Modern Justice: Indonesia’s Supreme Court’s Challenges to Uphold Fair Trial Principles Through Digitalization

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Abstract: As we have seen, it is essential to widen digitization in order to bestow better access to public information contained in Indonesian courts for a variety of purposes. Court modernization through digitization benefits not only the judges but also both attorneys and litigants. To this end, Indonesia’s Supreme Court has progressed above and beyond to embody the principle of equality before the law by integrating technological development into the judicial process with. In fact, qualified policies do not always govern the implementation of technology, resulting in discrepancies between policy and implementation. Using a statutory, case, and historical approach, these article will assess whether it is reasonable and efficient to adopt this technology in Indonesian courts. Qualified implementing regulations and tiered socialization have not been utilized in the judicial context to support law enforcement’s readiness to carry out the judicial process electronically. This article further addresses the safety of personal and judicial data, and the security of electronic court proceedings, bearing in mind that applications of information technology should be considerate of the community’s need for access to justice as well as the court’s interests in preserving its authority. Nonetheless, given that technology has already been implemented to enhance access, a variety of actions aimed at bolstering both policy issuance and reforming the technological infrastructure will encourage the court to conduct trials in a safe and sound manner.

Keywords: court; digitalization; fair trial; judges; society.

I. Introduction

Rapid advances in technology have made it challenging for courts to establish a balance between the ideal of facilitating the society access to judicial records and safeguarding personal information enclosed in those records when examining them electronically.¹ It is unavoidable that the Supreme Court as a high state institution in the judicial sector carries out digitization not only in the administration sector but also when conducting examinations at trial. The publication of the 2010 Blueprint, which outlines the vision of the Indonesian courts

and the long-term legal reform program from 2010 to 2035 for four judicial institutions below the Supreme Court, has accelerated the modernization of the judiciary in Indonesia. Modernization through digitalization of judicial instruments is not only intended to keep up with the times; it also fulfills the fundamental need to provide the widest possible access to all available judicial services.

In 2019, the Supreme Court finally enacted a regulation that accommodates the needs of the society in terms of registering cases, estimating trial fees, paying down payments, summoning parties, and conducting trials electronically. This regulation was a response to the concern that Indonesia’s trial procedure remained conventional and unchanged. At the stage of administering cases and trials, the application of this regulation has usually adequately met the demand for electronic facilities. Moreover, there remain an extensive variety of obstacles in the way of the Supreme Court utilizing technology to carry out various policies. There are still many unresolved issues regarding everything from the efficacy of internal work completion to its societal benefits.

Considered another way, the government as the highest authority has implicitly shown its commitment to granting equal status to all citizens before the law by issuing such human rights instruments as the 1945 Constitution of the Republic of Indonesia (UUD 1945)\(^4\). As a democratic country, Indonesia places a premium on fair treatment before the law regardless of gender, religion, sexual orientation, ethnicity, and language background.\(^5\) Further, considering that Indonesia is a geographical archipelago ranging from Sabang to Merauke, cultural diversity must be wisely preserved; in fact, it cannot be avoided.

In response to this need, Indonesia, a State Party to the United Nations, formally ratified the International Covenant on Civil and Political Rights (ICCPR) and issued Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. This regulation is crucial in demonstrating the State’s commitment to upholding human rights values for its citizens.\(^6\) The principle of equality before the law is also frequently addressed together with the principle of public disclosure of information. One commonly agreed belief is that optimizing the latest developments in technology is an excellent way to preserve greater access to courts; in this case, the internet and other web-based platforms are useful tools for publishing information. The application can vary greatly, which would include allowing access to public court record as well as a court tracking system and all its auxiliary applications.

It is inevitable that in an attempt to fulfill societal demands, the issuance of internal system and is bound to uphold that position without exception.

\(^2\) Mahkamah Agung Republik Indonesia, “Cetak Biru Pembaruan Peradilan 2010-2035” (Jakarta, 2010), https://www.mahkamahagung.go.id/media/198.

\(^3\) Supreme Court Regulation Number 7 of 2022 regarding Amendments to the Supreme Court Regulation Number 1 of 2019 regarding Electronic Administration and Trials (hereinafter referred to as SC Regulation concerning Electronic Administration and Trials)

\(^4\) Article 27 paragraph (1) UUD 1945 states that Each citizen retains the same position in the justice

\(^5\) Ibid.

regulations by the Supreme Court is a consequence of the adoption of the rule of law principles. The significance of the rule of law principle rests in its ambivalent intersection with democracy; it both affirms and inhibits democracy by restraining majority rule excesses. Subsequently, democracy is understood not only as a simple idea of majority power held by the executive, which in this case is in the politics sector, but as a form of control over majority power itself.

