

Effectiveness of e-litigation in religious courts in Indonesia

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Abstract

The Indonesian Supreme Court has implemented an e-court for efficient, fast, low-cost trial processes. However, its Effectiveness in religious courts is lower than in district and state administrative courts, prompting a study for improvement recommendations. This socio-legal research uses a legal substance, structural, and cultural approach, using primary and secondary data, after being collected and analyzed using systematic content analysis in a polyangulation manner. The results showed that the Effectiveness of e-litigation in religious courts was influenced: First, aspects of legal structure in the form of unstable internet networks, the number and competence of court employees still needed to be improved, and there was no special division to handle it. Second, the aspect of legal substance in the form of a discrepancy between the procedural law and the regulation with the Supreme Court Rules needs to be regulated in law to have binding legal force. Third, the legal culture aspect is the need for socialization with the public about the benefits and ease of e-litigation for litigants.

Keywords

e-litigation, Religious courts, Effectiveness

Introduction

Modernizing the judiciary is crucial for a simple, fast, and low-cost system. In 2018, Indonesia's Supreme Court implemented e-courts for case management, including e-filing, registration, payment, and document delivery [1]. Previous research shows that e-court is effective at the e-filing, e-payment, and e-summons stages but has yet to be effective in e-litigation [2]. E-court and e-litigation are important to continue to be developed because they are demands for the development of information technology that will impact social change [3]. With a notable rise in cases, the Supreme Court of the Republic of Indonesia hears cases in both traditional and virtual courts. Most traditional cases are filed in Religious Courts, with 86.3% in 2021 [4] and 85.6% in 2022 [5]. The lowest percentage, 20.8% in 2021 and 27.3% in 2022, are e-courts. However, the efficacy of e-litigation in religious courts could be better, necessitating additional research.

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The research utilizes Lawrence Meir Friedman's view of the legal system, focusing on its structure, substance, and culture. The legal structure includes courts, judges, and relationships. The legal substance is fluid and subject to social conditions, allowing for novel legal systems. Legal culture encompasses social attitudes and values. Friedman suggests that technology can improve law enforcement efficiency [6].

Methods

Research It is socio-legal research using a legal substance, structural, and cultural approach. Research data in the form of primary data in the form of opinions of Judges of Religious Courts in Indonesia determined With simple random sampling that allows each population to have an equal opportunity to be selected as a sample [7] collected using questionnaires [8], and secondary data in the form of primary legal sources, namely Supreme Court Regulation of the Republic of Indonesia Number 7 of 2022 concerning Amendments to Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court and secondary legal sources in the form of concepts and results of previous research. Research data was collected through the stages of data condensation, data display, and conclusion [9], then analyzed using systematic content analysis, that is, selecting cases, coding cases, and analyzing [10], triangulation [11].

Results and Discussion

Implementation of E-court and e-litigation in religious courts in Indonesia

Based on the Supreme Court's e-Court website, the number of cases registered via e-filing and heard via e-litigation at the appellate level courts until 2022 [12] shows that the three appellate religious level courts that carry out the most e-litigation are the Pekanbaru Religious High Court with 1,265 (6.40%), the Surabaya High Religious Court as many as 879 (1.70%), and the Syar'iyah Court of Nanggroe Aceh Darussalam Province as many as 805 (6.50%). The three lowest appellate courts that carry out e-litigation are the Gorontalo High Religious Court with 38 (3.10%); Bangka Belitung High Religious Court with as many as 27 (1.70%); and the Palu High Religious Court with as many as 24 (1.20%). The number of applications of e-litigation at the highest court level is not commensurate with the percentage. On the other hand, this percentage needs to be commensurate with the widespread implementation of e-litigation. The Religious Court at the Appellate Level with the largest percentage is the Jambi High Religious Court at 14.5% (475), the Pontianak High Religious Court at 11.6% (385), and the Palembang High Religious Court at 8.4% (550).

