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ISBN 978-623-94803-7-0



FACULTY OF  
LAW

# PROCEEDING

## Law and Development in the Era of Pandemic

Faculty of Law Universitas Islam Indonesia

PROCEEDING INTERNATIONAL



International Student Colloquium 2020

Published in July 2021



law.uii.ac.id

**International Proceeding**

Law and Development in the Era of Pandemic

Published in July 2021



**International Proceeding**  
Law and Development in the Era of Pandemic

Faculty of Law  
Universitas Islam Indonesia,  
Special Region of Yogyakarta, Indonesia

**Published in July 2021**



**FH UII PRESS**



**Publisher**  
**FH UII Press**

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**International Proceeding**

Law and Development in the Era of Pandemic

ISBN: 978-6239-4803-7-0

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Cover Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Layout Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Published	:	31 July 2021
Conference date	:	28 November 2020
Halaman	:	ix + 137
ISBN	:	<b>978-6239-4803-7-0</b>
Publisher	:	<b>FH UII Press</b>

Tamansiswa Street 158 Yogyakarta, PO BOX. 1133  
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## Foreword

*Assalamualaikum, wr., wb.,*

In the age of pandemic Covid-19 had impacts toward the humans. In relation with the humans has correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of “Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19”. The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage that caused by the pandemic; to engage the participants to think critically to the polemic issue of law during pandemic; and as a venue for lecturer, student, and community in respond to poor resolution from each country.

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*Wassalamualaikum wr. wb.*

Editor in Chief,

Dodik Setiawan Nur Heriyanto, S.H., M.H., L.L.M., Ph.D.

## Literature Review: The Development of E-Court System Technology as a Transformation of Indonesian Law in the COVID-19 Pandemic Era

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### Abstract

*The COVID-19 pandemic causes changes in behavior and conditions in almost all parts of the world. Many habits of the community have changed. One sector that is affected is the aspect of justice, in which trials are postponed because they cannot conduct face-to-face trials so that the quality of the trial has declined. In this case the Supreme Court changed the trial from offline to online with the issuance of Regulation Number 1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically. Internal constraints within the judiciary include human resources, infrastructure, and the provision of adequate internet networks that contribute to the arrangement of e-Court effectively and efficiently. The research used in this study was a literature review study with the keywords of e-court, e-litigation and e-justice obtained from the Google search engine, DOAJ and the Oneway library. In regard to this matter, it is necessary to conduct a literature study that can be used as a starting point for the e-court system in Indonesia. The case studies used the combined TOL and MBA trial systems. TOL had advantages in resolving court problems and was proven to be effective in security, time and cost. Meanwhile, MBA system had better security standards. The integration of these methods can be carried on so as to create a new e-court method that can be realized and applied in Indonesia. TOL was proven to be effective in trial management, time and costs, while MBA had advantages in security systems. Thus, this integration was very effective so that the court system in Indonesia needs to formulate this system.*

**Keywords:** *MBA, modern court, TOL*

## 1. INTRODUCTION

The spread of the COVID-19 pandemic has an impact on social, education, various industrial sectors, economies, and law enforcement. In the aspect of law enforcement that is affected, there has been a change in the method from being face to face to being online or meeting virtually. With the issuance of PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Covid-19 Handling, there are prohibition starting from teaching and learning activities in schools, worshipping in places of worship, limiting transportation, to prohibiting activities at work. This has made changes in lives of the community to become work from home in which all activities that require meeting directly are switched to online or virtual meetings. Technology is seen as a potential facilitator to solve the problem of justice in the COVID-19 pandemic era and in terms of increasing efficiency in the justice sector in the future. Legal procedures, technology, and administration should be simpler and accessible to a wider range of users. Hanseth and Lyytinen emphasized that system flexibility and quick adaptation to meet the needs and demands of new users are very important to build critical mass.<sup>1</sup> The rapid development of information technology eventually requires judiciaries in many countries including Indonesia to increase the adoption of information technology. Previously, court administration was conducted manually, creating a lengthy and complicated process and resulting in high costs. Utilizing information technology aims to accelerate, simplify, and reduce case administration costs. Therefore, the trend of justice in many parts of the world has begun to develop in an integrated judiciary (i-Judiciary).<sup>2</sup>

