MAHKAMAH KONSTITUSI
REPUBLIK INDONESIA

THE 6TH INTERNATIONAL
SHORT COURSE OF AACC
THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA

PROCEEDING

The 6th International Short Course

Association of Asian Constitutional Courts and Equivalent Institutions

"Democracy, Digital Transformation, and Judicial Independence"

Jakarta, 10 – 11 August 2023

Prepared By:
The Permanent Secretariat of AACC for Planning and Coordination

PROCEEDING

THE 6th INTERNATIONAL SHORT COURSE OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURT AND EQUIVALENT INSTITUTIONS (AACC) 2023

DEMOCRACY, DIGITAL TRANSFORMATION AND JUDICIAL INDEPENDENCE

PREFACE

On behalf of the committee, I would like to extend my warmest gratitude to all of the Participants to the 6th International Short Course of the AACC 2023 which was held Thursday, 10 August 2023. First, I would like to take this opportunity to convey my appreciation to the organizing committee for their untiring efforts to manage this the 6th International Short Course of the AACC 2023. The International Short Course is a forum to develop the capacity of the support staffs of the Constitutional Courts in Asia as well as efforts to strengthen institutional relations and cooperation among AACC member countries. The even was attended by 13 (thirteen) different countries, namely: Azerbaijan, Bangladesh, Indonesia, Kazakhstan, Korea, Malaysia, Maldives, Mongolia, Pakistan, Russia, Thailand, Turkiye, and Uzbekistan. The event took the theme "Democracy, Digital Transformation, and Judicial Independence". There were three sessions in this event, first session discussed about "Emerging Technologies and Judicial integrity: Challenges in digital transformation of Courts". The second session discussed about Digital Transformation and its Role in Improving Democracy, and the last session talked about "The Judicial System in the Digital Era: Revisiting the Relationship between Democracy and Judicial Independence". The selected topics depicted a vast pool of knowledge, resources and expertise. The sessions were preceded by Liaison Officers meeting to discuss recent issues and the upcoming program from each AACC member country.

All in all, the 6th International Short Course of AACC 2023 offered a truly comprehensive view while inspiring the Participants to come up with solid recommendations to tackle the most recent challenges. I would like to take this opportunity to thank the keynote speaker and participants for their contributions, and I hoped each country's perspective would contribute and benefit the development of the democracy and judicial independence, whether in general, for all short course participants and in particular for the Constitutional Court of the Republic of Indonesia. Lastly, I hoped that this proceeding could spark a sense of curiosity for all parties who have an interest in the field of constitution, judicial independence, and democracy.

Heru Setiawan

Secretary General

TABLE OF CONTENTS

OPENING CEREMONY

SPEECH FOR THE OPENING

OF SHORT COURSE OF AACC IN 2023 CONSTITUTIONAL JUSTICE

PROF. DR. ARIEF HIDAYAT, S.H., M.S.

Jakarta, August 10, 2023

Bismillahirahmanirahim,

Assalamu'alaikum Wa Rahmatullahi Wa Barakatuh,

Good afternoon, Greetings to you all.

- Honorable speakers of the International Short Course of the AACC;
- Distinguished participants of fourteen member states of the AACC;
- Ladies and gentlemen.

First of all, thank you for your presence in Jakarta to fulfill our invitation to attend the AACC International Short Course of 2023 on "Democracy, Digital Transformation, and Judicial Independence."

Honorable guests,

As a permanent secretariat of the AACC, the Constitutional Court of the Republic of Indonesia is always committed to advancing the association on all counts—in terms of capacity building for the working level of the member states in addition to planning and coordination as well as implementation of activities for the justices.

I believe in this modern era, the development of an institution or organization is highly contingent on both top-down and bottom-up collaboration.

Ladies and gentlemen,

As part of judicial institutions, we have the obligation to deliver decisions that can provide a sense of justice. And it must be noted that this obligation does not only rest on the shoulders of the justices, but also on yours as supporting staff members of the constitutional justices.

Building on that notion, since I was given trust as President of the AACC in 2015, one of the priority agendas have been to carry out programs to exchange experience as well as train staff members of the Constitutional Courts of the AACC members.

Honorable guests,

For the sixth AACC International Short Course, the Constitutional Court of the Republic of Indonesia decided on the theme "Democracy, Digital Transformation, and Judicial Independence."

This theme was chosen with a particular purpose. We all understand that as a judicial institution and the guardian of democracy, the Constitutional Court is mandated to uphold the Constitution as the supreme law that manages the administration of the state based on the principles of democracy. Technological advances come with numerous challenges. They bring about opportunities and challenges that come with the high traffic of information. Consequently, provocative information, hoaxes, and post-truth are commonplace.

We understand the concept of Society 5.0 as an era where digital technology becomes an important part of life where humans is the main component. Similarly, law makes humans the key to legal mobilization. This means that the law does not function optimally without humans there to move the law.

Therefore, I believe that technology is for humans; not the opposite—humans for technology. Technology exists to develop, utilize, and use for the interest of mankind, without departing from the image of the Creator.

Ladies and gentlemen,

In a work visit to Dubai in 2022, I had the opportunity to learn about how artificial intelligence has entered their justice system, including in the decisions.

They were testing, in several financial cases, instead of using the judges' wisdom to make decisions, to use algorithms designed in such a way to come to just decisions.

This is a challenge for us all. As judicial institutions that review the nation's norms and principles enshrined in the Constitution, it is important for us to prioritize vision, feelings, and intention as God's creations equipped with perfect intelligence.

Ladies and gentlemen,

Based on some of the things I said earlier, I believe that this short course will be very interesting for all participant to find out how technology can support humans in guarding democracy and realizing independent judiciary.

I hope in the sharing session, we will learn from one another and exchange ideas, so there will be new positive things to bring back to our respective countries.

Finally, bismillahirrahmanirrahim (in the name of God, the Most Gracious, the Most Merciful), I hereby open this year's AACC International Short Course.

Thank you for your attention.

Wassalamu'alaikum Warahmatullahi Wabarakatuh. May God bless us all.

SUMMARY OF DISCUSSION

SUMMARY OF DISCUSSION

THE 6TH INTERNATIONAL SHORT COURSE OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURT AND EQUIVALENT INSTITUTIONS 2023

DEMOCRACY, DIGITAL TRANSFORMATION AND JUDICIAL INDEPENDENCE

Jakarta, Indonesia, August 10 2023

1. The 6th International Short Course of the Association of Asian Constitutional Court and Equivalent Institutions 2023 ("the Short Course") was held in Jakarta, on August 10, 2023.
2. The Short Course was attended by speakers from professionals and academic fields in constitutional law. The meeting was concluded in warm, friendly and cordial atmosphere. (the list of participants is attached as **Annex I**)
3. The meeting was opened by H. E. Arief Hidayat, Justice of the Constitutional Court of the Republic of Indonesia ("the MKRI"). In his opening remarks, H. E. Arief Hidayat welcomed the delegates to Jakarta, and reminisced the process he has been through in establishing the first Short Course back in 2015 along with Türkiye and Republic of Korea. He also elaborated the importance of the topic of the Short Course to enhance the rule of law in accordance with the technological advancement and globalization. Participants of the Short Course also commended the commencement of the discussions within

the Short Course, as this occasion also marked the 20th anniversary of the Constitutional Court of the Republic of Indonesia.

Liaison Officer's Meeting

4. This session preceded the opening speech. The Liaison Officers of AACC from 13 member countries that were present in the Short Course attended the meeting. In this occasion, the Head of the Permanent Secretariat of AACC for Planning and Coordination, R.A. Indah Apriyanti Tomas, raised the issue of possible ideas for activities to be posted on MKRI's official website along with the possible topics for the next Short Course. Participants from Thailand, Türkiye, Russia, Korea, Kazakhstan and Kyrgyzstan delivered their respective ideas in order to further promote the Short Course. They also suggested that more posts and exposure of cultural programs should be done. Furthermore, they also suggested that this event should be continued held in hybrid form to enable more participants from other states to join.

Session 1: "Emerging Technologies and Judicial Integrity: Challenges in Digital Transformation of Courts"

5. The first speaker to present in the session was Prof. Dr. I Gusti Ketut Ayu Rachmi Handayani (Prof Ayu), the Dean of the Faculty of Law, Universitas Sebelas Maret, Surakarta. Her paper, "Digital Transformation in Judiciary and Public Service in Supporting the Establishment of Democratic State", discussed the impact of digital transformation in court trials and public services in the enhancement of

democratic states. As technology development continues to evolve, our society also adjusts their lifestyle and preferences, including in the field of law enforcement. Throughout the Covid-19 pandemic, the principle of "*solus populi suprema lex osto*" applied, where public safety was the top priority of the state. Thus, many trials and public services began to be held online. However, the presenter noted that there were differences in interests between the community and the Government. The community considered that face-to-face services made them feel more served, while the Government wanted services that are transparent, fast, accountable and efficient. Therefore, technology must be the basis for the revitalization of public service delivery.

6. The second speaker was Dr. Edmon Makarim, an expert in cyber law and a lecturer at the Faculty of Law, University of Indonesia. In his article, "Emerging Technologies and Judicial Integrity: Challenges in Digital Transformation of Courts", he presented that there has been a tendency that technological advancement is inversely proportional to the development of human intelligence. Those who are dependent on technology in their daily life become very vulnerable once it is disrupted. Therefore, in law enforcement, technology must be put partially and proportionally. The inseparable strong ties between law enforcement and the sense of justice and empathy must always be the basis of every court decision.

7. The last speaker who delivered his writing in this session was Heru Setiawan, Secretary General of the Indonesian Constitutional Court. In his paper titled: "Digital Transformation in The Judicial Review

Procedure At The Constitutional Court Of The Republic Of Indonesia", the bureaucratic mechanism, which is based on laws and regulations, causes the service to take longer and affect the court's service satisfaction rate recently. Therefore, digital transformation must be integrated to the system so that it can give the public access to justice more quickly and help judges in the judicial process to get a helicopter view.

8. During the Question and Answer (Q&A) Session, a participant from MK RI asked several questions to the panel: (i) What can MK RI do to improve people's welfare, addressed to Prof Ayu (ii) What if the technology used later on eventually increases social inequality, addressed to Mr. Edmon and (iii) what has MK RI done in bridging the differences between theory and practice that exist in the use of technology in the justice system.
9. In response, the panel stated that (i) MK RI must be able to increase public satisfaction by providing technology-based judicial services that accommodate their interests so that development based on democracy will be accomplished (ii) MK RI must be able to provide inclusive technology accessible by all groups as in the attachment of evidence, and (iii) Both theory and practice are equally strong, therefore the Government must be able to formulate laws and regulations that are able to accommodate the interests of the people and technological developments in the long term.
10. In the second round of the Q&A session, another participant from MK RI posed a question about the possible vulnerabilities of the court

system once it has been integrated with technological digitalization. In response to that, the Secretary General stated that some conventional practices, such as the usage of hard-copy evidence to verify digital evidence, need to be maintained so that courts will have an authentic record of a particular case.

11. Lastly, a participant from Pakistan asked the Secretary General about the best practices in MK RI to handle the circulations of false information and their usage as evidence in court. In response, the Secretary General elaborated the filtering and blocking system that have been used recently. The evidences can be traced all the way back to its original source so the court can verify their validity.
12. Prior to the sharing session, H. E. Arief Hidayat delivered his views on the Q&A session. He stated that the world we live in has entered the era of uncertainty, complexity and ambiguity, coinciding with the massive usage of technology, which also inconveniences the general public. Therefore, every Government has to be able to overcome the possibility of being vulnerable and dependent on its usage by setting a set of laws and regulations which are adaptive of this situation.
13. During the sharing session, speakers from Indonesia, Thailand, and Kazakhstan came as a panel to deliver their views as follows; (i) Indonesia: MK RI has been using technological advancement in serving the public needs. However, the absence of technology-based laws and regulations which govern security in that particular realm has put the practice prone to disruption. (ii) Thailand: the Thai Constitutional Court has been facing challenges in its transparency and judicial

independence. In response, the Thai Constitutional Court has put justice as its top priority in order to maintain the trust of the Thai people to demonstrate compliance with the oath that has been taken before the Majesty the King. (iii) Kazakhstan: Although it is a new institution in the Kazakh Government, the Constitutional Court of Kazakhstan always strives to uphold justice in its mandate to maintain constitutional justice for the people. Furthermore, the court also seeks to establish relations with the international community in order to study best practices so that they are able to provide the best for the people.

14. In conclusion, the moderator of the sharing session from Russia, concluded the discussion by stating that all of the countries in the session share similar situation. Besides having an advantage in enhancing the quality of the service to the general public, technology has also stood as a challenge since its advancement has occurred at a rapid pace, and while its security arrangements at the international level are still being drafted. Therefore, the court must be able to adapt to changes while still paying attention to traditional values, which have been used as guidelines in the judicial process.

Session 2: "Digital Transformation and its Role in Improving Democracy"

15. The first speaker to present in the second session was Dr. I Dewa Gede Palguna, former Justice of MK RI. In his paper, "Digital Transformation and Its Role in Improving Democracy: The Indonesian Constitutional Court's Experience", the use of digital transformation in the court

system is guided by the “modern and trusted judiciary” vision. The court has managed to provide electronic filing, e-case registration, video conference hearing, and video streaming ever since. With the help of technology, the court is committed to keep improving its services to the public in order to achieve a judicial system that is accountable, transparent, accessible, and responsive.

16. The next speaker to present was Mr. Murat Şen, the Secretary General of the Constitutional Court of the Republic of Türkiye. In his presentation, Mr. Şen elaborated how the digitalization of the judicial administration in Türkiye was based on the will to delivering better services to the public. But those changes also came with challenges, such as the new understanding of effectiveness, accountability and transparency. The Government overcame this with training of the civil service and diversification of the resource profiles.
17. The last speaker who delivered his paper in this session was. Prof. Dr. Hartiwiningsih, S.H., M.Hum. (“Prof Hartiwiningsih”) the head of Doctoral Programme, Faculty of Law, Universitas Sebelas Maret, Surakarta. Prof Hartiwiningsih presented her views, “The Role of Digital Transformation in Enhancing Democracy with Legal Certainty”, which discussed about how digital transformation in the enhancement of the quality of public services should be coincided with the progressive preparation of human resources who will take control of the administration system.
18. During the Q&A session, two participants from MK RI, posed 3 questions. To Mr. Şen: (i) How does the Turkish Government ensure

those who are not technologically savvy abide by the law which governs the digital realm and digital public services? (ii) How does the Turkish Government ensure the democracy principle amidst the spread of hoax during the general election, and to Dr. I Dewa Gede Palguna: (iii) How does MK RI ensure the consistent existence of "Luberjurdil" ("*Langsung, Umum, Bebas, Rahasia, Jujur dan Adil*", "Direct, General, Independent, Confidential, Honest dan Fair") Principles amidst digital transformation.

19. In response, Mr. Şen answered the questions as follows: (i) The Turkish Constitutional Court no longer accepts hard copy documents since the adoption of the application to the system. All court verdicts are stored online and accessible to all. Furthermore, the Turkish Constitutional Court also owns social media platforms which regularly update its activities; (ii) The Turkish Constitutional Court does not have jurisdiction over general elections. However, freedom of speech falls into the competence of the Turkish Constitutional Court and is governed according to the constitution. In response to the third question, Dr I Dewa Gede Palguna stated that the broadcasted court hearing has been the implementation of the general election principles throughout the years. This signifies that public access to justice has been promoted by the presence of technology.

20. The discussion then proceeded to the sharing session of a panel comprised of Republic of Korea, Uzbekistan, Malaysia and moderated by Pakistan. (i) In Republic of Korea, technological advancement has been put into consideration in order to align laws regarding political

campaigns during general elections. Two-sided platforms such as social media are very different in nature compared to one-way medias like newspapers and televised speeches. Therefore, freedom of speech needs to be adjusted to the situation to ensure the conductivity of the communities throughout the process by the Constitutional Court of Korea (“the CCK”). (ii), In Uzbekistan, the use of digital technology in the court has been used gradually. In accordance with the New Uzbekistan 2022-2026 Vision, the E-KSUD mechanism was established to a more reachable access of the court to the general public. This also helps the court to provide the features which support the evolution of transparent service like never before. (iii) In Malaysia, technological advancements and transformations have played vital roles in the democratic process in recent years. The Malaysian Government has had to adjust itself in order to ensure responsible freedom of expression continues to be carried out as it should for the sake of the security of the social order.

21. The moderator concluded the discussion by stating that digital developments have brought easy access to society in receiving information very quickly. However, on the other hand, that information is very vulnerable to being miscommunicated in order to mislead them for political gain. In order to maintain public order, Governments have to be able to adjust the laws and regulations in accordance with the spirit of democracy stated in the constitution.

Session 3: "The Judicial System in the Digital Era: Revisiting the Relationship between Democracy and Judicial Independence"

22. The first speaker to present in the third session was Professor M Guntur Hamzah, one of the Justices in MK RI. In his paper, "Enforcement of the Constitution through the Modern Judicial Ecosystem". Modern judiciary in the business processes of MK RI prioritizes accessible and transparent information to the public. In recent practices, the court has been extensively accessible with decisions downloadable as early as 15 after the trial has ended. In the domestic level, MK RI has been awarded by the Indonesian National Book of Records as the most transparent judicial process in its practices.

23. The last speaker to present in the third session was Mr. Jongmun Park, Secretary General of the Constitutional Court of Korea (CCK). The article titled "Digital Transformation in the Constitutional Court of Korea: Intelligent Constitutional Court System" discussed that The CCK has adopted automation in its daily business process to increase the productivity of the court and inclusive access for all. However, the CCK limits technology usage by not implementing Artificial Intelligence ("AI") yet in the system. This is to prevent security threats to the court which may put the justice of the people at risk.

24. The discussion proceeded with a panel comprised of Türkiye, Azerbaijan, Mongolia, Bangladesh and moderated by Maldives. (i) In Türkiye, in the frame of constitutionalism, the freedom of speech is

protected by the law. The Government must be able to balance the freedoms given and the social order. Thus, the laws and regulations must be enacted in accordance with a deep and mindful consideration to guarantee legal certainty in the long term. (ii) In Azerbaijan, the Electronic Court was established by the decree of the President in 2014. The court sees that the use of AI can ease the burden of the judges. However, the court is also still in doubt whether AI has been able to fulfill the principle of humanism and justice in its sentencing. (iii) In 2020, The Mongolian Government introduced the “Mongolia 2050” framework to the public which aims to digitalize services to citizens including the court. However, there are risks regarding the security in cyber realm which the Government still try to accommodate within its national policies and regulations. (iv) The pandemic in 2019 has disrupted the judicial system of Bangladesh. The government adapted to the situation by enacting the Virtual Court Act in 2020. The court then adopted digitalization throughout the system and such enhancement has been taking place ever since.

25. The moderator concluded the discussion by stating, just like any other countries, which have delivered their ideas in the field of the usage of technological advancement in the court, all of the participants in this sharing session have expressed their optimism that technology will help them in serving the general public. However, there are pivotal risks that need to be managed such as security and its arrangement in the domestic legal framework.

26. Due to the time constraint, there was no Q&A session at the end of the third session. However, participants were welcomed to seek further inquiries and clarifications regarding the presented papers to an email provided by the committee, which would later be responded by the respective authors.

Closing

27. The Short Course was closed by Mr. Muhidin, Head of Registrar of MK RI. In his remarks, Mr. Muhidin stated that the Short Course aims to be a medium for the exchange of ideas and information to enhance democracy within the jurisdiction of the constitutional courts. In its development, technology came along to play significant roles in our dynamic society. He hoped the discussions brought new insights to the audiences so they may adapt themselves to the changes and work together in the future.
28. The Papers presented by the Speakers are attached as ANNEX I.

ANNEX I

PAPERS

INTERNATIONAL SHORT COURSE

SESSION I

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani

Dean of Faculty of Law Universitas Sebelas Maret

Digital Transformation in Justice and Public Services to Support the Realization of a Democratic State

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Jakarta, 10-11th August 2023

TRANSFORMASI DIGITAL DALAM PERADILAN DAN PELAYANAN PUBLIK DALAM MENDUKUNG TERWUJUDNYA NEGARA DEMOKRASI

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani
Fakultas Hukum Universitas Sebelas Maret

INTRODUCTION

Perkembangan teknologi terus mempengaruhi kehidupan bermasyarakat dengan konsep transformasi digital.

Industri 4.0 dan Society 5.0 menjadi gagasan yang terus diusung untuk memperbaiki peradaban berbasis teknologi.

Konsep Society lebih fokus pada konteks terhadap manusia. Revolusi industri menggunakan AI, dan kecerdasan buatan sebagai komponen utamanya. Sedangkan Society 5.0 menggunakan teknologi modern dengan mengandalkan manusia sebagai komponen utamanya.

Salah satu hasil perkembangan ini adalah digitalisasi dalam pengadilan dan pelayanan publik. Apakah transisi ini memberikan tren positif pada nilai demokrasi di Indonesia?

2

DIGITAL TRANSFORMATION ADALAH BAGIAN PROSES DARI TEKNOLOGI YANG LEBIH BESAR, ARTINYA ADALAH PERUBAHAN YANG BERHUBUNGAN DENGAN PENERAPAN TEKNOLOGI DIGITAL DALAM SEMUA ASPEK KEHIDUPAN YANG ADA PADA MASYARAKAT. DALAM SEJARAH UMAT MANUSIA TRANSFORMASI DIGITAL TELAH TERBUKTI MAMPU MERUBAH SELURUH ASPEK KEHIDUPAN MANUSIA.

SECARA SEDERHANA, DIGITALISASI DAPAT DIPAHAMI SEBAGAIPERUBAHAN YANG DISEBABKAN ATAU DIPENGARUHI OLEH PEMAKAIAN TEKNOLOGI DIGITAL DALAM SETIAP ASPEK KEHIDUPAN MANUSIA

TEORI DIGITAL MERUPAKAN SEBUAH KONSEP PEMAHAMAN DARI PERKEMBANGAN ZAMAN MENGENAI TEKNOLOGI DAN SAINS, DARI SEMUA YANG BERSIFAT MANUAL MENJADI OTOMATIS, DAN DARI SEMUA YANG BERSIFAT RUMIT MENJADI RINGKAS.

SAAT INI, ERA TEKNOLOGI DIGITAL DAN SEMUA SERBA TEKNOLOGI, SERBA CEPAT SERTA CANGGIH. SEGALA SESUATU DIBUAT RINGKAS TANPA MELUPAKAN ASPEK PRESISI DAN KETERATURAN.

ERA SAAT INI SEBENARNYA SUDAH DIPREDIKSI OLEH PARA ILMUWAN SEJAK DULU YANG PADA AKHIRNYA HAMPIR SELURUH KEGIATAN MANUSIA DAPAT DIKENDALIKAN MELALUI KECANGGIHAN TEKNOLOGI DIGITALISASI.

3

KEBIJAKAN LEMBAGA PERADILAN DI INDONESIA

MENSIKAPI COVID-19

Asas" SOLUS POPULI SUPREMA LEX ESTO

KESELAMATAN RAKYAT MERUPAKAN HUKUM TERTINGGI

20xx SAMPLE FOOTER TEXT 4

TRANSFORMASI DIGITAL DI PENGADILAN

E-learning, *e-court*, *e-litigation*, *e-payment*, *e-summon* dan aktivitas digital lain merupakan berbagai macam bentuk rekayasa teknologi informasi di pengadilan yang lahir sebagai implikasi kemajuan teknologi informasi.

Setiap orang yang pemanfaatkan sarana ini tidak bergantung lagi pada aktivitas fisik, mereka dapat melakukan atau mengaksesnya dari lokasi dan wilayah yang tidak terbatas.

Disisi lain perubahan yang cepat ini juga dipengaruhi oleh keadaan-keadaan yang saat ini dialami oleh seluruh bangsa di dunia yaitu COVID-19

5

TEORI HUKUM KONVERGENSI (CLARK KERR)

TEORI INI MEMUNGKINKAN PEREKONOMIAN NEGARA BERKEMBANG DAPAT BERTUMBUH DENGAN CEPAT MELAMPAUI NEGARA NEGARA YANG TERLEBIH DAHULU BERKEMBANG MELALUI PROSES INDUSTRIALISASI.

TEORI INI MENITIKBERATKAN PADA ADANYA PERTEMUAN ANTARA HUKUM DAN TEKNOLOGI DENGAN KARAKTERNYA YANG MENJADI CIRI KHAS KEILMUWAN MASING-MASING

20xx SAMPLE FOOTER TEXT 6

TRANSFORMASI DIGITAL DI MA DAN MK

PERADILAN MODERN BERBASIS TEKNOLOGI INFORMASI.

PERMA No. 3 TAHUN 2018 TTG Administrasi Perkara di Pengadilan Secara Elektronik

PERMA No. 1 Tahun 2019 TTG Administrasi Perkara dan Persidangan Secara Elektronik

PMKNo. 18 Tahun 2009 TTG Pedoman Pengajuan Permohonan Elektronik dan Pemeriksaan Persidangan Jarak Jauh diperbaharui dengan PMK No. 1 Tahun 2021 TTG Penyelenggaraan Persidangan Jarak Jauh.

PMK No. 2 Tahun 2021 TTG Tata Beracara dalam Perkara Pengujian UU yang mencabut PMK Np. 9 Tahun 2020 tentang Tata Beracara dalam Perkara Pengujian UU

7

TRANSFORMASI DIGITAL MENUJU NORMAL BARU

PERMA No. 1 Tahun 2019: Implementasi Cetak Biru menuju Peradilan Modern. Kebijakan ini tidak dimaksudkan sebagai antisipasi pandemi covid, namun ternyata memenuhi standar Protokol kesehatan dalam masa pencegahan covid-19

SEMA No. 1 Tahun 2020 mendorong pencari keadilan memanfaatkan E-court dan E-litigation dalam proses administrasi dan persidangan perkara perdata, agama dan Tata Usaha Negara

8

BIROKRASI

Weber mengidentifikasi birokrasi sebagai bentuk organisasi yang dominan dalam masyarakat yang legal dan rasional. Perkembangan birokrasi merupakan produk dari perluasan tugas-tugas administratif yang intensif dan kualitatif (berlawanan dengan ekstensif dan kuantitatif)—dengan kata lain, kerumitan melahirkan birokrasi(Fry and Raadschelders, 2023: 39).

Bagi (Beck Jørgensen, 2012: 2-3), gagasan Weber tentang organisasi birokrasi dicirikan oleh atribut-atribut berikut:

a. Otorisasi untuk membuat keputusan ditetapkan dalam aturan.
b. Fungsionaris ditempatkan dalam sistem hierarkis, dan mereka beroperasi dengan spesialisasi tingkat tinggi
c. Fungsi dilakukan melalui penggunaan dokumentasi.
d. Kehidupan publik dan pribadi pejabat dipisahkan dengan tegas.
e. Pejabat tersebut telah terlatih secara profesional/akademis.
f. Memegang jabatan oleh pejabat adalah pekerjaan tetap yang memberikan gaji yang merupakan sumber penghasilan utama.

9

E-GOVERNMENT

E-Government sebagai upaya pemanfaatan informasi dan teknologi komunikasi untuk meningkatkan efesiensi dan efektivitas, transparansi dan akuntabilitas pemerintah dalam memberikan pelayanan publik secara lebih baik.

Penerapan e-government dikenal dengan sebutan digital government, online government atau dalam konteks tertentu transformational government terbukti mempermudah terjadinya interaksi timbal balik – secara digital tentunya – antara pemerintah dengan masyarakat.

10

E-GOVERNMENT

Instruksi Presiden Republik Indonesia Nomor 3 Tahun 2003 tentang Kebijakan dan Strategi Nasional Pengembangan e-Government, menyebutkan terbentuknya kepemerintahan yang bersih, transparan, dan mampu menjawab tuntutan perubahan secara efektif; yaitu dengan:

1. Masyarakat menuntut pelayanan publik yang memenuhi kepentingan masyarakat luas di seluruh wilayah negara, dapat diandalkan dan terpercaya, serta mudah dijangkau secara interaktif.
2. Masyarakat menginginkan agar aspirasi mereka di dengar dengan demikian pemerintah harus memfasilitasi partisipasi dan dialog publik di dalam perumusan kebijakan negara.

11

TAHAP E-GOVERNMENT

Tahap E-Government menurut Inpres No. 3 Tahun 2003 tentang kebijakan dan strategi nasional pengembangan, bahwa penerapan E-Government dapat dilaksanakan melalui tingkatan sebagai berikut:

1. Tingkat persiapan yang meliputi:
   a. Pembuatan situs informasi di setiap lembaga;
   b. Penyiapan SDM;
   c. Penyiapan sarana akses yang mudah misalnya menyediakan sarana Multipurpose Community Center, Wernet, dll;
   d. Sosialisasi situs informasi baik untuk internal maupun untuk publik.
2. Tingkat pematangan yang meliputi :
   a. Pembuatan situs informasi publik interaktif;
   b. Pembuatan antar muka keterhubungan antar lembaga lain.
3. Tingkat pemantapan yang meliputi :
   a. Pembuatan situs transaksi pelayanan publik;
   b. Pembuatan interoperabilitas aplikasi maupun data dengan lembaga lain.
4. Tingkat pemanfaatan yang meliputi :
   Pembuatan aplikasi untuk pelayanan yang bersifat G2G (Government To Government), G2B (Government To Business) dan G2C (Government To Citizen) yang terintegrasi.

12

TANTANGAN PENYELENGGARAAN E-COURT DAN E-GOVERNMENT

1. Ketersediaan Infrastruktur → Infrastruktur

Berdasarkan analisis terhadap data yang diperoleh dari UN E-Government Survey, diketahui bahwa dari ketiga indeks yang menentukan besaran EGDI Indonesia, indeks TII merupakan indeks yang paling rendah.

2. Kesenjangan Digital → Budaya

Berdasarkan usia, orang-orang dewasa merupakan target primer produk e-government. Namun, pada umumnya kaum muda adalah kelompok yang lebih fasih dalam menggunakan teknologi. Selain itu, tingkat pendidikan merupakan faktor lain yang mempengaruhi implementasi e-government.

3. Perbedaan Kepentingan antara Masyarakat dan Pemerintah → Kepemimpinan

Pemerintah mengambil sudut pandang managerial, dan menekankan pada fungsi komunikasi e-government dalam implementasinya. Namun, masyarakat mengharapkan adanya peningkatan interaksi (two-way communi- cation) dengan pemerintah melalui e-government.

13

E-COURT

Digital Transformation

Pelayanan Publik yang tetap berlandaskan AAUPB → Demokrasi

14

AAUPB MENURUT UU ADMINISTRASI PEMERINTAHAN

1. Asas Kepastian Hukum, asas dalam negara hukum yang mengutamakan landasan ketentuan peraturan perundang-undangan, kepatutan, keajegan, dan keadilan dalam setiap kebijakan penyelenggaraan pemerintahan.
2. Asas Kepentingan Umum, asas yang mendahulukan kesejahteraan dan kemanfaatan umum dengan cara yang aspiratif, akomodatif, selektif, dan tidak diskriminatif.
3. Asas Keterbukaan, asas yang melayani masyarakat untuk mendapatkan akses dan memperoleh informasi yang benar, jujur, dan tidak diskriminatif dalam penyelenggaraan pemerintahan dengan tetap memperhatikan perlindungan atas hak asasi pribadi, golongan, dan rahasia negara.
4. Asas Kemanfaatan, manfaat yang harus diperhatikan secara seimbang antara: (1) kepentingan individu yang satu dengan kepentingan individu yang lain; (2) kepentingan individu dengan masyarakat; (3) kepentingan Warga Masyarakat dan masyarakat asing; (4) kepentingan kelompok masyarakat yang satu dan kepentingan kelompok masyarakat yang lain; (5) kepentingan pemerintah dengan Warga Masyarakat; (6) kepentingan generasi yang sekarang dan kepentingan generasi mendatang; (7) kepentingan manusia dan ekosistemnya; (8) kepentingan pria dan wanita.

AAUPB MENURUT UU ADMINISTRASI PEMERINTAHAN

1. Asas Ketidakberpihakan/ Tidak Diskriminatif, asas yang mewajibkan Badan dan/atau Pejabat Pemerintahan dalam menetapkan dan/atau melakukan Keputusan dan/atau Tindakan dengan mempertimbangkan kepentingan para pihak secara keseluruhan dan tidak diskriminatif.
2. Asas Kecermatan, asas yang mengandung arti bahwa suatu Keputusan dan/atau Tindakan harus didasarkan pada informasi dan dokumen yang lengkap untuk mendukung legalitas penetapan dan/atau pelaksanaan Keputusan dan/atau Tindakan sehingga Keputusan dan/atau Tindakan yang bersangkutan dipersiapkan dengan cermat sebelum Keputusan dan/atau Tindakan tersebut ditetapkan dan/atau dilakukan.
3. Asas Tidak Menyalahgunakan Wewenang, asas yang mewajibkan setiap Badan dan/atau Pejabat Pemerintahan tidak menggunakan kewenangannya untuk kepentingan pribadi atau kepentingan yang lain dan tidak sesuai dengan tujuan pemberian kewenangan tersebut, tidak melampaui, tidak menyalahgunakan, dan/atau tidak mencampuradukkan kewenangan.
4. Asas Pelayanan Yang Baik, asas yang memberikan pelayanan yang tepat waktu, prosedur dan biaya yang jelas, sesuai dengan standar pelayanan, dan ketentuan peraturan perundang-undangan.