The number of cases registered via e-filing and tried via e-litigation in first-instance courts in 2022 [12] is the Rengat Religious Court, 568 (63.0%), the Lubuk Linggau Religious Court, 481 (31.8%) and Sigli Syar'iyah Court as many as 392 (37.9%). The number of applications of e-litigation at the highest court level is not commensurate with the

percentage. On the other hand, this percentage needs to be commensurate with the widespread implementation of e-litigation. The first level courts with the largest percentage were the Dabo Singkep Religious Court at 77.5% (145), the Sanggau Religious Court at 64.6% (268), and the Rengat Religious Court at 63.0% (568). There are twenty-two first-level religious courts whose cases have been registered online or e-filing, but nothing has been done online or e-litigation, namely: Bojonegoro Religious Court: 734, Kuningan Religious Court: 585, Marisa Religious Court: 294, Sinabang Syar'iyah Court: 142, Kuala Kurun Religious Court: 135, Meureudu Syar'iyah Court: 121, Pulang Pisau Religious Court: 101, Buol Religious Court: 97, Kuala Pembabuang Religious Court: 71, Balige Religious Court: 45, Court Pasangkayu Religious Court: 41, Bajawa Religious Court: 41, Soe Religious Court: 28, Blangkejeren Syar'iyah Court: 27, Kefamenanu Religious Court: 26, Fak-Fak Religious Court: 26, Tais Religious Court: 25, Tarutung Religious Court: 21, Bangli Religious Court: 21, Sidikalang Religious Court: 17, Bolaang Uki Religious Court: 7, and Paniai Religious Court: 7.

The implementation of e-litigation in appellate religious courts has been carried out throughout Indonesia, but less effective than 248,529 cases registered online through e-filing; only 9,182 cases were heard online through e-litigation or only 2.6%. While the Effectiveness of e-litigation in religious courts of first instance, it is known that the highest number of e-litigation implementations is the Rengat Religious Court, as much as 568 (63.0%), while the religious court with the largest percentage of e-litigation implementation is the Dabo Singkep Religious Court as much as 77.5% (145). Twenty-two religious courts on the island of Java still need to carry out e-litigation, namely the Bojonegoro Religious Court and the Kuningan Religious Court.

Terms of e-court and e-litigation in Indonesia

Electronic courting is mandated under Law Number 48 of 2009, aiming for quick and cheap trials. "simple" refers to efficient and effective examination and resolution of cases, while "light costs" refer to the cost of cases accessible to the community. However, this principle does not override the need for thoroughness in seeking truth and justice. The Supreme Court of Indonesia has published a legal basis, namely Supreme Court Rules Republic of Indonesia Number 3 of 2018, and enhanced by Supreme Court Regulations Republic of Indonesia Number 1 of 2019. The implementation of electronic justice faces challenges due to the structure, substance, and culture of court employees and litigants. Despite its success in delivering simple, fast, effective, efficient, and modern trials, continuous development, improvement, and socialization are needed [13]. The Supreme Court of Indonesia has improved the Supreme Court Rules Republic of Indonesia Number 1 of 2019 and Regulation of the Republic of Indonesia Number 7 of 2022, demonstrating the dynamic nature of e-court operations, particularly during the COVID-19 pandemic, where public services shifted significantly to online media [4].

The main provisions of electronic trials and electronic trials in general that also apply to religious courts are as follows: First, an electronic trial involves several processes,

including accepting a lawsuit, receiving payment, delivering calls, notifications, answers, and legal remedies, and managing, submitting, and storing documents in civil, civil religious, military, and state administration using electronic systems. Second, electronic trial refers to a court-supported process for examining and adjudicating cases using information and communication technology. It aims to create professional, transparent, accountable, effective, efficient, and modern handling of cases. The trial process includes submitting claims, applications, objections, rebuttals, resistances, interventions, answers, replicas, duplicates, evidence, conclusions, judgments, determinations, and appeals. Third, electronic proceedings in court include electronically registered cases, which are heard when mediation is declared unsuccessful unless mediation is required. If the defendant does not agree to the trial being conducted electronically, the case file is submitted before the scheduled hearing to be uploaded into the court information system. The trial will be conducted electronically if an advocate, curator, or administrator represents the defendant. Administrative cases are heard electronically without the defendant's consent. The arrangement between e-filing and e-litigation automatically eliminates the gap between the two. In addition, previous research also proposed adding mediation that must be submitted by judges at the first hearing [14]; the input has also been accommodated in the latest regulations.