In Indonesia, to deal with the situation caused by the COVID-19 pandemic, the Supreme Court issued Circular Letter Number 1 of 2020 concerning Guidelines for Implementation of Duties During the Prevention Period of the Spread of Coronavirus Disease 2019 (COVID-19) within the Supreme Court of the Republic of Indonesia and the Judiciaries Under Its Auspices (“SEMA 1/2020”) (Regulation of the Supreme Court of the Republic of Indonesia Number 1, 2019). Based on the SEMA 1/2020, judges and judicial officials can carry out official duties by working from home (WFH). The WFH includes conducting trial administration using the e-Court application, conducting trials using the e-Litigation application, coordination, meetings, and other official duties.<sup>3</sup> The application of e-Court, the Supreme Court has issued Regulation of the Supreme Court Number 1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically which came into effect since August 19, 2019. Even though the Supreme Court has implemented e-Litigation to replace conventional trials that present parties at courtroom, but not all trials can be conducted by e-Litigation. The e-Litigation application is only shown in court proceedings of Civil cases in District Courts, Religion-related Cases in Religious Courts

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<sup>1</sup> Hanseth, O., & Lyytinen, K. (2016). *Design Theory for Dynamic Complexity in Information Infrastructures: The Case of Building Internet*. Enacting Research Methods in Information Systems, 104-142.

<sup>2</sup> Santiadi, K., (2019) ‘Expanding Access to Justice Through E-court in Indonesia’ *Prophetic Law Review* 1 39.

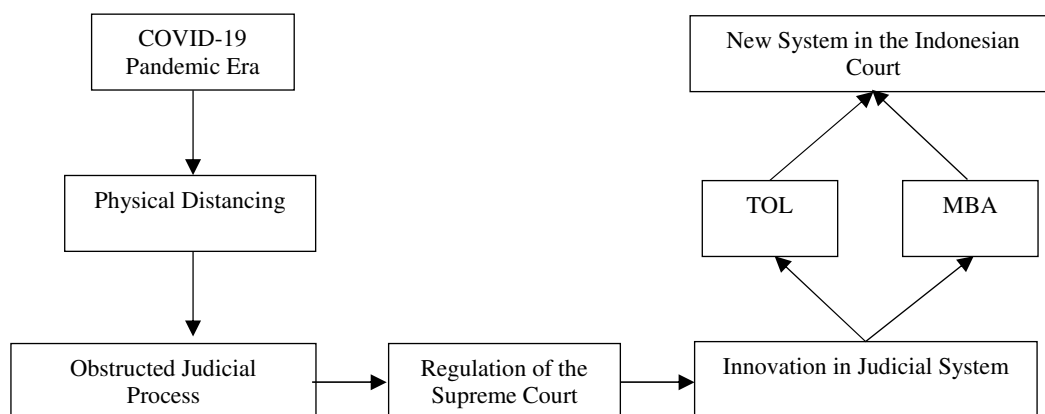
<sup>3</sup> Lumbanraja, A., (2020) ‘Perkembangan Regulasi dan Pelaksanaan Persidangan Online di Indonesia dan Amerika Serikat Selama Pandemi COVID-19’ *Jurnal Crepido* 2 46-58.

and State Administration in State Administrative Courts. This is because the cases do not involve the accused who is being detained. Thus, the Supreme Court does not apply e-Litigation to criminal cases because it involves accused who is currently in detention.<sup>4</sup> Another factor that requires changes to the online justice system is that many cases that occur in Indonesian courts are not fully resolved. Research revealed that there were many extortion practices carried out by court officials in Indonesia in providing judicial services to the public. The Report of the Ombudsman of the Republic of Indonesia revealed that in the three years from 2014-2016, the District Court was the judiciary institution with the highest number of complaints. There were 394 complaints related to maladministration, particularly related to continuing postponement of cases of 215 complaints, 117 complaints due to lack of competence in carrying out judicial duties, and 115 complaints related to procedural irregularities.<sup>5</sup>

An innovation is needed for system reform in the e-Court which can run effectively and efficiently in accordance with Article 2 Paragraph (4) of Law No. 48 of 2009 concerning Judicial Power which in court must implement simple, fast and low-cost judicial principles.<sup>6</sup> Thus, a literature review is required to be used as a starting point for the e-Court system in Indonesia.

## 2. PROBLEM FORMULATIONS

- a. What is the TOL system?
- b. What is the MBA system?
- c. Is the integration of TOL and MBA systems effective in Indonesia?