SIMPULAN

Melalui E-Court dan E-government membuka ruang revitalisasi seluruh sistem dalam bernegara dan kaitannya dengan tugas negara dan pemerintah dalam memberikan pelayanan yang memuaskan kepada masyarakat melalui berbagai upaya agar menghasilkan pelayanan yang lebih cepat, tepat, manusiawi, murah, tidak diskriminatif, dan transparan tentunya sesuai dengan AAUPB

17

20xx

THANK YOU

ayu_igk@staff.uns.ac.id.

18

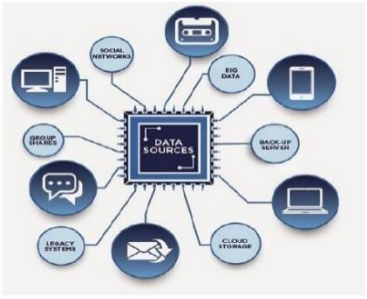
Dr. Edmon Makarim, S.H., L.L.M.,

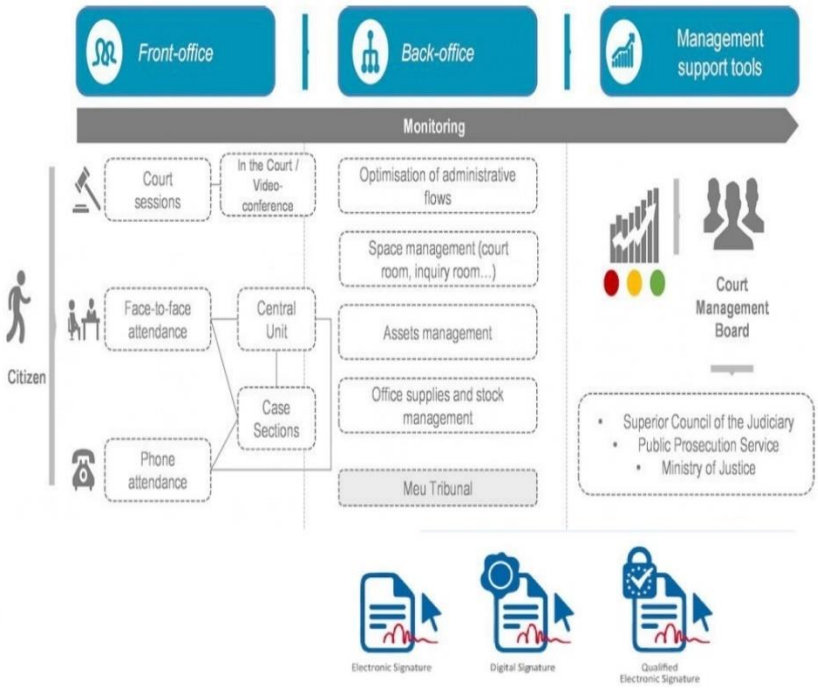
Lecturer at the Faculty of Law of University of Indonesia

Emerging Technologies and judicial Integrity: Challenges in Digital Transformation of Courts

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Emerging Technologies and Judicial Integrity: Challenges in Digital Transformation of Courts.



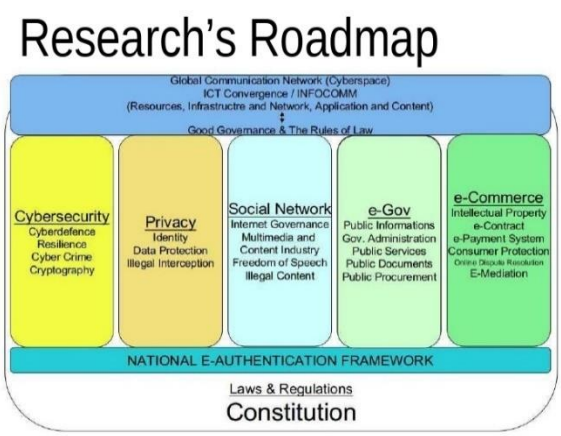


Oleh :

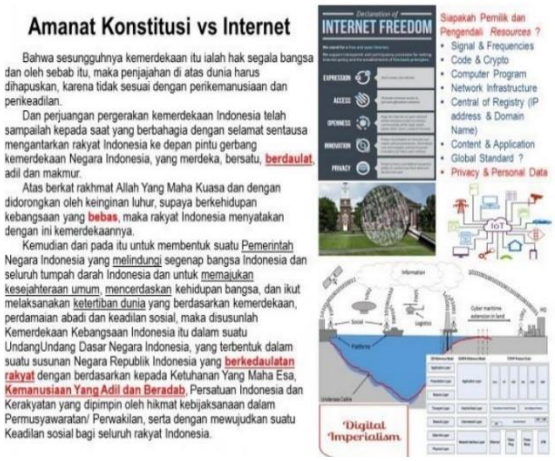
Dr. Edmon Makarim, S.Kom., SH., LL.M

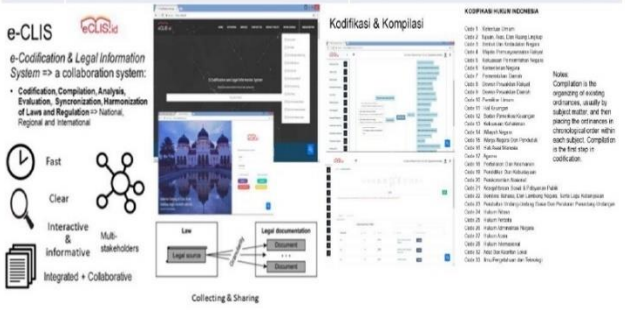
CV

- Nama : Edmon Makarim
  - : Dekan dan Dosen bidang HukumTelematika/Cyber Law FH-UI
    - Peneliti Senior, Lembaga Kajian Hukum Teknologi FHUI
- Pendidikan
  - 1988-1993, "S.Kom" (computer degree), Informatics Management, Universitas Gunadarma
  - 1989-1994, "S.H." (law degree), Economics Law, FH-UI
  - 2002-2004, "LL.M." (Lex Legibus Master/Master in Law), Comparative Law, University of Washington School of Law, Seattle.
  - 2004-2009, "Doctor" (Doctoral of Law Sciences, FHUI, Depok).
- Pengalaman & Organisasi
  - 1994-1996, Assistant of Lawyer ("SHR Law Firm")
  - 1996-1999, In-house Legal Counsel ("Sisindosat telematics co)
  - Jan 2008-Dec 2009, Staf Ahli Menteri Bidang Hukum, Depkominfo.
  - 2013-2015, anggota dewan penasehat, masyarakat telematika indonesia.
  - 2013-2015, anggota dewan penasehat, Komisi Informasi Publik DKI Jakarta
  - 2013–present: arbiter (BAM-HKI), Panelist online Dispute Resolution (PANDI), bidang hukum (PAPPRI), Anggota Dewan Penasehat (Masyarakat Fotografi Indonesia).
  - 2016, Anggota Dewan Penasehat, Ikatan Alumni Magister Notariat FHUI
  - 2022 Ketua BKS FH PTN se Indonesia
- Buku:
  - Pengantar Hukum Telematika
  - Tanggung Jawab Penyelenggara Sistem Elektronik
  - Notaris dan Transaksi Elektronik
  - Konstitusi dan Telematika
- Pengembang Sistem Kodifikasi & Informasi Hukum Elektronik (e-Codification & Legal Information System/eclis.id)



Th	Judul Kegiatan	Keluaran
1999	Legal framework for e-commerce 1999	RUU-IETE => UU 11/2008 + PP 82/2012
2003	Indonesian Telematics Law/ Cyberlaw (legal framework)	Modul Perkuliahan + Buku Ajar: Kompilasi Kajian Hukum Telematika
2009	Electronic System Provider Liability for Implementing the IT Governance	Buku Ajar: Tanggung Jawab PSE
20102 011	Telematics and Constitutional Rights and Liability Development	Artikel Jurnal Nasional dan Internasional serta Buku Ajar
20102 011	Notary and e-Transaction (cybernotary)	Artikel Jurnal Nasional dan Jurnal Internasional serta Buku Ajar
20112 012	Privacy & Data Protection,	Revisi Buku Ajar + RUU Intersepsi Masukan Rancangan Peraturan Menteri Kominfo ttg Privacy dan Informasi Komersial (spamming)
2014	Information Security & Resilience	RUU Sandi + Rancangan Perpres Cybersecurity
2014	National e-Authentication Framework for ID: National e-Identity Management	Artikel Jurnal Nasional dan Jurnal Internasional serta revisi Buku Ajar
2014	Trust Services by Community: Community Certification Authority	Artikel Jurnal Nasional dan Jurnal Internasional serta revisi Buku Ajar
2015	National e-Authentication for Public Document in Government Administration & Public Services	Artikel Jurnal Nasional dan Jurnal Internasional serta revisi Buku Ajar





Pasal 28C

(1) Setiap orang berhak mengembangkan diri melalui pemenuhan kebutuhan dasarnya, berhak mendapat pendidikan dan memperoleh manfaat dari **ilmu pengetahuan dan teknologi, seni dan budaya**, demi meningkatkan kualitas hidupnya dan demi kesejahteraan umat manusia. **)

(2) Setiap orang berhak untuk memajukan dirinya dalam memperjuangkan haknya secara kolektif untuk membangun masyarakat, bangsa dan negaranya. **)

Pasal 31

(1) Setiap warga negara berhak mendapat pendidikan. ****)

(2) Setiap warga negara wajib mengikuti pendidikan dasar dan pemerintah wajib membiayainya. ****)

(3) Pemerintah mengusahakan dan menyelenggarakan satu sistem pendidikan nasional, yang meningkatkan keimanan dan ketakwaan serta akhlak mulia dalam rangka mencerdaskan kehidupan bangsa, yang diatur dengan undang-undang. ****)

(4) Negara memprioritaskan anggaran pendidikan sekurang-kurangnya dua puluh persen dari anggaran pendapatan dan belanja negara serta dari anggaran pendapatan dan belanja daerah untuk memenuhi kebutuhan penyelenggaraan pendidikan nasional. ****)

(5) Pemerintah memajukan **ilmu pengetahuan dan teknologi** dengan menjunjung tinggi nilai-nilai agama dan persatuan bangsa untuk kemajuan peradaban serta kesejahteraan umat manusia. ****)

Pasal 32

(1) Negara **memajukan kebudayaan nasional Indonesia** di tengah peradaban dunia dengan menjamin kebebasan masyarakat dalam memelihara dalam mengembangkan nilai-nilai budayanya. ****)

(2) Negara menghormati dan memelihara bahasa daerah sebagai kekayaan budaya nasional. ****)

Pasal 33

(1) Perekonomian disusun sebagai usaha bersama berdasar atas asas kekeluargaan.

(2) Cabangcabang produksi yang penting bagi negara dan yang menguasai hajat hidup orang banyak dikuasai oleh negara.

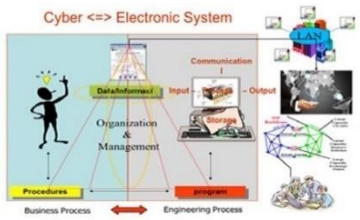
(3) Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesarbesar kemakmuran rakyat.

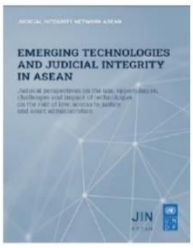
(4) Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, efisiensi berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional. ****)

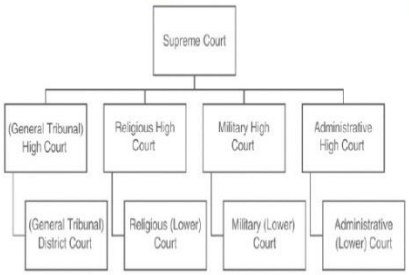
(5) Ketentuan lebih lanjut mengenai pelaksanaan pasal ini diatur dalam undang-undang. ****)

Intro

- Transformasi adalah perapihan kembali setiap *business models/process* dari setiap Organisasi dan Management menjadi suatu penyelenggaraan *engineering process* yang akuntabel & sustainable. Mencakup internal dan eksternal organisasi itu sendiri. Dalam konteks institusi public maka eksternal adalah pelayanan public itu sendiri.
- Are we trust with the "*digital default principle*" or "*conventional principle*"..?? ⇔ *cost effective*.
- *Utility of Technology vs Sosial Justice ⇔ Social Construction by Tech vs Law is Social Engineering*







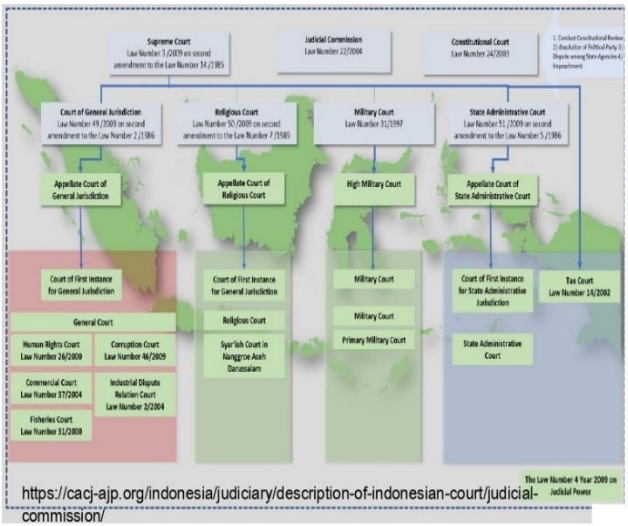
The Bangalore Principles include six values:
Value 1: **Independence**:
Value 2: **Impartiality**:
Value 3: **Integrity**:
Value 4: **Propriety**:
Value 5: **Equality**:
Value 6: **Competence and Diligence**:

Courts across the world are engaging in a variety of projects and long-term programmes, working with international agencies as partners and donors, to *modernize their justice systems*, including:
• case management systems,
• virtual proceedings,
• electronic filing and storage of documents and evidence,
• asynchronous communication between litigants and with the court,
• electronic scheduling, and
• the introduction of new tools such as online dispute resolution, and AI predictive tools.

Judicial integrity is a broad concept that includes a number of key elements of judging to ensure *strong, fair and rights-respecting justice systems*:
• Transparency in decision making
• Transparency in court administration
• Predictability of case timeframes
• Equal access regardless of status, money, or identity
• Equal treatment regardless of status, money, or identity
• Mechanisms to prevent bribery
• Mechanisms to prevent gendered or identity-based threats
• Due process
• Judicial independence
• Separation of political and judicial roles and institutions

Some Critical points:
- System Integration ⇔ vertical, Horizontal & Longitudinal Integration => e-filing/archiving
- Legalization & Notarization
- Trust services ⇔ National e-Authentication
- Payment + duty stamp
- Privacy & Data Protection
- Sovereignty & National Security

++ Cloud, AI/machine learning, Big Data, IoT, etc.



https://cacj-ajp.org/indonesia/judiciary/description-of-indonesian-court/judicial-commission/

National Legal System

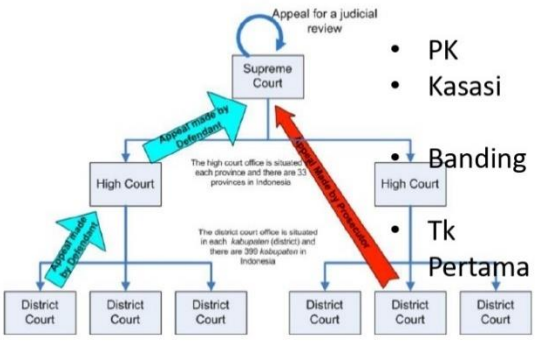
History + Source of Law + Outside Influence and Conflict of Interest
(International Convention vs National Interest/Constitution)

Elements;
- Substance + Hierarchy
- Structure
- Legal Culture

Legal Information System
- From the information and communication perspective ⇔ processing negative feedback to positive
- Will it create prosperity or misery?

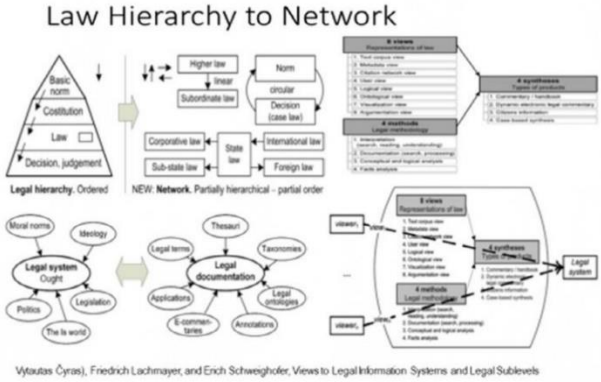
Implementation
- Philosophical
- Sociological
- Juridical

- A "code" with the rooted system?
- Are the information easy to find and understandable? => consistent legal algorithm (synchronised + harmonized)
- Is the communication in forming and socializing processes good enough? => transparancy, inclusive and participatory
- the structure and organization of Implementing Agency would be efficient and effective ?



- PK
- Kasasi
- Banding
- Tk Pertama

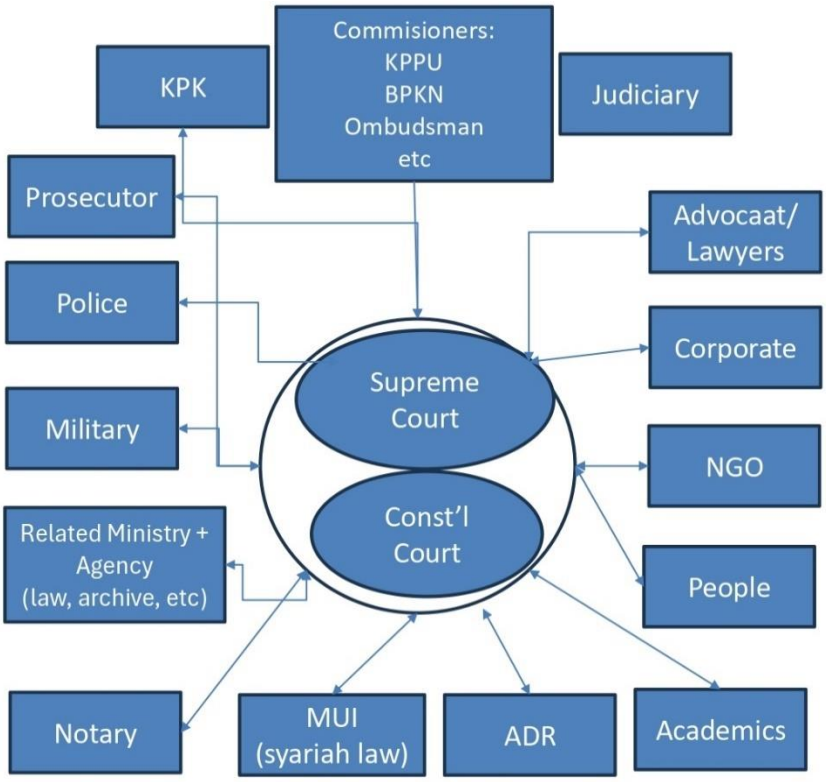
Law Hierarchy to Network



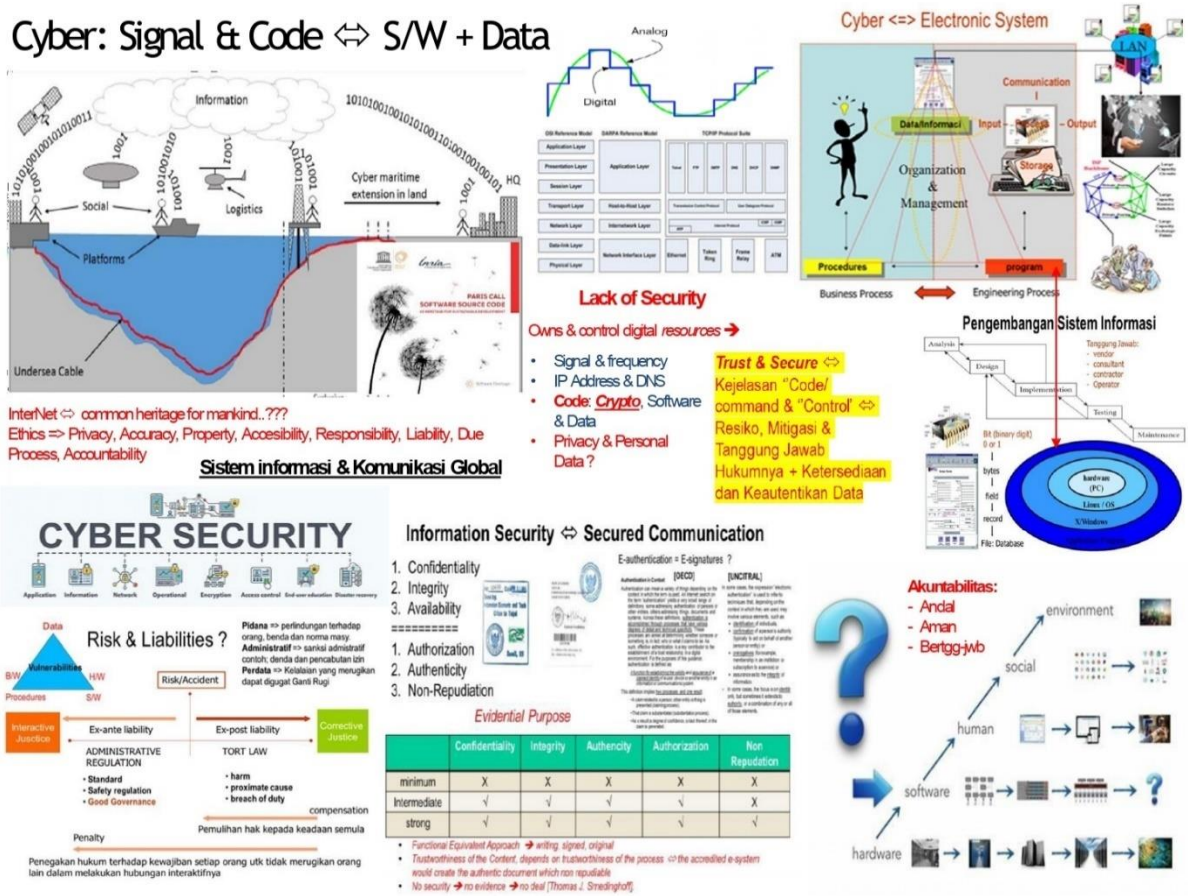
Vytautas Čyras), Friedrich Lachmayer, and Erich Schweighofer, Views to Legal Information Systems and Legal Sublevels

e-Justice

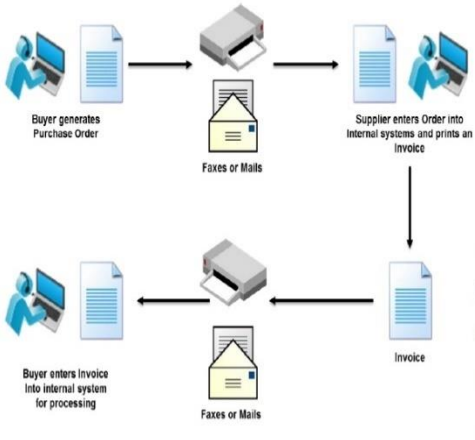
E-justice initiatives include the strategies, process (re)engineering, automation, data collection, integration of systems as well as online dispute resolution, e-filing, remote court process and technologies used to digitize, store, and provide access to legal documents and evidence.
Digitization is the process of converting existing processes and content from analog into digital formats. This includes developing online forms and portals to submit documents or access decisions to make existing in-person court processes available online.
Digitalization is the use of digital technologies to change justice processes and business models. This includes digital technologies that allow for completely new ways of delivering or administering justice.
Digital Transformation is the cultural change in systems and institutions through digital technology. This includes *user-centred design* and technologies that allow employers and users to work differently.

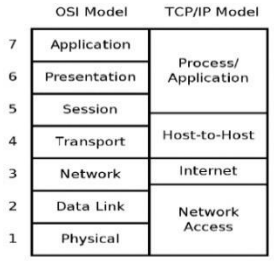


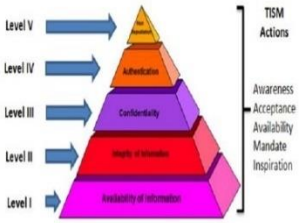
To what extent we can have trustworthiness for all of the e-system components => evidence, decision and archives => legal certainty, time constraint & fair ++ predictive



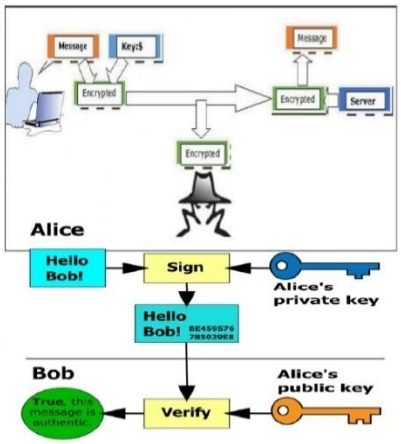
Transaksi via EDI







Transaksi via internet



Security Property	Meaning
Confidentiality	Information is only available to the people intended to use or see it.
Integrity	Information is changed only in appropriate ways by the people authorized to change it.
Availability	Apps and services are ready when needed and perform acceptably.
Authentication	A person's identity is determined before access is granted if anonymous people are not allowed.
Authorization	People are allowed or denied access to the app or app resources.
Nonrepudiation	A person cannot perform an action and then later deny performing the action.

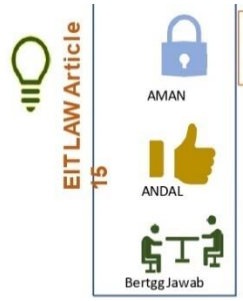
Source: Mike Gualtieri, Principal Analyst, Forrester Research

Dasar Pemikiran: Informasi yang dihasilkan SE Security = Bobot Kekuatan Pembuktian

- *"Where information is recorded by mechanical means without the intervention of a human mind, the record made by the machine admissible in evidence, provided of course, it is accepted that the machine is reliable" [Professor Smith, 1981]*
- *Computers would be useless if they were not able to record information with a fair degree of reliability, which consist of 2 elements;*
  - *The trustworthiness of the Content.*
  - *The trustworthiness of the Process*

Secured communication ⇔ secured information

- Arsitektur **internet tidak diciptakan *by design* untuk menjamin keamanan informasi**
- Informasi yang ditransmisikan melalui internet pada dasarnya tdk dijamin keotentikannya
- ***No security -> no transaction evidence -> no deal***
- Transaksi digital membutuhkan teknologi yang menjamin keotentikan informasi yang ditransaksikan dan para pihak yang terlibat dalam transaksi
- **Siapa dan bagaimana cara menjamin keotentikan informasi yang disampaikan melalui internet?**



Jika sistem elektronik terjamin keandalannya, maka transaksi yang digunakan dalam suatu sistem elektronik pun akan terjaminkeandalannya.

PSE Lingkup Publik
Instansi dan institusi yang ditunjuk oleh Instansi Penyelenggara Negara, tetapi tidak termasuk PSE yang merupakan otoritas pengatur dan pengawas sektor keuangan.

PSE Lingkup Privat
PSE yang diselenggarakan oleh Orang, Badan Usaha dan masyarakat

Penyelenggara Sistem Elektronik

Baik PSE publik maupun privat harus terdaftar sebelum penggura dapat menggunakan sistemnya. Prosedur pendaftaran mengacu kepada Peraturan Kominfo Nomor 36/2014 tentang Tata Cara Pendaftaran Penyelenggara Sistem Elektronik

Engineering process seluruh PSE harus sesuai dengan ketentuan keandalan Kominfo dan ketentuan keamanan dari BSSN.

Seluruh PSE harus memastikan penyelenggaraannya *comply* dengan ketentuan mengenai Perlindungan Data Pribadi yang diatur dalam UU ITE dan Peraturan Kominfo Nomor 20/2014 tentang Perlindungan Data Pribadi dalam Sistem Elektronik

Pengembangan Sistem Informasi

UU ITE + PP 82/2012 => 71/2019, PSTE => Akuntabilitas

- Handal, Aman dan Bertanggung jawab
- IE/DE merupakan alat bukti yang sah
- Standar Minimum Penyelenggaraan, khusus utk pelayanan publik perlu Sertifikasi Kelaikan => menjamin pelaksanaan IT Governance
  - mencakup Komponen2 IS => H/W, S/W, procedure, B/W dan Content
  - Mencakup Fungsi-fungsi => I,P, O, S, C
  - BCP, DRC, Back-up data,
  - Personal Data Protection
  - Penggunaan e-sign + CSP/CA
  - dsb.
- SE utk non-pelayanan publik => Pendaftaran + Sertifikasi Keandalan (optional/fakultatif).

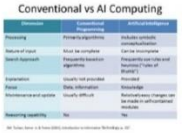
Penelusuran Validitas Informasi

Big Data + Analytics + Artificial Intelligence in Law

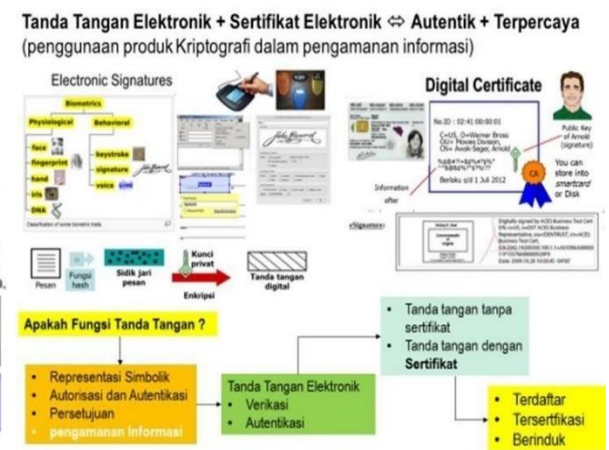
- A **legal expert system** is a domain-specific expert system that uses artificial intelligence to emulate the decision-making abilities of a human expert in the field of law.[1][2] Legal expert systems employ a rule base or knowledge base and an inference engine to accumulate, reference and produce expert knowledge on specific subjects within the legal domain. <wikipedia>, Example Chatbot, AI lawyers, etc.