Upon further examination, it becomes obvious that the utilization of information technology by the Supreme Court in its community services has the potential to infringe the human rights of citizens if it is not implemented pursuant to the general principles of good governance. The disruption cause by the insertion of technologies, for example, artificial intelligence, the Internet of Things, predictive/behavioral analysis, big data, or even blockchain technologies can revolutionize how government engage with its citizens. This step should nonetheless be applauded because, regardless of the judiciary’s obligation to uphold noble and dignified values, this does not preclude socio-political enhancements, specifically those that foster equal opportunities and treatment before the law.

Since the independence of Indonesia in 1945, the prevailing thought has been that paper management of court records is entirely adequate and that arising issues concerning access to justice, including but not limited to open access to court records, were well settled long ago. However, it argue that adapting to the digital world introduces an array of new issues. This situation has become increasingly widespread since the COVID-19 pandemic has affected the wheels of the global economy: many countries including Indonesia are now experiencing formidable challenges to maintain public information in a traditional way amid social distancing arrangements aimed at minimizing the impact of the judicial apparatus. The government’s public policies are affected at least partially by social conditions as well as technological developments. The worldwide pandemic and its social distancing policies undoubtedly had a vital role in encouraging the judiciary’s utilization of technological developments to support the principle of public information disclosure. As a result, courts around the world have become more active in accepting documents through electronic media and use videoconferencing systems more often.

The imposition of restrictions through limited quarantine has caused a slight hiccup in the settlement of cases in court because most administrative procedures including examinations are still carried out manually, not online. The problems were further exacerbated by delays in the issuance of

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implementing regulations that improved the carrying out of online examination processes in both civil and criminal cases. This problem must be addressed by regulations that accommodate not only remote settlement of cases but also fundamentally involve technology in the entire flow of judicial services from start to finish.

During the pandemic, a Circular Note on the governance of judicial institutions made adjustments to the work system in the justice sector to ensure that tasks were carried out with the objective of prioritizing the safety of the people and law enforcers, in this event the justice seekers and judges. Through this provision, the Supreme Court determined adjustments to the work system by encouraging the implementation of official duties from home for judges and judicial apparatus. In addition to examining cases through E-Litigation and E-Court applications, judges obtained the authority to restrict the number of trial visitors and to secure distance between them in their handling of not-yet-tried criminal and civil cases. A legal entity with an impact on society, the Supreme Court issues its public policies as living documents, whose contents can evolve according to current developments. This regulation was expected to allay public concerns about access to justice in the midst of restrictions on activities subject to governmental regulation. Together with ensuring its users’ privacy, it also must be supported by the availability of technical infrastructure that actively addresses the function of information technology in facilitating services instead of merely using the term “electronic” as a digitization gimmick.

Challenges arise when regulations governing alternative electronic dispute resolution of cases enacted through public policy are unable to address societal problems. It is hard to predict a priori what the consequences of issuing additional procedural regulations will be with relation to better improving the right to a fair trial. Before issuing regulations on general access to digital court records or even enforcing online dissemination via advanced technologies, a crucial issue facing the government concerns the balance of both the privacy interests of individuals and the government’s interest in allowing transparency about the court’s operation. In this case, legal innovations that have direct implications for society must be ensured not to harm the morals of the judiciary of the Supreme Court itself. To continually improve the court’s performance and service to the community, these innovations must also lead to real structural changes, not just ones on the surface.

Two important issues to be considered for further research is 1) whether the Supreme Court’s policy is effective enough to sustain the tenet of equity before the law amid enormous digitization in the bureaucratic sector; and 2) whether the utilization of

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digital technologies in the Indonesian judicial process is adequate and effective to showcase the government’s priority of reflecting the law through the safety of its citizens.\textsuperscript{15} If it is not, what steps should the government take to accommodate the public interest in preserving the principle of equal treatment before the law in relation to the current and future situation of the judiciary in optimizing digitalization of the judiciary and its provided legal certainty?

