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IMPLICATIONS OF PERMA NUMBER 7 OF 2022 CONCERNING ADMINISTRATION OF CASES AND TRIALS JUDICIAL TRIAL ELECTRONICS AGAINST PRINCIPLES OF CIVIL PROCEDURE LAW

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ABSTRACT

Background: There is a growing need for courts to implement electronic-based administration, or E-Court, as technology advances. **Objective**: To understand, study and analyze whether PERMA Number 7 of 2022 regarding Electronic Administration and Trial of Cases in Court complies with Indonesian civil procedural law principles. **Method**: Qualitative research with a normative legal perspective demonstrates that e-court use can typically increase judicial efficiency. **Result**: Some applications are still opposite from the principles of civil procedural law, HIR and RBG. This condition can be seen in the implementation of the principle of open hearings to the public in the court, the application of the Nemo Judex Idoneus in Propria Causa principle, and SEMA 1 of 2023 concerning Surat Tercatat (Registered Letters), which violate the provisions in the HIR and RBG. **Conclusion:** This situation makes sense because it will take time to create new civil procedural laws and there is an urgent need to improve the court's efficacy and efficiency.

INTRODUCTIONS

Modernization as a social activity that occurs in society is a revolutionary movement whose nature changes and becomes complex in all areas of human life. The impact will affect many human social systems in order to achieve a very progressive homogenization (convergence) of human life. (Frans Simangunsong, 2015 . At a practical level, this has not been fully implemented in the Indonesian justice system. People seeking justice are burdened with a heavy burden in resolving disputes and are often considered slow, time consuming, expensive, unresponsive to public interests, and too formalistic and technical.

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Considering this reality, responding to the current situation requires efficient and effective administrative services, as well as realizing judicial procedures that are not complicated, not slow and certainly not expensive. The Supreme Court (MA) through the Indonesian Supreme Court Judicial Reform Blueprint for 2010-2035 seeks to realize the goal of an honorable Indonesian judiciary, namely a supreme judiciary, so modernization of case management must be a judicial reform agenda. Updating information technology as one of the areas of updating support functions is closely related to modernizing case management. (Satjipto Raharjo, 2010).

At the level of law enforcement practice in Indonesia, especially within the Supreme Court, the process of digitizing the judiciary is well known. The process of digitizing justice that has been implemented by the Supreme Court, namely by implementing electronic administration and trials of criminal cases, with Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court, amended by Supreme Court Regulation (PERMA) Number 7 of 2022.

The development of holding electronic hearings has been further strengthened by the publication of the Decree of the Chief Justice of the Supreme Court (SK KMA) number 363 of 2022 concerning Technical Instructions for the Implementation of Civil, Religious Civil and State Administrative Cases. Electronic courts are a tool used by courts to provide services to the community. These services include online down payment, online case registration, online summons service and online hearing. District Courts, State Administrative Courts, Military Courts, Religious Courts, or Sharia Courts are some of the judicial institutions that offer e-courts .

The first stage in conducting an electronic hearing is summoning all parties to the case online, which is one of the components of e-court, what is meant by "legal and appropriate" for summoning the parties is determined in e-summon . In the event that the parties' electronic domicile addresses are not known, the summons will be made via registered letter. This registered letter mechanism is regulated in SEMA 1 of 2023 as implementing regulations of PERMA Number 7 of 2022. Furthermore, the parties do not need to be physically present in court when using the court. virtual that operates online. The Indonesian Supreme Court seeks to innovate and modernize the Indonesian judicial system by utilizing electronic trials to combine the possibilities of civil procedural law (IT for Judiciary) with information technology (IT) .

There are a number of legal issues regarding the regulation of electronic trials in PERMA Number 7 of 2022 which are important to research. First, SEMA 1 of 2023 as implementing regulations regarding procedures and summons by registered letter is contained in PERMA Number 7 of 2022, however this change is different from the provisions of HIR and Rbg. Second, the basics of civil procedural law are widely understood. This includes the ideas of simplicity, speed, and low cost; Apart from that, the implementation of the Nemo Judex Idoneus In Propria Causa principle is also receiving attention after the enactment of PERMA Number 7 of 2022. Based on the concepts previously provided, this research proposes the following problem formulation: (1) What are the juridical implications of SEMA 1 of 2023 regarding registered letters related to the process of summoning the parties in the trial? (2) How does e-court based on PERMA Number 7 of 2022 relate to the principles of civil procedural law?

