



## THE NEW REGULATION ON E-LITIGATION

### Background

The rapid development of technology in the modern era has required more effective and efficient case and court administration services. In addition, Article 2 (4) of Law Number 48 of 2009 on Judicial Powers requires the justice system to be simple, quick and low cost. For this reason, the Indonesian Supreme Court saw a need to reform the administrative and justice system in order to overcome the existing obstacles and challenges of administering the justice system. In order to achieve this goal, the Supreme Court launched an e-Court application in 2018 and recently launched an e-Litigation application.

### e-Court Application

In April 2018, Supreme Court Regulation No.3 of 2018 on The Administration of Court Cases by Electronic Means ("PERMA 3/2018") was issued. A few months after, the e-Court application was officially launched and since then, the Supreme Court has continued to develop and finalize the e-Court application and regulations.

The e-Court application can process the submission of lawsuits (e-filing), payment of court fees (e-payment) and summonses (e-summons) electronically. e-Court consists of an electronic court administration process which includes the submission of:

- (i) lawsuits/applications;
- (ii) responses;
- (iii) counterpleas;
- (iv) rejoinders;
- (v) conclusions; as well as
- (vi) the storage of case dossiers.

However, Perma 3/2018 did not provide a clear procedure for the submissions of the documents in (ii) - (v) above.

Any individual or advocate can access and utilize e-Court as long as he/she is registered in the e-Court system and has become a registered user. However, mediation sessions and evidentiary hearings are still held physically.

Through Supreme Court Regulation Number 1 of 2019 on The Administration of Court Cases and Proceedings by Electronic Means ("PERMA 1/2019") and its implementing regulation, Supreme Court Decree Number 129/KMA/SK/VIII/2019 on Technical Guidelines for the Administration of Court Cases and Proceedings by Electronic Means ("Kepma 129/2019"), the Supreme Court revoked PERMA 3/2018. Kepma 129/2019 further emphasized the use of the "e-Court" application (*Aplikasi e-Court*).

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## Indonesian e-Court Users

Two types of e-Court users are: a registered user, who is an attorney, or another user including a state attorney, government legal bureau, the Indonesian army, the Indonesian Police Force, a public prosecutor, a Board of Directors, in-house lawyers and holders of a power of attorney appointed according to the law.

## e-Filing, e-Payment, and e-Summonses

Like its predecessor, Perma No.1/2019 regulates the submission of lawsuits (e-filing), the payment of court fees (e-payment) and service of summonses (e-summons) electronically. The use of the electronic case administration system at the level of appeal, appeal to the Supreme Court and judicial review is possible by agreement among the parties provided that the electronic case administration system was used at the first instance level.

The e-filing and e-payment processes include the following:

1. the registration of the lawsuit through the e-Court system and selection of the relevant court;
2. the issuance of an e-SKUM (an Electronic Power of Attorney to Pay);
3. the payment of the court fee electronically into the court's bank account;
4. registration by the registrar, for which the registrar will download all the data from the application as backup data and organize the documents; and
5. the processing of cases registered electronically by the court.

The e-summons administration and notification process includes the following:

1. service of the first summons on the Plaintiff or Attorney electronically, while on the Defendant it is manual;
2. the generation by the Court Case Tracking Information System (SIPP) application of an electronic summons to each of the parties through the e-Court Application; and
3. the electronic service of the summons on:
  - a. the Plaintiff or Attorney who registers electronically;
  - b. the Defendant as agreed to in writing.

The summons to a defendant who does not live at his/her own address will be served through the Head of Village.

There should be no fee for an electronic summons, but the court may develop and implement a paid electronic summons through a short message or other service.

## e-Litigation

Perma No.1/2019 has introduced new electronic litigation details, with basic procedure as follows:

1. The Panel of Judges explains the rights and obligations of the parties in electronic litigation in the first hearing.
2. The e-Litigation commences upon both parties giving their consent (to use e-Litigation) after mediation fails (except in a state-administrative case, where the defendant's consent is not required).
3. The Panel of Judges then determines the hearing schedule, ie. the submission of responses, counterpleas, rejoinders, conclusions, etc. The parties must submit them by the given date and time determined by the Panel of Judges. Upon receiving the documents, the court will forward them to the counterparty(ies). A party which fails to submit them within the time limit for no valid reason will be considered to have waived its right to submit them.

4. Witnesses or experts examination can be conducted through audio-visual communication devices, as long as it has been agreed to by all of the parties.
5. Examination of evidence still refers to the prevailing laws. Kepma 129/2019 requires the parties to upload the evidence (which needs to be legalized) to the e-case administration system. Original documents must still be presented to the court during a hearing the date of which will be determined by the court.
6. The judges' ruling is issued through the e-case administration system. An electronic copy of the ruling will be considered legally binding. The date of the ruling is the date of its issuance through the e-Court administration system.

## Current steps in the development of the Indonesian Court System

The Supreme Court has appointed a work unit consisting of 6 District Courts, 4 Religious Courts and 3 State Administrative Courts to implement these regulation, including the Central Jakarta District Court, the Surabaya Religious Court and the Makassar State Administrative Court. e-Litigation will initially be processed in a total of thirteen courts in all the civil, religious, military administrative and state administrative courts. The regulations will be implemented in stages, with the Supreme Court aiming to have e-Litigation operating in all courts of first instance in Indonesia in early 2020.

One of the challenges to the development of e-Litigation is that the Supreme Court and the parties involved still have to prepare the facilities and infrastructure as well as reliable human resources needed to be able to operate this e-Litigation system optimally.

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