

## THE PRUDENCE OF ADMINISTRATIVE JUDGES IN APPLYING E-GOVERNMENT INFORMATION TECHNOLOGY

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**Abstract:** *This study analyzes digital evidence in the judicial process. The application of information technology (e-government) is a must for state administrators, both the judiciary, the legislature, especially the executive. In resolving state administrative disputes, digital evidence is also often used. This requires judges to have the ability to examine and analyze a case that has a digital element. Preparation of the Supreme Court to respond to developments in digitalization of electronic services (e-government), namely the Supreme Court has issued PERMA Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts. This time, the E-Court is a form of the Supreme Court's seriousness in reforming the Supreme Court in the field of information technology in the justice system. Efforts that can be made by Administrative Court Judges in the digital era, Administrative Judges must pay attention to the e-government system as a whole, for example Online Single Submission (OSS) licensing, because licensing now involves an integrated online system, which involves elements of regional government, provincial government and government center. how to upload data, the possibility of an error in the system, what is uploaded, how the system can reject and accept data. It is these things that allow administrative judges to involve Web experts. Digital Web forensic experts are needed in proving cases at the Administrative Court, because in my opinion it is almost impossible for an administrative judge to have good and correct knowledge of digital forensics. Web expert witnesses will shed light on an administrative case, making it easier for State Administrative judges to make decisions. The Supreme Court should hold education and training regarding online licensing, online registration, online validation carried out by the executive, and administrative judges should not hesitate to present web expert witnesses to explain an administrative case.*

**Keywords:** *Prudence, Judge, Information Technology, E-Government.*

### Introduction

Indonesia is currently in the era of legal development, especially the development of digital law which is currently being developed rapidly, this is what I, as a writer, believe sooner or later will change the way of life, mindset and way of working. According to a journal writer, entitled: Development of Indonesian Law Regarding Information and Communication Technology, By: Renny N.S. Koloay, according to the author in the 1990s only a few people had heard of e-mail and the Internet, then 10 years later these

technologies have become institutionalized and widely known. This is part of global development (Koloay, 2016). Development is a set of human endeavors to direct social and cultural change in accordance with the goals of national and state life, namely achieving growth in civilization, social and cultural life on the basis of the targets that have been implemented (Fuadi, 2009). Current technological developments are part of the ongoing Industrial Revolution. The digital era that is currently developing rapidly will bring us to the Industrial Revolution 4.0. The relationship between the Industrial Revolution 4.0 and the governance system in Indonesia is clearly very close, because in the development of the Industrial Revolution 4.0, the application of information technology (e-government) is a must for state administrators, both the judiciary, the legislature, especially the executive. As a manifestation of the government's seriousness in supporting the realization of e-government, the government has passed laws and regulations related to information technology, including Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE); Regulation of the Minister of Administrative Reform and Bureaucratic Reform (MenpanRB) no. 06 of 2011 concerning Electronic Service Manuscripts (TNDE); and Regulation of the President of the Republic of Indonesia No.95 of 2018 concerning Electronic-Based Government Systems (SPBE). From a judicial perspective, the Supreme Court itself has seriously prepared for a New Era of Information Technology-Based Modern Justice. With the Birth of Perma (MA regulation) Number 3/2018 concerning Administration of Cases in Courts Electronically which has provided a legal umbrella for the implementation of e-court applications. Next, the Supreme Court issued Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts. This time the E-Court is a form of reform of the Supreme Court of the Republic of Indonesia in the field of information technology in the justice system (Robby & Tarwini, 2019).

At the legislative level, the DPR RI is currently seriously preparing various Prolegnas to prepare 2 major programs, namely the Plan to Ratify the ASEAN Agreement on Trade through Electronic Systems and the Bill on Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). With the issuance of these regulations and laws, especially Presidential Decree No. 95 of 2018 concerning SPBE, this proves that currently all elements of our government are serious about realizing effective and efficient governance by utilizing information technology (e-government) as a whole. The application of e-government will later be interconnected in a government administration system and in the delivery of public services in a government agency.

The author makes an example as follows, there is an applicant at the Land Office wanting to return the name of the certificate at the Land Office. After the ASN at the service counter of the Land Office checked the application files in their computerized system, it turned out that the applicant's requirements were lacking. The lacking condition is that the applicant does not have an E-KTP. Then the Land Office service counter officer advises applicants for E KTP first. This is what I mean by the application of interconnected e-government in a government administration system. The purpose of this e-government The point is that the process of public services from state administrators to the community is more effective, efficient and responsive (faster response). And also the use of information technology in governance (e-government), is also one way to realize bureaucratic reform in improving the quality of public services to make them more transparent, effective and efficient.