Fourth, examining written evidence involves uploading stamped letter evidence documents into the court information system before the trial, submitting electronic letter evidence to the Registrar of Hearings, conducting remote evidentiary hearings with witness and expert examinations, and charging all costs to the party presenting witnesses and experts. This process allows for efficient and cost-effective proceedings in court, ensuring fair and efficient proceedings for all parties involved. The provision that charges all costs incurred in remote court infrastructure trials to the proposing party is not in line with the trial with light costs principle. Instead, remote trials should be charged in addition to the case's determined costs. The costs borne by the party submitting witnesses and experts should be the costs of presenting to the trial, excluding the costs of examining them remotely using court infrastructure. The court infrastructure is already prepared to serve the justice-seeking community and has been charged a case fee. Fifth, the judgment or determination in a court case is signed manually by a panel of judges, pronounced electronically by the judge or presiding judge, and has valid legal force and effect. It is legally open to the public and can be accessed through the court information system. If a defendant does not consent to an electronic hearing, notice of the judgment or injunction is given by registered mail.

Indonesia's legal system still uses manual judgments, but electronic signatures are now regulated under the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions and Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. These electronic signatures must meet certain requirements, such as

relating only to the signatory, being aware of any changes to the electronic information related to the signature, and allowing the signatory to be identified and given consent. Indonesia has nine electronic certification providers, including eight non-agency providers and the Electronic Certification Center of the State Cyber and Encryption Agency. These signatures are used for both certified and uncertified purposes [15]. Court decisions will be signed using certified electronic wrist tags from the Electronic Certification Center of the State Cyber and Encryption Agency, an electronic certification organizer.

Sixth, the court information system facilitates electronic legal remedies, with the Appellant Court Registrar uploading appeal deeds and electronic notifications of appeals, announcements, submissions, counter appeals, and checking files. For non-electronic comparators, notifications are made via registered mail. All appeal documents are uploaded into the court's information system, and case files are examined electronically. Comparators or appeals not initially electronically heard are examined through the e-Court Desk. The Court of Appeal follows the same procedure as the Court of First Instance, but there are additional legal remedies for cassation and extraordinary judicial review to the Supreme Court. The 2022 Supreme Court Annual Report shows a rise in religious civil cassation cases, with 1,136 cases in 2022, and 16 cases in Islamic crime cassation. In 2021, civil religious review cases increased to 129; in 2022, there were 189 cases and one Islamic crime review [5]. Future judicial review provisions should be carried out electronically, from registration trial to judgment.

This research investigates the Effectiveness of e-litigation in religious courts in Indonesia. The study used ten judges from six religious courts to understand their advantages, weaknesses, and suggestions for improving legal structure, substance, and culture. The study was limited in time and access, focusing on the primary perpetrator of the trial, the judge. The findings aim to provide empirical evidence on the Effectiveness of e-litigation in religious courts.

The effect of legal structure aspects on the effectiveness of e-litigation in religious courts in Indonesia

The structural aspect of e-litigation in Indonesia offers advantages such as faster trial times, standardized structure, clear employee duties, and a One-Stop Integrated Service room. However, the organization has shortcomings such as inconsistent employee competence, lack of a dedicated division for managing e-litigation applications, and insufficient participation from all personnel. Intermittent signal quality also disrupts trials. Additionally, numerous electronic litigation issues need attention. To improve e-litigation Effectiveness, suggestions include holding the position of the deputy clerk, evaluating monthly to solve problems, improving employee competence, forming a special division for handling e-court and e-litigation applications, ensuring completeness of facilities, infrastructure and human resources, socializing the importance of e-litigation for the justice-seeking community, and improving the e-litigation system. These improvements aim to improve the efficiency and Effectiveness of e-litigation in

Indonesia. The results of this study follow previous research that e-litigation has weaknesses in areas that The internet signal needs to be stronger [16], the number and competence of employees still need to be improved [19], and there is no specific division to handle it.

The Effectiveness of e-litigation relies heavily on internet signal and network. The Central Bureau of Statistics identifies three ecosystems: network, device, and application, and five indicators: fixed-line subscribers per 100 population, mobile phone subscribers per 100 population, international internet bandwidth per user, percentage of households with computers, and internet access. 2019-2020, Jakarta had the highest internet access index, while Papua had the lowest. East Nusa Tenggara and North Maluku were in the low index 2020, rising to the medium index group [19]. In 2020-2021, the Special Capital Region of Jakarta was the only province with a high internet access index; Papua is the only province with a low internet access index; the rest are included in the medium internet access index group [20].

