concluded that E-Litigation has proven to be effective.

E-Litigation still uses the name E-Court in practice in the Medan religious courts. However, what differentiates it lies in the legal subject, where in E-Litigation personal parties and legal entities can submit virtual inspections, which is different from E-Court where the party involved You can only apply for permission to litigate in a virtual manner from a legal representative.

So in this case it can be interpreted that the cases registered in the E-Court at the Medan Religious Court in the 2019-2021 period, namely 4996 which have been registered on the Medan Religious Court website, are also included in E-Litigation because the differences are only in the legal subject alone. .

Effectiveness of E-Litigation in resolving divorce cases

Previously, it was necessary to create indicators as a reference for the effectiveness of this E-Litigation, including:

1. (Quantity indicator). How many cases are carried out via e-litigation and how does this compare with cases carried out in person?
2. (Quality indicators). Does the implementation of E-Litigation fulfill the formality requirements in procedural law?

In the previous discussion, it was stated that in the Medan City Religious Court, divorce cases carried out via e-litigation reached 63% of the total cases heard in the 2019-2021 period. This shows that E-Litigation

²¹ Julianto, 'Effectiveness of Implementing the E-Litigation Policy in the Batam District Court and Batam City Religious Court, Indonesia', *Communication Media*, 3 (2021), 6.

²² Interview with Junior Law Clerk, Husnah Ulfa, SH

²³ PA Medan 2019 Year Report

²⁴ 2020 PA Medan Year Report

²⁵ PA Medan 2021 Report

²⁶ Medan Religious Court data

was the main choice in carrying out trials at that time, which incidentally was in conditions (social distance) due to the COVID-19 outbreak. As for quality indicators related to fulfilling formality requirements in procedural law, they can be obtained from interviews with clerks and judges. From the results of an interview with the Junior Legal Registrar, Husnah Ulfa, regarding the E-Litigation system, he said that this method of justice is very useful because the defendant no longer has to have difficulty coming to court if they are sick, just by using Perma No. 1 of 2019, then they are responsible. to attend the trial has been held.

He also said that this method really helps both parties in the lawsuit, it makes it very easy for both parties to carry out the trial and if you have read and understood the essence of Perma No. 1 of 2019 then both parties in the case can carry out the trial. That's how important it is. PERMA No. 1 of 2019.²⁷

On the other hand, we also conducted interviews with judges regarding the effectiveness of E-Litigation in Helmilawati's trial. A religious court judge explained several reasons for the validity and effectiveness of E-Litigation, namely that in this E-Litigation system, formal truths can be realized in E-Litigation. Litigation is due to all forms of evidence and information being verified before entering the trial process so that it can be ensured that the documents presented are real evidence.

As for the obstacles in the E-Litigation process, from the mediation process to the judge's decision, they do not reach a difficult level, of course obstacles still exist but can be overcome easily, for example, if it comes time to submit a duplicate but no files have been sent, then you can be sure the plaintiff did not include a duplicate.

Even though - This litigation emerged as a response to the Covid-19 pandemic which requires trials to be held virtually to avoid the spread of disease. However, this system is still considered relevant to continue because apart from being able to make it easier for litigants not to bother coming to court, it can save travel costs up to can reduce the backlog of cases in court, so that the E-Litigation process continues to this day.²⁸

Conclusion

The E-Litigation System is a judicial process that is carried out virtually. This system is based on PERMA No. 1 of 2019 as a response to preventing the spread of the Covid-19 virus.

What is worth explaining is the difference between E-Court and E-Litigation. E-Court itself is a system for registration and uploading trial data on the court website which is mandatory. In contrast to it, E-Litigation is a virtual trial process which does not require The parties involved in the case can carry out the trial directly or virtually (E-Litigation). So that not all cases that have been entered into the E-Court system will then proceed through the E-Litigation trial as well.

E-Litigation still uses the name E-Court in practice in the Medan religious courts. However, what differentiates it lies in the legal subject, where in E-Litigation personal parties and legal entities can submit virtual inspections, which is different from E-Court where the party involved You can only apply for permission to litigate in a virtual manner from a legal representative.

The effectiveness of the E-Litigation process in divorce cases can be stated to be very effective in addition to making things easier for the parties involved in the dispute,

²⁷Interview with Junior Law Clerk, Husnah Ulfa, SH

²⁸Interview with judge Helmilawati, SHI, MA

saving case costs and reducing the backlog of cases in court, reducing the spread of the Covid-19 outbreak, this E-Litigation trial is very effective. Without eliminating the substance of the court process itself, does not reduce the rights of the litigants until the truth is reached through formalities. So it can be acknowledged that this E-Litigation is an effective trial.

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