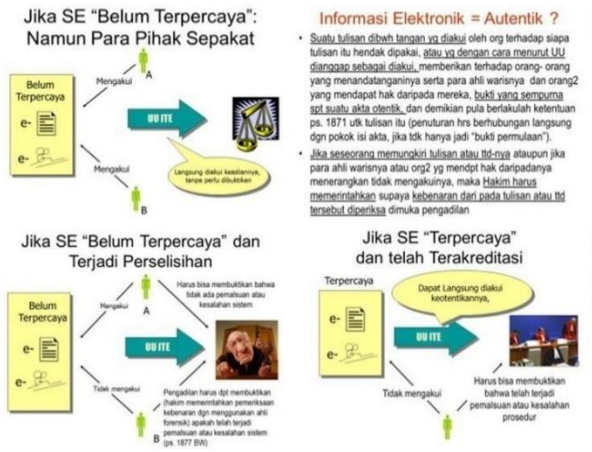
(+): penetration of the legal services to the poor people equal righs and justice
(-) disruptive to the the existing legal services/lawyers
How about the liability in case of the malfunction/not working properly => incorrect answer (no warranties)

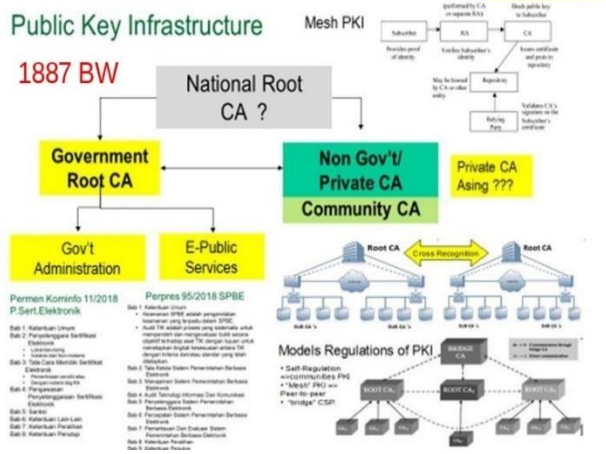
Conventional vs AI Computing

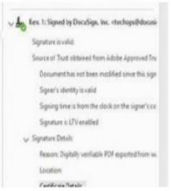


- Rule driven based
- data driven based





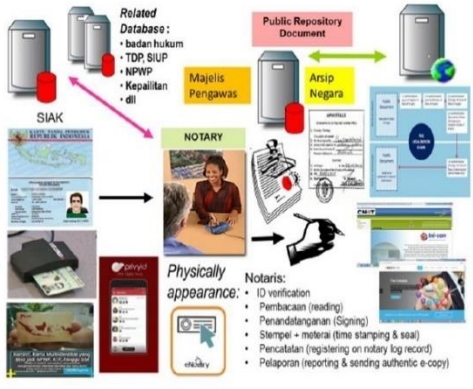


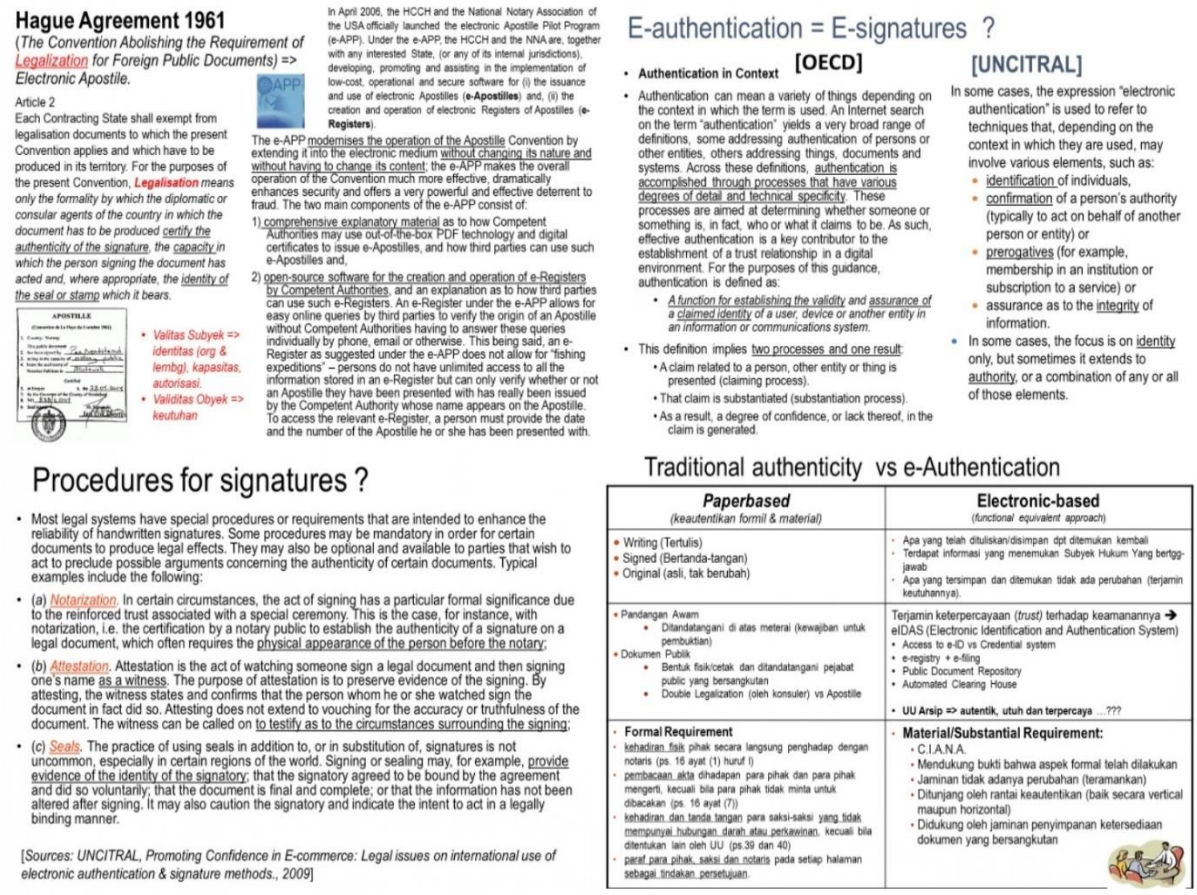


Pasal 7 UU 14/2008 KIP

1. Badan Publik wajib menyediakan, memberikan dan/atau menerbitkan Informasi Publik yang berada dibawah kewenangannya kepada Pemohon Informasi Publik, selain informasi yang dikecualikan sesuai dengan ketentuan
2. Badan Publik wajib menyediakan Informasi Publik yang akurat, benar, dan tidak menyesatkan.
3. Untuk melaksanakan kewajiban sebagaimana dimaksud pada ayat (2), Badan Publik harus membangun dan mengembangkan sistem informasi dan dokumentasi untuk mengelola Informasi Publik secara baik dan efisien sehingga dapat diakses dengan mudah.
4. Badan Publik wajib membuat pertimbangan secara tertulis setiap kebijakan yang diambil untuk memenuhi hak setiap Orang atas Informasi Publik.
5. Pertimbangan sebagaimana dimaksud pada ayat (4) antara lain memuat pertimbangan politik, ekonomi, sosial, budaya, dan/atau pertahanan dan keamanan negara.
6. Dalam rangka memenuhi kewajiban ayat (1) sampai dengan ayat (4) Badan Publik dapat memanfaatkan sarana dan/atau media elektronik dan nonelektronik.

Pelayanan Publik (UU 25/2009)	UU 30/2014 Administrasi Pemerintahan
Pasal 24 Dokumen, akta, dan sejenisnya yang berupa produk elektronik atau nonelektronik dalam penyelenggaraan pelayanan publik dinyatakan sah sesuai dengan peraturan perundang-undangan.. Penjelasan: Cukup Jelas	Pasal 1 1. Administrasi Pemerintahan adalah tata iaksana dalam pengambilan keputusan dan/atau tindakan oleh badan dan/atau pejabat pemerintahan. 2. Fungsi Pemerintahan adalah fungsi dalam melaksanakan Administrasi Pemerintahan yang meliputi fungsi pengaturan, pelayanan, pembangunan, pemberdayaan, dan pelindungan. 11. **Keputusan Berbentuk Elektronis** adalah Keputusan yang dibuat atau disampaikan dengan menggunakan atau memanfaatkan media elektronik. 12. **Legalisasi** adalah pernyataan Badan atau Pejabat Pemerintahan tentang keabsahan suatu salinan surat atau dokumen administrasi pemerintahan yang dinyatakan sesuai dengan asinya. 13. Sengketa Kewenangan adalah klaim penggunaan Wewenang yang dilakukan oleh 2 (dua) Pejabat Pemerintahan atau lebih yang disebabkan oleh tumpang tindih atau tidak jelasnya Pejabat Pemerintahan yang berwenang menangani suatu urusan pemerintahan. 14. Konflik Kepentingan adalah kondisi Pejabat Pemerintahan yang memiliki kepentingan pribadi untuk menguntungkan diri sendiri dan/atau orang lain dalam penggunaan Wewenang sehingga dapat mempengaruhi netralitas dan kualitas Keputusan dan/atau Tindakan yang dibuat dan/atau dilakukannya. 15. Warga Masyarakat adalah seseorang atau badan hukum perdata yang terkait dengan Keputusan dan/atau Tindakan.





Konvensional	Elektronik
Dokumen Yang Diterima sd akhir proses persidangan berbentuk kertas dan kemudian dialihkan ke bentuk elektronik	Dokumen Yang Diterima dari awal bentuk original nya adalah elektronik (harus dapat ditelusuri siapa orang yg bertgg jwb dan dokumen valid secara elektronik => terkonfirmasi secara elektronik)
Dlm hal transformasi dilakukan oleh para pihak, maka Pengadilan tentu memerlukan kepastian/ konfirmasi bahwa bukti adalah sah dan mengikat (diperoleh secara sah, relevan dan valid)	Semua bukti digital yang dihadirkan harus teramankan dengan baik ; - Jika dikirimkan secara elektronik harus melalui secured communication - Jika dikirimkan secara offline maka harus terenkripsi sesuai kebijakan kriptografi nasional
1. Jika dokumen pejabat maka menggunakan CA pemth 2. Jika dokumen privat maka hrs menggunakan TTE yang Tersertifikasi dan Berinduk ke pemth	1. Jika dokumen pejabat maka menggunakan CA pemth 2. Jika dokumen privat maka hrs menggunakan TTE yang Tersertifikasi dan Berinduk ke pemth
Jika dilengkapi meterai seharusnya menjadi pendukung sistem keautentikan	Meterai adalah sama dengan e-seal, harus dipastikan sbg pendukung rantai keautentikan
Meta data menjelaskan proses terakhir dari transformasi kertas menjadi digital	Idealnya, meta data dari berkas ybs menjelaskan semua proses yang telah dilalui.

Draft UNCITRAL Model LAW on eIDAS

* dlm konteks e-communication for international contract

Article 19. Electronic archiving

Where the law requires a document, record or information to be retained, or provides consequences for the absence of retention, that requirement is met in relation to a data message if a method is used:

(a) To make the information contained in the data message accessible so as to be usable for subsequent reference;

(b) To indicate the time and date of archiving and associate that time and date with the data message;

(c) To retain the data message in the format in which it was generated, sent or received, or in another format which can be demonstrated to detect any alteration to the data message after that time and date, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(d) To retain such information, if any, as enables the identification of the origin and destination of a data message and the time and date when it was sent or received.

UU 30/2014 Administrasi Pemerintahan

- Pasal 1 angka (11) => Keputusan Berbentuk Elektronis adalah Keputusan yang dibuat atau disampaikan dengan menggunakan atau memanfaatkan media elektronik.
- BAB VII PENYELENGGARAAN ADMINISTRASI PEMERINTAHAN Bagian Keempat Keputusan Berbentuk Elektronis (Pasal 38)

(1) Pejabat dan/atau Badan Pemerintahan dapat membuat Keputusan Berbentuk Elektronis.
(2) Keputusan Berbentuk Elektronis wajib dibuat atau disampaikan apabila Keputusan tidak dibuat atau tidak disampaikan secara tertulis.
(3) Keputusan Berbentuk Elektronis berkekuatan hukum sama dengan Keputusan yang tertulis dan berlaku sejak diterimanya Keputusan tersebut oleh pihak yang bersangkutan.
(4) Jika Keputusan dalam bentuk tertulis tidak disampaikan, maka yang berlaku adalah Keputusan dalam bentuk elektronis.
(5) Dalam hal terdapat perbedaan antara Keputusan dalam bentuk elektronis dan Keputusan dalam bentuk tertulis, yang berlaku adalah Keputusan dalam bentuk tertulis.
(6) Keputusan yang mengakibatkan pembebanan keuangan negara wajib dibuat dalam bentuk tertulis.

Pasal 38
Ayat (1) Prosedur penggunaan Keputusan Berbentuk Elektronis berpedoman pada ketentuan peraturan perundangundangan yang mengatur tentang informasi dan transaksi elektronik.
Ayat (2) Untuk proses pengamanan pengiriman Keputusan, dokumen asli akan dikirimkan apabila dibutuhkan penegasan mengenai penanggung jawab dari Pejabat Pemerintahan yang menyimpan dokumen asli. Jika terdapat permasalahan teknis dalam pengiriman dan penerimaan dokumen secara elektronis baik dari pihak Badan dan/atau Pejabat Pemerintahan atau Warga Masyarakat, maka kedua belah pihak saling memberitahukan secepatnya.
Ayat (3) Cukup jelas.
Ayat (4) Cukup jelas.
Ayat (5) Cukup jelas.
Ayat (6) Cukup jelas.

UU Kearsipan	Penjelasan
Pasal 1 angka (3) Arsip adalah rekaman kegiatan atau peristiwa dalam berbagai bentuk dan media sesuai dengan perkembangan teknologi informasi dan komunikasi yang dibuat dan diterima oleh lembaga negara, pemerintahan daerah, lembaga pendidikan, perusahaan, organisasi politik, organisasi kemasyarakatan, dan perseorangan dalam pelaksanaan kehidupan bermasyarakat, berbangsa, dan bernegara. Pasal 3 Penyelenggaraan kearsipan bertujuan untuk: a. menjamin terciptanya arsip dari kegiatan yang dilakukan oleh lembaga negara, pemerintahan daerah, lembaga pendidikan, perusahaan, organisasi politik, organisasi kemasyarakatan, dan perseorangan, serta ANRI sebagai penyelenggara kearsipan nasional; b. menjamin ketersediaan arsip yang **autentik** dan **terpercaya** sebagai alat bukti yang sah;	Pasal 3 Huruf a Cukup jelas. Huruf b Yang dimaksud dengan "menjamin ketersediaan arsip yang autentik dan terpercaya sebagai alat bukti yang sah" adalah bahwa penyelenggaraan kearsipan harus dapat menjamin arsip sebagai rekaman kegiatan atau peristiwa yang dapat disediakan atau disajikan dalam kondisi autentik dan terpercaya, sehingga dapat berfungsi sebagai alat bukti yang sah maupun dapat menjadi sumber informasi dalam pelaksanaan kegiatan pada masa yang akan datang. Yang dimaksud dengan "arsip yang autentik" adalah arsip yang memiliki struktur, isi, dan konteks, yang sesuai dengan kondisi pada saat pertama kali arsip tersebut diciptakan dan diciptakan oleh orang atau lembaga yang memiliki otoritas atau kewenangan sesuai dengan isi informasi arsip. Yang dimaksud dengan "arsip terpercaya" adalah arsip yang isinya dapat dipercaya penuh dan akurat karena merepresentasikan secara lengkap dari suatu tindakan, kegiatan atau fakta, sehingga dapat diandalkan untuk kegiatan selanjutnya.

24.Sistem Informasi Kearsipan Nasional yang selanjutnya disingkat SIKN adalah sistem informasi arsip secara nasional yang dikelola oleh ANRI yang menggunakan sarana jaringan informasi kearsipan nasional. => SIKD + SIKS
25.Jaringan Informasi Kearsipan Nasional yang selanjutnya disingkat JIKN adalah sistem jaringan informasi dan sarana pelayanan arsip secara nasional yang dikelola oleh ANRI.

Legalisasi (UU AdPem)

Bab IV bagian ke VI- Legalisasi Dokumen:
Pasal 73
(1) Badan dan/atau Pejabat Pemerintahan yang menetapkan Keputusan berwenang untuk melegalisasi salinan/fotokopi dokumen Keputusan yang ditetapkan.
(2) **Legalisasi** salinan/fotokopi dokumen sebagaimana dimaksud pada ayat (1) dapat dilakukan oleh Badan dan/atau Pejabat Pemerintahan lain yang diberikan wewenang berdasarkan ketentuan peraturan perundang-undangan atau pengabsahan oleh notaris.
(3) Legalisasi Keputusan tidak dapat dilakukan jika terdapat keraguan terhadap keaslian isinya.
(4) Tanda Legalisasi atau pengesahan harus memuat:
a. pernyataan kesesuaian antara dokumen asli dan salinan/fotokopinya; dan
b. tanggal, tanda tangan pejabat yang mengesahkan, dan cap stempel institusi atau secara notarial.
(5) Legalisasi salinan/fotokopi dokumen yang dilakukan oleh Badan atau Pejabat Pemerintahan tidak dipungut biaya.

Pasal 74
(1) Keputusan wajib menggunakan bahasa Indonesia.
(2) Keputusan yang akan dilegalisasi yang menggunakan bahasa asing atau bahasa daerah terlebih dahulu diterjemahkan ke dalam bahasa Indonesia.
(3) Penerjemahan wajib dilakukan oleh penerjemah resmi.

Pasal 73
Ayat (1) Yang dimaksud dengan "salinan/fotokopi" adalah termasuk juga copy collationee.
Ayat (2) Yang dimaksud dengan "**dokumen**" adalah setiap informasi yang terdokumentasi dalam bentuk tertulis atau bentuk elektronik yang dikuasai oleh Badan dan/atau Pejabat Pemerintahan yang berkaitan dengan aktivitas penyelenggaraan pemerintahan dan/atau pelayanan publik.
Kewenangan notaris untuk mengesahkan dokumen dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.
Ayat (3) Yang dimaksud dengan "**terdapat keraguan**" adalah karena robek, penghapusan kata, angka dan tanda, perubahan, kata-kata yang tidak jelas terbaca, penambahan atau hilangnya lembar halaman yang merupakan bagian tidak terpisahkan dari dokumen.
Ayat (4) Cukup jelas.
Ayat (5) Cukup jelas.
Pasal 74 Cukup jelas.

UU Kearsipan	Penjelasan
c. menjamin terwujudnya pengelolaan arsip yang andal dan pemanfaatan arsip sesuai dengan ketentuan peraturan perundang-undangan; d. menjamin pelindungan kepentingan negara dan hak-hak keperdataan rakyat melalui pengelolaan dan pemanfaatan arsip yang autentik dan terpercaya; e. mendinamiskan penyelenggaraan kearsipan nasional sebagai suatu sistem yang komprehensif dan terpadu; f. menjamin keselamatan dan keamanan arsip sebagai bukti pertanggungjawaban dalam kehidupan bermasyarakat, berbangsa, dan bernegara; g. menjamin keselamatan aset nasional dalam bidang ekonomi, sosial, politik, budaya, pertahanan, serta keamanan sebagai identitas dan jati diri bangsa; dan h. meningkatkan kualitas pelayanan publik dalam pengelolaan dan pemanfaatan arsip yang autentik dan terpercaya.	Huruf c Yang dimaksud dengan "pengelolaan arsip yang andal" adalah pengelolaan arsip yang dilaksanakan berdasarkan sistem yang mampu menampung dan merespons kebutuhan perkembangan zaman. Sistem pengelolaan arsip yang andal memiliki kemampuan: menjaring atau menangkap (capturing) semua arsip dari seluruh kegiatan yang dihasilkan organisasi; menata arsip dengan cara yang mencerminkan proses kegiatan organisasi; melindungi arsip dari pengubahan, pengurangan, penambahan, atau penyusutan oleh pihak yang tidak berwenang; menjadi sumber utama informasi secara rutin mengenai kegiatan yang terekam dalam arsip; dan menyediakan akses terhadap semua arsip berikut beserta metadatanya. Huruf d Yang dimaksud dengan hak-hak keperdataan rakyat meliputi: hak sosial, hak ekonomi, dan hak politik dan lainlain yang dibuktikan dalam arsip misalnya sertifikat tanah, ijazah, surat nikah, akte kelahiran, kartu penduduk, data kependudukan, surat wasiat, dan surat izin usaha. Huruf e Yang dimaksud dengan "mendinamiskan penyelenggaraan kearsipan nasional" adalah bahwa dengan adanya sistem yang komprehensif dan terpadu penyelenggaraan kearsipan menjadi lebih dinamis dan terarah. Huruf f Yang dimaksud dengan "menjamin keselamatan dan keamanan arsip" adalah bahwa arsip baik secara fisik maupun informasinya harus dijaga keselamatan dan keamanannya, sehingga tidak mengalami kerusakan atau hilang. Arsip perlu dijaga kerahasiaannya dan pengaksesan oleh pihak yang tidak berhak, karena arsip merupakan bukti pertanggungjawaban dalam kehidupan bermasyarakat, berbangsa dan bernegara. Huruf g Yang dimaksud dengan "aset nasional" adalah kekayaan negara dan masyarakat baik secara ekonomi, sosial, politik, budaya, maupun aspek kehidupan lain yang terekam dalam arsip seperti daftar kekayaan negara maupun bukti-bukti kepemilikan yang harus dilindungi dan dijaga keselamatannya. Huruf h Yang dimaksud dengan "meningkatkan kualitas pelayanan publik" adalah penyelenggaraan kearsipan yang komprehensif dan terpadu dengan dukungan sumber daya manusia yang profesional serta prasarana dan sarana yang memadai akan meningkatkan kualitas pelayanan publik dalam memanfaatkan arsip yang dibutuhkan melalui ketersediaan arsip yang faktual, utuh, sistematis, autentik, terpercaya, dan dapat digunakan.

BAB VI AUTENTIKASI

Pasal 68
(1) Pencipta arsip dan/atau lembaga kearsipan dapat membuat arsip dalam berbagai bentuk dan/atau melakukan alih media meliputi media elektronik dan/atau media lain.
(2) Autentikasi arsip statis terhadap arsip sebagaimana dimaksud pada ayat (1) dapat dilakukan oleh lembaga kearsipan.
(3) Ketentuan mengenai autentisitas arsip statis yang tercipta secara elektronik dan/atau hasil alih media sebagaimana dimaksud pada ayat (1) harus dapat dibuktikan dengan persyaratan yang diatur dengan peraturan pemerintah.

Pasal 69
(1) Lembaga kearsipan berwenang melakukan autentikasi arsip statis dengan dukungan pembuktian.
(2) Untuk mendukung kapabilitas, kompetensi, serta kemandirian dan integritasnya dalam melakukan fungsi dan tugas penetapan autentisitas suatu arsip statis, lembaga kearsipan harus didukung peralatan dan teknologi yang memadai.
(3) Dalam menetapkan autentisitas suatu arsip statis, lembaga kearsipan dapat berkoordinasi dengan instansi yang mempunyai kemampuan dan kompetensi.

Pasal 68
Ayat (1) Cukup jelas.
Ayat (2)
Yang dimaksud dengan "autentikasi arsip statis" adalah **pernyataan tertulis atau tanda** yang menunjukkan bahwa arsip statis yang bersangkutan adalah **asli atau sesuai dengan aslinya.**
Ayat (3) Cukup jelas.
Pasal 69
Ayat (1)
Yang dimaksud dengan "dukungan pembuktian" adalah usaha-usaha **penelusuran dan pengungkapan serta pengujian** terhadap arsip yang akan diautentikasi.
Ayat (2)
Yang dimaksud dengan "kemandirian dan integritasnya" adalah lembaga kearsipan harus menjaga **netralitasnya** dalam penetapan autentisitas dan tidak menyandarkan pembuktian pada instansi dan/atau pihak yang mempunyai kepentingan tertentu yang dapat menciderai kualitas pembuktian.
Ayat (3) Cukup jelas.

PP28/2012 Arsip (Bagian Keempat Autentikasi)

Pasal 106
(1) Autentikasi arsip statis dilakukan terhadap arsip statis maupun arsip hasil alih media untuk menjamin keabsahan arsip.
(2) Autentikasi terhadap arsip hasil alih media sebagaimana dimaksud pada ayat (1) dilakukan dengan memberikan tanda tertentu yang dilekatkan, terasosiasi atau terkait dengan arsip hasil alih media.
(3) Kepala lembaga kearsipan menetapkan autentisitas arsip statis sebagaimana dimaksud pada ayat (1) dengan membuat surat pernyataan.

Pasal 107
Kepala lembaga kearsipan menetapkan autentisitas arsip statis sebagaimana dimaksud dalam Pasal 106 ayat (3) berdasarkan persyaratan:
a. pembuktian autentisitas didukung peralatan dan teknologi yang memadai;
b. pendapat tenaga ahli atau pihak tertentu yang mempunyai kemampuan dan kompetensi di bidangnya; dan
c. pengujian terhadap isi, struktur, dan konteks arsip statis.

Pasal 108
(1) Dalam rangka pembuktian autentisitas arsip statis sebagaimana dimaksud dalam Pasal 107 huruf a, lembaga kearsipan menyediakan prasarana dan sarana alih media serta laboratorium.
(2) Ketentuan lebih lanjut mengenai prasarana dan sarana, laboratorium serta tata cara penggunaan dan metode pengujian dalam rangka autentikasi diatur dengan Peraturan Kepala ANRI.

Pasal 106
Ayat (1)
Yang dimaksud dengan "autentikasi arsip statis" adalah pernyataan terhadap autentisitas arsip statis yang dikelola oleh lembaga kearsipan setelah dilakukan proses pengujian.
Ayat (2) Cukup jelas.
Ayat (3) Cukup jelas.

Pasal 107
Huruf a Cukup jelas.
Huruf b
Yang dimaksud dengan "pihak tertentu" antara lain laboratorium forensik, laboratorium kimia maupun perseorangan (seperti ahli di bidang teknologi informasi dan telekomunikasi, sejarah, kertas, tinta, dan film).
Huruf c
Pengujian terhadap isi, struktur dan konteks arsip statis untuk memastikan reliabilitas dan autentisitas arsip statis.

Pasal 108
Ayat (1) Yang dimaksud dengan "laboratorium" adalah unit yang melaksanakan pengujian terhadap autentisitas dan reliabilitas arsip yang dilengkapi dengan peralatan untuk pengujian.
Ayat (2) Cukup jelas

PERKA-ANRI

- PerKa No.20/2011 tentang Pedoman Autentikasi Arsip Elektronik;
- PerKa No.14/2012 Tentang Pedoman Penyusunan Kebijakan Umum Pengelolaan Arsip Elektronik
- PerKa No.15/2012 Tentang Petunjuk Pelaksanaan Pengelolaan Surat Elektronik Di Pencipta Arsip.
- PerKa No.2 Tahun 2014 Tentang Pedoman Tata Naskah Dinas

Digital archiving is a curation activity, ensures that
- Data is properly selected
- Data is properly stored
- Data can be accessed
- The logical and physical integrity of the data is maintained over time
- Data is secure and authentic *

* Lord & MacDonald, e-Science Data Curation Report, 2003

- **Arsip Elektronik** adalah arsip yang diciptakan (dibuat atau diterima dan disimpan) dalam format elektronik.
- **Identitas** adalah keseluruhan karakteristik suatu dokumen yang unik mengidentifikasinya serta membedakannya dengan dokumen atau arsip lainnya.
- **Integritas** adalah kualitas lengkap dan tidak berubah dalam setiap komponen pentingnya.
- **Autentisitas** adalah kualitas suatu arsip yang sebagaimana adanya dan tidak mengalami perubahan.
- **Autentik** adalah layak diterima atau dipercaya berdasarkan fakta dan ini identik (tidak berbeda sedikit pun) dengan asli serta bonafide (dapat dipercaya dengan baik).
- **Arsip asli** adalah arsip yang memiliki karakter sesungguhnya, yang tidak dipalsukan, diimitasikan, atau tercemar, serta dipastikan berasal dari sumber tertentu yang diketahui.
- **Arsip orisinal** adalah arsip yang lengkap dan efektif yang merupakan manifestasi pertama saat arsip tersebut diterima atau dikaptur dan dinyatakan sebagai arsip.

Permen Kominfo 11/2018 P.Sert.Elektronik

- Bab 1: Ketentuan Umum
- Bab 2: Penyelenggara Sertifikasi Elektronik
  - Lokal dan Asing
  - Instansi dan Non-Instansi
- Bab 3: Tata Cara Memiliki Sertifikat Elektronik
  - Pemeriksaan sendiri atau
  - Dengan notaris sbg RA
- Bab 4: Pengawasan Penyelenggaraan Sertifikasi Elektronik
- Bab 5: Sanksi
- Bab 6: Ketentuan Lain-Lain
- Bab 7: Ketentuan Peralihan
- Bab 8: Ketentuan Penutup

Perpres 95/2018 SPBE

Bab 1: Ketentuan Umum
- Keamanan SPBE adalah pengendalian keamanan yang terpadu dalam SPBE.
- Audit TIK adalah proses yang sistematis untuk memperoleh dan mengevaluasi bukti secara objektif terhadap aset TIK dengan tujuan untuk menetapkan tingkat kesesuaian antara TIK dengan kriteria dan/atau standar yang telah ditetapkan.

Bab 2: Tata Kelola Sistem Pemerintahan Berbasis Elektronik
Bab 3: Manajemen Sistem Pemerintahan Berbasis Elektronik
Bab 4: Audit Teknologi Informasi Dan Komunikasi
Bab 5: Penyelenggara Sistem Pemerintahan Berbasis Elektronik
Bab 6: Percepatan Sistem Pemerintahan Berbasis Elektronik
Bab 7: Pemantauan Dan Evaluasi Sistem Pemerintahan Berbasis Elektronik
Bab 8: Ketentuan Peralihan
Bab 9: Ketentuan Penutup

UU ITE

Pasal 5 (1) Informasi Elektronik dan/atau Dokumen Elektronik dan/atau hasil cetaknya merupakan alat bukti hukum yang sah. (2) Informasi Elektronik dan/atau Dokumen Elektronik dan/atau hasil cetaknya sebagaimana dimaksud pada ayat (1) merupakan **perluasan** dari alat bukti yang sah sesuai dengan Hukum Acara yang berlaku di Indonesia. (3) Informasi Elektronik dan/atau Dokumen Elektronik dinyatakan sah apabila menggunakan Sistem Elektronik sesuai dengan ketentuan yang diatur dalam Undang-Undang ini. (4) Ketentuan mengenai Informasi Elektronik dan/atau Dokumen Elektronik sebagaimana dimaksud pada ayat (1) tidak berlaku untuk: a. surat yang menurut Undang-Undang harus dibuat dalam bentuk tertulis; dan b.surat beserta dokumennya yang menurut Undang-Undang harus dibuat dalam bentuk akta notaril atau akta yang dibuat oleh pejabat pembuat akta.	*Penjelasan Pasal 5* (perubahan dalam UU ITE 19/2016 sebagai konsekuensi dari Putusan MK 20/PUU-XIV/2016) Ayat (1) Bahwa keberadaan Informasi Elektronik dan/atau Dokumen Elektronik mengikat dan diakui sebagai alat bukti yang sah untuk memberikan kepastian hukum terhadap Penyelenggaraan Sistem Elektronik dan Transaksi Elektronik, terutama dalam pembuktian dan hal yang berkaitan dengan perbuatan hukum yang dilakukan melalui Sistem Elektronik. Ayat (2) Khusus untuk Informasi Elektronik dan/atau Dokumen Elektronik berupa hasil intersepsi atau penyadapan atau perekaman yang merupakan bagian dari penyadapan harus dilakukan dalam rangka penegakan hukum atas permintaan kepolisian, kejaksaan, dan/atau institusi lainnya yang kewenangannya ditetapkan berdasarkan undang-undang. Ayat (3) Cukup jelas. Ayat (4) Huruf a Surat yang menurut undang-undang harus dibuat tertulis meliputi tetapi tidak terbatas pada surat berharga, surat yang berharga, dan surat yang digunakan dalam proses penegakan hukum acara perdata, pidana, dan administrasi negara. Huruf b Cukup jelas.
Pasal 6 Dalam hal terdapat ketentuan lain selain yang diatur dalam Pasal 5 ayat (4) yang mensyaratkan bahwa suatu informasi harus berbentuk tertulis atau asli, Informasi Elektronik dan/atau Dokumen Elektronik dianggap sah sepanjang informasi yang tercantum di dalamnya dapat diakses, ditampilkan, dijamin keutuhannya, dan dapat dipertanggungjawabkan sehingga menerangkan suatu keadaan.	*Penjelasan Pasal 6* Selama ini bentuk tertulis identik dengan informasi dan/atau dokumen yang tertuang di atas kertas semata, padahal pada hakikatnya informasi dan/atau dokumen dapat dituangkan ke dalam media apa saja, termasuk media elektronik. Dalam lingkup Sistem Elektronik, informasi yang asli dengan salinannya tidak relevan lagi untuk dibedakan sebab Sistem Elektronik pada dasarnya beroperasi dengan cara penggandaan yang mengakibatkan informasi yang asli tidak dapat dibedakan lagi dari salinannya.
Pasal 11 (1) Tanda Tangan Elektronik memiliki kekuatan hukum dan akibat hukum yang sah selama memenuhi persyaratan sebagai berikut: a. data pembuatan Tanda Tangan Elektronik terkait hanya kepada Penanda Tangan; b. data pembuatan Tanda Tangan Elektronik pada saat proses penandatanganan elektronik hanya berada dalam kuasa Penanda Tangan; c.segala perubahan terhadap Tanda Tangan Elektronik yang terjadi setelah waktu penandatanganan dapat diketahui; d.segala perubahan terhadap Informasi Elektronik yang terkait dengan Tanda Tangan Elektronik tersebut setelah waktu penandatanganan dapat diketahui; e. terdapat cara tertentu yang dipakai untuk mengidentifikasi siapa Penandatangannya; dan f.terdapat cara tertentu untuk menunjukkan bahwa Penanda Tangan telah memberikan persetujuan terhadap Informasi Elektronik yang terkait. (2) Ketentuan lebih lanjut tentang Tanda Tangan Elektronik sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Pemerintah.	*Penjelasan Pasal 11* Ayat (1) Undang-Undang ini memberikan pengakuan secara tegas bahwa meskipun hanya merupakan suatu kode, Tanda Tangan Elektronik memiliki kedudukan yang sama dengan tanda tangan manual pada umumnya yang memiliki kekuatan hukum dan akibat hukum. Persyaratan sebagaimana dimaksud dalam Pasal ini merupakan persyaratan minimum yang harus dipenuhi dalam setiap Tanda Tangan Elektronik. Ketentuan ini membuka kesempatan seluas-luasnya kepada siapa pun untuk mengembangkan metode, teknik, atau proses pembuatan Tanda Tangan Elektronik. Peraturan Pemerintah dimaksud, antara lain, mengatur tentang teknik, metode, sarana, dan proses pembuatan Tanda Tangan Elektronik. Ayat (2) Peraturan Pemerintah dimaksud, antara lain, mengatur tentang teknik, metode, sarana, dan proses pembuatan Tanda Tangan Elektronik.

Pepres 82/2022 Infrastruktur Informasi Vital (IIV)

Pasal 4

Sektor IIV meliputi:

a. Administrasi pemerintahan;
b. Energi dan sumber daya mineral;
c. Transportasi;
d. Keuangan;
e. Kesehatan;
f. Teknologi informasi dan komunikasi;
g. Pangan;
h. Pertahanan; dan
i. Sektor lain yang ditetapkan Presiden.

Pasal 6

1) Setiap penyelenggara SE lingkup sektor IIV wajib melakukan identifikasi IIV secara berkala paling sedikit 1 (satu) kali dalam 1 (satu) tahun.
2) Setiap penyelenggara sektor IIV wajib melaporkan hasil identifikasi IIV beserta informasi yang relevan kepada Kementerian atau Lembaga.
3) Kementerian atau Lembaga melakukan verifikasi thdp laporan hasil identifikasi IIV sebagaimana dimaksud.
4) Kementerian atau lembaga menetapkan:
a. SE menjadi IIV; dan
b. Penyelenggara SE pada lingkup sektor IIV sbg Penyelenggara IIV

Berdasarkan hasil verifikasi laporan identifikasi IIV.

5) Ketentuan lebih lanjut mengenai *identifikasi IIV, pelaporan hasil identifikasi, mekanisme verifikasi, penetapan IIV, dan penetapan penyelenggara IIV* ***diatur dengan Peraturan Badan.***

Pasal 23

1. Badan berkedudukan sebagai koordinator penyelenggaraan pelindungan IIV.
2. Badan tsb bertugas:
   a) Mengevaluasi pelaksanaan penetapan sektor IIV
   b) Mengevaluasi penetapan IIV
   c) Mengusulkan penetapan danperubahan sektor IIV kpd Presiden
   d) Memberikan himbauan keamanan siber IIV kpd K/L berdasarkan data dan informasi yang diperoleh Badan;
   e) Mengevaluasi implementasi kebijakan pelindungan IIV.