RESEARCH METHOD

In accordance with the characteristics of legal science, normative law is used in this research. Legal research that prioritizes the study or analysis of statutory regulations is the basis for this research. Legal studies include studies, legal theory, legal philosophy, legal dogmatics and legal philosophy. (Peter

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Mahmud Marzuki, 2005). There are 2 (two) legal research methodologies, statutory and conceptual approaches used in this research. To apply the statutory method, all applicable laws and regulations must be reviewed. Next, interpret the legal theories put forward by experts in the field of law from their point of view (conceptual approach). (Suratman, and Philips Dillah, 2015). This research then uses quantitative data analysis. Judge decisions and statutory regulations are primary sources of law. Meanwhile, secondary legal texts provide quantitative data in all documents about law that are not official documents. (Wirjono Prodjodikoro, 1984)

RESULT AND DISCUSSION

Research Results and Discussion

Juridical Implications of SEMA 1 of 2023 concerning Registered Letters Regarding Legal and Proper Summons

Indonesia now adheres to the civil procedural law left behind by the Dutch East Indies colonialists. According to historical records, HIR (Herziene Indonesische Reglement) applies to indigenous and eastern foreign groups living on the islands of Java and Madura; RBG (Rechtsreglement voor De Buitengewesten) applies to those living outside these two regions; and Reglement op de burgerlijk rechtsvordering (BRv), which is used by European groups, is a procedural law whose judicial system is known as Raad Van Justitie . Landraad is the name of the legal forum for indigenous groups and eastern immigrants. This Landraad became a model for current district courts.

Emergency Law Transition Regulation Number 1 of 1951 concerning Temporary Measures to Implement Unity of Power and Civil Court Procedures, in conjunction with Articles II and IV of the Constitution of the Republic of Indonesia of 18 August 1945 in conjunction with Article 5, remains the legal basis for HIR and RBG. The law clearly postulates that HIR and RBG continue to apply to all categories of the population as procedural legal regulations in district courts; In other words, this means that all Indonesian citizens are protected by applicable law.

The current rules in the HIR and RBG regulate the process of summoning parties to court. Based on these three conditions, a summons is considered valid and acceptable if it is attended by the following three parties: plaintiff, defendant and witnesses. (LJ van Apeldoorn, 2004) :

1. Who has the authority to summon: Article 388 jo, Article 390 paragraph (1) HIR, and Article 711 jo. Article 718 RBG regulates that the Bailiff carries out a summons by giving a summons *(exploit)* to the person concerned;
2. Summoning Method: There are two kinds of summoning techniques: ordinary summoning and general summoning. Normal summons, there are two methods used to carry out HIR 390 paragraphs (1) and (3) and RBG article 718 paragraphs (1) and (3): the bailiff gives the summons directly to the person concerned or the bailiff hands it to the Village Head. This general summons is then possible in two more ways, namely by giving it *(exploit)* to the Mayor or Regent which must then be posted on the front door of the relevant district court, or by announcing it through mass media and notice boards in the court area.
3. The time frame for the summons is regulated in Article 122 HIR jo and Article 146 RBG which stipulates that the summons must be submitted no later than three working days before the trial date.

To increase the effectiveness and efficiency of the judiciary, the Supreme Court implemented an e-

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court system , including provisions for summoning parties electronically or called e-summon . PERMA Number 7 of 2022 Articles 15 and 17 regulate electronic summons or e-summon . In essence, electronic summons allows all parties to be summoned electronically by sending a summons via their e-court account. What is said to be "electronic domicile" is the residential address of the parties as indicated by a valid email address or telephone number. This PERMA states that all parties whose cases are heard electronically, defendants who have provided an objective, as well as plaintiffs and defendants whose cases are determined to be electronic, will receive electronic summons. However, the summons or notification will be delivered by registered letter if the defendant is summoned but does not appear or the defendant does not have an electronic domicile. (Eddy Army, 2020) .

Supreme Court Circular Letter (SEMA) Number 1 of 2023 concerning Procedures for Summons and Notifications by Registered Letter regulates technical judicial rules regarding summons or notifications by registered letter. That in accordance with the cooperation agreement letter Number: 02/HM.00/PKS/V/2023 and PKS106/DIR-5/0523, the court sends registered letters by utilizing the services of registered letter delivery service providers who collaborate with the Supreme Court, namely PT expedition couriers Indonesian post..

Only people who live in the same house as the parties, as well as security guards in apartments, flats, or other similar houses, or receptionists can receive calls or notifications, based on SEMA norms. Then, the recipient is willing to be photographed with his identity card to ensure that he is not an opposing party in the related case. The problem that arises is precisely how to ensure that the third party who receives the call is not from the opposing party, while the person tasked with delivering the call is the expedition courier, not the bailiff in a case (Eddy Army, 2020).