II. Legal Materials and Methods

This academic study was written using a normative juridical method. In this instance, it also used a historical, case-based, and statutory method. To comprehend more about the transformation of the application of technology in the world of justice, the article argue that the three approaches detailed below are the most appropriate way to help in solving problems.

In carrying out the statutory approach, hierarchically, the author was guided by the highest statutory basis in Indonesia, namely the 1945 Constitution, as well as its derivative regulations such as the ICCPR Law, the Judicial Powers Law, Supreme Court Regulations, and the Decree of the Chief Justice of the Supreme Court. In addition, these article has included a number of relevant technical provisions, such as the Judiciary Blueprint, which provides a roadmap for Indonesia’s modernization of the judicial process.

This paper next examines Supreme Court cases to observe the way linked regulations are actually formulated in practice. In the realm of Indonesian law, there are currently quite a few precedents that can be used as rules of thumb, particularly for information technologies that have already been implemented such as E-Court and E-Litigation.

Finally, the article used a historical perspective to determine benchmarks for the development of Indonesia’s justice system. Presently, the Supreme Court is implementing a significant digital change. It is therefore important to consider the history of decision-making to determine the level of legal sensitivity carried out by the judiciary.

III. Results and Discussion

One of the first technological implementations in Indonesia’s court appeared in a corruption case involving the former Minister of State Secretary of the Republic of Indonesia, Mr. Akbar Tandjung, who at that time was suspected of committing a criminal act of corruption via alleged misuse of non-budgetary funds belonging to BULOG. In this case, the Supreme Court annulled the decisions of the Central Jakarta District Court and the DKI Jakarta High Court, and granted Tandjung’s cassation request.\textsuperscript{16} What is interesting about this case is not the outcome but the legal innovations that were born from the trial process.

At that time, the Central Jakarta District Court that examined Akbar Tandjung as the defendant faced challenges during the examination process because there was not enough evidence or witnesses for cross-examination.\textsuperscript{17} For the majority of judges, cross-examining witnesses ensures that a case will be resolved because additional examination answers many open questions.


\textsuperscript{16} Indonesian Supreme Court Cassation Decision Number 572K/PID/2003 dated February 4, 2004.

\textsuperscript{17} Central Jakarta District Court Decision Number 449/Pid.B/2002/PN/Jkt.pst dated September 2, 2002.
In this instance, the Panel of Judges was of the opinion that the examination of evidence through a confrontation method against the Minutes of Witnesses Examination, Former President BJ Habibie, would make it difficult to obtain material truth. On the one hand, the challenge arose when Habibie was in Hamburg so that the prosecutor had difficulty presenting the witness directly to trial. The court determined that the testimony of Habibie (acting at that time as former President of the Republic of Indonesia) provided such important information on the use of BULOG’s non-budgetary funds for other purposes that it authorized the conducting of witness examination via teleconference. This case is a milestone in the history of the implementation of information technology in Indonesian courts as well as providing the foundation for the issuance of various Supreme Court regulations that accommodate the process of electronically administering cases and trial examinations.

The synergy between law and technology highlights the fact that two essentially different things can be integrated and bring benefits to the community. Culture and/or circumstances are alleged to be the convergence point between law and technology. Because Indonesia adheres to legal positivism, however, written statutory provisions that require a long process and ongoing discourse between the government and other stakeholders in their issuance are the main source of law. This situation spurs the rapid development of technology that occurs in human life, one that is not always followed by the issuance of regulations to govern it. In fact, technological developments continue unchecked, often causing disparities between law and technology.

These issues are quite worrying because, a contrario, law should be a public policy instrument that supports the development of human civilization in a better direction, not the other way around.

Implementation of Technology in the Administration Process

In the context of judicial administration and in connection with the realization of modern justice based on information technology and increased accountability and transparency, the Supreme Court issued a policy concerning the implementation of the Case Tracking Information System application (hereinafter referred to as “SIPP”). Implicitly, SIPP is the newest version of the earlier case administration system called the Case Tracking System (CTS) that has been implemented since 2011. The predecessor of the CTS is a similar application in collaboration with the Supreme Court and USAID through the Changes for Justice program. This application is essentially an innovation in the paper-based administration

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21 Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 71/KM/SK/IV/2019 concerning the Implementation of the Case Tracking Information System Application for the Courts of Appeal and First Instance Courts in the Four Judiciary Bodies
of judicial cases; it is then integrated into one system that can be accessed by all judicial actors. The CTS itself functions to ensure that all administration matters are properly administered and integrated, and most importantly, that they are easily traced. The system handles the process of registering cases, determining the Panel of Judges and Registrars, determining the day of the first trial, inserting the list of witnesses and evidence as well as uploading supporting documents for the trial such as Minutes of Trials and Final Verdict. In other words, the significant changes initiated by the Supreme Court in order to bring justice administration services online are major moves that require tremendous effort.