Pepres 47/2023 Strategi Keamanan Siber

1. **Keamanan Siber** adalah upaya adaptif dan inovatif untuk melindungi seluruh lapisan ruang siber, termasuk aset informasi yang ada di dalamnya, dari ancaman dan serangan siber, baik yang bersifat teknis maupun sosial.
2. **Strategi Keamanan Siber Nasional** adalah arah kebijakan nasional dalam menggunakan seluruh sumber daya siber nasional untuk mewujudkan Keamanan Siber guna mempertahankan dan memajukan kepentingan nasional.
3. **Insiden Siber** adalah satu atau serangkaian kejadian yang mengganggu atau mengancam berjalannya sistem elektronik.
4. **Krisis Siber** adalah situasi kedaruratan akibat dari Insiden Siber pada tingkat nasional yang berdampak terhadap keselamatan, keutuhan, dan kedaulatan negara.
5. **Manajemen Krisis Siber** adalah tata kelola penggunaan sumber daya dan langkah penanganan secara efektif yang dilakukan sebelum, saat, dan setelah terjadinya Krisis Siber.
6. **Tim Tanggap Insiden Siber** adalah sekelompok orang yang bertanggung jawab menangani Insiden Siber dalam ruang lingkup yang ditentukan terhadapnya.
7. **Instansi Penyelenggara Negara** adalah institusi legislatif, eksekutif, dan yudikatif di tingkat pusat dan daerah dan instansi lain yang dibentuk dengan peraturan perundang-undangan.
8. **Pemangku Kepentingan** adalah para pihak yang memiliki peran dalam penerapan Strategi Keamanan Siber Nasional dan Manajemen Krisis Siber.
9. **Penyelenggara Sistem Elektronik** yang selanjutnya disingkat PSE adalah setiap orang, penyelenggara negara, badan usaha, dan masyarakat yang menyediakan, mengelola, dan/atau mengoperasikan sistem elektronik secara sendiri-sendiri maupun bersama-sama kepada pengguna sistem elektronik untuk keperluan dirinya dan/atau keperluan pihak lain.

Pasal 6: Fokus area Strategi Keamanan Siber Nasional sebagaimana dimaksud dalam Pasal 5 huruf a terdiri atas:

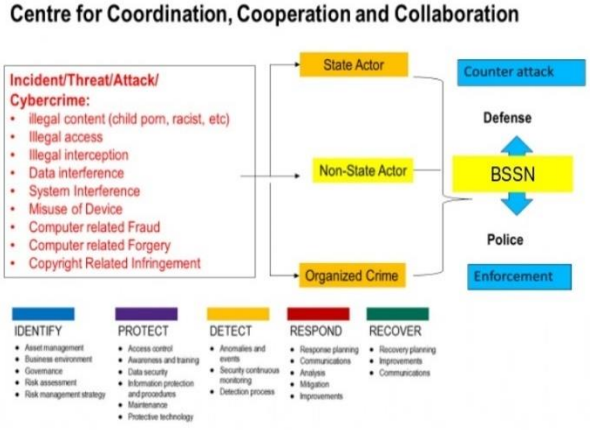
a) tata kelola;
b) manajemen risiko;
c) kesiapsiagaan dan ketahanan;
d) penguatan pelindungan infrastruktur informasi vital;
e) kemandirian kriptografi nasional;
f) peningkatan kapabilitas, kapasitas, dan kualitas;
g) kebijakan Keamanan Siber; dan
h) kerja sama internasional.

Cybersecurity

Umum	ITU	NATO
Cybersecurity is the body of technologies, processes and practices designed to protect networks, computers, programs and data from attack, damage or unauthorized access. In a computing context, the term *security* implies cybersecurity. Ensuring cybersecurity requires coordinated efforts throughout an information system. Elements of cybersecurity include: • Application security • Information security • Network security • Disaster recovery / business continuity planning • End-user education.	"Cybersecurity is the collection of tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets. The Global Cybersecurity Agenda: 1) Legal Measures => cybercrime legislation 2) Technical and Procedural Measures => End users and businesses (direct approach); and Service providers and software companies 3) Organizational Structures => highly developed organizational structures, avoid overlapping. 4) Capacity Building & User's education => public campaigns + open communication of the latest cybercrime threats 5) International Cooperation => Mutual Legal Assistance of the LEA's	**National Cyber Security (NCS):** Defined 'The focused application of specific governmental levers and information assurance principles to public, private and relevant international ICT systems, and their associated content, where these systems directly pertain to national security' **The 5 Mandates** (Different interpretations of NCS & common activities) • Military Cyber • Counter Cyber Crime • Intelligence and Counter-Intelligence • Critical Infrastructure Protection and National Crisis Management • Cyber Diplomacy and Internet Governance + 3 **'Cross Mandates'**: o coordination, o information exchange and data protection, o research & development and education **The 3 Dimensions:** Different stakeholder groups in NCS • Governmental (central, state, local) – coordination' • National (CIP/contactors, security companies, civil society) – co-operation' • International (legal, political and industry frameworks) – collaboration' **The 5 Dilemmas:** • Balancing the cost and benefits of NCS • Stimulate the Economy vs. Improve National Security • Infrastructure Modernisation vs. Critical Infrastructure Protection • Private Sector vs. Public Sector • Data Protection vs. Information Sharing • Freedom of Expression vs. Political Stability

Comparative: Substantive Law of Cyber Crime

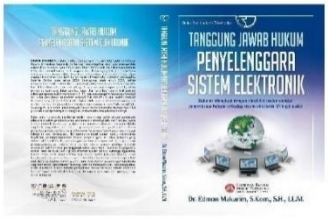
CoC	ITU	Indonesia
Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems illegal access, illegal interception, data interference, system interference, misuse of devices, Title 2 – Computer-related offences computer-related forgery, computer-related fraud Title 3 – Content-related offences offences related to child pornography and offences related to copyright and neighbouring rights. Title 4 – Offences related to infringements of copyright and related rights Title 5 – Ancillary liability and sanctions Attempting and aiding or abetting Corporate liability Sanctions & Measures	*Title 2. Substantive Provisions; Acts Against Computers, Computer Systems, Networks, Computer Data, Content Data, and Traffic Data* sect. 2. Unauthorized Access to Computers, Computer Systems, and Networks sect. 3. Unauthorized Access to or Acquisition of Computer Data, Content Data, Traffic Data sect. 4. Interference and Disruption sect. 5. Interception sect. 6. Misuse and Malware sect. 7. Digital Forgery sect. 8. Digital Fraud, Procure Economic Benefit sect. 9. Extortion sect. 10. Aiding, Abetting, and Attempting sect. 11. Corporate Liability	• Penyalahgunaan Komptr/ Kompt sbg sarana: – Penyebaran Informasi ilegal (Illegal materials) – Pelanggaran Hak Cipta (offences related to copyright) – Pemalsuan atau Penipuan (*computer related fraud & forgery*) • Komputer sebagai sasaran – Akses tanpa hak dan/atau melawan hukum (Illegal Access) – Intersepsi Melawan Hukum (Illegal Interception) – Gangguan/Pengrusakan Data (Data Interference) – Gangguan/Pengrusakan Sistem (System Interference) – Penyalahgunaan Perangkat (Misuse of Device)

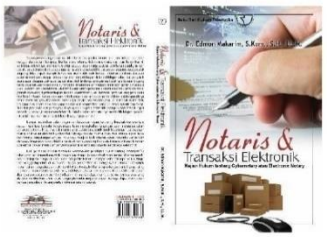


Kesimpulan

- Paradigma e-justice dan transformasi e-Court tdk dpt dilepaskan dari paradigma keautentikan secara elektronik tidak hanya sekedar Ketersediaan Data saja melainkan juga sistem keautentikan lintas sektor
- Semua komunikasi dan pemberkasan harus jelas rantai keautentikannya dan diperlakukan sebagaimana layaknya Arsip Negara untuk fungsi pembuktian & pembelajaran hukum di belakang hari.
- Sistem arsip perkara secara elektronik harus didukung oleh kejelasan tata-naskah dinas secara elektronik dan *IT policy* di instansi yang bersangkutan. Sesuai UU Kearsipan harus Autentik dan Terpercaya
- Alat bukti yang sah, tetap harus dilihat reliabilitas sistem keamanannya, yang secara teknis akan menentukan sejauhmana kekuatan pembuktiannya. Bobot pembuktikan ditentukan oleh bagaimana penerapan *e-IDAS (e- identitification and authentication system)*, sehingga sepanjang IE/DE berikut Sistem Elektroniknya teraman/terjaga validitasnya dengan baik, maka otomatis tidak dapat disangkal => mempunyai kekuatan hukum yang kuat dan mengikat.
- Perlu reformasi hukum nasional untuk mengkonsistensikan aturan ttg Keautentikan, khususnya thp identitas dan dokumen public guna menghadapi Law 2030.
- Keautentikan, baik secara teknis maupun hukum terhadap dokumen elektronik di Indonesia merujuk pada pasal 5 dan 6 UU-ITE, selayaknya ditunjang dengan Sertifikat Elektronik sesuai dengan PP-PSTE.
- Indonesia perlu memiliki kebijakan tentang Public Document Repository, demi memfasilitasi kejelasan adanya rantai keautentikan terhadap dokumen public dan mengurangi rumitnya legalisasi foreign public document. ANRI perlu membantu MA + KUMHAM dalam hal ini, khususnya terkait Dokumen Perusahaa dan Arsip Negara yang disimpan oleh Notaris.

Thank You

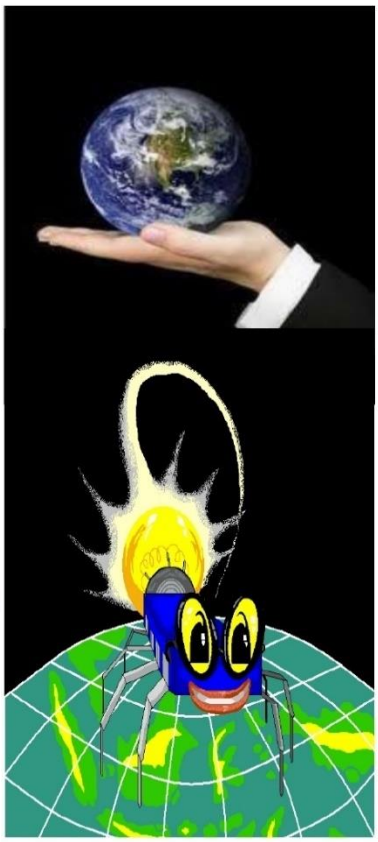




- Eyes => horizon
- Lamp => idea
- Smile=> Optimism
- IC/processor => ICT
- Web & Hub => geostrategic Nusantara Islands

Empowerment
Through Education
Living A Dream,
Building A Future

eCLIS.id



UU 8/1997 Dokumen Perusahaan	PP 88/1999 tentang Tata Cara Pengalihan Dokumen Perusahaan ke Dalam Mikrofilm atau Media Lainnya dan Legalisasi	
Menimbang: ... f. Bahwa kemajuan teknologi telah memungkinkan catatan dan dokumen yang dibuat di atas kertas dialihkan ke dalam media elektronik atau dibuat secara langsung dalam media elektronik	**Pasal 1** Dalam Peraturan Pemerintah ini yang dimaksud dengan: 1. Dokumen perusahaan adalah data, catatan, dan atau keterangan yang dibuat dan atau diterima oleh perusahaan dalam rangka pelaksanaan kegiatannya, baik tertulis di atas kertas atau sarana lain maupun terekam dalam bentuk corak apapun yang dapat dilihat, dibaca, atau didengar. 2. Mikrofilm adalah film yang memuat rekaman bahan tertulis, dan atau tergambar dalam ukuran yang sangat kecil. 3. Legalisasi adalah tindakan pengesahan isi dokumen perusahaan yang dialihkan atau ditransformasikan ke dalam mikrofilm atau media lain, yang menerangkan atau menyatakan bahwa isi dokumen perusahaan yang terkandung di dalam mikrofilm atau media lain tersebut sesuai dengan naskah aslinya. **Pasal 2** Setiap perusahaan dapat mengalihkan dokumen perusahaan yang dibuat atau diterima baik di atas kertas maupun dalam sarana lainnya ke dalam mikrofilm atau media lainnya. BAB II TATA CARA PENGALIHAN **Pasal 6** (1) Sebelum melakukan pengalihan, perusahaan yang bersangkutan wajib melakukan persiapan dan penelitian dari berbagai aspek atas dokumen perusahaan yang akan dialihkan. (2) Pimpinan perusahaan yang bersangkutan dapat terlebih dahulu menetapkan pedoman intern dalam rangka pengalihan dokumen perusahaan. (3) Pimpinan perusahaan dapat menetapkan pejabat di lingkungan perusahaan yang bersangkutan yang ditunjuk dan bertanggung jawab untuk meneliti dan menetapkan dokumen perusahaan yang akan dialihkan. **Pasal 7** Keputusan mengenai pengalihan dokumen perusahaan hanya dapat dilakukan oleh pimpinan perusahaan atau pejabat yang ditunjuk. **Pasal 8** Dalam dokumen perusahaan yang dibuat perusahaan berbentuk neraca tahunan, perhitungan laba rugi tahunan, atau tulisan lain yang menggambarkan neraca laba rugi, pengalihan hanya dapat dilakukan setelah dokumen perusahaan tersebut dibuat di atas kertas dan ditandatangani oleh pimpinan perusahaan atau pejabat yang ditunjuk di lingkungan perusahaan yang bersangkutan.	**Pasal 9** Pengalihan dokumen perusahaan dapat dilakukan terhadap satu set dokumen tertentu atau sekumpulan dokumen, baik yang sejenis maupun yang tidak sejenis. **Pasal 10** (1) Pengalihan dokumen perusahaan dilakukan dengan menggunakan peralatan dan teknologi yang memenuhi standar ketepatan dan kelengkapan sehingga dapat menjamin hasil pengalihan sesuai dengan naskah asli dokumen yang dialihkan: (2) Dalam pengalihan dokumen perusahaan, pimpinan perusahaan atau pejabat yang ditunjuk wajib menjamin keamanan proses pengalihan agar: a. dokumen perusahaan hasil pengalihan, yang disimpan di dalam mikrofilm atau media lainnya tersebut, merupakan dokumen pengganti yang sepenuhnya sama dengan naskah aslinya; b. mikrofilm atau media lainnya tetap dalam keadaan baik untuk dapat disimpan dalam jangka waktu sekurang kurangnya sesuai dengan ketentuan mengenai daluwarsa suatu tuntutan yang diatur dalam peraturan perundang undangan yang berlaku; dan c. dokumen hasil pengalihan dapat dibaca atau dicetak kembali di atas kertas. **Pasal 11** (1) Perusahaan dapat menunjuk perusahaan lain untuk melaksanakan pengalihan dokumen perusahaan ke dalam mikrofilm atau media lainnya. (2) Perusahaan yang ditunjuk melaksanakan pengalihan dokumen sebagaimana dimaksud dalam ayat (1) wajib memenuhi syarat sebagai berikut: a. berbadan hukum; dan b. memperoleh izin usaha. **Pasal 12** Apabila tempat pemrosesan pengalihan dokumen perusahaan berbeda dari tempat pembuatan dan penyimpanan dokumen perusahaan, proses pengalihan dapat dilakukan melalui media teknik pengalihan yang tersedia.

UU 8/1981 Hukum Acara Pidana	UU 15/2002 Tindak Pidana Pencucian Uang	UU 9/2013 Pencegahan dan Pemberantasan Terorisme	UU 21/2007 Pemberantasan Tindak Pidana Perdagangan Orang
Pasal 184 - Keterangan saksi - Keterangan ahli - Surat - Petunjuk - Keterangan terdakwa	**Pasal 1 angka 7** Dokumen adalah data, rekaman, atau informasi yang dapat dilihat, dibaca, dan/atau didengar, yang dapat dikeluarkan dengan atau tanpa bantuan suatu sarana, baik yang tertuang di atas kertas, benda fisik apapun selain kertas, atau yang terekam secara elektronik, termasuk tetapi tidak terbatas pada: a. tulisan, suara, atau gambar; b. peta, rancangan, foto, atau sejenisnya; c. huruf, tanda, angka, simbol, atau perforasi yang memiliki makna atau dapat dipahami oleh orang yang mampu membaca atau memahaminya.	**Pasal 1 angka 14** Dokumen adalah data, rekaman, atau informasi yang dapat dilihat, dibaca, dan/atau didengar yang dapat dikeluarkan dengan atau tanpa bantuan suatu sarana, baik yang tertuang di atas kertas atau benda fisik apa pun selain kertas maupun yang terekam secara elektronik, termasuk tetapi tidak terbatas pada: a. tulisan, suara, atau gambar; b. peta, rancangan, foto, atau sejenisnya; dan c. huruf, tanda, angka, simbol, atau perforasi yang memiliki makna atau dapat dipahami oleh orang yang mampu membaca atau memahaminya.	**Pasal 29** Alat bukti selain sebagaimana ditentukan dalam Undang-Undang Hukum Acara Pidana, dapat pula berupa: a. informasi yang diucapkan, dikirimkan, diterima, atau disimpan secara elektronik dengan alat optik atau yang serupa dengan itu; dan b. data, rekaman, atau informasi yang dapat dilihat, dibaca, dan/atau didengar, yang dapat dikeluarkan dengan atau tanpa bantuan suatu sarana, baik yang tertuang di atas kertas, benda fisik apa pun selain kertas, atau yang terekam secara elektronik, termasuk tidak terbatas pada: 1) tulisan, suara, atau gambar; 2) peta, rancangan, foto, atau sejenisnya; atau 3) huruf, tanda, angka, simbol, atau perforasi yang memiliki makna atau dapat dipahami oleh orang yang mampu membaca atau memahaminya.
	Pasal 38 Alat bukti pemeriksaan tindak pidana pencucian uang berupa: a. alat bukti sebagaimana dimaksud dalam Hukum Acara Pidana; b. alat bukti lain berupa informasi yang diucapkan, dikirimkan, diterima, atau disimpan secara elektronik dengan alat optik atau yang serupa dengan itu; dan c. dokumen sebagaimana dimaksud dalam Pasal 1 angka 7.	**Pasal 38** Alat bukti yang sah dalam pembuktian tindak pidana pendanaan terorisme ialah: a. alat bukti sebagaimana dimaksud dalam Undang- Undang Hukum Acara Pidana; b. alat bukti lain berupa informasi yang diucapkan, dikirimkan, diterima, atau disimpan secara elektronik dengan alat optik atau alat yang serupa optik; dan/atau c. Dokumen.	

Heru Setiawan

Secretary General of the Constitutional Court of the Republic of Indonesia

Digital Transformation in the Judicial Review Procedure at the Constitutional Court of the Republic of Indonesia

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Nama Penulis : Heru Setiawan
NIM : T3120108013
Promotor : Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H., M.H
Co-Promotor : Prof. Dr. M. Guntur Hamzah, S.H., M.H

CONSTITUTIONAL COURT OF

THE REPUBLIC OF INDONESIA

MATERIAL OF
THE SECRETARY GENERAL OF
THE CONSTITUTIONAL COURT,
FOR
The International Short Course of AACC 2023
"Democracy, Digital Transformation, and Judicial Independence"
Jakarta, 10 August 2023

Digital Transformation in the Judicial Review Procedure at the Constitutional Court of the Republic of Indonesia

I. Introduction

One of the challenges and crucial issues in supporting the creation of a court decision is the consistency of the verdict. In many cases, the court decisions are deemed inconsistent, because they decide differently on cases that actually have similar substances. This is known as overulling. In this case, overulling is understood as the court practice in providing a different new judicial opinion to replace the previous judicial opinion even though the subject matters of the constitutional issues are similar. The practice of overulling may lead the public opinion to think that the court is often trapped in inconsistencies in deciding the cases. Inconsistent decisions will potentially create legal uncertainties. In fact, there would be confusion in the community regarding which decisions must be followed and obeyed.[1]

[1] Regarding this overruling practice, it can be read, among others, in Zaka Firma Aditya, "Judicial Consistency Dalam Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang Penodaan Agama," *Jurnal Konstitusi* 17, no. 1 SE-Articles (May 6, 2020): 80–103, https://doi.org/10.31078/jk1714. This article provides an example of the decision of the Constitutional Court which is considered inconsistent or overruling, namely the Decision of the Constitutional Court Number 36/PUU-XV/2017 and the Decision of the Constitutional Court Number 40/PUUXV/2017 in relation to the status of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) in the constitutional structure in Indonesia. The Decision of the Constitutional Court Number 36/PUU-XV/2017 and the Decision of the Constitutional Court Number 36/PUU-XV/2017 have interpreted the institution of KPK as part of the executive branch, whereas

The consistency of the Decision of the Constitutional Court is an important aspect in maintaining the substance of sustainable legal justice and certainty. However, it must be understood that the wish to remain consistent will not necessarily overpower the wish to make any amendment. Although in it, there is a strong reason to make the amendment. This is because the development of new legal demands requires a change in the direction of legal consideration or opinion in the decision. The most important thing in this case is the existence of clear and firm constitutional arguments. Whether the Constitutional Court wish to be consistent with the previous decision or it wish to amend its direction, stance and constitutional arguments when deciding any cases with similar constitutional issues.

Thereby, to be able to realize these things, ideas and concrete steps are needed to provide the support to the Constitutional Court (Mahkamah Konstitusi or MK). Such ideas and steps are related to the provision of legal literacy which would be needed when deciding on any case. This legal literacy support must enable the Constitutional Judges to search, know, present, and compare legal considerations and opinions in all previous decisions in a comprehensive manner that contain similar constitutional issues within the period of time since the Constitutional Court was established.

This is so that before any case is decided, Constitutional Judges may obtain any materials from all legal considerations and opinions from similar decisions to get a complete picture with a 360 degree perspective, especially regarding *ratio decidendi*[2] and the constitutional interpretation method applied. Furthermore, the Constitutional Judges will choose and determine their legal considerations and opinions, whether to remain in their stance and be consistent with the previous decision, or to choose to change their stance. The legal literacy provided can definitely guide the Constitutional Judges to determine their stance. The stance could

in the 4 (four) previous decisions, namely the Decision of the Constitutional Court Number 016-017-019/PUU -IV/2007, the Decision of the Constitutional Court Number 19/PUU-V/2007, the Decision of the Constitutional Court Number 37-39/PUU-VIII/2010, and the Decision of the Constitutional Court Number 5/PUU-IX/2011, the Constitutional Court declared that KPK is an independent institution that shall not be included in the power system of executive, judicial or legislative. The practice of overruling by the Constitutional Court can be seen in the dissenting opinion submitted by Constitutional Judge I Dewa Gede Palguna, Judge Suhartoyo and Judge Saldi Isra in the Decision of the Constitutional Court Number 36/PUU-XV/2017.

[2] Refer to Black's Law Dictionary, page 1135 (5th ed. 1979).

be the same or different, both require constitutional arguments that are equally meaningful, clear, firm and certain.

Therefore, the tracing of legal considerations and opinions is no longer done manually, relying solely on memory, so as to minimize the creation of any decisions with inconsistent legal considerations and opinions as well as ahistorical. However, even if there is any amendment to the decision, such amendment shall not be decided without any constitutional arguments.

Based on the aforementioned background, the formulation of the issues in this writing is as follows.

1. How urgent is the digital transformation in the practice of judicial review procedure (*Pengujian Undang-Undang* or PUU) at the Constitutional Court (Mahkamah Konstitusi or MK)?
2. What is the process of digital transformation in the judicial review procedure at the Constitutional Court (Mahkamah Konstitusi or MK) in order to achieve the legal objectives?
3. What rules and principles should be applied by the Constitutional Court (Mahkamah Konstitusi or MK) to accelerate the digital transformation that is in line with the vision of a modern and reliable judicial review procedure (*Pengujian Undang-Undang* or PUU)?

II. Digital Transformation in the Judicial Review Procedure at the Constitutional Court of the Republic of Indonesia

To be able to provide legal literacy for judicial institution in the era of technological advancement, Society 5.0 is a necessity. The availability of judicial technology by carrying out the digital transformation in handling the judicial review cases at the Constitutional Court is substantially very constitutional because every citizen has the right to optimize the potential that God Almighty has bestowed, including in terms of the use of technology.[3]

From the beginning, the Constitutional Court is determined to become a modern court by continuously implementing and developing innovations to optimize

[3] Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia," *Jurnal Konstitusi* 11, no. 3 SE-Articles (May 20, 2016): 409–27, https://doi.org/10.31078/jk1131.

the utilization of information, communications, and technology (ICT).[4] Undeniably, the use of ICT has become a main driving force for modern institutions such as the Constitutional Court, especially Digital Transformation in Judicial Review Procedure.

The digital transformation conducted by the Constitutional Court will produce legal documents resulted from legal analysis which are transformed by the technology capable of processing, storing, and displaying the legal principles in the Decisions of the Constitutional Court into a single integrated digital legal literacy, thus creating a comprehensive legal literacy. In order to produce a comprehensive legal literacy and to answer for the openness in the handling of cases at the Constitutional Court, the act of analyzing the law must be carried out from the stage when the petition is received by the Constitutional Court, both for any online petition and any petition submitted at the counter provided by the Constitutional Court. Therefore, every stage of handling the cases at the Constitutional Court and the trials at the Constitutional Court will produce legal documents which are then legally analyzed, thus will result in legal literacy for the case being petitioned for.

Digital Transformation in the Judicial Review Procedure at the Constitutional Court is a necessity that was initiated to strengthen the support for an important phase in the handling of the cases, namely when Constitutional Judges formulate and compile the drafts of decision after obtaining sufficient information through the sessions that are open to the public. This phase in the Digital Transformation in the Judicial Review Procedure at the Constitutional Court is especially important as it is one of the ways to realize a fully supported substantive principle in the process of decision makings that are just and have legal certainty.

In the cycle of case handling, both the decision and the judge have two inseparable terms. The first term, namely at the stage of case handling in preparing the Decision. The stage of case handling that is transparent is very important in each stage of case handling. Starting from the submission, examination of files, holding the trials, and decision makings. The transparent stage of case handling is important

[4] Agusti Carrilo, *E-Justice: Using Information Communication Technologies in the Court System* (New York: Information Science Reference, 2009).

because at each stage, this becomes the initial assessment of the parties in obtaining justice at each stage followed by the petitioner.[5]

The second term is the verdict which is the end product of the judges in addressing, answering, and resolving the case. In fact, a decision is referred to as the "crown of judges". In this case, a quality decision is a reflection of the expertise, capacity and ability of the judges in deciding the case. Various theories have been put forward regarding how to achieve a quality judge decision that reflects justice. It is an absolute for the justice seeker that a quality decision is none other than the decision that can create justice, acceptable, and implementable.

By observing the basic principles of Good Judiciary Governance, it can be concluded that there are 2 basic principles that are relevant to the research issue. The first basic principle is as put forward by Jeremy Bentham[6] whereas openness is the spirit of justice. In order for the justice system to be open, another approach is needed, namely by inviting other fields to be linked to the legal system, in this case technology, so that transparency is actually realizable. If the legal approach is linked to the technology, then what would be a determining factor is the technology-based justice system. The decisions of the Constitutional Court may share different opinions or may offer several pros and cons. However, the consistent openness and transparency carried out by the Constitutional Court in its decisions will be acceptable to all members of society[7]. "Law and Justice must be rational and the use and technology may fulfill it".

The Second Principle is as stated by Lord Gordon Hewart,[8] he said that justice must not only be done, it must be seen to be done. To achieve this, there are 2 areas that need attention, namely the judges and the decisions. The first area**,** the judges

[5] Hani Adhani, "Mahkamah Konstitusi Indonesia Di Era Digital: Upaya Menegakan Konstitusi, Keadilan Substantif Dan Budaya Sadar Berkonstitusi," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (2021): 130–46, https://doi.org/10.18196/jphk.v2i2.11763.

[6] M.Guntur Hamzah, *Bahan Presentasi Pengembangan SIKD Di MK* (Surabaya: Universitas Airlangga Surabaya, 2019).

[7] The acceleration of technological transformation at the Constitutional Court was conveyed by President Joko Widodo during his remarks at the Special Plenary Session for Submission of Constitutional Court Reports in the Constitutional Court Courtroom on 10 February 2022. See, https://www.setneg.go.id/baca/index/presiden_apresiasi_mk_dalam_percepatan_transformasi_peradilan_digital_di_masa_pandemi, diakses pada 10 April 2023.

[8] Anne Richardson Oakes and Haydn Davies, "Justice Must Be Seen to Be Done: A Contextual Reappraisal," *Adelaide Law Review* 37, no. 2 (2016): 461–94, https://law.adelaide.edu.au/system/files/media/documents/2019-02/alr-37-2-ch06-oakes-davies.pdf.

must make decisions fairly and the second area, each decision making process must be presented in a transparent and fair manner.

Based on these opinions of Jeremy Bentham and Lord Gordon Hewart, the Constitutional Court needs to ensure that at each stage of case handling, the principles of fairness and transparency have been fulfiled for the petitioners by linking judicial technology as has been practiced in the Constitutional Court through digital transformation of case handling in judicial review cases.

As for the practice of digital transformation of legal documents, it must be available at each stage of case handling as a manifestation of public information disclosure based on the Constitutional Court Law Number 24 of 2003 as last amended by Law Number 7 of 2020 concerning the third amendment to Law Number 24 of 2003 and Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases.

In terms of implementing digital transformation, there is a need to consider various problematic elements that would arise, namely Philosophical Problems, Theoretical Problems, Juridical Problems and Empirical Problems in the judicial institution and the petitioners.

a. Philosophical Problems

   Digital transformation and transparency at each stage of case handling will hold the historical legal documents of the legal norms that have occurred at each stage of case handling in judicial review cases in a transparent manner which is accountable to the public, to the registrar of the Constitutional Court and to the Constitutional Judges and in the end to the final stage of case handling in judicial review cases, namely the Decision of the Constitutional Court. The Decision of the Constitutional Court must be in a very good quality, made by going through a good process at each stage of case handling so that the Constitutional Court can produce a decision that ultimately uphold the law and create an implementable and acceptable justice as a solution to the constitutional problem experienced by the petitioner. The philosophical problem in the form of doubt regarding the roles and capabilities of technology in supporting the judicial institution and constitutional judges in making good decisions continues to be a problem considering that the preparation of laws / decisions is not just a technical process of technology but it also requires a

touch of conscience / conviction of the constitutional judges in examining, adjudicating and deciding any constitutional cases .

b. Theoretical Problem

There are perspectives of "technology beating the law" or "The law lags behind the technology". The discipline of law is often positioned as a rival to the technology, even though the two are convergently intersecting. The lawyers in the discipline of law need to be equipped with the capabilities to master the technology to be able to ensure that the law, with the support of the technology, will always be seen as fair at each stage, so that in the end the decision is also deemed as fair and acceptable to the parties. In law, the support of technology is not just a change in business strategy or personal attitude, but rather a shift of paradigm in the entire legal system.

c. Juridical Problem

The practice of judicial review implemented at the Constitutional Court has been considered open and the holding of trials of the Constitutional Court has indeed been supported by information technology systems so that the Constitutional Court which holds the title as a modern and reliable constitutional court would be considered as an established standard in handling the judicial cases.

Talking about the implementation of digital transformation in judicial review at the Constitutional Court, it is necessary to pay close attention to the stages in the proceedings at the Constitutional Court. Normatively, it can be observed carefully that the stages of handling the judicial review cases have been regulated in the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases. The stages are as follows.

1) Submission of petition;
2) Recording of petition in the Electronic Petitioner's Petition Submission Book (*Buku Pengajuan Permohonan Pemohon Elektoronik*);
3) Examination of the completeness of the petition;
4) Notice of Deed of Notification of Completeness of Petition File accompanied by a List of Examination Results of the Completeness of the Petitioner's Petition;
5) Fulfilment of the completeness and revision of the petition;

6) Submission of the petition report in the Deliberative Meeting of Judges (RPH or *Rapat Permusyawaratan Hakim*)
7) Recording of petition in the Constitutional Case Registration Book (*Buku Registrasi Perkara Konstitusi*)
8) Submission of a copy of the petition
9) Submission of petition as a related party
10) Notice of hearing to the parties
11) Preliminary examination
12) Trial examination
13) Holding of Deliberative Meeting of Judges (RPH or *Rapat Permusyawaratan Hakim*) to discuss the case
14) Declaration of verdict
15) Delivery/submission of a copy of the decision

Based on these fifteen stages, several problems have been identified, so it is necessary to believe that digital transformation practices are important to be implemented. In the early stages, the period of petition submission and the recording of such petition in the Electronic Petitioner's Petition Submission Book, there is a few days difference between the time when the Petitioner submits the petition and the issuance of the Deed of Petitioner's Petition, such period of time is not regulated in the Standard Operating Procedures at the Constitutional Court so that sometimes the process could be done quickly, while other times it is done slowly. Furthermore, in the stage of examination of the completeness of the petition and notice of Deed of Notification of Completeness of Petition File accompanied by a List of Examination Results of the Completeness of the Petitioner's Petition, the Petitioner would only get the results of the examination if the petitioner's petition is declared as incomplete, then a problem arises: why is there no notification given for any complete petition? Therefore, the petitioner could confirm that the petition is indeed being examined and could confirm the time of such examination, thus the petitioner is able to figure out in detail the progress of the stages of the petition. Moreover, the problem that may arise is that after the petition is registered, the Court should be able to create a resume of the petition which can be widely published on the website of the Constitutional Court to the

general public, especially to those outside of the legal field, thus they would be able to read and understand the substance of the petitioner's petition.