It makes sense that, in contrast to the procedures for summoning parties which are declared valid and appropriate as outlined in the HIR and RBG, electronic summons are considered valid and appropriate in accordance with the norms set by the Supreme Court. The first difference is, because the summons is now in electronic form, it no longer needs to be made in writing like HIR or RBG, then the method of summons is the subject of the second difference. PERMA Number 7 of 2022 also regulates notification and summons of decisions by registered letter, however this provision is different from those contained in HIR and BRg.

In legal language, the terms "legal" and "proper" refer to a summons. The provisions of Articles 388 and 390 HIR form the basis. If the summons is made by an authorized official—in this case the bailiff or substitute bailiff—then it is considered valid (Article 388). Jurisdiction limits the authority of the bailiff or substitute bailiff as an authorized official. However, as stated in SEMA Number 1 of 2023, the Supreme Court revised the assumption of the legality and appropriateness of the summons.

The official and proper concept now relies on the implementation of the judge's order to summon the parties or notify the court letters, where the court letters are delivered by a third party from the letter delivery service provider carried out by the PT Pos Indonesia expedition courier, not by summons or notification. carried out by a substitute bailiff or another bailiff. According to SEMA 1 of 2023, a summons is considered valid and proper if it is delivered via courier to a person who shares the same house as the parties, a security guard or receptionist. Both bailiffs and couriers need to verify that the person receiving the exploit is indeed not a party to the relevant case. This condition can also be detrimental to the person called, not because he does not want to go to court, but because the recipient does not give him the exploit .

The rules in PERMA Number 7 of 2022 give rise to normative conflicts with legal regulations and

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the fairness of calling parties to HIR and RBG. Legal certainty, in this perspective, is the result of laws that are unambiguous and consistent and are not affected by the subjective circumstances surrounding their application. (LJ van Apeldoorn, 2004) . According to Article 28 D paragraph (1) of the 1945 Constitution, Third Amendment, every person has the right to recognition, protection and legal certainty that is fair and equal before the law. This highlights the importance of legal certainty. (Apeldoorn 2004).

The Constitution clearly states that the idea of legal certainty must be followed in the formation of all statutory regulations. Because positive law is the only law from a legal perspective, legal certainty needs to be maintained whatever the impact. There is no justifiable reason to do otherwise. Legislative rules that are formally ratified and enforced by a sovereign state are the subject of legal certainty.

Legal certainty is achieved by statutory regulations, in accordance with those stated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations. In general, any reimbursement of statutory requirements must be equivalent. As a result, legal regulations equivalent to HIR and RBG must be replaced, not PERMA which is basically internal. In addition, lex specialis derogat legi generalis, namely the legal doctrine which states that special laws replace general laws, cannot be implemented in a legal and appropriate calling order because HIR, RBG, and PERMA have different levels of position.

This is based on Bagir Manan's statement that the following situation is the only situation where lex specialis derogat legi generalis can be applied Manan (2004): (a) the provisions of general legal regulations can still be implemented, except for those specifically regulated by existing legal regulations special; (b) The provisions of the lex specialis must be in one legal unit with the lex generalis . (c). The requirements of the lex specialis must be in accordance with the requirements of the lex generalis. From these characteristics, it can be seen that the PERMA related to e-court does not fulfill the second prerequisite to be called lex specialis HIR and RBG. It is clear that certain unfair statutory restrictions, such as PERMA in this case, must comply with HIR and RBG regulations, which are legally equivalent. The analysis and assessment discussed above results in the conclusion that PERMA is unlikely to replace the standards contained in HIR and RBG.

Given these conditions, the Supreme Court, which is the main institution responsible for enforcing the exercise of judicial power, is in a difficult position. To improve the standard of public services provided by the courts. On the one hand, the Supreme Court must be a court that prioritizes the use of technology and follows developing trends, on the other hand, the Supreme Court faces challenges with outdated regulations such as HIR and RBG when creating new guidelines such as e-court . Therefore, to achieve judicial effectiveness and efficiency, policy makers must collaborate to develop the latest and modern national civil procedural law products.

E-court based on PERMA Number 7 of 2022 regarding the Principles of Civil Procedure Law

Yahya Harahap emphasized that "the duties and authority of judicial institutions in the civil sector are to examine, accept and adjudicate, and resolve disputes between litigants." In addition, civil courts can decide cases related to cases or applications made voluntarily. The legal framework known as civil procedural law is a guideline so that material civil law can be enforced through the judiciary. In different language, civil procedural law is a set of regulations that determine the proper application of material civil law. As with legislation in other fields, civil procedural law is based on a number of principles which form the basis of its provisions. Based on PERMA Number 7 of 2022, in this section the author will analyze the main points of civil procedural law in the E-Court system .