**Figure 1.** Problem diagram

## 3. METHOD

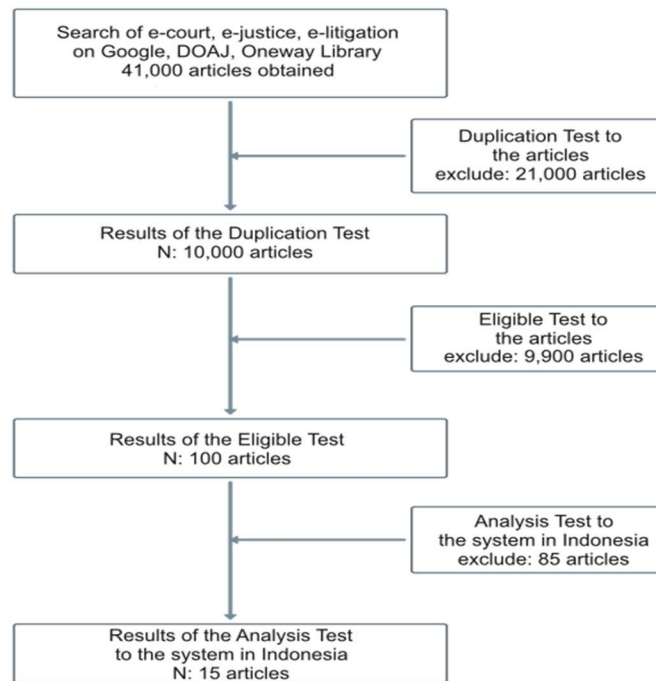
The study used by the author of this work was a literature study that referred to international trials. To find case studies, searches were made through Google, DOAJ and the

<sup>4</sup> *Ibid.*

<sup>5</sup> Santiadi K., *Op.cit.*

<sup>6</sup> Lumbanraja A., *Op,cit.*

Oneway library with the keywords of e-court, e-litigation and e-justice. The search engine found 41,000 articles including newspapers, books and journals. Of the 41,000 articles, a duplication test was carried out, so that 10,000 articles were obtained. Of the 10,000 articles, an eligible test was carried out, so that 100 articles that met the case study models were obtained. The 100 articles were reviewed based on the Indonesian system and laws and regulations so that there were 15 articles that met and were in accordance with the system in Indonesia.



**Figure 2.** The literature review research method

#### 4. ANALYSIS

Italian Trial Online (TOL) is an electronic transmission system in Italy that is utilized to access documents on a procedural basis, payment of case fines and notification of civil cases in 2001. The main purpose of creating this system is to create a paperless system and accelerate administrative arrangements. However, the TOL system failed in 2005 due to failure during the trial, the delay in judging cases and failure in updating a very complex system (Il Processo Telematico: Nuovi Ruoli e Nuove Tecnologie Per un Moderno Processo Civile, 2000).

Noting this failure, the Milan Bar Association fixed this system by identifying purposes and solving organizational problems and promoting the technical feasibility of the judicial legal system. To meet the requirements, this system was designed through a variety of functions, including: digitization and e-filling of civil procedural documents for information exchange relating to civil processing and case processing for court staffs, electronic notification and communication to and from courts and payment systems for due costs and court fees.

The Indonesian system is currently similar to the TOL system in the early phase where the Indonesian system applies the e-Filing (Online Case Registration in Courts), Electronic Payments (Online Court Fee Payment), e-Summons (Online Party Summons), e-Litigation (Online Trials). Indonesia adopts this system because it follows the Regulation of the Supreme Court Number 1 of 2019. In this regulation, trials that can be conducted online include civil cases, religion-related cases in Religious Courts and state administration in State Administrative Courts. This is because, in the trial, no accused were detained so that the Supreme Court does not need to involve the accused who is being detained. Based on the data from the Supreme Court as of May 18, 2020, there were 842 cases conducted by e-Litigation or only about 47% of the total active cases. Meanwhile, in religious courts throughout Indonesia, there are 412 active cases or about 50% of the total active cases in the e-Litigation service of the Supreme Court. In the State Administrative court, it is recorded that it only served 30 active cases or about 3% of total active cases in the e-Litigation service of the Supreme Court.<sup>7</sup> The system applied in Indonesia is similar to the one applied in Italy in the past. It is proven that the system applied in Indonesia is still ineffective considering the data resolved by e-Litigation which is not more than 50% of the total number of cases.

In Italy, to solve this problem, the MBA (Milan Bar Association) made an innovation to make this system effective. The first step taken by the MBA was to pay attention to the data stored on the bootstrap system.<sup>8</sup> The MBA did this because it was the most-costly and time-consuming system. However, it was not easy because the MBA had to fulfill the hardware and software that allowed connection to the system and allowed digital and live time data collective (consisting of smart cards and USB).<sup>9</sup> Besides, the user must buy a software in order to use it. This initial cost was the major problem in upgrading the TOL system. With this system that had been built, lawyers and prosecutors could file cases using a dashboard which was useful for compiling the required documents, attaching digital copies of paper-based documents (by scanning), attaching proof of payment and for signing digitally via smart card and email that had been verified that was provided by the MBA. The prepared documents were sent via Points of Access managed by MBA to court clerks who checked the documents and sent the data to the judge (CMS, 2012). On the other side, the judges used their dashboard to study the case, write it, sign the decision and send it to the office where the clerk signed it digitally. The innovation of TOL was not only a well-built system but also in a payment system where payment procedures were possible to be paid on credit by providing written evidence of debt to the court. This system was implemented along with court staff and judges that was conducted without trial. Moreover, this payment was made digitally by partnering with some providers and banks to facilitate payments and to reduce the possibility of errors in payments.