In the stage of Decision, it is deemed necessary to also include the explanation regarding the process of the Deliberative Meeting of Judges (RPH or *Rapat Permusyawatan Hakim*) in the decision. Surely, what would be included is not the entire content of the Deliberative Meeting of Judges, but the outline information regarding the intensity of the Deliberative Meeting of Judges as conducted. This needs to be done because during the declaration of the decision, the Court will only publish date of the Deliberative Meeting of Judges when the decision is made. The Petitioner never knew the intensity of the discussion of the case during the Deliberative Meeting of Judges, and when the Deliberative Meeting of Judges was conducted. It would give a sense of satisfaction to the Petitioner to know how long it takes for the case to be decided, so that there is no longer any presumption that the Constitutional Court has neglected/ignored a case.

In addition, the digital transformation will make it very easy for everyone, especially the Distinguished Judges of the Constitutional Court, to carry out the identification process, section by section, in the Outline of the Decision**.** In every review of the incoming petition, the Identity of the Petitioner and the Legal Attorney of the Parties can be seen, so this will make the tracking of the relevant data easier in each stage of case handling.

It is not enough to stop there, the digital transformation, as carried out in the Subject Matter section at the handling stage of the Judicial Review case, by reviewing the previous related decisions, can assist in finding out the reasons for the petition being put forward by the Petitioner. No less important is the stage of *ratio decidendi*[9] or Legal Considerations of the Court, the process of identifying this part will be very decisive because the digital transformation can assist to provide the literacies used by the Constitutional Judges to construct Legal Opinions, so that decisions can be made in a fair and wise manner. With the help of technology, the previous decisions can also be known, which subsequently can be used as jurisprudence, so that it is expected

[9] *Op.Cit.* Black's Law Dictionary.

to be used as literacy material which should be very useful for the Constitutional Judges and even all justice seekers at the Constitutional Court.

The last part in the decision is the Verdict. In accordance with the Constitutional Court Law, the Constitutional Court, in any judicial review cases so far, has passed down the verdicts which stated either the case is granted, dismissed or inadmissible. However, the Constitutional Court, sometimes in the explanation of its verdict, also renders any specificities such as declaring the case as conditionally constitutional or conditionally unconstitutional. Surely, this explanation can provide further enlightenment as knowledge for the legal activists in the society in relation to the characteristics of verdicts in the Constitutional Court. We often also find dissenting opinions and concurring opinions in the judicial review cases, although it is still being debated whether these two things should be a part of the decision or not. But these two things has also caught the attention of the law activists. Therefore, the presence of digital technology is also beneficial to find the dissenting opinions or concurring opinions which often appears in the decisions of the Constitutional Court.

Both Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court and Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases have not regulated any holistic and comprehensive integration between the handling the judicial review cases and the use of the information, communications, and technology (ICT) system. This is one of the main problems of the Constitutional Court (MK or Mahkamah Konstitusi) in carrying out digital transformation because there is no firm and clear legal umbrella for such problem.

d. Empirical Problem

The practice of decision makings in the judicial institution so far has been largely determined by the judges, it is manual in nature, and relies on the ability of constitutional judges, also it did not utilize the support of digital transformation technology that fully supports the constitutional judges in formulating their decisions in any cases. Thus, it is common to find inconsistencies in the decisions of the Constitutional Court (MK or Mahkamah Konstitusi) even though several petitions may have the same philosophical

substances or legal basis. In addition, the transparency of documents in every trial/hearing process cannot be fully accessed in general because the spirit of transparency/openness of the Constitutional Court (MK or Mahkamah Konstitusi) in the judicial process has not been integrated with the existing technology.

By considering the Philosophical Problem, Theoretical Problem, Juridical Problem, Empirical Problem in the practice of digital transformation in the Constitutional Court and also in relation to the implementation of digital transformation at each stage in the Judicial Review case, it is expected that recommendations will be produced in the form of several fundamental changes in the practice of handling the judicial review cases which required several proposed amendments to the norms of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, Constitutional Court Regulation Number 2 of 2021 concerning Procedures for Judicial Review in the Constitutional Court, as well as a proposed new formula in the practice of handling the cases by implementing digital transformation in the procedure of judicial review at the Constitutional Court.

By carrying out the digital transformation in the procedure of judicial review at the Constitutional Court, it is expected that the legal documents and digital legal literacy with complete, accurate, and easily accessible primary and secondary data will be available to the Parties, the Constitutional Judges, and the Court Registrar of the Constitutional Court. This could be a new formula for a substantive support in the stages of case handling that is transparent and reliable which shall produce the decisions of the Constitutional Court that have taken into account the source of law in each stage of case handling at the Constitutional Court.

III. Conclusion

Based on the above description, several fundamental problems would arise for the judicial institution and for the justice seekers if the judicial institution does not apply the information technology and system in the litigation process at the judicial institution.

These fundamental problems can be categorized as follows.

a. The access to justice would be limited;
b. The transparency in the stages of case handling is not easily accessible;
c. The support for the creation of legal literacy norms in each stage of case handling is not fulfilled;
d. Decision making would rely solely on the ability and memory of the judges because they are not supported by legal literacy in making such decisions;
e. The unavailability of norms that are created in every stage of case handling;
f. The costs of litigation would not be cheap for any justice seekers;
g. It would take a long time to conduct the litigation process, from the submission of the petition until the declaration of decision.

From these fundamental problems, several problems have been formulated in this paper, namely.

1. How urgent is the digital transformation in the practice of judicial review procedure (*Pengujian Undang-Undang* or PUU) at the Constitutional Court (Mahkamah Konstitusi or MK)?
2. What is the process of digital transformation in the judicial review procedure at the Constitutional Court (Mahkamah Konstitusi or MK) in order to achieve the legal objectives?
3. What rules and principles should be applied by the Constitutional Court (Mahkamah Konstitusi or MK) to accelerate the digital transformation that is in line with the vision of a modern and reliable judicial review procedure (*Pengujian Undang-Undang* or PUU)?

Based on the formulation of the problems, it can be concluded that the solutions to solving such problems in the law procedure and practice at the judicial institution are as follows:

1. Digital transformation in the constitutional justice institution, especially in the practice of judicial review procedure at the Constitutional Court is urgently needed, a fully digital implementation should be carried out to achieve the goal of seeking justice at the Constitutional Court as the judicial institution. A fully digital legal literacy would provide the materials for decision making that could support the Constitutional Judges, who previously only relied on memory. By

having a 360-degree perspective on literacy decisions, this would become the strength of Constitutional Judges to make decisions that are just.

2. There is a need to build a Modern Technological and Judicial Ecosystem and Digital Culture Transformation in the judicial institution to provide acceleration for the establishment of the constitutional judges and the justice seekers who are fully supported by digital means.
3. Ensuring and encouraging that the gradual creation of the norms of the Constitutional Court (MK or Mahkamah Konstitusi) Law and the Judicial Review Procedure at the Constitutional Court (MK or Mahkamah Konstitusi) fully supports the digital transformation and the creation of digital literacy materials for decision making.

The implementation of fully digital approach at the Constitutional Court is believed to be the conclusion, as has been described, it can be a solution to resolve the fundamental problems that generally occur in the constitutional justice institution.

BIBLIOGRAPHY

Adhani, Hani. "Mahkamah Konstitusi Indonesia Di Era Digital: Upaya Menegakan Konstitusi, Keadilan Substantif Dan Budaya Sadar Berkonstitusi." *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (2021): 130–46. https://doi.org/10.18196/jphk.v2i2.11763.

Aditya, Zaka Firma. "Judicial Consistency Dalam Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang Penodaan Agama." *Jurnal Konstitusi* 17, no. 1 SE-Articles (May 6, 2020): 80–103. https://doi.org/10.31078/jk1714.

Cropanzano, Russell, Donna Chrobot-mason, Deborah E Rupp, and Cynthia A Prehar. "Accountability for Corporate Injustice" 14 (2004): 107–33. https://doi.org/10.1016/j.hrmr.2004.02.006.

Cui, Yu, and Hao Jiao. "Organizational Justice and Management Trustworthiness during Organizational Change : Interactions of Benevolence , Integrity , and Managerial Approaches." *Information Processing and Management* 56, no. 4 (2019): 1526–42. https://doi.org/10.1016/j.ipm.2018.10.008.

Fujimoto, Yuka, Charmine E J Härtel, and Fara Azmat. "Towards a Diversity Justice Management Model: Integrating Organizational Justice and Diversity Management." *Social Responsibility Journal* 9, no. 1 (January 1, 2013): 148–66. https://doi.org/10.1108/17471111311307877.

Fuller 1902-1978, Lon L (Lon Luvois). *The Morality of Law*. New Haven : Yale University Press, 1964., 1964. https://search.library.wisc.edu/catalog/999468106202121.

Isra, Saldi. "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia." *Jurnal Konstitusi* 11, no. 3 SE-Articles (May 20, 2016): 409–27. https://doi.org/10.31078/jk1131.

Keller, Werner Hans, and Xia Zhang. "Functions of Law in the Sustainable Development of China and a Model for Environmental Legislation." *European Business Review* 29, no. 4 (January 1, 2017): 440–56. https://doi.org/10.1108/EBR-05-

Koenti, Ishviati, and Universitas Janabadra. "Penerapan Prinsip Transparansi Di Lingkungan Peradilan Tingkat Pertama Di Yogyakarta." *Jurnal Kajian Hukum* 3, no. 1 (2018): 499–515.

Korac-Kakabadse, Nada, Alexander Kouzmin, and Phillip Reeves Knyght. "Inequality of Discourse: Problematic Consumption of Justice in the Common Law Legal System." *Women in Management Review* 16, no. 3 (January 1, 2001): 126–41. https://doi.org/10.1108/09649420110390282.

Kusumawardani, Qur'ani Dewi. "Hukum Progresif Dan Perkembangan Teknologi Kecerdasan Buatan." *Veritas et Justitia* 5, no. 1 (2019): 166–90. https://doi.org/10.25123/vej.3270.

Oakes, Anne Richardson, and Haydn Davies. "Justice Must Be Seen to Be Done: A

Contextual Reappraisal." *Adelaide Law Review* 37, no. 2 (2016): 461–94. https://law.adelaide.edu.au/system/files/media/documents/2019-02/alr-37-2-ch06-oakes-davies.pdf.

Ojiako, Udechukwu, Maxwell Chipulu, Alasdair Marshall, and Terry Williams. "ScienceDirect An Examination of the ' Rule of Law ' and ' Justice ' Implications in Online Dispute Resolution in Construction Projects." *International Journal of Project Management*, 2017. https://doi.org/10.1016/j.ijproman.2017.10.002.

Omri, Anis, and Nejah Ben. "Good Governance for Sustainable Development Goals : Getting Ahead of the Pack or Falling Behind ?" *Environmental Impact Assessment Review* 83, no. December 2019 (2020): 106388. https://doi.org/10.1016/j.eiar.2020.106388.

Prayogo, R. Tony. "Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Pedoman Beracara Dalam Pengujian Undang-Undang." *Jurnal Legislasi Indonesia* 13, no. 2 (2016): 194. https://e-jurnal.peraturan.go.id/index.php/jli/article/view/151/0.

Schockman, H Eric, Vanessa Alexandra Hernández Soto, and Aldo Boitano de Moras. "International Law and Social Justice." In *Peace, Reconciliation and Social Justice Leadership in the 21st Century*, 8:137–41. Building Leadership Bridges. Emerald Publishing Limited, 2019. https://doi.org/10.1108/S2058-880120190000008029.

Ali, Achmad. *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence) Termasuk Undang-Undang (Legisprudence) Volume I Pemahaman Awal*. Jakarta: Kencana Prenada Media Grup, 2010.

Asshiddiqie, Jimmly. *Hukum Acara Pengujian Undang-Undang*. Jakarta: Konstitusi Press, 2006.

Carrilo, Agusti. *E-Justice: Using Information Communication Technologies in the Court System*. New York: Information Science Reference, 2009.

Greacen, Jhon M. *18 Ways Courts Should Use Technology To Better Serve Their Customers*. Denver: Institute for the Advancement of the American Legal System, 2018.

Hamzah, M.Guntur. *Bahan Presentasi Pengembangan SIKD Di MK*. Surabaya: Universitas Airlangga Surabaya, 2019.

Ilyas, Amir. *Kumpulan Asas-Asas Hukum*. Jakarta: Rajawali Pers, 2016.

Manan, Abdul. *Aspek-Aspek Pengubah Hukum*. Jakarta: Kencana Prenada Media, 2006.

Margono. *Asas Keadilan,Kemanfaatan Dan Kepastian Hukum Dalam Putusan Hakim*. Jakarta: Sinar Grafika, 2012.

Rasjidi, Lili, and Ida Bagus Wiyasa Putra. *Hukum Sebagai Sebuah Sistem*. Bandung: Mandar Maju, 2003.

Reiling, Dory. *Technology for Justice: How Information Technology Can Support Judicial Reform*. Amsterdam: Leiden University Press, 2009.

Santoso, M.Agus. *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*. Jakarta: Kencana, 2014.

Saukani. *Akses Tata Kelola Daerah Yang Baik*. Yogyakarta: LkiS, 2013.

Shidarta. *Karakteristik Penalaran Hukum Dalam Konteks Ke-Indonesiaan*. Jakarta: Utomo, 2006.

Sholehudin, Umar. *Hukum & Keadilan Masyarakat*. Malang: Setara Press, 2011.

Siahaan, Maruarar. *Hukum Acara Mahkamah Konstitusi*. Jakarta: Sinar Grafika, 2015.

Tjandra, Riawan. *PTUN Mendorong Terwujudnya Pemerintahan Yang Bersih Dan Berwibawa*. Yogyakarta: Universitas Atmajaya Yogyakarta, 2009.

Asnawi, M. Natsir. "Teknologi Dan Pengadilan: Pemanfaatan Teknologi Dalam Mendukung Fungsionalitas Pengadilan." Mahkamah Agung Republik Indonesia, 2020. https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/pemanfaatan-teknologi-dalam-mendukung-fungsionalitas-pengadilan-oleh-m-natsir-asnawi-s-h-i-m-h-3-7.

Special Plenary Session for Submission of Constitutional Court Reports in the Constitutional Court Courtroom. https://www.setneg.go.id/baca/index/presiden_apresiasi_mk_dalam_percepatan_transformer_peradilan_digital_di_masa_pandemi, accessed on April 10, 2023.

R.A. Indah Apriyanti

Constitutional Court of the Republic of Indonesia

Emerging Technologies and Judicial Integrity: Challenges in Digital Transformation of the Indonesian Constitutional Court

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Emerging Technologies and Judicial Integrity: Challenges in Digital Transformation of the Indonesian Constitutional Court

R.A. Indah Apriyanti
The Constitutional Court of the Republic of Indonesia

Judicial integrity is a multi-faceted concept that covers the conduct and practices of judges as well as the structure and circumstances in which judges work. It encompasses the principles that ensure transparent, effective and accountable institutions as a critical component for promoting SDG 16's aim of peaceful, just and inclusive societies and justice for all.[10] Article 10 of the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on 10 December 1948 stated that Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.[11] In this context, the judiciary is an area that has significant potential for emerging technologies to play a more prominent role.

E-justice is an umbrella term that captures any effort to administer, deliver, strengthen, or monitor justice services using digital technologies. It includes efforts by institutions like courts and governments, individuals like lawyers and human rights defenders, and private and civil society entities like technology providers and community partners.[12]

Some elements of these projects were introduced or accelerated because of the COVID-19 pandemic and ensuing quarantines, which required courts to operate virtually and restructure court processes as online transactions. The use of technology can increase speed and transparency of judicial decisions, increasing confidence, accountability and allowing for a greater public scrutiny of the system. The foundational protections of the rule of law built into justice systems may be compromised, unintentionally, by private

[10] 2030 Agenda for Sustainable Development, https://sdgs.un.org/2030agenda
[11] Universal Declaration of Human Rights, https://www.un.org/en/about-us/universal-declaration-of-human-rights
[12] International Consortium for Court Excellence, Court Excellence Self-Assessment Questionnaire.

sector technology developers. As changes are introduced, ongoing scrutiny of the impacts of technology changes on the judicial process will be critical.[13]

Digital Transformation in the Judicial System

The Indonesian Constitutional Court has implemented digital transformation in the judicial system in the last few years when digitalization has affected how people live and interact.

1. Digitalization of Court Proceedings

   One of the most significant benefits of emerging technologies is the digitalization of court proceedings. The use of electronic systems can help in reducing paperwork, improving accessibility, and facilitating the efficient management of cases. The digitization of court records can help in making them easily accessible, improve transparency, and speed up the judicial process. For example, the e-Court project on **simpel.mkri.id**[14] aims to computerize the working of courts in the country and make the judicial system more efficient.

2. Use of Machine Learning

   Machine learning refers to computer systems that can learn and adapt without following explicit instructions by using algorithms and statistical models to analyze and draw inferences from patterns in data. AI uses an algorithm to apply a logical formula to data to predict or propose a result.[15] An algorithm is the mathematical logic behind a system that performs tasks or makes decisions. In the court context, this can result in predicting court processes or timelines or generating draft decisions. When decisions are made using a predictive algorithm, it is also referred to as automated decision-making.

   machine learning can help analyze vast amounts of data, identify patterns, and predict outcomes. Although still a debate among the judges, Indonesian Constitutional Court recognized the value and is considering the AI tools being introduced to enhance the efficiency of the justice delivery system – both in terms of quality and quantity. Currently, the courts have implemented the e-risalah, which is an AI-enabled transcription tool for conversion in courtrooms hearings/trials to written language.

3. E-filing of Cases

[13] UNDP RBAP Emerging Technologies and Judicial Integrity in ASEAN, 2021
[14] www.simpel.mkri.id
[15] *Op.Cit.* UNDP RBAP

The use of e-filing can make the process of filing cases faster, more efficient, and cost-effective. E-filing can help reduce the time taken for filing, improve data accuracy, and eliminate the need for physical presence in court. For example, the e-filing portal of the Indonesian Constitutional Court enables lawyers and applicants to file cases and access case records online, namely the case-tracking system.

4. Video Conferencing for Hearings

   The use of video conferencing can help in conducting hearings remotely, making it easier for lawyers and litigants to participate in the judicial process. Video conferencing can save time and money, reduce travel burdens, and ensure all participants' safety and security. For example, during the Covid-19 pandemic, the Indonesian Constitutional Court started using video conferencing to conduct virtual hearings, which is called the SmartBoard system. The SmartBoards are available in 50 universities around Indonesia and 3 regions that is granted “Desa Konstitusi” stature in cooperation with the Indonesian Constitutional Court.

5. Chain of Authority for Secure Record-Keeping

   Chain of Authority technology can help ensure court records' security and transparency.

   The use of *chain of authority* can help prevent tampering, maintain data integrity, and ensure that court records are secure and accessible only to authorized users.

It is undeniable that the huge positive impact of digital transformation is followed by challenges should be faced in the application of emerging technologies in the judicial system.

1. Data Security

   With the increasing amount of sensitive data being collected by the judicial system, it is crucial to ensure that this data is kept secure. Any data breaches could compromise the justice system's integrity and undermine public trust.

2. Bias and Discrimination

   Emerging technologies such as Machine learning may inadvertently perpetuate bias and discrimination if the algorithms are not designed carefully. There is also the risk that these technologies could amplify existing biases and inequalities in the justice system.

3. Lack of Understanding

Many legal professionals may not have the technical expertise required to fully understand the capabilities and limitations of emerging technologies. This could lead to misunderstandings about how these technologies should be applied, resulting in ineffective or inappropriate use.

4. Privacy Concerns

   The use of emerging technologies could potentially violate privacy rights. For example, facial recognition technology could be used to identify individuals without their consent, and there is a risk that this technology could be misused by law enforcement or other organizations.

5. Cost

   The implementation of emerging technologies can be expensive, and the judicial system may not have the resources to invest in these technologies. This could limit the potential benefits that these technologies could bring to the justice system.

6. Ethical Considerations

   Several ethical considerations need to be taken-into-account when implementing emerging technologies in the judicial system. There is also concern with respect to the lack of the human element or 'conscience' required for the act of judging. For example, it is essential to ensure that these technologies do not compromise individuals' rights or undermine the justice system's integrity.

The Indonesian Constitutional Court should provide the following things in order to realize substantive justice for all citizens.[16] *First,* the implementation of ethical considerations. Emerging technologies can have ethical implications, and the judicial system needs to ensure that these technologies are being used in a way that is consistent with ethical standards. *Second,* the effort to protect data Privacy and Security. Emerging technologies such as Internet of Things (IoT) rely heavily on data collection, and it is vital to ensure that this data is being collected and used in a way that is compliant with data privacy and security regulations. *Third,* ensuring accessibility for all *Justitia bellen.*[17] The judicial system must ensure that emerging technologies do not create barriers to accessibility for individuals with disabilities or those with limited access to technology. *Fourth,* ensuring

[16] Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia," *Jurnal Konstitusi* 11, no. 3 SE-Articles (May 20, 2016): 409–27, https://doi.org/10.31078/jk1131.
[17] Agusti Carrilo, *E-Justice: Using Information Communication Technologies in the Court System* (New York: Information Science Reference, 2009).

that the use of emerging technologies must be transparent and subject to accountability measures to ensure that they are being used fairly and justly. It can be daily accessed from the mkri.id. *Fifth,* providing training and education. The judicial system must ensure that judges, lawyers, and other stakeholders are adequately trained and educated on the use of emerging technologies to ensure that they are being used effectively and appropriately.

The emerging of technologies in the Indonesian Constitutional Court judicial system has provided substantive justice for all *Justitia bellen* in all over Indonesia, especially those who live in the remote area and has no any facilities to access the court directly.

REFERENCES

Agusti Carrilo, *E-Justice: Using Information Communication Technologies in the Court System* (New York: Information Science Reference, 2009).

Agenda 2030for Sustainable Development, https://sdgs.un.org/2030agenda

International Consortium for Court Excellence, Court Excellence Self-Assessment Questionnaire.

Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia," *Jurnal Konstitusi* 11, no. 3 SE-Articles (May 20, 2016): 409–27, https://doi.org/10.31078/jk1131.

UNDP RBAP Emerging Technologies and Judicial Integrity in ASEAN, 2021

International Consortium for Court Excellence, Court Excellence Self-Assessment Questionnaire.

Universal Declaration of Human Rights, https://www.un.org/en/about-us/universal-declaration-of-human-rights

www.simpel.mkri.id

Tanawoot Trisopon

Constitutional Court of the Kingdom of Thailand

Judicial Independence: Constitutional Court of the Kingdom of Thailand

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Mr.Tanawoot Trisopon
Constitutional Court of the Kingdom of Thailand
Liaison Officer

Judicial Independence: Constitutional Court of the Kingdom of Thailand

Separation of power in the legislature, the executive, and the judiciary is a crucial principle to modern democracy. The separation of these three authorities established the mutual checks and balances between them, which ensured the limitation of any over usage of power by another power. One of the essential indications of a state that abided by this principle is the independence of the judiciary. The independence of the judiciary is a logical result of the principle of separation of powers in the sense that the vesting of judicial functions in a body separated from the legislature and the executive can only be meaningful if that body is truly independent.

The one aspect of sovereign powers, the judicial powers are resided in the Courts. This is asserted in the Constitution which provides that the trial and adjudication of cases are the powers that belonged to the Courts, that must be carried out with due regard to justice and following with the Constitution, laws, and in the name of the King. Judges are independent in the proper, swift, and fair trial and adjudication of cases per the Constitution and laws.

It can be interpreted that only the Courts can exercise judicial powers to ensure justice. The Constitutional Court, just like other Courts in the system, is independent and has to consider constitutional cases following the Constitution and laws.

1. The independence of the Constitutional Court as an institution

In constitutional democracy, the constitution is determined to be supreme. This principle is reflected through the constitution, which enacted

that the provision of any law, rule, and regulation contrary to or inconsistent with the constitution will be voided. The Constitutional Court then performed the important function of safeguarding the supremacy of the Constitution. Also, served as a judicial body, which recognizes and protects the rights and liberties of people through the exercise of adjudicative power.

The Constitutional Court was established under the Constitution. It consists of the President and eight judges, appointed by the King upon the advice of the Senate. "Justices of the Constitutional Court" was the name of the Judges of the Constitutional Court.

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties can be divided into the following:

- A case involving the constitutionality of laws or bills
- A case in which a person suffering a violation of right or liberty constitutionally protect alleges that the conduct concerned is contrary to or inconsistent with the Constitution (constitutional complaint)
- Any other case provided by the Constitution, an Organic Act, or any law to be within the jurisdiction of the Court

Autonomy in regulatory and administration.

The Constitutional Court has the autonomy to organize itself in the aspect of case management and general administration of the Court. The Court has an independent secretariat body, with the Secretary-General of the Office of the Constitutional Court as the executive, directly responsible to the President of the Constitutional Court. Secretary-General of the Office of the Constitutional Court was nominated by the President of the Constitutional Court with the approval of the Justices of the Constitutional Court collectively. The Office of the Constitutional Court also has independence in personnel administration, budget, and other activities as provided by law.

In addition, the Office of the Constitutional Court Act, B.E. 2542 (1999) was enacted to realize the above-mentioned provision of the Constitution. Based on this Act, the justices of the Constitutional Court have the authority to issue regulations, budget, finance, and other business

related to the Office of the Constitutional Court. Such regulations or notifications will be signed by the President of the Constitutional Court and come into effect upon their publication in the Government Gazette.

Budgetary independence

The Constitutional Court planned its budget, which is a part of the State budget. The Constitution provides that the State will allocate sufficient budgets for the autonomous administration of the Constitutional Court and in consideration of expenditure estimates for the Constitutional Court.

In addition, if the Court believes that the allocated budget is insufficient, it will submit a motion to the committee (National Assembly's Budgetary Committee) directly.

As regards the submission of budget estimates, the Office of the Constitutional Court Act, B.E. 2542 (1999) stipulates that the Office will submit to the Council of Ministers. Its estimates of the budget are under the resolution of the Justices of the Constitutional Court collectively to incorporate it in the annual appropriations bill or the supplementary appropriations bill. As the case may be, to set it aside as subsidies of the Justices of the Constitutional Court and the Office of the Constitutional Court.

One special feature of the budgetary management of the Office of the Constitutional Court is that the unspent budget left over from the previous fiscal years could be carried over to the current fiscal year without the need to return it to the Government's central budgetary pool. However, a report regarding the amount unspent has to be submitted to the Council of Ministers at the end of each fiscal year.

Compliance with the Constitutional Court ruling

The Constitution implemented that the ruling of the Constitutional Court is final, and has the binding power over the National Assembly, the Council of Ministers, the Courts, and other state organizations. It is final in the sense that the parties are unable to file an appeal to any Court; it is binding that the ruling of the Constitutional Court will bind not only the parties involved in the cases but also the third parties. Thus, once the

Constitutional Court passes a ruling, that ruling will instantly bind other state agencies, the law's enactment and its application, and interpretation.

2. The constitutional independence of the individual judge

While it is undeniable that in one sense the individual independence of the judge depends on " the legal mind" of that particular judge, it is still important that there should be guarantees of independence of individual judges provided in either the Constitution or laws. In the case of the Constitutional Court of Thailand, a certain number of guarantees that support the independence of individual judges are provided in the Constitution.

Selection process

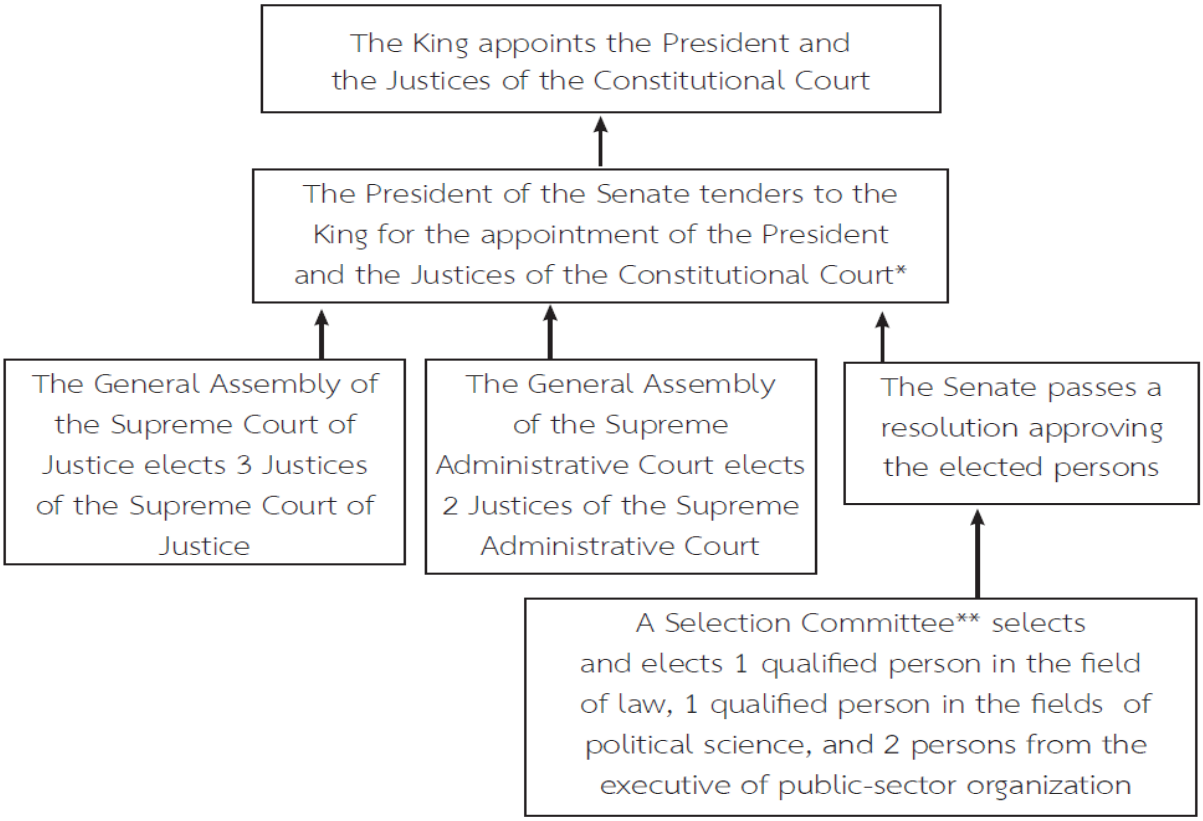
Since the Constitutional Court is a special judicial organization, the selection for the 9 Justices of the Constitutional Court is different from judges of other courts. The Constitution of the Kingdom of Thailand B. E. 2560 (2017) stipulated that the Justices of the Constitutional Court came from four different fields of expertise.

(a) Justices of the Supreme Court of Justices, 3 of whom are selected at a General Assembly of the Supreme Court of Justices by secret ballot.

(b) Justices of the Supreme Administrative Court, 2 of whom are selected at a General Assembly of the Supreme Administrative Court by secret ballot.

(c) Qualified 2 persons from the academic field; 1 from the field of law who genuinely possess knowledge and expertise in law with the academic qualification not less than professor level. And, 1 person from the field of political science who genuinely possess knowledge and expertise in political science with an academic qualification not less than professor level

(d) Qualified 2 persons from government organization; 2 (current/ former) executive level officers from any government or public-sector organization.



The 9 elected justices shall hold a meeting and elect one among them to be the President of the Constitutional Court and notify the result to the President of the Senate accordingly.

The minimum age for a qualified person to be Justices of the Constitutional Court is 45 years, and the maximum age is 68 years. The term of office for the Justices of the Constitutional Court is 7 years, and they will hold office for only one term.

3. Operating procedures of the Constitutional Court

The Constitutional Court, as a court, is unable to initiate the proceeding by itself at its initiative. The parties who have legal standing according to the constitution have to file an application with the Constitutional Court to start the case for a ruling or order. The list of eligible parties to file an application is as follows:

- Courts of Justice
- Administrative Courts

- Military Courts
- Constitutional Organs
- Attorney-General
- Members of the House of representative, senators
- A person whose rights and liberties have been infringed.

The filing of an application has to be in accordance with the procedure and conditions provided in the Constitution.

The Constitution provides that the quorum of Justices of the Constitutional Court for hearing and ruling a decision will consist of not less than 5 Justices. A majority of votes will make the decision unless otherwise provided in the Constitution. Every Justice of the Constitutional Court who constitutes a quorum will give an opinion of his part and make an oral statement to the meeting before passing a resolution. Moreover, the decisions of the Constitutional Court and the opinions of all Justices will be published in the Government Gazette.

The above procedure ensured that the Justices are free to have separate opinions, or dissenting opinions; transparency will be realized since the Court's decisions, as well as each Justice's opinion will be published.This, surely enhance the independence of individual Justices.

Process of deliberation of the Court

The Justices of the Constitutional Court collectively will consider a case after accepting it for consideration and ruling. However, once the application has been filed to the Constitutional Court, the President usually appointed no fewer than 3 Justices to take charge of the case. The duties of Justices in charge are; considering whether to accept the application for consideration and ruling or not, taking charge of the case files, and issuing any order, which does not constitute a ruling of the case. An order of Justices in charge of a case will be made by majority vote.