Based on the explanation above, it is known that one way to measure the level of effectiveness of the application of technology into law is through the issuance of a policy that focuses not only on transforming service procedures within an institution but also on increasing standards in gathering information and changing the behavior of its users. In this situation, the Supreme Court has endeavored to fully digitize the case administration process by not only issuing a regulation but also technically changing the procedure for administering cases so that it is no longer uses large amounts of paper. Institutionally, this policy also structurally changes how the judicial system operates, making it more productive and efficient with demonstrated time savings. It has been proven that using SIPP as a case information hub improves work process optimization through automation, allowing for faster work completion without compromising the work structure of the original process.

Despite some minor drawbacks, new and advanced technology like SIPP is probably the safest option to bridge some of the “access to justice gap” that is felt keenly by people who can be disadvantaged in court. In this scenario, SIPP, which can be accessed online, should make it more convenient for those who live in rural, regional, and remote areas. In this situation, it can be said that technology emerged before a policy was issued, which is very common in states that adhere to the Civil Law legal system. Even though these two things are related to each other, for some legal experts it is the law that should regulate the application of technology, not the other way around. Some contend that the main principle of the rule of law is that all individuals and authorities within the state should be obligated by and entitled to the benefit of laws publicly, and prospectively enacted and administered in the courts.

There are at least eight derived principles from the rule of law, including but not limited to implementation of the law, accessibility and predictability, fairness, preservation of fundamental rights, accessibility to trials, restrictions on the amount of power exercised by law enforcers, impartiality of the adjudicative processes provided by the state, and state compliance with its obligations under relevant regulations. The lengthy debate over the lack of laws that permit the


24 Supreme Court Regulation Number 8 of 2022 regarding Amendments to the Supreme Court Regulation Number 4 of 2020 regarding Electronic Administration and Trial of Criminal Cases.


26 Thomas Henry Bingham, The Rule of Law (United Kingdom: Allen Lane, 2010), 67.
use of information technology in courts has ultimately evolved into a similar debate over what came first, the chicken or the egg.

To solve this obstacle, the Supreme Court itself established the values of judicial bodies through the 2010-2035 Judicial Blueprint regarding the relationship between the application of rule of law theory and the application of technology in the judiciary in Indonesia. The did this mainly with the application of the principle of equal treatment before the law,27 where in these circumstances every citizen has the same right to the fairness of the trial. That said, the judiciary is obliged to guarantee protection and legal certainty for justice seekers without exception, and this must be formalized by written laws and regulations.

In practice, the public, especially justice seekers, can now easily access case information according to their individual needs through the SIPP application. Society has changed its paradigm, making it superfluous to go through a tedious and time-consuming bureaucratic procedure in order to obtain information relevant to a case. Now, anyone who has an internet connection can access case information that has been made public. If it is related to the fulfillment of community rights based on breakthroughs issued by the Supreme Court, then it can be surmised that this step adheres to the general principles of good governance (subsequently referred to as AUPB) based on the provisions of Law Number 30 of 2014 concerning Government Administration. Even so, the disclosure of information adopted by Indonesia is already one step ahead of digitalization in the US, where the Supreme Court has no duty to publicly release court records on the internet.28

There are at least eight principles that must be carried by the government, in this case including the judiciary, in administering services to the community including: legal certainty, expediency, impartiality, meticulousness, respect for authority, transparency, public interest, and excellent service.29 Pursuant to this, meeting the public’s need for information on cases examined by the Supreme Court has fulfilled the principles of legal certainty, benefit, transparency, public interest, and excellent service. In fact, the AUPB is also applied to other branches of government, the legislative and, of course, the courts, in addition to bodies that are categorized as executive bodies.30

The implementation of SIPP as a form of digitization in the Supreme Court’s administrative sector benefits all parties involved, not just those who need case information. The prosecutor, the defendant, and other parties are all urgently in need of the disclosure of judicial information. Information from a case that is not listed as confidential information can be directly obtained by anyone in the public who are unaffiliated to a case by accessing the SIPP application from their respective devices. The judge’s decision whether to accept the

27 The Supreme Court issued the 2010-2035 Judicial Reform Blueprint which contains the values of judicial bodies including independence of judicial power, integrity and honesty, accountability, responsibility, transparency, impartiality and equal treatment before the law.