The use of information technology in every element of governance is also one of the supports for the state civil apparatus (ASN) to be more qualified, innovative, competitive, effective and efficient in carrying out their duties. To do this, an innovation is needed that is able to support and implement information technology in e-government easily, effectively and efficiently. This electronic service (e-government) has actually been felt by the community at this time with the advent of the OSS (Online Single Submission) licensing service. Benefits of using OSS (Taqiyya, 2021):

Facilitating the management of various business permits, both prerequisites for doing business (permits related to location, environment, and buildings), business licenses, and operational permits for business operations at the central or regional level with a mechanism for fulfilling commitments to permit requirements

Facilitate business actors to connect with all stakeholders and obtain permits safely, quickly and in real time

Facilitate business actors in reporting and solving licensing problems in one place

Facilitate business actors to store licensing data in one business identity (NIB).

OSS is used in obtaining business licenses by business actors with the following characteristics: In the form of business entities or individuals; Micro, small, medium and large enterprises; Individual businesses/business entities both new and those that were already established prior to the operationalization of OSS (Kusnadi, 2020). Businesses with capital originating entirely from within the country, or where there is a composition of foreign capital. Thus, emails, chat recording files, and various other electronic documents can be used as legal evidence. Based on the above background, this study aims to find out how the Supreme Court is preparing to respond to the development of digitalization of electronic services (e-government)?

## **Result and discussion**

Law is generally understood as a system of rules created and enforced through social or governmental institutions to regulate behavior, although the exact definition is a matter of long debate. It has been variously described as the science and art of justice. Laws enacted by the state may be made by the legislature and produce laws, by the executive through decrees and regulations, or formed by judges, usually in common law jurisdictions. Private individuals may enter into legally binding contracts (*pacta sunt servanda*), including arbitration agreements that may choose to accept arbitration as an alternative to normal litigation. The formation of the law itself can be influenced by the constitution, written or tacit, and the rights enshrined in it. Law shapes politics, economics, history and society in various ways and serves as a mediator between people.

Legal systems vary between countries, with the differences analyzed in comparative law. In civil law jurisdictions, legislatures or other bodies codify and consolidate laws. In the common law system, judges make binding case law, although sometimes case law can be overturned by a higher court or legislature. Historically, religious laws influenced secular matters, and are still used in some religious communities. Sharia law based on Islamic principles is used as the primary legal system in several countries, including Iran and Saudi Arabia.

The legal scope can be divided into two domains. Public law concerns government and society, including constitutional law, administrative law, and criminal law. Civil law deals

with legal disputes between individuals and/or organizations in areas such as contracts, property, torts/delicts and commercial law. This distinction is stronger in civil law countries, particularly those with separate administrative court systems; conversely, the public-private law distinction is less pronounced in common law jurisdictions (CR-26, 2018).

Indonesia is currently in the era of legal development, especially the development of digital law which is currently being developed rapidly, this is what I, as a writer, believe sooner or later will change the way of life, mindset and way of working. Preparation of the Supreme Court to respond to the development of digitalization of electronic services (e-government), the Supreme Court has seriously prepared for a New Era of Information Technology-Based Modern Justice. With the Birth of Perma (MA regulation) Number 3/2018 concerning Administration of Cases in Courts Electronically which has provided a legal umbrella for the implementation of e-court applications. Next, the Supreme Court issued Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts. This time the E-Court is a form of reform of the Supreme Court of the Republic of Indonesia in the field of information technology in the justice system.

The application of e-government will later be interconnected in a government administration system and in the delivery of public services in a government agency. Given the fast pace of digitalization of electronic services (e-government) by state administrators, this does not rule out the possibility that state administrative disputes will also be getting bigger. Regarding the possibility of disputes over state administrative disputes in the field of (e-government), this must be balanced with the ability of judges, especially administrative judges, to study and analyze a case that has a digital element (Ginting, et al., 2022).

Administrative judges in state administrative disputes should pay attention to and weigh the opinions of electronic/website experts, especially government-owned websites. Considering that the application for government administration at this time is almost completely done online. (for example: OSS, fiduciary, Mortgage Certificates, auctions, etc.). OSS is a new national scale system developed by the government that is used for registration of business licenses as well as commercial licenses, through the OSS portal. Online Single Submission (OSS) is a licensing system that utilizes information technology that integrates licensing at the regional and central levels. The launch of the OSS system is a follow-up to Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. Once again, the author emphasizes that the main purpose of the OSS system is to facilitate business activities in Indonesia so that it can increase investment and business (Setyowati, 2018).