The Justices of the Court will consider the case with utmost confidentiality, in the deliberation; the Justices are free to state their opinions on the case. The decision of the Court will be taken by votes on each issue of the case, no abstention is allowed

4. Conclusion

Independence is a very important tenet of the judiciary, including the Constitutional Court. It is a mean, which enable judges to decide cases impartially, without fear or favor, affection or ill will. The guarantees of independence of the Constitutional Court of the Kingdom of Thailand as an institution as well as the constitutional independence of individual justices as provided in the Constitution and related laws are crucial toward the ideal of justice.

Now, the Constitutional Court is faced with the diverse challenge to the Court's transparency and judicial independence. It is undeniable that the challenges toward transparency and judicial independence call for a diverse answer to how the Constitutional Court can defend its independence and ensure the public of its transparency, both toward the people and the related parties of the cases.

In facing these challenges, the "state of mind" of the Justices of the Constitutional Court becomes all the more important. The Justices must stand firm in their own decision while giving out the ruling strictly in line with the provision of the laws. Moreover, having great fortitude and maintaining a high level of resilience in the discharge of their judicial duties with transparency and impartiality. Also, abiding by the oath they took at the time of taking the office solemnly declared before His Majesty the King.

Alua Nadirkulova

Constitutional Court of the Republic of Kazakhstan

Constitutional Court of the Republic of Kazakhstan

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

The 1990s:

- Elected at the session of the Supreme Council on July 2 , 1992
- After the adoption of the Constitution in 1995 and the establishment of the Constitutional Council of the Republic of Kazakhstan (by October 1995)

The 2023:

- The Constitutional Court of the Republic of Kazakhstan on the results of the constitutional referendum of 2022
- It began to operate on January 1, 2023
- Composition – 11 judges

1

INTERNATIONAL COOPERATION

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

World Conference on Constitutional Justice
(121 members, participation since 2013)

Association of Asian constitutional courts and equivalent institutions
(21 members, participation since 2013)

the Venice Commission of the Council of Europe
(61 members, participation since 2012)

Eurasian Association of Constitutional Review Bodies
(9 members, participation since 1997)

Memorandums on international cooperation signed with the Constitutional Courts of the Republic of Indonesia, the Hashemite Kingdom of Jordan, the Russian Federation, the Republic of Turkey, the Arab Republic of Egypt

2

APPLICANTS/SUBJECTS OF APPEAL:

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

- PRESIDENT
- CHAIRPERSON OF THE SENATE
- CHAIRPERSON OF THE MAZHILIS
- DEPUTIES OF THE PARLIAMENT (at least one fifth of its total membership)
- PRIME MINISTER
- CITIZENS
- COMMISSIONER FOR HUMAN RIGHTS
- PROSECUTOR GENERAL
- COURTS (representatives)

3

MAIN FEATURES:

CONSTITUTIONAL COURT
OF THE REPUBLIC OF KAZAKHSTAN

1. MISSION - ENSURING THE SUPREMACY OF THE CONSTITUTION THROUGHOUT THE TERRITORY OF THE REPUBLIC OF KAZAKHSTAN
2. INDEPENDENT
3. SEPARATE FROM THE COURT SYSTEM AND DOES NOT REVIEW JUDICIAL ACTS
4. FOR LEGAL ISSUES ONLY AND DOES NOT ASSESS THE ACTUAL CIRCUMSTANCES THAT GAVE RISE TO THE APPEAL

4

CONDITIONS AND PRINCIPLES OF THE CONSTITUTIONAL PROCEEDINGS

PRINCIPLES

- supremacy of the Constitution
- comprehensive and complete objective research
- collegiality
- publicity (exception: state secrets and other protected secrets)
- equality of participants
- language of the proceedings is Kazakh (state language), when needed translation should be provided, including into sign language

CONDITIONS

- suspension of proceedings - force majeure and other cases
- recording/meeting minutes during sessions of the Constitutional Court
- termination of proceedings is possible at any stage (at the request of the applicant, cancellation or invalidation of the legal act, lack of jurisdiction of the appeal made, adoption of the final decision of the Constitutional Court (on another appeal on a similar issue)
- state duty in the amount of 1 MCI (from January 1, 2024)
- hard copy and electronic formats

5

THE JURISDICTION OF THE CONSTITUTIONAL COURT:

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

PRELIMINARY CONSTITUTIONAL CONTROL

The proper conduct of:

- the election of the President, Members of Parliament
- a republican referendum

Considers for compliance with the Constitution:

- the laws adopted by the Parliament, before they are signed by the President
- the international treaties of the Republic, before ratification

Gives an official interpretation of the norms of the Constitution:

- the opinions on draft amendments to the Constitution and other cases in accordance with Article 47, paragraphs 1,2 of the Constitution

THE SUBSEQUENT CONSTITUTIONAL CONTROL:

SUBSEQUENT CONSTITUTIONAL CONTROL:

The constitutionality of laws and other normative legal acts and their individual provisions.

THE RESULTS OF GENERALIZATION OF THE CONSTITUTIONAL PROCEEDINGS PRACTICE:

Annually direct a message to the Parliament on the state of constitutional legality in the Republic of Kazakhstan

6

DECISIONS ON THE CONSTITUTIONALITY OF LAWS AND OTHER REGULATORY LEGAL ACTS

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

- on the recognition of the legal act or its provisions to be consistent with the Constitution
- on the recognition of the legal act or its provisions to be consistent with the Constitution as interpreted by the Constitutional Court
- on the recognition of the legal act or its provisions being not consistent with the Constitution

Additional decision by the Constitutional Court:

- on the recognition
- on editorial errors or compliance with the content, meaning and purpose of the decision of the Constitutional Court
- on correcting inaccuracies

Review of the decision:

- changes in the Constitution
- new essential circumstances

Dissenting opinion of Judge:

- written, attached to the materials of the constitutional proceedings, is not subject to public disclosure

7

EXECUTION OF DECISIONS MADE BY THE CONSTITUTIONAL COURT

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

- Regulatory resolutions shall take effect from the date of their adoption, are generally binding throughout the territory final and not subject to appeal
- In the case of the necessity in adoption of legislative and other measures to eliminate gaps and contradictions in legal regulation, the authorised stated bodies no later than 6 month after the publication of the Constitutional Court decision shall introduce a draft relevant law to the Mazhilis in order to ensure adoption of other legal acts, unless otherwise provided by the Constitutional Court.
- The final decisions of the Constitutional Court shall be directed withtin five working days after the decision adoption to the applicants of their representatives, the President, the chambers of the Parliament, the Supreme Court, the Prosecutor General, the Minister of Justice
- Decisions of the Constitutional Court are published in Kazakh and Russian languages on legal information platform, in the mass media (Yegemen Qazaqstan and Kazakhstanskaya Pravda newspapers), and on the website of the Constitutional Court

8

CITIZENS' APPEALS IN THE CONTEXT OF REGIONS

A total of 3500 as of 6 months of 2023

4 Aktobe region - 110
5 Almaty region - 135
6 Atyrau region - 99
7 West-Kazakhstan region - 72
11 Kyzylorda region - 77
12 Mangystau region - 90
13 Turkestan region - 99
14 Pavlodar region - 100
15 North -Kazakhstan region - 129
16 East -Kazakhstan region - 121
17 Shymkent city - 151
18 Abay region - 87
19 Zhetysu region - 39
20 Ulytau region - 52

9

THE NATURE OF THE ISSUES IN THE APPEALS

- Disagreement with court decisions – 1272 or 41%
  - on criminal cases – 788
  - on civil cases – 391
  - on administrative cases - 93
- Pension issues – 31
- Issues of access to information - 103
- Compliance with labor legislation – 51
- Issues of the penal enforcement system – 50
- On election – 36
- explanation of legal norms – 69
- About personal reception – 31
- On the recognition of the normative legal acts unconstitutional – 802 or 26%
- Social security issues - 43
- Complaints on the actions of judges– 126
- Issues of pre-trial investigation - 63
- Complaints against law enforcement officers – 60
- Housing legislation issues – 26
- Issues of non-execution of judicial acts – 22
- Issues of bankruptcy of individuals - 17
- Others - 236

10

CONSTITUTIONAL PROCEEDINGS

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

23
Normative decisions

128
under review

34
on preliminary consideration

- the amount of the state fee for citizens at the stage of appeal to the Supreme Court in the context of access to justice
- about the lifelong deprivation of the right to enter the civil service
- pension payments for former military personnel
- conditions of restriction of freedom in the form of house arrest, as well as serving a sentence of life imprisonment
- use of a person's image in the media without one's consent
- lack of a mechanism for appealing decisions of the Commission on the Quality of justice or a Judicial jury
- proportionality of criminal liability for individuals for transportation, purchase, sale, storage of oil and petroleum products, as well as oil refining
- ratio of payment of a fine in the order of abbreviated proceedings and the possibility of reviewing decisions on administrative offenses under newly discovered circumstances
- proportionality of lifetime restrictions on admission to public service for persons who have been brought to disciplinary responsibility for three years, and persons against whom a guilty verdict has been passed within for the same period of time
- infringement of the constitutional right to protection within the framework of the Criminal ProcedureCode of the Republic of Kazakhstan
- infringement of the constitutional rights of a person and a citizen to access to justice

11

INCLUSION IN CONSTITUTIONAL PROCEEDINGS

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

At public expense:

- The State-guaranteed legal aid for socially vulnerable citizens (persons with disabilities, older people, etc.)
- Provision an interpreter from/to the national and official languages, in sign language
- Foreigners, stateless persons, and refugees have equal access to constitutional proceedings

12

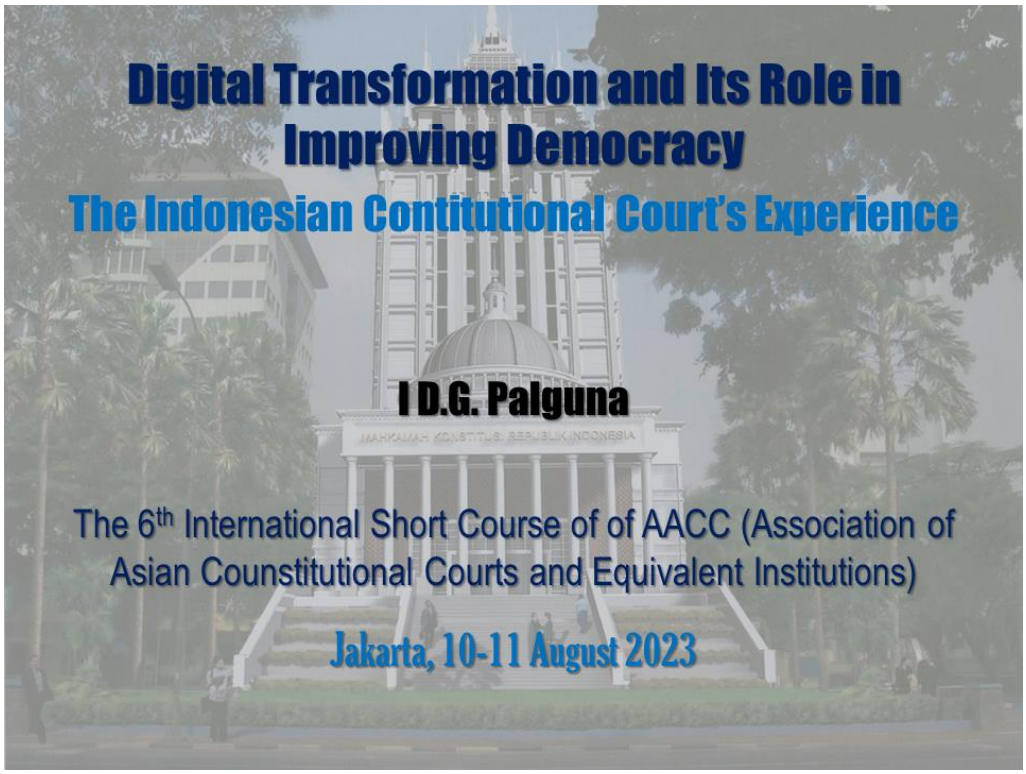
SESSION II

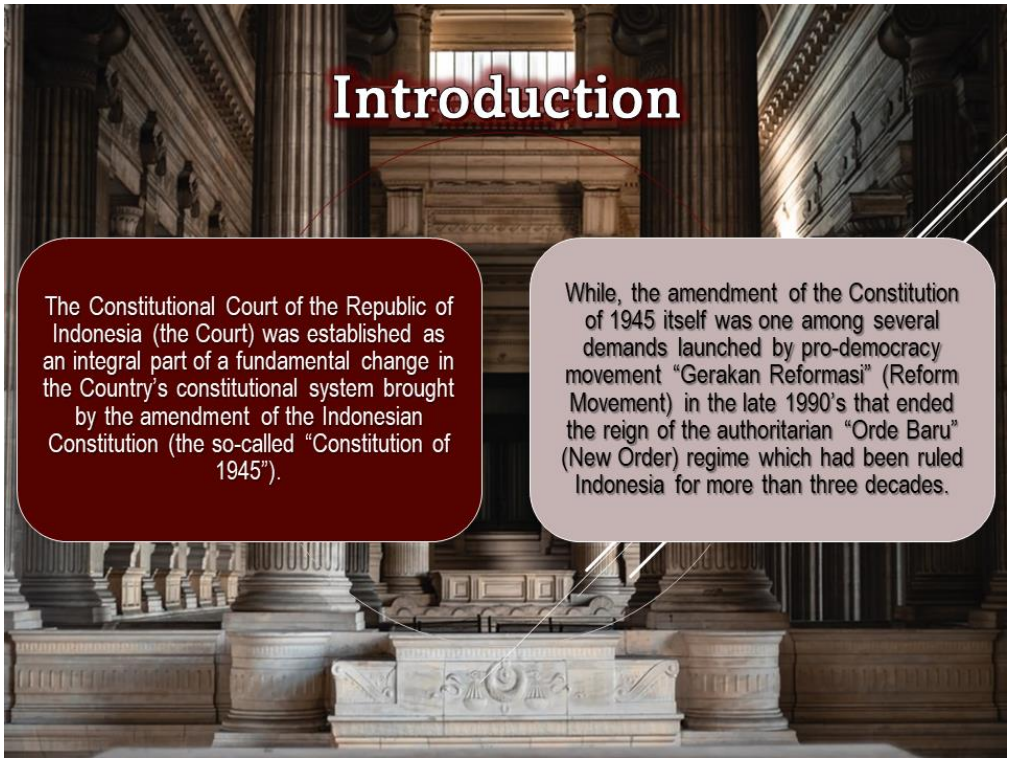
Dr. I Dewa Gede Palguna

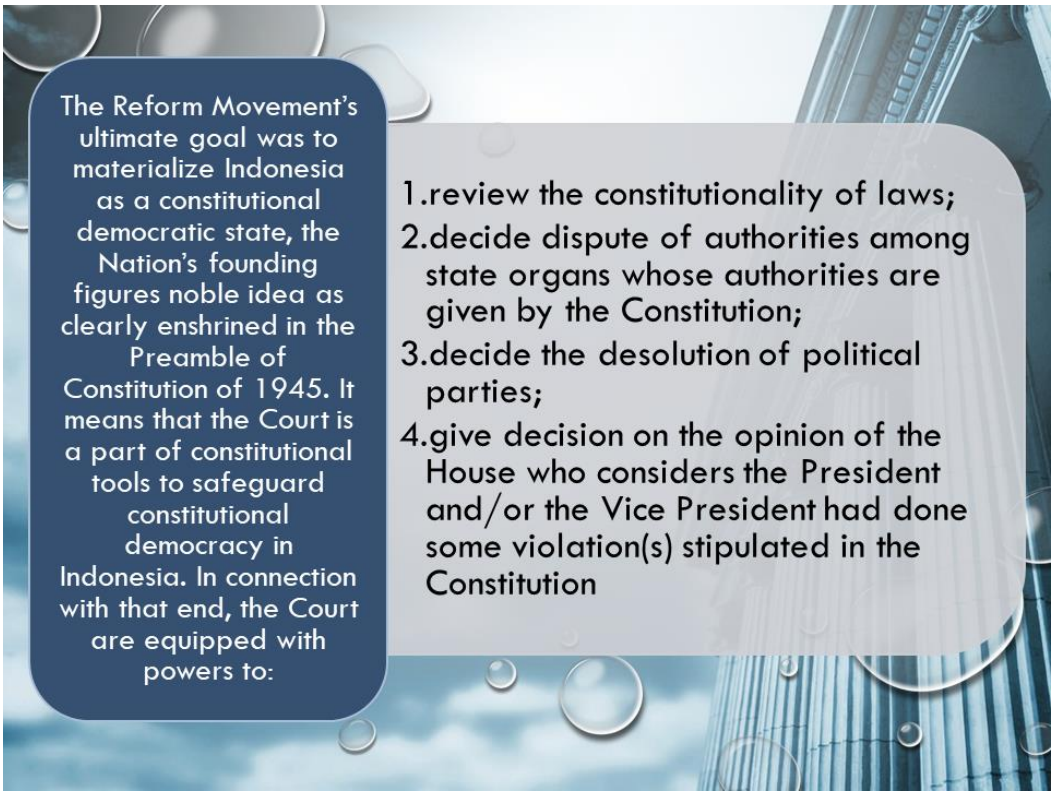
Former Justice of the Constitutional Court of the Republic of Indonesia

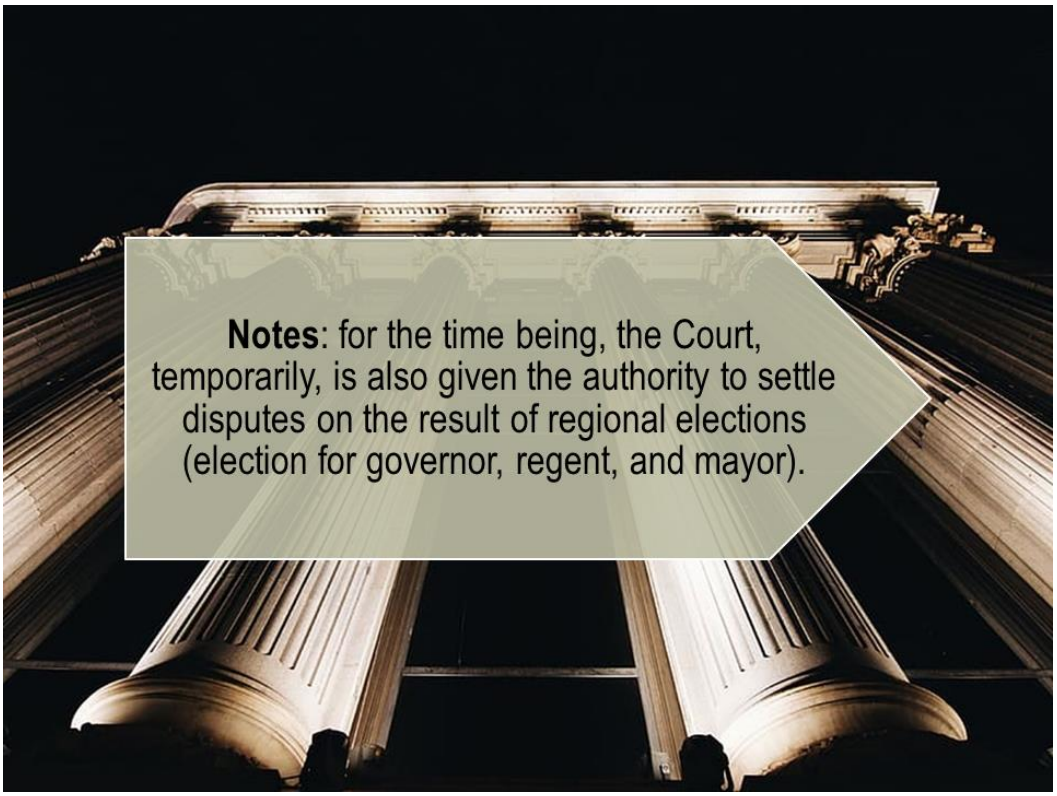
Digital Transformation and Its Role in Improving Democracy: The Indonesian Contitutional Court's Experience

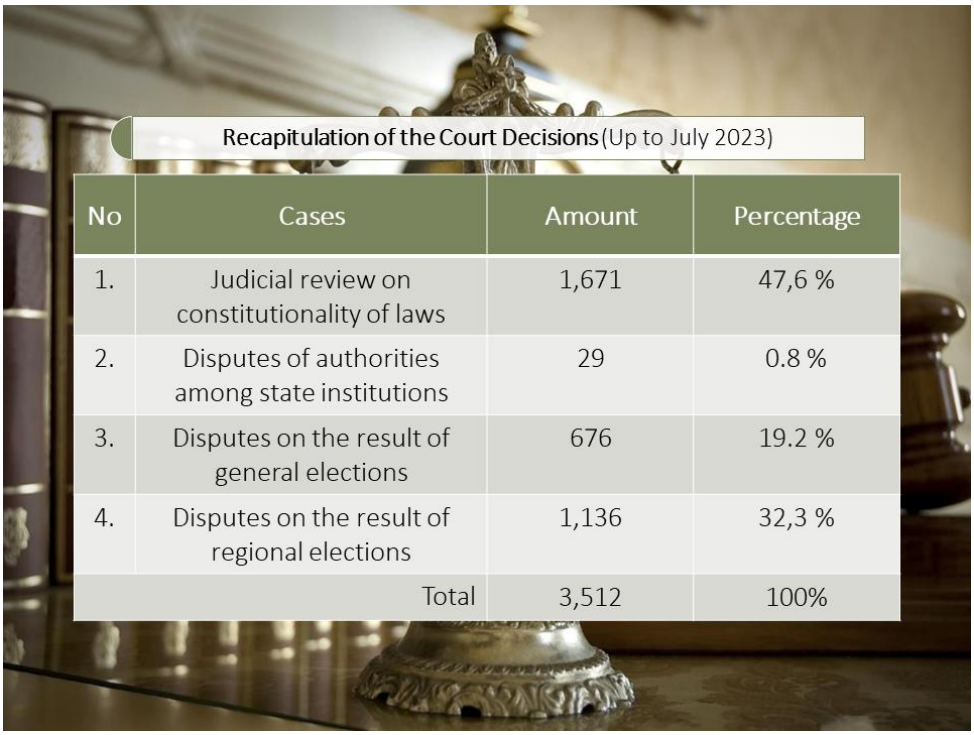
A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

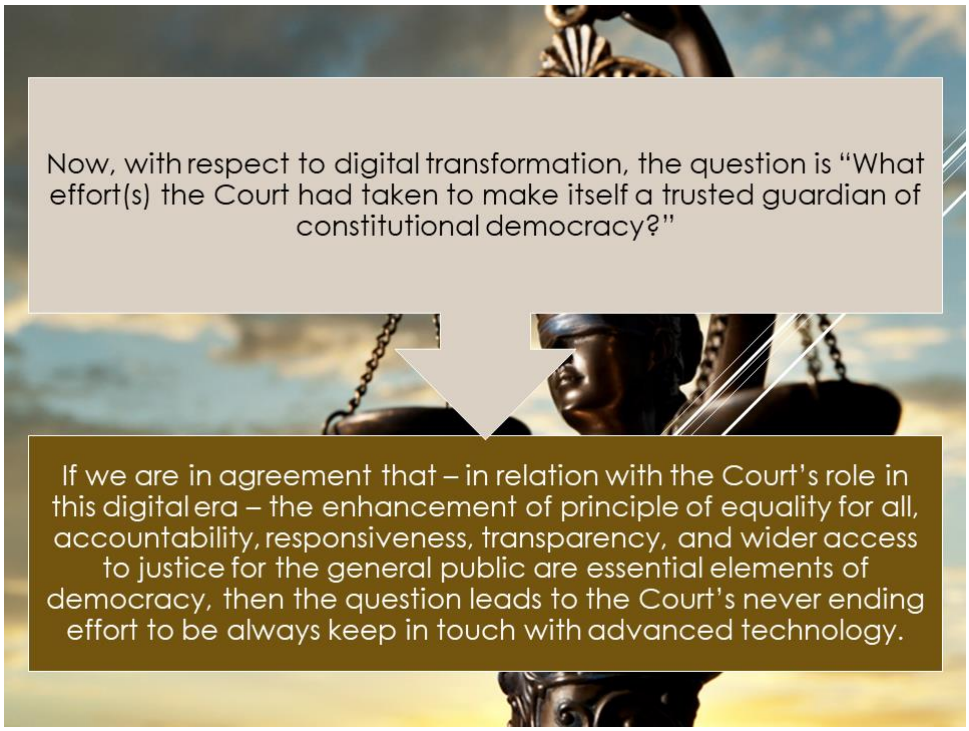

Digital Transformation and Its Role in Improving Democracy
The Indonesian Contitutional Court's Experience
I D.G. Palguna
The 6th International Short Course of of AACC (Association of Asian Counstitutional Courts and Equivalent Institutions)
Jakarta, 10-11 August 2023


Introduction
The Constitutional Court of the Republic of Indonesia (the Court) was established as an integral part of a fundamental change in the Country's constitutional system brought by the amendment of the Indonesian Constitution (the so-called "Constitution of 1945").
While, the amendment of the Constitution of 1945 itself was one among several demands launched by pro-democracy movement "Gerakan Reformasi" (Reform Movement) in the late 1990's that ended the reign of the authoritarian "Orde Baru" (New Order) regime which had been ruled Indonesia for more than three decades.

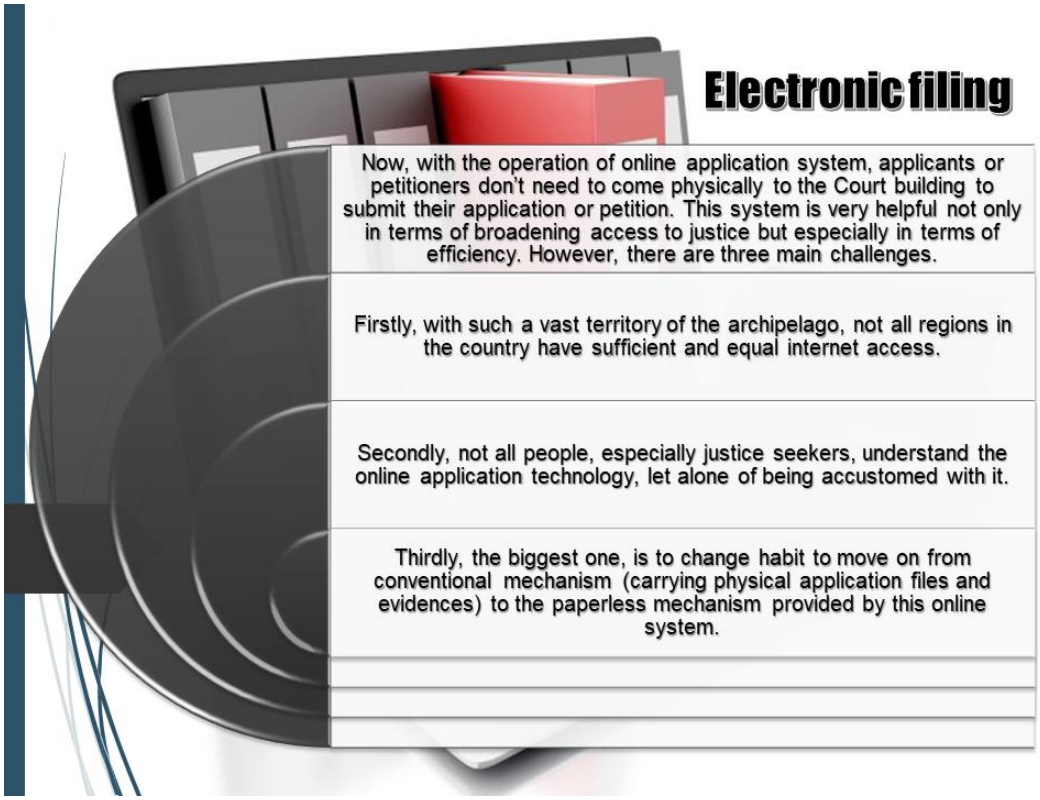

The Reform Movement's ultimate goal was to materialize Indonesia as a constitutional democratic state, the Nation's founding figures noble idea as clearly enshrined in the Preamble of Constitution of 1945. It means that the Court is a part of constitutional tools to safeguard constitutional democracy in Indonesia. In connection with that end, the Court are equipped with powers to:
1.review the constitutionality of laws;
2.decide dispute of authorities among state organs whose authorities are given by the Constitution;
3.decide the desolution of political parties;
4.give decision on the opinion of the House who considers the President and/or the Vice President had done some violation(s) stipulated in the Constitution

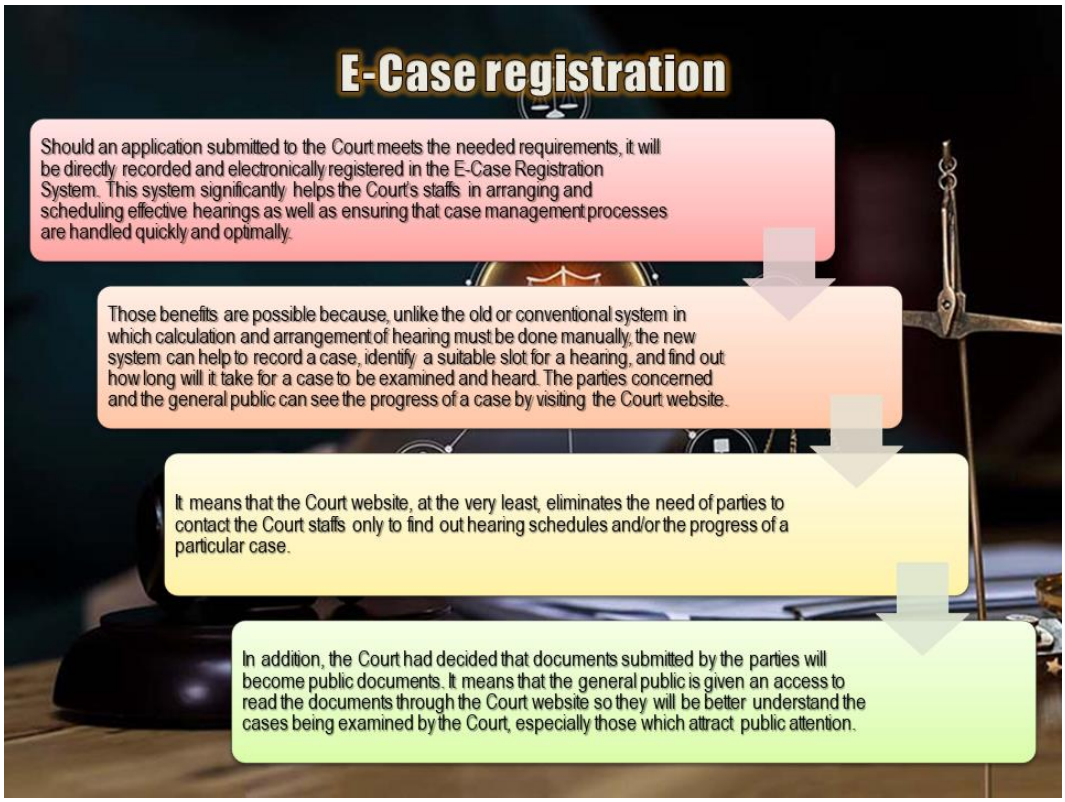

Notes: for the time being, the Court, temporarily, is also given the authority to settle disputes on the result of regional elections (election for governor, regent, and mayor).

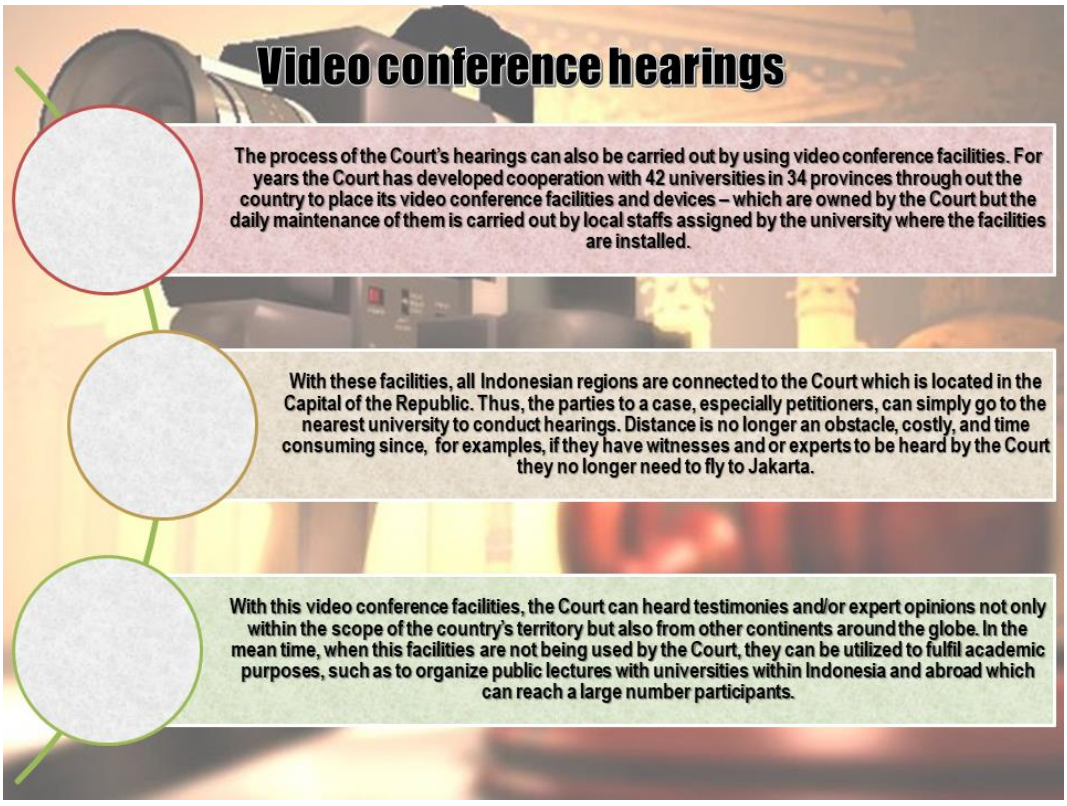

Recapitulation of the Court Decisions (Up to July 2023)
No
Cases
Amount
Percentage
1.
Judicial review on constitutionality of laws
1,671
47,6 %
2.
Disputes of authorities among state institutions
29
0.8 %
3.
Disputes on the result of general elections
676
19.2 %
4.
Disputes on the result of regional elections
1,136
32,3 %
Total
3,512
100%


Now, with respect to digital transformation, the question is "What effort(s) the Court had taken to make itself a trusted guardian of constitutional democracy?"
If we are in agreement that – in relation with the Court's role in this digital era – the enhancement of principle of equality for all, accountability, responsiveness, transparency, and wider access to justice for the general public are essential elements of democracy, then the question leads to the Court's never ending effort to be always keep in touch with advanced technology.