29 Article 10 paragraph (1) Law Number 30 of 2014 concerning Government Administration.

application or not is discretionary in the case of confidential information.

Furthermore, SIPP implementation reflects the AUPB values upheld by the Supreme Court. The information contained in SIPP that is available to everyone is metadata that can be accessed via the internet at any point in time. Besides, layered and rigorous SOPs minimize the likelihood of data entry errors as a result of layered verification from the Chief Justice of District Court to the Judge examining the case. This prerequisite has compelled SIPP to exhibit the efficacy of the principles of transparency and legal certainty.

Implementation of Technology in the Examination Process

The concept of fair treatment before the law cannot be compromised in the context of law enforcement. Article 4 of Law Number 48 of 2009 concerning Judicial Power states that the court is obliged to judge according to law without any action that leads to discrimination. The idea of everyone having equal rights before the law asserts that laws should apply equally and fairly to all citizens; in other words, no one is above the law. Many argue that the implications of applying technology in the world of justice can be consolidated with legal theory to create a new social dimension to the process of examining a case. The frightening paradigm of the court has exposed the public’s animosity toward the idea of justice on the ground. However, social issues that arise in society are gradually changing due to the introduction of technology in a way that is more open and less terrifying. In other words, it has been proven that the utilization of technology in the field results in shifts in methods, discourse, and practice as well as reactions that have prompted a multitude of legal, economic, and political studies prompting novel and more complicated legal phenomena.

To be precise, the application of technology in court examinations was born after digital crime became more prevalent. This happened inevitably once digitization became more commonplace in people’s lives. To accommodate a qualified electronic trial system, a large investment is therefore needed. The European Union has already worked together to create the right formulation to create digitalization of the judiciary through financial support from its members. The aim is to support a more accessible judicial climate supported by integrated policy instruments, not only in the examination process but also in the social reintegration process through correctional institutions.

Indonesia has generally taken these steps and implemented a case examination process that uses technology-based applications, particularly E-Court and E-Litigation. E-Court currently gives litigants the option to resolve disputes electronically. Parties now can register cases and collect supporting files

electronically as well as pay court fees\textsuperscript{35} and summon parties electronically.\textsuperscript{36} The implementation of this application undoubtedly expedites the settlement of cases where the issue of case backlog has been a scourge at the Supreme Court. It is inevitable that, in direct proportion to the increase in the frequency of legal disputes, there will be further economic activity among people in this modern era. Owing to this situation, the demand for a court to serve as a neutral forum for conflict settlement increases quickly, necessitating the use of technology.\textsuperscript{37}

In addition to speeding up the process of settling cases, the implementation of E-Court also leads to a cost-effective trial. This is clearly the embodiment of the mandate of the Judicial Powers Regulation, which states that trials must be carried out simply, quickly, and cost-efficiently.\textsuperscript{38} The transparency of civil case processes allows the public to see the full operation of the judiciary, starting from the administrative process to the ensuing trial. This is especially vital in a democratic country like Indonesia, where an increase in public legal awareness shows that the application of law by the judiciary has been moving in the right direction. The accountability of the judiciary is the key to the success of a country’s legal reform, apart from the confidential nature of the basis for making final decisions by judges. In this instance, the accountability referred to is the performance of the judiciary in carrying out the trial process electronically; if something goes wrong, it can be accounted for.\textsuperscript{39}

Henceforth, it is hugely important to enforce consistency in the civil case resolution procedure, as this is an instrument of the rule of law valued by society.\textsuperscript{40} E-Court ensures a consistent process for all civil cases, without exception. The automation of the civil case resolution process through E-Court complements the conventional case settlement process without deviating from the essence of the applicable formal law. In contrast to Common-Law-adherent countries, where legal consistency is determined by the precedent of court decisions,\textsuperscript{41} Indonesia, as an adherent to the Civil Law legal system, is obliged to implement Supreme Court regulations regarding Electronic Administration and Trials in an equitable and responsible manner.