Administrative judges must pay attention to the Online Single Submission (OSS) licensing system, because licensing now involves an integrated online system, which involves elements of regional government, provincial government and central government. how to upload data, the possibility of an error in the system, what is uploaded, how the system can reject and accept data. It is these things that allow administrative judges to involve Web experts (Dawud, et al., 2020). Why are Digital Web forensic experts needed in proving cases at Administrative Court, because in my opinion it is almost impossible for administrative judges to have good and correct knowledge of digital forensics. Web expert

witnesses will shed light on an administrative case, making it easier for State Administrative judges to make decisions (Mahfud, 2009).

Experts according to the Big Indonesian Dictionary are people who are proficient, fully versed in a science (intelligence). web is a system for accessing, manipulating, and downloading hyperlinked documents contained in computers connected via the internet; networking; network. So what is meant by a web expert is a person who has a knowledge of systems for accessing, manipulating, and downloading hyperlinked documents contained in computers connected via the internet; networking; comprehensive network. Law Number 11 of 2008 concerning Electronic Information and Transactions provides a legal basis regarding the legal force of electronic evidence and the formal and material requirements for electronic evidence to be admissible in court. Electronic Evidence is Electronic Information and/or Electronic Documents that meet the formal requirements and material requirements regulated in the Electronic Transaction Information Law. Article 5 paragraph (1) of the Electronic Transaction Information Law stipulates that Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence. What is meant by Electronic Information is one or a set of electronic data, including but not limited to writing, sound, pictures, maps, plans, photographs, electronic data interchange, electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them. (Article 1 point 1 of the Electronic Transaction Information Law).

Whereas what is meant by Electronic Documents is any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps, plans, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. (Article 1 point 4 of the Electronic Transaction Information Law).

In principle, Electronic Information can be distinguished but cannot be separated from Electronic Documents. Electronic Information is data or a collection of data in various forms, while Electronic Documents are containers or 'packages' of Electronic Information. For example, when we talk about music files in mp3 form, all information or music that comes out of these files is Electronic Information, while Electronic Documents from these files are mp3s. Article 5 paragraph (1) of the Electronic Transaction Information Law can be grouped into two parts. First, Electronic Information and/or Electronic Documents. Second, printouts of Electronic Information and/or printouts of Electronic Documents. The Electronic Information and Electronic Documents will become Electronic Evidence (Digital Evidence). While the printed results of Electronic Information and Electronic Documents will be proof of letters.

Article 5 paragraph (2) of the Electronic Transaction Information Law stipulates that Electronic Information and/or Electronic Documents and/or their printouts are an extension of valid legal evidence in accordance with the procedural law in force in Indonesia, what is meant by expansion here must associated with the type of evidence regulated in Article 5 paragraph (1) of the Electronic Transaction Information Law. Expansion here means adding evidence that has been regulated in criminal procedural law in Indonesia, and

expanding the scope of evidence that has been regulated in criminal procedural law in Indonesia.

The expansion of evidence regulated in the Criminal Procedure Code has actually been regulated in various scattered laws. For example, the Company Documents Law, the Terrorism Law, the Corruption Eradication Law, the Money Laundering Law. The Electronic Transaction Information Law confirms that in all applicable procedural law in Indonesia, Electronic Information and Documents and their printouts can be used as valid legal evidence. How can Electronic Information and Documents be used as valid legal evidence? The Electronic Transaction Information Law stipulates that there are formal requirements and material requirements that must be met. The formal requirements are regulated in Article 5 paragraph (4) of the Electronic Transaction Information Law, namely that Electronic Information or Documents are not documents or letters which according to the law must be in written form. While the material requirements are regulated in Article 6, Article 15, and Article 16 of the Electronic Transaction Information Law, which in essence Electronic Information and Documents must be guaranteed for their authenticity, integrity, and availability. To guarantee the fulfillment of the material requirements in question, in many cases digital forensics is needed.

## **Conclusion**

Preparation of the Supreme Court to respond to the development of digitalization of electronic services (e-government), the Supreme Court has seriously prepared for a New Era of Information Technology-Based Modern Justice. With the Birth of Perma (MA regulation) Number 3/2018 concerning Administration of Cases in Courts Electronically which has provided a legal umbrella for the implementation of e-court applications. Next, the Supreme Court issued Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts. This time the E-Court is a form of reform of the Supreme Court of the Republic of Indonesia in the field of information technology in the justice system.

Suggestion The Supreme Court should conduct Education and Training regarding online licensing, online registration, online support by executives, and administrative judges, preferably in digital cases so as not to hesitate to be able to present expert web witnesses to explain a case.

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