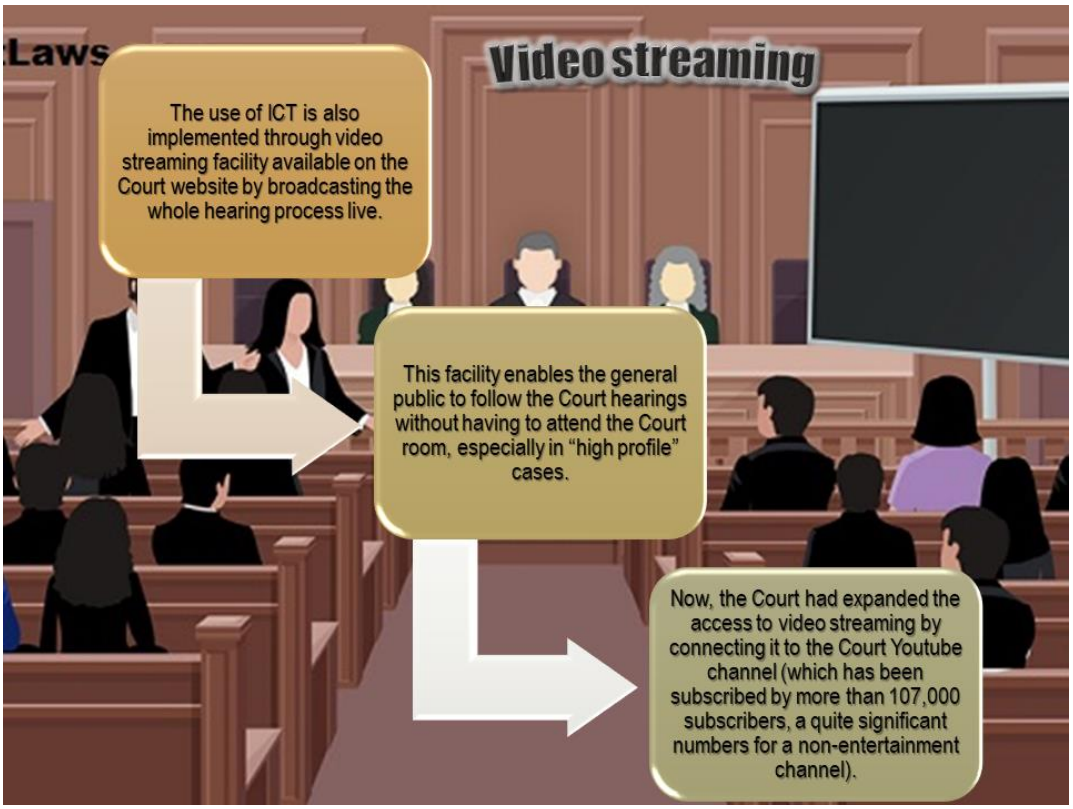

The Court's Digitalization
Guided by a vision to become a "modern and most trusted judiciary", the Court, since the very beginning of its existence, had adopted, and continuously updating, technologies considered relevant to optimize its performance, especially in the field of information and communication.
This is a significant effort to maximize access to justice for those concerned, especially justice seekers. The Court had created and developed a judicial system based on information and communication technology (ICT) called the "E-Judiciary."
It had been used to provide extensive and convenient access for justice seekers across the Country. This includes electronic filing, video conference, court recording system, case retrieval system and live streaming.

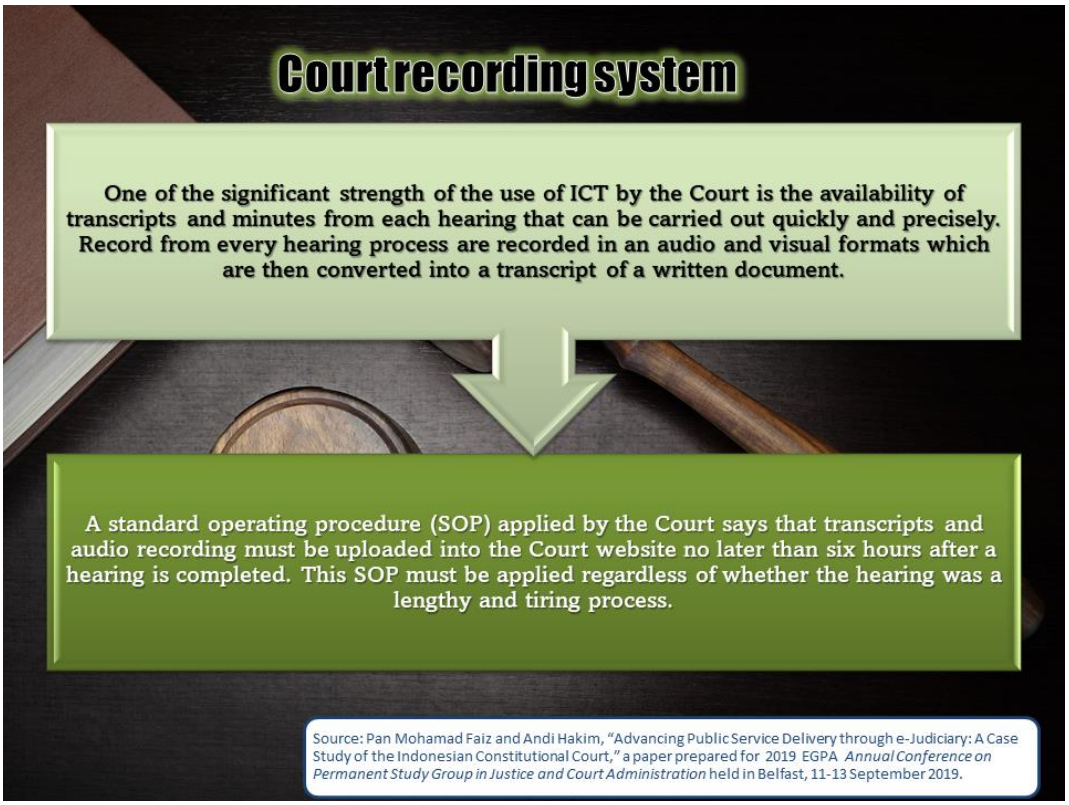

Electronic filing
Now, with the operation of online application system, applicants or petitioners don't need to come physically to the Court building to submit their application or petition. This system is very helpful not only in terms of broadening access to justice but especially in terms of efficiency. However, there are three main challenges.
Firstly, with such a vast territory of the archipelago, not all regions in the country have sufficient and equal internet access.
Secondly, not all people, especially justice seekers, understand the online application technology, let alone of being accustomed with it.
Thirdly, the biggest one, is to change habit to move on from conventional mechanism (carrying physical application files and evidences) to the paperless mechanism provided by this online system.

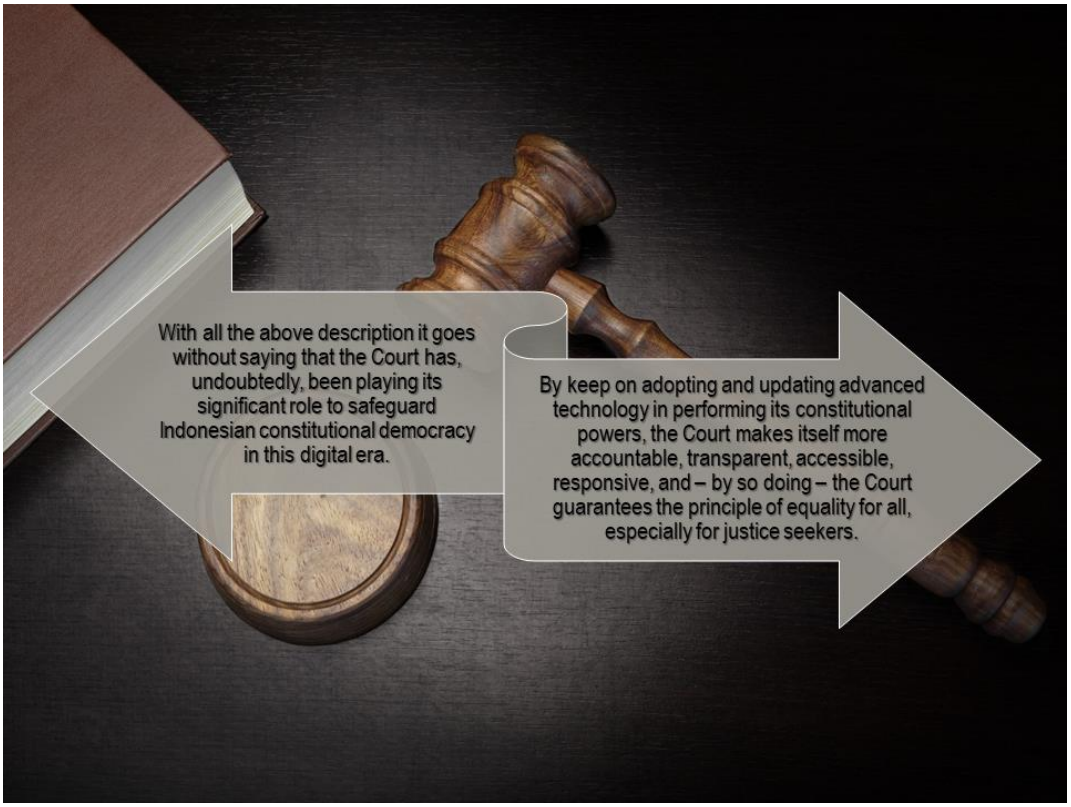

E-Case registration
Should an application submitted to the Court meets the needed requirements, it will be directly recorded and electronically registered in the E-Case Registration System. This system significantly helps the Court's staffs in arranging and scheduling effective hearings as well as ensuring that case management processes are handled quickly and optimally.
Those benefits are possible because, unlike the old or conventional system in which calculation and arrangement of hearing must be done manually, the new system can help to record a case, identify a suitable slot for a hearing, and find out how long will it take for a case to be examined and heard. The parties concerned and the general public can see the progress of a case by visiting the Court website.
It means that the Court website, at the very least, eliminates the need of parties to contact the Court staffs only to find out hearing schedules and/or the progress of a particular case.
In addition, the Court had decided that documents submitted by the parties will become public documents. It means that the general public is given an access to read the documents through the Court website so they will be better understand the cases being examined by the Court, especially those which attract public attention.


Video conference hearings
The process of the Court's hearings can also be carried out by using video conference facilities. For years the Court has developed cooperation with 42 universities in 34 provinces through out the country to place its video conference facilities and devices – which are owned by the Court but the daily maintenance of them is carried out by local staffs assigned by the university where the facilities are installed.
With these facilities, all Indonesian regions are connected to the Court which is located in the Capital of the Republic. Thus, the parties to a case, especially petitioners, can simply go to the nearest university to conduct hearings. Distance is no longer an obstacle, costly, and time consuming since, for examples, if they have witnesses and or experts to be heard by the Court they no longer need to fly to Jakarta.
With this video conference facilities, the Court can heard testimonies and/or expert opinions not only within the scope of the country's territory but also from other continents around the globe. In the mean time, when this facilities are not being used by the Court, they can be utilized to fulfil academic purposes, such as to organize public lectures with universities within Indonesia and abroad which can reach a large number participants.


Case tracking system
With a view to make information more transparent, the Court implemented a policy to upload every application file (along with other relevant documents) from the parties into the Court website. With this policy, anyone, especially the parties to a case, can search the ongoing case to find out the next Court hearing schedule or when the decision of the case will be read.


Laws
Video streaming
The use of ICT is also implemented through video streaming facility available on the Court website by broadcasting the whole hearing process live.
This facility enables the general public to follow the Court hearings without having to attend the Court room, especially in "high profile" cases.
Now, the Court had expanded the access to video streaming by connecting it to the Court Youtube channel (which has been subscribed by more than 107,000 subscribers, a quite significant numbers for a non-entertainment channel).


Court recording system
One of the significant strength of the use of ICT by the Court is the availability of transcripts and minutes from each hearing that can be carried out quickly and precisely. Record from every hearing process are recorded in an audio and visual formats which are then converted into a transcript of a written document.
A standard operating procedure (SOP) applied by the Court says that transcripts and audio recording must be uploaded into the Court website no later than six hours after a hearing is completed. This SOP must be applied regardless of whether the hearing was a lengthy and tiring process.
Source: Pan Mohamad Faiz and Andi Hakim, "Advancing Public Service Delivery through e-Judiciary: A Case Study of the Indonesian Constitutional Court," a paper prepared for 2019 EGPA Annual Conference on Permanent Study Group in Justice and Court Administration held in Belfast, 11-13 September 2019.


With all the above description it goes without saying that the Court has, undoubtedly, been playing its significant role to safeguard Indonesian constitutional democracy in this digital era.
By keep on adopting and updating advanced technology in performing its constitutional powers, the Court makes itself more accountable, transparent, accessible, responsive, and – by so doing – the Court guarantees the principle of equality for all, especially for justice seekers.


"Terima Kasih"
Thank You

Murat Şen

Secretary General of the Constitutional Court of the Republic of Türkiye

Digital Transformation and its Role in Improving Democracy

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Distinguished Participants,
Ladies and Gentlemen,

It is a great pleasure to be here and address such eminent participants in this International Short Course. As part of the AACC activity, these courses have been running successfully and efficiently for many years. In this regard, I would especially like to thank the Indonesian Constitutional Court for organizing this important event and for their warm hospitality. I would also congratulate the 20th Anniversary of the Indonesian Constitutional Court. I wish a very fruitful course and every success to all.

The concept of democracy has had a privileged position among governance systems since the ancient period. The basis of democracy, which is accepted as the power of the people, is rule of law and the effective protection of fundamental rights and freedoms. Although the concept of democracy has fluctuated throughout history in the protection of rule of law and fundamental rights and freedoms, it has finally become indispensable today.

On the other hand, today's digital developments force the concept of democracy to change. We communicate constantly via the Internet on our smartphones or computers, we even organize conferences, work meetings online. This rapid development has had a significant and transformative impact on our democratic societies, including justice systems around the world. However, the direction of the effects of these developments on democracy is controversial. As a matter of fact, while technological developments, especially Internet, offer countless opportunities for participation in governance and the effective exercise of fundamental rights and freedoms in liberal democracies, they also pose threats to democracies.

In the meantime, I would like to point out that in my presentation, I am going to evaluate the role of digitalization in the development of democracies not on the basis of political theory, but on the basis of constitutional and human rights.

In this context, I believe that the effects of digital transformation on democratic society can be evaluated from three different perspectives within the constitutional and human rights framework. The first of these is the strengthening of the right of access to the courts on the basis of the rule of law, which is one of the most important pillars of democracy. The second is to facilitate the exercise of freedoms, which is another pillar of democratic societies. On the other hand, digitalization also has a negative impact on democracies. Threats to the security of personal data, especially in the context of the right to respect for private life, and misinformation through social media threaten the free decision-making of individuals and make democracies vulnerable to manipulation.

Distinguished Participants,

Let me begin with the impact on the judiciary in light of Turkish constitutional court decisions.

First of all, I would like to mention that in Türkiye we had already passed laws on the digitalization of our justice system long before COVID-19. Indeed, one of the most important projects in the practice of law in Türkiye are the recent introduction of the National Judiciary Informatics System ("UYAP") and the Audio-Visual Information System ("SEGBİS"). However, the pandemic has clearly accelerated the process of strengthening the right of access to court.

The use of this systems for access to the courts has led to some controversies that have been the subject of Constitutional Court decisions. In its assessment on the determination of the time limits for filing online lawsuits, the Court has considered that practices that make it excessively difficult or impossible to reach a court may violate the right of access to a court. The court therefore emphasized that online litigation processes should be facilitative.[18]

Regarding the online defense of defendants in criminal cases the Court has also found a violation of the right to be present at the hearing within the scope of the right to a fair trial. In its judgment, the Court emphasized that the defendant's request to appear in person to defend himself in an online hearing cannot be unreasonably denied.[19]

The aforementioned decisions show that the Turkish Constitutional Court accepts the digitalization of judicial processes as long as it facilitates the right to a fair trial. It emphasized that the conveniences provided by digitalization should not turn into disadvantages for individuals when filing a lawsuit or making their defenses.

Distinguished Participants,

Pluralist democracies can only flourish in environments where ideas can be openly discussed and the rights of others can be defended. The Internet, which is the trigger of the developments emerging with digitalization, has assumed a role in providing an environment of discussion, which is the oxygen of democracy.

The ability of individuals to produce content on the Internet enables the public to participate effectively in governance. For this reason, the Internet limits the political authority's ability to control information and communication, and provides an environment where every issue can be freely discussed. In this sense, there is no doubt that the Internet provides numerous advantages to facilitate and enhance the quality of democratic societies. However we have faced formidable challenges including the legal ones since the invention of the Internet.

Indeed, the Internet is a double-edged sword. It provides very effective platform for not only expressing and sharing views, but also for fraud, gambling, child abuse, terrorism,

[18] For the UYAP applications in criminal proceedings see, *İbrahim Topcu*, App. No: 2014/1295, 23 March 2017; *Hasan İşten*, App. No: 2015/1950, 22 February 2018; *Ergin Demir*, App. No: 2019/28641, 19 October 2022; *Nihat Kara*, App. No: 2018/20830, 17 November 2022; and for those in civil proceedings see, *Süleyman Yaprak*, App. No: 2014/12996, 1 February 2017; *Nebi Karataş and Others*, App. No: 2014/13001, 8 March 2017; *Safir Mobilya Pazarlama Sanayi and Ticaret A.Ş.*, App. No: 2014/15206, 11 May 2017; *Emrah Demirtaş and Zafer Demirtaş*, App. No: 2015/5498, 24 May 2018; *Binali Boran*, App. No: 2016/1235, 24 October 2019; *Inspektorate Uluslararası Gözetim Servisleri A.Ş.*, App. No: 2017/29088, 10 June 2020.

[19] *Emrah Yayla* [Plenary], App. No: 2017/38732, 6 February 2020; and also, *Şehrivan Çoban* [Plenary], App. No: 2017/22672, 6 February 2020.

libeling and so on. Therefore, protection of fundamental rights requires us to regulate the use of the Internet in legal terms. However, the borderless and elusive nature of the Internet makes this regulation very challenging.

Nonetheless courts play a significant role in building a coherent case-law to protect individual rights and liberties at the age of Internet. In this regard, superior courts have faced difficulties to deal with mainly two group of cases arising out of the Internet and in particular of social media.

First group involves state interventions in various forms such as access ban and different sanctions to be imposed on the social media corporations as well as the users. In these cases, the main task of courts is to protect freedom of expression and/or the right to respect for private life. In most of these cases, two fundamental rights may compete with each other.

Second group involves legal questions which are directly related to the horizontal effect of human rights. As we all know, the social media corporations themselves have imposed certain restrictions on their users such as blocking or suspending their accounts. These interventions raise the question of protecting freedom of expression of individuals vis-a-vis the social media corporations.

The bulk of the complaints before the Constitutional Court of Türkiye are within the scope of the first group. That is why I want to mention a few judgments of the Court to give you an idea about how the Turkish Constitutional Court has been tackling this hard job of protecting rights and balancing among competing rights at the age of the Internet.

In its relevant judgments the Court has frequently emphasized that the Internet and social media played a crucial role in democratic societies as widely used and efficient medium of the freedom of expression. Given this function of the Internet, the Court has stated that the authorities have to act carefully and responsibly in regulating the Internet.

In both areas of constitutional review and individual application, the Court examines the alleged restrictions of the fundamental rights and freedoms relating to the Internet on the basis of a three-level test. First, an act of parliament is necessary to impose restrictions on fundamental rights and liberties. Second, the restrictions must pursue certain legitimate aims such as protection of public security and the rights of others. Finally, the restrictions must be proportionate and necessary in a democratic society. In this regard, the Court has invoked the conceptions of "*pressing social need*" and "*proportionality*" in deciding whether an impugned restriction constitute a violation of rights and liberties.

As regards social media, the Constitutional Court ruled that freedom of expression was violated in relation to the bans on access to *Twitter*[20], *Youtube*[21] and *the Wikimedia Foundation*[22]. In these decisions, the Court concluded that the state's intervention was generally contrary to the requirements of democratic society and disproportionate. The Court spelled out that the relevant law did not authorize the administrative body to block access to an entire website or social media platform; rather, it only permitted blocking of

[20] *Yaman Akdeniz and Others*, App. No: 2014/3986, 2 April 2014, § 49.
[21] *Youtube LLC Corporation Service Company and others* [Plenary], App. No: 2014/4705, 29 May 2014, §§ 56-57.
[22] *Wikimedia Foundation Inc. and others* [Plenary], App. No. 2017/22355, 26 December 2019.

specific URL addresses upon a judge order. The Court also pointed out that the blocking of access to social media was an interference not only with the freedom to disseminate information and thoughts enjoyed by the content providers but also with the Turkish users' right to receive information and thoughts.

Ladies and Gentlemen,

On the other hand, the negative impact of the widespread use of the Internet on democracy should also be mentioned. Although the internet provides a fertile environment for pluralistic democracy, disinformation and manipulation through social media and other tools can pose a threat to democracy. Disinformation and manipulation not only prevent the free formation of individuals' opinions, but also create a favorable environment for those who aim to eliminate the democratic environment. This is generally the legitimate purpose of state intervention in the Internet. However, in any case, excessive restriction of freedom of expression, presence of which is indispensable (sine qua non) for the democracy, through oppressive legal regulations may eliminate pluralistic democracy.

Distinguished Participants,
Ladies and Gentlemen,

In conclusion, I would like to emphasize that the role and function of the constitutional justice in safeguarding fundamental rights and freedoms, in particular access to justice, freedom of expression and the protection of privacy and personal data, is even more important in the age of digital transformation. We will certainly continue to face new challenges in this area.

In this constantly changing environment, it is important that constitutional courts/councils and supreme courts and equivalent bodies, as constitutional guardians, strike a fair balance between competing rights and freedoms in the area of information and communication technologies.

Thank you for your attention.

Prof. Dr. Hartiwiningsih, S.H., M.Hum.,

Head of Doctoral Program Study Faculty of Law
University Sebelas Maret

Digital Transformation and its Role in Improving Democracy

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Peran Transformasi Digital dalam Meningkatkan Demokrasi yang berkepastian Hukum

Oleh : Hartiwiningsih

Fakultas Hukum Universitas Sebelas Maret

A. Pendahuluan

Globalisasi telah membawa masyarakat modern hidup dalam era teknologi informasi atau yang disebut dengan era revolusi industri 5.0, artinya, dunia global telah menempatkan kehidupan manusia berada di tengah-tengah arus teknologi yang begitu cepat perkembangannya baik dalam bidang hukum, politik, ekonomi, ilmu pengetahuan dan teknologi (IPTEK), budaya, pendidikan, dan sosial. Dampak globalisasi telah membawa semua aspek kehidupan manusia menjadi lebih maju, lebihbaik, lebih sejahtara, lebih mudah, dan lebih cepat, hidup dalam suatu habitat yang global, transparan, tanpa batas, saling mengait (linkage), dan saling ketergantungan (interindependence). Kesejahteraan yang dinikmati oleh masyarakat global ini tidak lain karena peran dari transformasi digital yang telah merambah masuk dalam kehidupan bermasyarakat, berbangsa, dan bernegara. Sebagai contoh kemajuan dalambidang ekonomi terdapat e money, OVO, gopay, trnsaksi online melalui e banking, berjualan online melalui marketplace, kartu debit dan kredit yang bisa dimanfaatkan untuk bertransaksi.

Tranformasi digital pada dunia hukum seperti e Court, digitalisasi pembentukanregulasi, e-partisipasi melalui aplikasi ini diharapkan masyarakat akan lebih mudah memberikan masukan dalam pembentukan peraturan perundang-undangan, e- pengundangan dengan aplikasi ini proses permohonan pengundangan dapat dilakukan

secara online, e-litigasi merupakan layanan yang mengelola informasi seputar persidangan di mahkamah konstitusi berbasis Teknologi informasi untuk optimalisasi jangkauan penyebaran informasi terkait persidangan. Online legal consultant adalah praktik memberikan layanan konsultasi hukum secara daring melalui berbagai platform digital seperti website, aplikasi seluler, dan media sosial. Layanan ini memungkinkan klien untuk berkonsultasi dengan profesional hukum tanpa harus bertatap muka,sehingga menghemat waktu dan biaya dan dapat mengakses bantuan hukum dari manasaja dan kapan saja.

Transformasi digital juga telah masuk dalam sistem politik dan pemerintahan. Digitalisasi telah membawa perubahan signifikan dalam cara kita berkomunikasi, memperoleh informasi, dan berpartisipasi dalam proses politik (Broome et al., 2015 dalam Poiron et al., 2023). Digitalisasi memiliki peran yang sangat penting dalam meningkatkan demokrasi. (Bratton, 2015 dalam Poiran et al., 2023). Demokrasi sebagai sistem pemerintahan yang berdasarkan partisipasi publik, kebebasan berpendapat, dan akses informasi yang adil, terus berkembang. Digitalisasi memainkanperan penting dalam memperluas partisipasi publik, meningkatkan transparansi, dan memperkuat akuntabilitas pemerintah. Melalui penggunaan teknologi komunikasi digital, seperti media sosial, platform online, dan alat kolaborasi online, individu kini memiliki akses yang lebih mudah untuk mengekspresikan suara mereka dan berpartisipasi dalam proses politik (Cole, 2018 dalam Poiron et al., 2023).

Kondisi eksisting menunjukan bahwa transformasi digital telah memberikan kemajuan dalam bidang demokrasi, memperluas jangkuan keikutsertaan masyarakat mulai dari perkotaan sampai kedesa-desa dapat turut serta aktif dan berkontribusi dalam kegiatan politik, dimana sebelum era digital partisipasi masyarakat dalam proses politik pasif. (Bulovsky, 2019 dalam Ines Mergel 2021). Selanjutnya era digitalisasi telah mendorong pemerintah transparan dalam merumuskan kebijakan, pengambilan keputusan,sehingga meningkatkan akuntabilitas pemerintahan. (Deibert, 1997 dalam Poiron et al., 2023).

Bila teknologi digunakan dengan cara bijak dan dikelola dengan baik dan dikawal dengan hukum maka akan menghasilkan kemanfaatan yang besar dalam memperkuat demokrasi (Deibert, 1997 dalam Poiron et al., 2023), namun disisi lain bila penggunaanteknologi informasi tidak dikawal dengan hukum, maka akan terjadi banyak pelanggaran dan kejahatan yang terkait dengan maraknya penggunaan sarana digitalisasi dalam kehidupan bermasayarakat, berbangsa dan bernegara. Oleh karena itu dalam tulisan ini akan dibahas peran transformasi digital dalam memajukan demokrasi dan peran hukum dalam mengawal penggunaan tehnologi informasi dalamberdemokrasi, agar tercapai demokrasi yang bermartabat, berkeadilan dan berkepastianhukum.

B. Peran Transformasi Digital dalam Meningkatkan Demokrasi

Tranformasi digital telah mengubah pemahaman, konsep dan cara bermasyarakat, berbangsa dan bernegara tingkat global. Perdebatan pada tataran teori dan praktek terkait masa depan demokrasi di era digital terus berkembang. Hasil sorotan diskusi antara lain meskipun tingkat kepercayaan pada lembaga perwakilan tradisional dan aktor politik menurun, namun individu melalui teknologi digital bersedia untuk terlibatdalam ruang publik, warga negara berpartisipasi dalam percakapan, konsultasi, dan pertimbangan online; berkontribusi secara online untuk tujuan yang mereka dukung, termasuk secara finansial; dan membagikan masukan mereka melalui platform digitalyang membantu meminta pertanggungjawaban lembaga publik. *(European CommitteeOn Democracy And Governance* (CDDG), *Study on the impact of digital transformation on democracy and good governance*, Strasbourg, 26 July 2021.

Transformasi digital juga memengaruhi lanskap politik dan masyarakat sipil. Aktor baru demokrasi telah muncul sementara aktor tradisional telah beradaptasi dengan carabaru dalam berkampanye dan menyebarkan pesan mereka, dengan beberapa partai politik menggunakan penargetan mikro dalam kampanye politik. Aktor swasta, khususnya perantara internet dan platform media sosial, semakin memainkan peran

sentral di ranah publik, sebagai penyedia infrastruktur, pembuat konten, dan distributor. Perusahaan teknologi besar berperan sebagai penjaga gerbang, memilih dan mengatur informasi yang dibagikan di platform sosial, menargetkannya ke audiens tertentu dan berpotensi memengaruhi opini publik, debat politik, dan akhirnya hasil pemilu. Secara keseluruhan, teknologi digital menawarkan cara untuk meningkatkan kualitas demokrasi dalam hal akuntabilitas dan daya tanggap. Digitalisasi dapat menawarkan saluran baru administrasi publik untuk memberikan layanan berkualitas.

Digitalisasi sektor publik telah meningkat pesat dalam konteks pandemi Covid-19. Kemampuan untuk mendigitalkan proses dan layanan administrasi dengan cepat telah berkontribusi besar pada ketahanan aksi publik, memastikan bahwa lembaga demokrasi dapat terus bekerja dan layanan publik dapat disampaikan.

Digitalisasi telah mengubah lanskap partisipasi publik dengan cara yang belum pernah terjadi sebelumnya (Dryzek, 2006; Diamond, 2010 dalam Poiron et al., 2023). Teknologi komunikasi digital, seperti media sosial, platform online, dan alat kolaborasionline, telah menyediakan platform baru bagi warga agar suara mereka didengar dan berpartisipasi dalam keputusan publik. Partisipasi yang diperluas ini mendorong inklusivitas, karena individu yang sebelumnya tidak memiliki akses atau kesempatan untuk berpartisipasi dalam proses politik kini dapat berkontribusi. Contohnya adalah penggunaan media sosial sebagai sarana ekspresi politik dan organisasi gerakan sosial.Juru kampanye politik dan aktivis komunitas dapat menggunakan platform media sosial untuk memobilisasi pendukung, menyebarkan pesan, dan membangun kesadaran tentang isu-isu penting (Hansen et al., 2012 dalam Poiron et al., 2023.) Selain itu, ada juga platform daring yang menyediakan forum partisipasi publik secara langsung, seperti petisi daring dan survei opini publik. Dengan demikian, digitalisasi telahmemberikan peluang bagi individu untuk terlibat aktif dalam proses politik, memperkuat partisipasi publik dalam demokrasi (Freedom, 2018).

Media sosial telah menjadi alat yang ampuh untuk memobilisasi pendukung dan menyebarkan pesan politik (Howard et al., 2013). Platform seperti Facebook, Twitter, Instagram, dan YouTube memungkinkan individu untuk berbagi pemikiran, pandangan, dan informasi mereka dengan cepat dan luas. Masyarakat dapat mengorganisir kampanye, menyebarluaskan informasi tentang isu-isu politik, danmendiskusikan isu-isu yang relevan. Media sosial juga memungkinkan interaksi langsung antara warga negara dan pemimpin politik, menciptakan saluran komunikasidua arah yang sebelumnya tidak mungkin dilakukan.

Selain media sosial, platform online juga menyediakan panggung untuk partisipasi publik yang lebih luas. Ada berbagai platform online yang memungkinkan warga untuk berpartisipasi dalam forum diskusi, mengajukan pertanyaan kepada pemimpin politik, memberikan masukan tentang kebijakan publik, atau bahkan berkontribusi langsung dalam pengambilan keputusan. Ini platform menciptakan ruang yang inklusif dan memungkinkan banyak suara dan perspektif didengar (Khondker, 2011).

Alat kolaborasi online juga memainkan peran penting dalam partisipasi publik. Misalnya, platform petisi online memungkinkan individu mengumpulkan dukungan untuk isu-isu tertentu dan mengajukan tuntutan kepada pemerintah (Lessig, 2006). Alat kolaborasi online juga memfasilitasi kerjasama antar kelompok orang yang memiliki tujuan yang sama, memungkinkan mereka berkolaborasi dalam mengatasi masalah sosial dan politik yang kompleks (Mayer et al., 2014).