The Internet access index data shows no significant effect on the Effectiveness of e-litigation in appellate and first-instance courts. The Special Capital Region of Jakarta has a high internet access index, but the implementation of e-litigation by the Jakarta High Religious Court is ranked 17th at 1.4%, and the religious court of first instance is outside the top 20. The Special Region of Yogyakarta has a high internet access index, but the implementation of e-litigation is ranked 16th at 4.5%. Internet network disruption during e-litigation is more engineering than national, and the internet network is unstable on certain days. The Telecommunication and Information Accessibility Agency of the Ministry of Communication and Information Technology in 2021 has determined that it will provide 4G signal supply in 7,904 villages and urban villages in the 3T (Frontier, Remote and Disadvantaged) area to ensure that all Indonesians have internet access to the digital transformation process [21]. Unfortunately, the project has not been completed because of the corruption case that ensnared Johnny G. Plate, Minister of Communication and Information Technology [22], but Budi Arie Setiadi, the new Minister of Communication and Information Technology, promised that the project would be completed in 2023 [23]. Completing the 4G signal supply project will increase the Effectiveness of e-litigation in religious courts and other courts of first instance spread across every district or city throughout Indonesia.

The Effectiveness of e-litigation relies on the competence of court employees, not just the legal structure. Increasing employee competence can overcome constraints like a lack of employees and the need for special divisions. However, this requires approval from the Ministry of State Apparatus Empowerment and Bureaucratic Reform, which can take time and require additional budgets from the Ministry of Finance. Therefore, improving employee competence is crucial for implementing modern e-litigation applications.

The effect of legal substance aspects on the implementation of e-litigation in religious courts in Indonesia

The Indonesian Supreme Court Rules Number 7 of 2022 and Regulation Number 1 of 2019 regulate e-litigation, but they need to be improved. The existing procedural law does not align with e-litigation's comprehensive nature, requiring judges to engage in *ijtihad*. Litigants must only register in the jurisdiction where they intend to file a case, and e-litigation has not been mandated. To improve e-litigation, parties can register from all courts in Indonesia and conduct a comprehensive codification of special procedural law e-litigation.

The results of this study are in accordance with the results of previous research that e-litigation has problems because The nature of choice has not been mandatory, so it still needs harmonization with procedural law [24]. Moreover, the legal basis of e-litigation is the Regulation of the Chief Justice of the Supreme Court, preferably regulated in regulations with higher binding force, namely the law [25]. This study proposes, because electronic trials and electronic trials are the embodiment of the principle of simple, fast, and low-cost trials as referred to in Article 2 paragraph (4) of the Law on Judicial Power, in order to have a strong legal basis, the provisions of e-court and e-litigation should be added to Article 2 paragraph (4) by adding the phrase "... which can be done with the judiciary and trial electronically".

The influence of legal culture aspects on the effectiveness of e-litigation in religious courts in Indonesia

The study explores the impact of legal culture on attitudes toward e-litigation, highlighting its practical advantages, like online question-and-answer sessions and cost savings. However, it also highlights areas for improvement, like lack of knowledge among the lower class, time-consuming transitions, and the need for email communication. To improve e-litigation, public awareness, cooperation with other agencies, and encouraging parties to use it are suggested. The study's limitations lie in its focus on judges' opinions rather than interested parties'. The results align with previous research suggesting that e-litigation is ineffective due to public ignorance [25], and modern.

The Effectiveness of e-litigation in religious courts in Indonesia is influenced by three aspects: structure, substance, and culture. Structural and substance weaknesses can be addressed internally in the Supreme Court, while the cultural aspect is challenging due to internal employee competence and external community attitudes. E-litigation is only accessible to those with legal problems once or twice, unlike other public services like Education and Health, which everyone accesses.

Conclusion

Based on data and analysis, it can be concluded that the Effectiveness of e-litigation in religious courts at the first instance and appeals in Indonesia is still low when compared

to district courts and state administrative courts, which are influenced by three aspects, namely legal structure, legal substance, and legal culture. The influence of aspects of a legal structure due to unstable internet networks, the number and competence of court employees still need to be improved, and no special division handles it. The aspect of legal substance because there is still a discrepancy between the procedural law, and the regulation with the Supreme Court Rules needs to be regulated in law to have binding legal force. The legal culture aspect needs socialization to the public about the benefits and ease of e-litigation for litigants.

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