**Problems and Challenges in the Application of Technology in the Indonesian Judiciary**

Indonesia has adopted the legal positivism doctrine as the foundation for its legal structure. This theory’s fundamental tenet is that the law was the sovereign’s command.\textsuperscript{42} According to this theory, it is widely accepted that a policy cannot be enacted if there are no written laws or regulations. The use of electronic applications in conjunction with the resolution of criminal cases at the

\textsuperscript{35} Article 10 paragraph (1) SC Regulation concerning Electronic Administration and Trials.

\textsuperscript{36} Article 15 paragraph (1) SC Regulation concerning Electronic Administration and Trials.


\textsuperscript{38} Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power.


Supreme Court, in this instance, is mutatis mutandis. The adoption of criminal cases in court is still very far from becoming “integrated,” even considering that the SC Regulation concerning Electronic Administration and Trials has adjusted for that though.

Having considered the SIPP case, it is indeed feasible that court records would be misappropriated for specious purposes amidst the public’s open access to public case information. Ever since the establishment that the basis of the notion of privacy should be the protection of one’s personally identifiable information, it is believed that open access to case data through the internet infringes one’s individual right to self-protection. Misconceptions about the classification of information and how to distinguish between private and public information are also highlighted by this circumstance. In this occurrence, there are not enough regulations governing limitations on non-public case information, so it is redacted or rendered anonymous to prevent information exploitation.

One thing that must be reiterated in the application of technology in Indonesian courts is data portability. Aside from the fact that there are no provisions governing this issue, it has become a complex conversation when information acquired from a SIPP is transmitted by the owner through the use of electronic media to another person who does not have authority over the data. Although rationally this is very feasible, the ease with and which case data can be transmitted has the potential to cause information to become very open and to be used in violation of the law. Even so, there is no provision for withdrawing data for someone whose name is on the record of convicted individuals. In other words, the contrast between “the law in the book” and “the law in the actions” distorts the concept of equal treatment before the law. A person who is deemed guilty by a court will always be held accountable for his actions.

In addition, the implementation of electronic applications especially in criminal trials have not yet figured out how to prioritize aspects of individual data security or at least the security of trial data that has been pulled from third-party applications. Transforming from a paper-based judicial system to an electronic-based one could influence how judges provide services to society. In this occasion, the use of third-party apps, which is meant to make the electronic trial more practical, actually poses a danger of disclosing the trial’s data, which is classified as a closed and private state document. The potential leakage of this data is clearly not only detrimental to the judicial institution as an institution to enforce justice but also injures the interests of the defendant to obtain legal protection that is based on the principle of legal certainty. This gap is what led directly to an imbalanced application of the law and technology during the trial’s process. The law must, on the one hand, adapt to technological developments, and on the

46 Article 2 paragraph (1) SC Regulation concerning Electronic Administration and Trial of Criminal Cases.
other, technology must adapt to a certain legal framework. A qualified implementing regulation must be enacted in order to strike a compromise between these two opposing poles, ensuring at the very least that implementation during trial honors the dignity of the judicial institution and offers legal certainty.

The use of electronic technology in criminal trials does not stop there; practically, the entire series of procedural procedures are still customarily carried out by correspondence using paper long before the trial process starts. Every correspondence from the commencement of the inquiry to the end of the trial is still conducted the old-fashioned way. First, the investigator produces the case file based on the information gathered during the investigation process after issuing a court order naming an individual as a suspect. Then the prosecutor’s office obtains the paperwork so that it can begin the prosecution procedure. The prosecutor’s office also submits the case file to the court until the file review process is completed physically and electronically through SIPP. Because there is a likelihood that procedural errors could result in sanctions, the entire situation has left law enforcement officials confused as to whether the electronic administration process has been completely applied or not.

Not only the Supreme Court of the Republic of Indonesia but the majority of courts throughout the world experience problems in carrying out the transformation from a paper-based system to an electronic-based one. Further, every action of law enforcers in the context of criminal law enforcement has been governed by Law Number 8 of 1981 concerning Criminal Procedure Law. In theory, this regulation was issued in a bid to reinforce substantive criminal law as well as to limit the power of law enforcement to take arbitrary action against the defendant. This is unequivocally supported considering the requirement that the accused always be granted the presumption of innocence prior to the court issuing the final verdict. This stance normatively showcases the judiciary’s independence as exhibited by the independence of the verdict that cannot be disseminated to other law enforcement officials such as police and prosecutors.