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a. Simple, Fast and Low Cost Principles

The three main principles that are the objectives of law—legal certainty, justice, and expediency—will undoubtedly be guaranteed by the existence of these principles in the legal system in court. In addition, the judicial process is widely understood when the concepts of simplicity, speed and low cost are applied, which include institutional, regulatory and judicial parts. Based on Law Number 48 of 2009 concerning Judicial Power, Article 2 Paragraph 4, "judiciary is carried out simply, quickly and at low cost" (Sunarto, 2014). Case resolution and case examinations are carried out effectively and efficiently, in accordance with the explanation as in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power.

Based on considerations in PERMA Number 7 of 2022 concerning Electronic Administration of Cases in Courts, reforms need to be carried out in problem solving and the judicial administration process in order to realize the concept of justice that is simple , fast and affordable. This reform is in line with current developments that require efficient case administration services in courts, so it is very important to offer computerized administration services in courts. PERMA 7 of 2022 is also the legal basis for providing legal certainty (Nia Sari Sihotang, 2016).

When considering e-court as a case administration management platform and the various applications it offers, it is clear that this will facilitate the judicial process—especially in civil cases, speeding up and simplifying the registration and examination stages. It is clear that the parties who file rights claims in this case do not have to queue to appear in court; instead, they can register their case and obtain SKUM online just by visiting the e-court site .

This system's ability to simplify processes and save time can help courts in upholding justice based on the values of affordability, efficiency and simplicity. In addition, judicial accountability and openness can be achieved through an electronic-based administrative system by minimizing the number of court officials interacting with litigants, thereby reducing the potential involvement of dishonest court employees. (Agus Santoso, 2012).

b. Principles of Trials Open to the Public

The trial must be open to the public, meaning that anyone can come and see, watch and listen to the trial in order to maintain the impartiality of the case examination. Likewise, in trials, the judge must make his decision open to the public before reading it.

Trial procedures involving the filing of a lawsuit are regulated in the electronic trial provisions of this Supreme Court Regulation, in accordance with Article 4 PERMA in the form of objections to the petition, rejection, rebuttal, answers, interventions and changes, duplicates, replicas, evidence, conclusions, decisions/determinations, and efforts. appellate law. Article 13 of the Judicial Power Law clearly regulates the principle of courts being open to the public, which is clearly opposed or violated by this rule. If this principle is violated, the decision of the judge who hears the case can be null and void. (Soerjono Soekanto, 2004) .

In PERMA, the term "open to the public" is mentioned 2 (two) times to describe electronic hearings. Firstly, in accordance with electronic trials using the Judicial Information System via the internet network, it has legally met the standards for trials open to the public, as stated in Article 27 of PERMA Number 1 of 2019. Second, Article 26 paragraph (4) of PERMA Number 7 of 2022 postulates that Uploading a copy of the decision or determination according to law is in accordance with the principle of open hearings to the public.

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Because they cannot be held physically and are carried out secretly, electronic hearings generally cannot be held. This raises the question of how can the public access the trial process electronically in a sustainable manner? Is this access only allowed after a decision has been made? Can the public gain this access through the courts? Please note, the access referred to is not the same as obtaining letters from the official court website or website. This activity only includes examining decisions or results of trials that have been completed and cannot see the progress of the trial.

The author looks at Article 27 of PERMA Number 1 of 2019 which states that electronic hearings comply with the requirements and principles of open to the public hearings, they only provide conditions and do not provide a definition of what is meant by "open to the public" electronically. According to Article 26 paragraph 4 of PERMA Number 7 of 2022, the posting of a decision or a copy of the decision fulfills the existence of a trial open to the public. In other words, a decision uploaded to the Case Information System is considered valid because it has been uploaded even though it is not known to all parties. This kind of provision, apart from having an inaccurate legal formulation, is also substantially different from the Judicial Power Law which is the basis for the development of PERMA Number 7 of 2022.

The Supreme Court can stipulate PERMA relating to procedural law, but must not deviate from the Judicial Power Law. In preparing PERMA, statutory regulations and principles must be adhered to which have a higher legal hierarchy than PERMA. Therefore, to provide electronic judicial process services and provide legal certainty to the public, the Judicial Power Law must be amended first.