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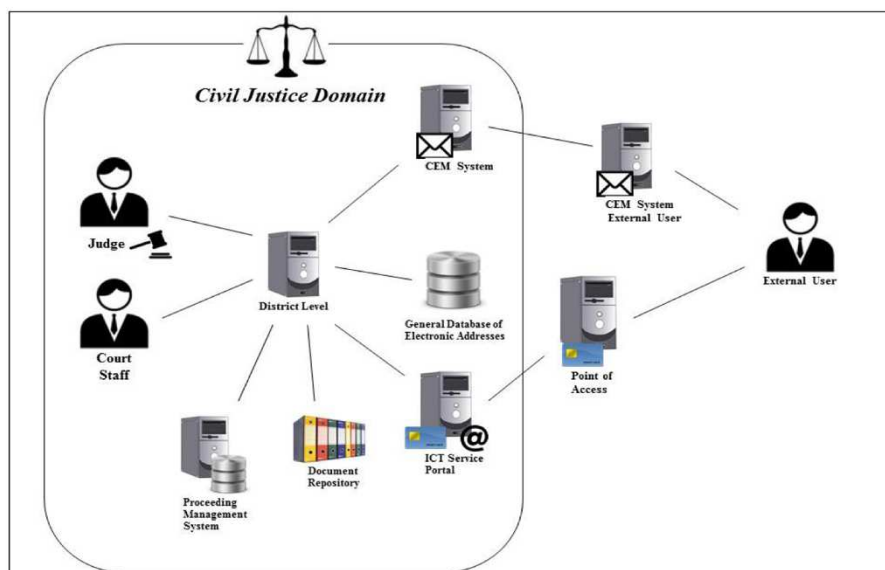
<sup>7</sup> *Ibid.*

<sup>8</sup> Marco Fabri in collaboration with Giampiero Lupo 'Some European and Australian e-justice services: Towards Cyber justice' (2012) Project Working Paper No. 1, Cyber justice Laboratory <[http://site.cyberjustice.ca/Content/documents/WP001\\_EU\\_Australia\\_e-justice\\_IRSIG20121019.pdf](http://site.cyberjustice.ca/Content/documents/WP001_EU_Australia_e-justice_IRSIG20121019.pdf)>

<sup>9</sup> Carnevali, D., & Resca, A. (2014) 'Pushing at the Edge of Maximum Manageable Complexity: The Case of 'Trial Online' in Italy' The Circulation of Agency In E-Justice: Interoperability and Infrastructures for European Transborder Judicial Proceedings 12.

TOL designs were based on technology components that were built from the initial stage. Furthermore, implementation related to the functions of the infrastructure was given to the private sector from the local bar association. By using this method, the TOL design will be updated following developments.<sup>10</sup> Technological procedures rely on offline procedures which were known with the inefficiencies and inconsistencies. Regarding the proceedings of the TOL trial, it can be implemented via a FaceTime account that has been registered through the MBA so that in this system it can be carried out safely and the accused can provide fair clarification. However, the FaceTime system was rarely applied to this concept because the presence of the accused is not a necessity.

The TOL and MBA system process flow is started with reporting from the reporter or accused represented by a lawyer to send a report file accompanied by a certified email (CEM) of an affiliated external user to the court page or website to obtain a case registration number and the amount of fees to be paid. Once the file is entered into the internal user, a verification process will be carried out by the CEM system internal court user. After the verification process is successful, the files will be sent and synchronized on one server (District Level). Then, the court staff will carry out an analysis process in the form of a report file with a document repository with the proceeding management system to be sent to the judge to make it easier and to accelerate the judge in deciding the case.



**Figure 3.** The renewed TOL architecture with MBA system

By using this system, TOL can be effective in Italy and even several cities that do not use TOL are obstructed by low technological literacy, which has an impact on declining the quality of the trial. Besides reducing the trial quality, this system difference will also affect the quality of lawyers when conducting trials because lawyers who are accustomed to using TOL will have difficulty when carrying out conventional trials due to difficulties in organizing data and effectiveness at work.

<sup>10</sup> Iannacci, Federico, 'When is an information infrastructure? Investigating the emergence of public sector information infrastructures.' (2010) 2 European Journal of Information Systems 44.



## 5. CONCLUSION

TOL had advantages in solving trial problems and was proven to be effective in security, time and cost. The integration of these methods can be carried out to create a new e-Court method that can be realized and applied in Indonesia. The integration of TOL and MBA methods had good results in the e-Court system so that Indonesia needs to formulate this method to complete trials in Indonesia. Besides, TOL can simplify the payment system so that this method will be effectively carried out in Indonesia.

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