This approach prohibits any law enforcement personnel from taking any actions that suggest eradicating suspects’ or defendants’ protections and rights during the course of a hearing in order to address everyone equally in court.

This situation arose frequently during the COVID-19 pandemic in Indonesia, causing trials to be conducted in a hybrid method. In one example, the Supreme Court maximized the functions of third-party applications such as Zoom to carry out criminal trials electronically. The defendant began his trial in the detention chamber where he was being held, while the judge, in accordance with his authority, conducted the trial from the courtroom. In contrast, the prosecutor had the option of attending the trial remotely or in person.

It argue that the entire trial process held electronically is a manifestation of the rule of law.

47 Article 4 paragraph (1) SC Regulation concerning Electronic Administration and Trial of Criminal Cases.
49 Adi Sulistyono and Isharyanto, Sistem Peradilan Di Indonesia Dalam Teori Dan Praktik (Jakarta: Prenadamedia Group, 2018), 52.
50 Article 7 SC Regulation concerning Electronic Administration and Trial of Criminal Cases.
law theory as a social transformation instrument. To put it another way, this transformation is congruent with how the law has changed in the modern age, when community activities are connected to the internet.

It argues that there is a possible violation of human rights in this circumstance, notably against the concept of equal standing before the law. The court, in its standing as a representation of justice, must continue to reflect its independence as a consequence of a democratic state regardless of changes in the method of resolving the case. It was feared that the defendant, who was not represented freely in the courtroom but rather appeared to be in detention, would feel compelled to testify before the judge. As in a conventional session, there is the possibility that the investigator and/or a prison officer pressures the defendant by using verbal or physical violence.

It is no exaggeration to say that problems such as shortage of personnel in the court, insufficient technical equipment, and even incompatibility of information systems in correctional institutions and/or prosecutors’ offices led to difficulties in ensuring the certainty in time of court proceedings. Especially if the hearing of defendant and/or witnesses are held with minimum court supervision, these issues must undoubtedly be a top priority when working to implement criminal trials in an electronic method. Although the distribution of judicial power has been carried out, the position of the judiciary and the prosecutors should engage in checks and balances to realize synergy between law enforcers. When the trial process is carried out electronically, it is thus important to ensure that the primary principle is maintained and that it upholds the same values as the conventional method.

IV. Conclusion and Suggestion

The implementation of information technology in the Indonesian justice system is unavoidable. This is due to the fact that technological developments have made it simpler for society to carry out its daily activities; this extends to court proceedings as well. The Supreme Court should adopt an aggressive stance on judicial digitization so that it does not deviate from the concept of equal treatment before the law and other statutory regulations governing it.

Indonesia’s Supreme Court must address the problems that have arisen due to the premature implementation of incomplete policies. In the judicial administration section, SIPP can be enhanced to make public information more accessible to the public. In other words, the inclusiveness of SIPP reflects the judiciary’s values of transparency, legal certainty, and equal treatment before the law for the public, especially justice seekers. Nonetheless, it is crucial to strengthen policies for those seeking information about cases, either through open access platform or social media platforms for each court and the simplification of the bureaucracy while also enforcing sanctions for the misuse of court records obtained through SIPP.


53 Zavalniuk, “Realization of the Constitutional Right to a Fair Trial in the Context of the Pandemic-Economic Crisis,” 75.
In the context of the trial process, much improvement is needed in terms of adding supporting policies and technological infrastructure to accommodate complete and integrated electronic examinations. In this area, the Supreme Court can work with inclusive virtual space providers to construct a system that supports electronic trials that are both safe to use and encrypted. Not only that, but the judges of the Supreme Court must also ensure that while conducting trials electronically, any statements made during the examinations are not given under coercion and pressure that may lead to the violations of suspects’ and defendants’ human rights while also maintaining equal rights of the parties in civil cases.

In addition to strengthening the role of the judiciary to internal parties, it becomes necessary to carry out tiered socialization to judges and other law enforcers in operating applications related to the process of examining a case. Increasing the competence of judges through proactive cooperation with policy makers around the world is vital so that the administration of trial process runs smoothly without any problems. Digitalization has therefore become not only necessary but also an essential effort to transform the perspective of law enforcement so that legal reform can indeed begin transforming society.

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