The term "open to the public" should have a slightly different connotation in judicial processes that are conducted electronically. The public can not only obtain court decisions freely, but can also actively participate in the trial process. However, in reality, people still experience difficulties, not only in accepting court decisions but also in the trial process itself. Not all decisions are available on the court's official website . Court decisions are accessible, but their content is often lacking, making it difficult to understand the decision in its entirety.

c. *The Principle of Nemo Judex Idoneus in Propria Causa*

The principle underlying this idea is that no one person is competent to judge his or her own case. (Fitri Dwi Marsela, 2014) . The concept of nemo judex idoneus in propia causa according to Mahfud MD "says that judges must not make decisions that affect their personal interests, either directly or indirectly judges cannot be judges or examine or decide on matters that concern their own interests (M.Mahfud MD , 2007). This procedure aims to determine the family relationship between one of the parties and the judge, advocate or public prosecutor in the case being considered. Electronic trial procedures are directly related to the process of monitoring or controlling the integrity of judges.

The party suing can submit an objection request if they have an objection based on their relationship with the chairman of the panel, member judge, advocate, prosecutor's clerk, police, or family relationship up to the third degree or marriage. with justification of the right of recusal (recusatie, wraking) (Bambang Sutiyoso, 2010). Article 17 of the Judicial Power Law aims to place the concept of the right to reject the parties' requests. Therefore, a judge needs to withdraw from the trial if he has any relationship with the chairman of the panel, member judge, advocate, prosecutor, clerk or solicitor, whether by blood, marriage, to a third party, or even as husband and wife after a divorce.

Likewise, the Chairman of the Panel, Member Judges, Advocates, Registrars and Prosecutors must also withdraw from the trial if they have a relationship with the party being sued or an advocate by blood,

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marriage or other relationship up to the third degree, or even husband and wife. If a judge or clerk, whether at the request of a party or personally at the request of a litigant, has a real or unreal interest in the case being heard, then they are obliged to withdraw from the trial. If the judge or clerk refuses to resign, the decision is deemed invalid and the case is handed over to another panel of judges for consideration. However, it is necessary to pay attention to the differences between Article 374 paragraph (1) HIR and Article 17 paragraph (4) of the Justice Law, especially regarding "any person who has a family relationship with a judge".

If the judge and one of the parties have a blood family relationship up to the third degree, then they may not judge the case based on Article 17 paragraph 4 of the Judicial Power Law without explaining whether the family relationship is straight or sideways. However, the requirements in Article 374 paragraph (1) HIR are more stringent; When a judge has a relationship with one of the parties to a dispute due to marriage, kinship, direct lineage without restrictions, or lateral lineage up to the fourth degree, then they cannot decide a case. This gap in legal regulations encourages legal transparency, especially with regard to related regulations, which creates difficulties and uncertainty in their actual implementation. The implementation of PERMA Number 7 of 2022 will exacerbate problems in the transparency of the implementation of this principle.

Electronic hearings will complicate the process of determining whether someone has a good working relationship with their legal representative or whether one of the parties disagrees. This is especially true for preliminary examinations, which are only available to the parties to the dispute; The general public cannot recognize or understand the existence of a kinship relationship between these parties. Although this restriction has often been ignored in practice to date, it is a serious problem that may arise in the future. Of course, a situation like this will cause concern. In order to guarantee legal certainty, the provisions of statutory regulations must be reformed, not only with substantial consistency but also in collaboration with relevant agencies that have the authority to establish regulations and legislation.

CONCLUSION

In general, it can be concluded that summons by registered letter contained in SEMA 1 of 2023 as a guideline for implementing PERMA 7 of 2023. Due to the disparity between PERMA and SEMA as well as HIR and RBG, this really interferes with the legal and proper arrangement of summons when viewed from a regulatory perspective. legislation. The presence of e-court has attempted to realize the principles of not being complicated, not slow, and not expensive in terms of facilitating case administration before, during and after the trial. However, the principle of openness to the public in its implementation in electronic hearings cannot be realized because the principle of lex superiori derogat legi inferiori in Article 13 of Law Number 48 of 2009 should not be denied by Article 26 paragraph (4) of PERMA Number 7 of 2022. Apart from The enactment of PERMA No. 7 of 2022 in practice will make it difficult to implement the principle of Nemo Judex Idoneus in Propria Causa.

Recommendations

Amendments to the Judicial Power Law are considered important to realize legal certainty as a fundamental element of legal objectives. If the law is based on law and there are no provisions that conflict with PERMA, the law, or the Principles of Civil Law, then legal certainty will be achieved.

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Surat Edaran Mahkamah Agung Nomor 1 Tahun 2023 tentang Tata Cara Panggilan Dan Pemberitahuan Melalui Surat Tercatat.