Secara keseluruhan, teknologi komunikasi digital telah membuka pintu bagi partisipasi publik yang lebih luas dan memberikan suara kepada warga negara dalam pengambilan keputusan publik. Hal ini memberikan kesempatan bagi individu yang sebelumnya tidak memiliki akses atau kesempatan untuk berpartisipasi aktif dalam proses politik. Namun perlu diingat bahwa partisipasi publik di dunia digital juga memiliki tantangan,seperti penyebaran informasi palsu atau pengaruh yang tidak sah. Oleh karena itu, penting untuk membangun literasi digital yang kuat dan melibatkan masyarakat dalam

penggunaan teknologi komunikasi digital secara bijaksana dan bertanggung jawab (McMillan, 2020).

Transparansi dalam proses pengambilan keputusan

Salah satu aspek penting dari demokrasi adalah transparansi dalam proses pengambilan keputusan. Digitalisasi telah memainkan peran penting dalam meningkatkan transparansi ini. Melalui media sosial, platform online, dan aplikasi pemerintahan elektronik, informasi yang relevan dapat diakses dengan mudah oleh publik (O'Neil, 2016). Hal ini memungkinkan individu untuk mendapatkan pemahaman yang lebih baik tentang proses pengambilan keputusan politik dan mengikuti perkembangan saat ini. Selain itu, teknologi blockchain juga muncul sebagai alat yang berpotensi revolusioner untuk memastikan transparansi dan integritas dalam proses politik. Dengan menggunakan teknologi ini, data dan keputusan yang diambil dapat terekam secara terbuka dan tidak dapat diubah. Hal ini memberikan keyakinan kepada masyarakat bahwa proses pengambilan keputusan tidak dipengaruhi oleh korupsi ataumanipulasi.

Teknologi Blockchain memang muncul sebagai alat yang berpotensi revolusioner untuk memastikan transparansi dan integritas dalam proses politik (Papacharissi, 2015). Blockchain adalah database terdesentralisasi yang mencatat transaksi secara publik dan transparan (Polity, 2018). Setiap transaksi yang dicatat dalam blockchain tidak dapat diubah atau dimanipulasi, sehingga menciptakan tingkat keamanan dan kepercayaan yang tinggi. Dalam konteks demokrasi, teknologi blockchain dapat digunakan untuk memastikan integritas dalam pemungutan dan penghitungan suara. Dengan menggunakan blockchain, setiap transaksi pemilu, termasuk penambahan dan penghitungan suara, dapat direkam secara permanen dan tidak dapat diubah. Hal ini memberikan keyakinan kepada masyarakat bahwa hasil pemilu tidak akan dimanipulasi (Slaughter, 2017).

Selain itu, teknologi blockchain juga dapat digunakan untuk meningkatkan transparansi dalam pendanaan kampanye politik. Di banyak negara, terdapat persyaratan untuk melaporkan kontribusi kampanye secara publik. Dengan menggunakan blockchain, informasi tentang kontribusi kampanye dapat dicatat dan diverifikasi secara transparan, mengurangi risiko praktik korupsi atau pengaruh yang melanggar hukum dalam proses politik. Selain untuk pemilu dan dana kampanye, teknologi blockchain juga dapat digunakan untuk memperkuat transparansi dalam pengelolaan anggaran publik. Dengan mencatat secara terbuka setiap transaksi keuangan di blockchain, publik dapat melacak pengeluaran publik dan memastikan anggaran digunakan secara efektif dan akuntabel (Srnicek, 2017).

Digitalisasi juga dapat meningkatkan akuntabilitas pemerintah dalam konteks demokrasi. Dengan adopsi teknologi digital, pemerintah dapat memperbaiki mekanisme pelaporan, mempercepat respon terhadap permasalahan yang muncul, danmemperkuat pencegahan terhadap praktik korupsi. Salah satu cara digitalisasi meningkatkan akuntabilitas pemerintah adalah melalui penyediaan aksesibilitas dan transparansi informasi. Pemerintah dapat menggunakan platform daring dan situs webresmi untuk memberikan informasi yang relevan tentang kebijakan publik, anggaran, dan kegiatan pemerintah lainnya. Dengan demikian, publik dapat dengan mudahmengakses informasi ini dan memahami bagaimana keputusan dibuat dan bagaimana anggaran publik digunakan (Zuboff, 2019).

Selain itu, teknologi digital juga memungkinkan pemerintah menerapkan mekanisme pelaporan yang lebih efisien. Misalnya, pemerintah dapat mengembangkan aplikasi seluler atau platform daring yang memungkinkan warga melaporkan tindakan korupsi, pelanggaran hukum, atau ketidakpatuhan terhadap kebijakan. Hal ini membuat masyarakat berperan aktif dalam memantau pemerintah dan mengungkap pelanggaran. Selain itu, digitalisasi dapat membantu meningkatkan ketanggapan pemerintah terhadap permasalahan dan keluhan yang disampaikan oleh masyarakat. Dengan adopsi teknologi komunikasi digital, pemerintah dapat menjalin interaksi langsung

dengan masyarakat melalui media sosial, surat elektronik, atau forum online lainnya. Hal ini memungkinkan pemerintah lebih cepat mendengar suara rakyat dan merespon dengan tindakan yang tepat (Papacharissi, 2010).

Tidak hanya itu, digitalisasi juga dapat digunakan untuk memperkuat pencegahan terhadap praktik korupsi dan penyalahgunaan kekuasaan. Pemerintah dapat menggunakan teknologi audit elektronik, sistem pelacakan transaksi keuangan, atau teknologi blockchain untuk memastikan bahwa proses pengelolaan dana publik berjalan dengan baik transparan dan akuntabel. Teknologi ini menciptakan jejak yang dapat direkam dan diverifikasi, mempersulit praktik korupsi dan meningkatkan integritas pemerintah. Secara keseluruhan, digitalisasi memiliki potensi besar untuk meningkatkan akuntabilitas pemerintah dalam demokrasi. Dengan adopsi teknologi digital, pemerintah dapat menyediakan aksesibilitas informasi yang lebih baik, memperbaiki mekanisme pelaporan, meningkatkan daya tanggap terhadap masyarakat,dan memperkuat tindakan pencegahan terhadap korupsi. Namun, penting untuk menjaga keamanan dan privasi data serta memastikan regulasi yang tepat agar digitalisasi berfungsi sebagai alat yang efektif untuk memperkuat akuntabilitas pemerintah (Papacharissi, 2015).

C. Dampak Transformasi Digital dalam Meningkatkan Demokrasi danPentingnya Payung Hukum

1. Dampak Transformasi Digital dalam Meningkatakan Demokrasi

Transformasi digital telah meberikan kenyamanan, kemajuan, dan kemudahan, dalam semua aspek kehidupan, politik, hukum, ekonomi, sosial, budaya dan pertahanan keamanan, namun disisi lain penggunaan teknologi dalam semua aspek kehidupan juga memberikan dampak negatif yang tidak bisa dihindari, untuk mengatasi masalah ini, peran hukum menjadi penting, agar penggunaan digitalisasi dapat terus memajukan kesejahteraan umat manusia, mewujudkan kepastian hukum, kemanfaatn dan keadilan

salah satu dampak negatif dapat kita lihat pada keterlibatan lembaga tradisional, dan masyarakat awam teknologi semakin kecil dalam proses demokrasi. Secara keseluruhan, teknologi digital menawarkan cara untuk meningkatkan kualitasdemokrasi dalam hal akuntabilitas dan daya tanggap. Namun, dampaknya terhadap partisipasi dan inklusi dapat menjadi ambivalen: akses internet dan literasi digital menjadi kriteria penting untuk memastikan partisipasi yang sepenuhnya inklusif dalamproses demokrasi.

Digitalisasi dapat menawarkan saluran baru administrasi publik untuk memberikan layanan berkualitas. Namun perlu dibarengi dengan penyiapan sumber daya manusia yang mengendalikan administrasi publik mampu secara progresif menggunakan teknologi digital. Digitalisasi administrasi publik akan memberikan pelayanan yang lebih baik, lebih cepat, efesiensi biaya, namun harus dibarengi dengan pengembangan dan pelatihan untuk para pegawai negeri. Optimalisasi penggunaan digitalisasi berartijuga mempromosikan perubahan budaya dalam pekerjaan pegawai negeri. Selanjutnya

Meningkatnya penggunaan AI dan pengambilan keputusan otomatis di sektor publik menimbulkan beberapa isu, di antaranya akuntabilitas, transparansi, dan risiko diskriminasi. Tanpa perlindungan yang memadai, teknologi dapat berdampak buruk terhadap penikmatan hak dan kebebasan individu, misalnya dalam hal privasi dan perlindungan data atau hak untuk tidak mengalami diskriminasi, atas dasar apa pun, termasuk literasi digital atau Studi tentang dampak transformasi digital terhadap demokrasi dan akses tata kelola yang baik.permasalahan ini tentu perlu didukung dengan pengaturan hukum yang memadai agar dampak negatif transformasi digital tidak melanggar hak asasi manusia dan demokrasi. Oleh karena itu perlu diatur penggunaan AI di sektor publik untuk melindungi hak-hak individu dan menghindari dampak yang tidak diinginkan yang lebih luas pada masyarakat. Agar akuntabilitas dapat bekerja secara efektif, pemerintah perlu menentukan bagaimana dan sejauh manasistem AI digunakan dalam proses pengambilan keputusan dan harus dapatmemberikan akuntabilitas untuk keputusan tersebut

2. Peran Hukum dalam Mengatasi Dampak Negatif Transformasi Digital

Salah satu hak asasi manusia yang penting adalah hak untuk memberi dan memperoleh informasi. Sebagai wujud pengakuan terhadap hak asasi tersebut, Pasal 19 ayat (2) Kovenan Internasional Hak-Hak Sipil dan Politik yang ditetapkan oleh Majelis Umum tanggal 16 Desember 1966, menegaskan bahwa "Setiap orang berhak atas kebebasan untuk menyatakan pendapat, hak ini termasuk kebebasan untuk mencari, menerima, dan memberikan informasi dan pemikiran apapun, terlepas dari pembatasan secara lisan, tertulis atau dalam bentuk cetakan, karya seni atau melalui lain sesuai dengan pilihannya." Selanjutnya dalam Pasal 9 Deklarasi Universal Hak-hak asasi Manusia menyatakan bahwa, "Setiap orang berhak atas kebebasan mempunyai dan mengeluarkan pendapat, dalam hal ini termasuk kebebasan mempunyai pendapatdengan tidak mendapat gangguan dan untuk mencari, menerima dan menyampaikan keterangan dan pendapat dengan cara apapun juga dan dengan tidak memandang batas-batas". (Agus Sudibyo, 2021).

Pada tataran nasional, kebebasan menyampaikan pendapat merupakan salah satu hak asasi manusia yang dijamin dalam Pasal 28 Undang-undang Dasar 1945 yang berbunyi, "Kemerdekaan berserikat dan berkumpul, mengeluarkan pikiran dengan lisan dan tulisan dan sebagainya ditetapkan dengan Undang-undang." Selain itu, hak untuk memperoleh informasi juga telah ditetapkan sebagai Hak Konstitusional setiap warga negara, sebagaimana tertuang Pasal 28F Undang- Undang Dasar Negara Republik Indonesia Tahun 1945 bahwa "setiap orang berhak untuk berkomunikasi dan memperoleh informasi untuk mengembangkan pribadi dan lingkungan sosialnya, sertaberhak untuk mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi dengan menggunakan segala jenis saluran yang tersedia". Berdasarkan ketentuan tersebut masyarakat dapat mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi yang dibutuhkan tanpaterkecuali.

Kemerdekaan dan kebebasan menyampaikan pendapat serta hak menyampaikan dan menerima informasi merupakan hak asasi manusia Indonesia telah diatur dalam peraturan perundang-undangan yakni dalam Undang-undang Dasar 1945, Undang- undang No. 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum, Undang-undang No. 39 Tahun 1999 tentang Hak Asasi Manusia, Undang- undang No. 40 Tahun 1999 tentang Pers, Undang-undang No. 32 Tahun 2002 tentang Penyiaran, Undang-undang No. 14 Tahun tentang Keterbukaan Informasi Publik(KIP), Peraturan Pemerintah No. 61 Tahun 2010 tentang Pelaksanaan Undang-undangKeterbukaan Informasi Publik (KIP), Peraturan Menteri PANRB No. 83 Tahun 2012 tentang Pedoman Pemanfaatan Media Sosial Instansi Pemerintah, Undang-undang No.19 Tahun 2016 tentang Perubahan atas Undang-undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektroni (ITE), dan Peraturan Pemerintah No. 71 Tahun 2019 tentang Penyelenggaraan system dan Transaksi Elektronik dan Undang-undang Nomor27 Tahun 2022 Tentang Perlindungan Data pribadi.

Ketersediaan regulasi tersebut tentu diharapkan dapat diimplementasikan dengan optimal agar pelanggaran yang terjadi dalam Transformasi digital dapat ditegakan dengan optimal sehinggga memberi kepastian, kemanfaatan dan keadilan.

D. Simpulan

Globalisasi telah membawa masyarakat modern hidup dalam era teknologi informasi atau yang disebut dengan era revolusi industri 5.0, artinya, dunia global telah menempatkan kehidupan manusia berada di tengah-tengah arus teknologi yang begitu cepat perkembangannya baik dalam bidang hukum, politik, ekonomi, ilmu pengetahuan dan teknologi (IPTEK), budaya, pendidikan, dan sosial. Dampak globalisasi telah membawa semua aspek kehidupan manusia menjadi lebih maju, lebihbaik, lebih sejahtara, lebih mudah, dan lebih cepat, hidup dalam suatu habitat yang global, transparan, tanpa batas, saling mengait (linkage), dan saling ketergantungan (interindependence). Kesejahteraan yang dinikmati oleh masyarakat global ini tidak lain karena peran dari transformasi digital yang telah merambah masuk dalam kehidupan bermasyarakat, berbangsa, dan bernegara

Bahan Bacaan

Poiran1, Syah Amin Albadry dkk, Digital Transformation and Its Role in Improving Democracy: A Systematic Literature Review, Open Access Indonesia Journal of SocialSciences. Vol 6 Issue 3 2023

Study On The Impact Of Digital Transformation On Democracy And Good Governance Prepared with a contribution from Professor Ines Mergel, University of Konstanz, Germany Adopted by the CDDG following its 13th meeting (15-16 April 2021)

Doni Akbar, Puji Susanti, dkk, Indutri Digital Dalam Dinamika Demokrasi Digital Dalam demokrasi Indonesia : Ancamana atau Peluang, Mediakom: Jurnal Ilmu Komunikasi Volume 5 No. 2 Desember 2021

Piers Andrea Noak, Digitalisasi Birokrasi Dalam Wilayah Publik Dan Masyarakat Sipil Menyongsong Pemilu 2024.

Undang-undang Dasar 1945

Undang-undang No. 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat diMuka Umum.

Undang-undang No. 39 Tahun 1999 tentang Hak Asasi Manusia.Undang-undang No. 40 Tahun 1999 tentang Pers.

Undang-undang No. 32 Tahun 2002 tentang Penyiaran.

Undang-undang No. 14 Tahun tentang Keterbukaan Informasi Publik (KIP).

Peraturan Pemerintah No. 61 Tahun 2010 tentang Pelaksanaan Undang-undang Keterbukaan Informasi Publik (KIP).

Peraturan Menteri PANRB No. 83 Tahun 2012 tentang Pedoman Pemanfaatan MediaSosial Instansi Pemerintah.

Undang-undang No. 19 Tahun 2016 tentang Perubahan atas Undang-undang No. 11Tahun 2008 tentang Informasi dan Transaksi Elektroni (ITE).

Peraturan Pemerintah No. 71 Tahun 2019 tentang Penyelenggaraan system danTransaksi Elektronik.

Undang-undang Nomor 27 Tahun 2022 Tentang Perlindungan Data pribadi.

Syahrin Jeli Bohari

Federal Court of Malaysia

DIGITAL TRANSFORMATION AND ITS ROLE IN IMPROVING DEMOCRACY: THE MALAYSIAN JUDICIARY'S PERSPECTIVE

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

DIGITAL TRANSFORMATION AND ITS ROLE IN IMPROVING DEMOCRACY:THE MALAYSIAN JUDICIARY'S PERSPECTIVE

Introduction

[1] First and foremost, on behalf of the Malaysian Judiciary, please accept our appreciation to the Constitutional Court of Indonesia for organizing and hosting this event. We are deeply honored and grateful for the invitation. Indeed, being part of this event is an exceptional opportunity to engage with like-minded professionals, share knowledge, and explore cutting-edge advancements in our field.

[2] In the current digital age, the world is experiencing a profound transformation in the way information is distributed, accessed, and utilized. This shift, known as digital transformation, involves integrating digital technologies to improve efficiency, transparency, and accessibility across diverse sectors, including governance and justice. Such technologies encompass artificial intelligence, big data analytics, cloud computing, blockchain, and more. Embracing this digital evolution offers unprecedented opportunities for progress and innovation, empowering societies to address complex challenges and createa more inclusive, interconnected, and sustainable future.

[3] Digital transformation's primary objective is to optimize procedures, enhance decision-making, and grant citizens convenient access to justice and legal services. Consequently, it holds significant ramifications for democracies worldwide, empowering them to thrive and evolve in the digital era.

[4] Malaysia has long been at the forefront of digital transformation. The Covid-19 pandemic disrupted societal operations, compelling the government to expedite the digitalization of various public services. This proactive approach aimed to mitigate disruptions and enable people to access essential services without jeopardizing public health and safety.

[5] In our presentation today, we will delve into the importance of digital transformation and its role in democracy, with a special focus on the Malaysian Judiciary's standpoint.

[6] Amidst the pervasive influence of technology across all facets of society, the judiciary assumes a pivotal responsibility in upholding the rule of law and safeguarding democratic principles in the face of these transformative advancements.

The Essence of Digital Transformation in Malaysian Judiciary

[7] The advancement of digital transformation in Malaysia is in line with the progression of Industrial Revolution 4.0, aiming to enhance the Court's delivery and service systems. This effort ensures efficiency, transparency, and seamless access to justice, offering the people a more effective and convenient experience.

[8] Over the past decades, the Malaysian Judiciary has taken substantial steps towards digitization as part of our Judicial Transformation, introduced by former Chief Justice Tun Zaki Tun Azmi in 2009. Various initiatives under the e-Court System platform have contributed significantly to this progress. The term"e-Court System" pertains to digital platforms utilized by lawyers, government agencies, courts, and the public for handling court proceedings and documents.

[9] The components of the e-Court System are as follows:

e-Filing System (EFS): A pivotal measure in achieving digitization is the adoption of electronic filing (e-filing) systems. This enables lawyers and litigants to electronically submit court documents, reducing reliance on physical paperwork and significantly enhancing legal process efficiency. It is a web-based platform which give access to its users anywhere and anytime. With this system,users can access information on court proceedings, assigned judges, and thelist of documents filed by parties, all conveniently available online. This initiative not only saves time but also reduces administrative burdens and enhances accessibility for all parties involved.

Case Management System (CMS): Digital case management systems offer a unified platform for efficiently managing and monitoring cases from inception to resolution. It ushered in a modern approach to case management and document processing, replacing physical court files with their digital counterparts. This transition has streamlined and digitized the entire process, bringing greater efficiency and convenience to the management of cases and documents. By providing online access to case-related information, updates, and documents, these systems promote transparency and accelerate the resolution of legal matters for judges, lawyers, and litigants alike.

e-Review: e-Review, an integral part of the e-Filing and CMS, enables remote case management, eliminating the need for lawyers' physical presence in court. Aligned with the goal of reducing lawyer attendance, it saves time and costs. Parties can communicate and share information online within the e-Review session, converting these exchanges into official Notes of Proceeding for visibility and record-keeping.

Court Recording System & Voice To Text (RVT): RVT, an advanced recordingtechnology, includes voice-to-text capabilities that automatically transcribe audio files into official notes of proceedings. The digitization has facilitated virtual courtproceedings in Malaysia, proving especially valuable during emergencies likethe COVID-19 pandemic when physical appearances are challenging. Virtual hearings ensure uninterrupted legal processes and access to justice. Electronic evidence, such as documents, videos, and digital records, can be presented andstored in a structured manner. As a result, judges can make well-informed decisions with ease and precision.

[10] In addition to the components of the e-Court system, the digital transformation initiated by the Malaysian Judiciary includes the following:

e-Courts Portal: The platform offers convenient access to a wealth of legal information and various e-Court services. It allows the public to obtain legal resources, learn about court procedures, and access forms and guidelines with ease.

e-PG: This online platform simplifies guilty pleas for Traffic and Departmental Summons Cases through remote communication technology, as accessible as using a mobile phone. It offers an alternative to the traditional requirement of a physical court appearance for the summoned person, providing convenience and efficiency.

e-Denda: This groundbreaking initiative enables online payment of fines in criminal cases through the E-Courts Portal, by using the Financial Process Exchange (FPX). By implementing this system, members of the public can conveniently settle fines without visiting court payment counters, expediting the process and facilitating the prompt release of the accused.

Artificial Intelligence (AI): AI is employed to analyze data and patterns to determine appropriate sentencing for specific criminal offenses. Since January 2020, the Malaysian Judiciary has been conducting pilot programs for AI sentencing tools in two states, Sabah and Sarawak. Subsequently, from July 2021 to April 2022, these initiatives were extended to Kuala Lumpur and Shah Alam's Sessions as well as Magistrates' courts. The system is designed to aid Sessions' Court Judges and Magistrates in recommending suitable sentences byanalyzing the sentencing trends from prior cases.

Currently, the system is accessible exclusively for one offense - possession of drugs under Section 12(2) of the Dangerous Drug Act 1952 (DDA). This offense entails a maximum fine of RM100,000 or up to 5 years of imprisonment, or both. However, the system's scope will soon be extended to include offenses under Section 380 of the Penal Code, specifically related to theft in dwelling houses.

Despite the incorporation of AI in the Malaysian judiciary system, its application in courts is still experimental, and the findings are not yet conclusive for decision-making. The main goal of AI is to promote consistency and fairness in sentencing, discouraging significant disparities for similar offenses. While AI offers recommendations based on specific criteria, the final decision on the mostsuitable sentence lies with the sentencing court, adhering to established sentencing principles and within the boundaries set by relevant legislations.

It is essential to emphasize that AI complements rather than replaces judges' roles, aiming to enhance justice transparency, consistency in law application,and sentencing parity. This effort is critical to maintaining public confidence inthe courts.

[11] In essence, the implementation of an e-Judiciary system in Malaysia fosters the advancement of jurisprudence. Embracing the concept of open justice as the new norm, it signifies a shift away from purely physical court processes. This initiative has garnered widespread positive feedback from all court users.

The Imperative Role of Democracy in the Judiciary

[12] The Malaysian judiciary rests on the foundation of democracy, embodying equality, impartiality, and accountability. Its core responsibility is to uphold the rule of law, deliver justice, and safeguard individual rights and liberties. As the nation embraces digital transformation, the judiciary must uphold democratic values while harnessing technology to enhance its operations.

[13] Judicial digital transformation can have a significant impact on democracy. When implemented thoughtfully and responsibly, digital transformation in the judiciary can positively contribute to the principles of democracy. However, it alsopresents challenges that need to be carefully addressed to ensure that democratic values are upheld.

[14] Below are several ways in which judicial digital transformation can have a positive impact on democracy:

a) Enhanced access to justice: Digital transformation can make the judicial process more accessible to citizens by enabling online access to court information, court documents and legal resources. Virtual hearings, electronic filing systems, and online platforms offer convenience and ease of access, reducing the need for physical court appearances and associated costs for individuals and businesses. This heightened accessibility empowers citizens to comprehend the legal system better andparticipate more actively in legal proceedings.

b) Transparency and accountability: Incorporating digital technologies can substantially improve the transparency of the Malaysian judiciary, granting public access to court proceedings, judgments, and case information. This enhanced transparency fosters greater accountability among judges and court officers, instilling trust in the judicial system.

c) Efficiency and Fairness: The integration of digital case management systems and data analytics can enhance the efficiency of case processing,resulting in quicker and more uniform outcomes. A more efficient judiciary contributes to a fairer and more effective justice system.

d) Easier Collaboration and Knowledge Sharing: Digital tools facilitate seamless collaboration among legal professionals, judges, court officers, and staff. It can facilitate knowledge sharing, leading to greater consistency and quality in legal decisions.

[15] While digital transformation offers numerous benefits, it also brings forth challenges and concerns that must be addressed. The following are the challenges and risks to democracy arising from digital transformation:

a) Data Privacy and Security: The digitization of court records and processes raises concerns about data privacy and security. As legal information becomes digitized and shared, cybersecurity and data privacy assume paramount importance. Preserving the integrity of judicial decisions necessitates verifying the accuracy and dependability of algorithms and AI-driven tools. Ensuring the protection of sensitive legal information is essential to safeguard individuals' rights and uphold public trust.

b) Digital Evidence Authentication: Maintaining the authenticity and integrityof digital evidence presented in court is of utmost importance. Judges and legal professionals must be equipped with the necessary skills to evaluate the reliability of digital evidence.

c) Automation Bias and AI ethics: The use of AI in decision-making process may raise concerns about bias and ethical considerations. It is crucial to ensure that AI systems are fair, transparent and accountable.

d) Public Trust and Confidence: As the judiciary embraces digital technologies, preserving public trust and confidence in the justice system becomes crucial. It necessitates clear communication and education about the advantages and limitations of digital transformation. Digital transformation demands continuous

education and training for judges, legal practitioners, and court personnel to proficiently navigate the digital landscape. Simultaneously, public awareness campaigns can empower citizens with information on accessing online legal resources, promoting legal literacy, and encouraging active participation in the democratic process.

Conclusion

[16] Digital transformation offers the Malaysian judiciary a distinctive chance to modernize and reinforce its role in upholding democracy and the rule of law. By embracing technology, the judiciary can improve efficiency, transparency, and accessibility while upholding democratic values. However, it must proceed with caution, addressing potential challenges and ensuring that digitalization aligns with democratic principles.

[17] As previously discussed, judicial digital transformation can have substantial effects on democracy, encompassing both positive and negative aspects. To ensure a positive impact, it is imperative to address the challenges and risks, prioritize inclusivity, and steadfastly uphold democratic values of transparency, fairness, and accountability throughout the digitalization process. By doing so, the judiciary can leverage technology to strengthen democracy andpromote a just and accessible legal system.

[17] The successful integration of digital technologies by the Malaysian judiciary will lead the way towards a more inclusive, efficient, and democratic legal system. This serves as an exemplary model for other democracies grappling with similar transformative challenges.

[18] Before we conclude, we would like to express our heartfelt gratitude to the team at the Constitutional Court of the Republic of Indonesia for extending the invitation to me and my colleague. Thank you for your warm hospitality and the knowledge shared during this conference.

Thank you.

Sojung, Kim

Constitutional Court of Korea

Confronting New Issues on Election Campaigns in the Digital Age

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

The Constitutional Court of Korea

Confronting New Issues on Election Campaigns in the Digital Age

Sojung, Kim

Constitutional Rapporteur Judge, Constitutional Court of Korea

The digital transformation has had a significant impact on the medium and means through which one of the most important elements of democracy, election campaigns, take place. In the past, traditional one-way media such as TV and pri nted materials, including televised speeches, newspaper advertisements, electio n leaflets, and banners, was used to inform voters about candidates and their pol icies and persuade them. However, after the digital transformation, efforts shifted towards two-way communication on online platforms such as social media, where candidates could deliver their messages and rally supporters. The timing of this t ransformation may vary from one country to another, but in the case of South Kor ea, significant changes occurred after the widespread adoption of high-speed inte rnet in the 2000s.

Consequently, the nature of constitutional issues related to election campaigns has also changed at the Constitutional Court of Korea(CCK). Previously, the main focus was on whether restrictions imposed on traditional campaign methods, as m entioned earlier, were infringing on candidates' freedom of campaigning or if thes e restrictions were applied equally to all candidates. For instance, issues like whe ther regulations prohibiting the publication of irregular academic credentials in ca mpaign promotional materials violated campaign freedom**(99Hun-Ba5, Septemb**

er 16, 1999), or whether election laws limiting participation in debates organized by local broadcasting organizations to candidates recommended by parties with m ore than five members in the National Assembly or parties that received more tha n 3% of the votes in the previous election, or candidates who obtained more than 10% of the votes in recent elections or showed a public support rate of over 5% i n opinion polls for district representative elections violated rights to equality **(201 0Hun-Ma451, May 26, 2011)**, were examined.

However, with online platforms becoming the major stage for expressing opinions related to elections since the 2000s, new issues emerged. New provisi ons were added to South Korea's Public Official Election Act in 2004 to require i nternet news sites to take technical measures to verify a user's real name befor e allowing the person to post information concerning his/her support for or oppo sition to political parties or candidates on bulletin board, etc. of their web-sites d uring election campaign period (22 days for presidential elections and 13 days f or National Assembly and local government elections). If such posts are not ver ified and are deemed expressions of support or opposition for a political party o r candidate, they must be removed, and penalties can be imposed for violations . The legislative objective was to avoid the possible side effects caused by pers onal attacks and negative propaganda against political parties or candidates, a nd to ensure a fair election. The constitutionality of this regulation became a po int of contention, as it raised concerns about the freedom of expression for user s who wished to express their support or opposition to political parties or candid ates anonymously on bulletin boards, the press freedom of internet news sites, and the right to self-determination of personal information for users. This mean s that in constitutional court cases concerning election campaigns, the position

of voters has transformed from being mere “an object of election campaigns” to “an active subject of the freedom of expression regarding elections.”

CCK, in its first constitutional review of these provisions **(2008Hun-Ma324 et al., February 25, 2010)**, deemed it to pass the four-stage test of excessive restrictions. The court's rationale for considering the provisions to meet the “necessity” requirement was that due to the nature of the internet, the rapid spread of false information and negative campaigning during the short election period could not be effectively remedied solely through post-hoc measures. However, there were dissenting opinions by 2 Justices (Justice Kim Jong-dae and Justice Song Doo-hwan), which argued that regulating anonymous political expression on the internet, which functions as the most participatory medium and promotes expression, could undermine democratic values by inhibiting political expression itself.

In the second constitutional review of these provisions **(2012Hun-Ma734 et al., July 30, 2015)**, the court reached a similar decision, while the number of dissenting justices increased to four (Justice Lee Jung-mi, Justice Kim Yi-su, Justice Lee Jin-sung, Justice Kang Ilwon).

However, in the third constitutional review **(2018Hun-Ma456 et al., January 28, 2021)**, the court's legal opinion changed, and it concluded that the provisions violated the rule against excessive restriction. The court acknowledged that the provisions served the legitimate purpose of reducing personal attacks and negative campaigning against candidates to ensure fairness in elections. Still, it held that “in the free marketplace of ideas created by the internet, the regulation suppressed diverse opinions and, thereby, could undermine the expression of public will

, a foundation of democracy.” The court pointed out several factors, such as the c omprehensive regulation of anonymous expression for administrative convenienc e, restricting anonymous expression during the essential period of political expre ssion (the election campaign period), introducing new means to secure fairness i n elections without limiting users' freedom of expression or the right to self-deter mination of personal information, and having existing post-hoc sanctions for elect ion crimes using the internet (e.g., defamation), indicating that the provisions fail ed to meet the “necessity” and “proportionality” requirements.

This shift in decisions reflects how online platforms have grown in stature. I n the past, there were concerns that online platforms, based on anonymity, would be overwhelmed by amount of baseless criticism directed at political parties and c andidates, and voters would indiscriminately accept such content, resulting in dis torted public opinion. This was why regulations on anonymous expression were c onsidered constitutionally justified. However, as online platforms became essenti al to political discourse, the potential negative impact of regulating anonymous ex pression became more apparent, in terms of inhibiting political expression. Also, given the active verification and self-correction mechanisms in place to address m isinformation, it is believed that the drawbacks of regulating anonymous expressi on outweigh the benefits. In light of this decision, it is expected that anonymous e xpression on politics and elections online becomes more active and, thereby, div erse public opinions reflecting the views of various segments of the population wi ll form, leading to further improvement of democracy.

Thus far, we have examined the constitutional issues related to election ca mpaigns raised before and after the digital transformation and the trends in the C

CK's decisions regarding the regulation of anonymous expression in the online s phere concerning elections. CCK provides the summary of the latest decision I co vered today through English version web-site. If you want to learn more about the decision, please visit our web-site (https://english.ccourt.go.kr/site/eng/main.do). And you can also find the English version of current Korean legislations on the w eb-site of Korea Law Translation Center (https://elaw.klri.re.kr).

Thank you very much for your attention.

Shokhrukh Majidov

Constitutional Court of the Republic of Uzbekistan

Digitalisation of Activity Judicial Authorities of Uzbekistan: Experience and Prospects for Development

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Шохрух Мажидов
Старший эксперт Конституционного суда
Республики Узбекистана

Цифровизации Деятельности Органов Судебной Власти Узбекистана: Опыт И Перспективы Развития

Уважаемые коллеги!

Дамы и господа!

Я рад приветствовать вас на данном международном учебном курсе Ассоциации азиатских конституционных судов и эквивалентных институтов (ААКС), посвященных **20-летию** Конституционного суда Республики Индонезии!

Пользуясь случаем позвольте поздравить представителей Конституционного Суда Республики Индонезии с **20-летием** Конституционного Суда Республики Индонезии и пожелать дальнейших успехов в деятельности по обеспечению верховенства Конституции, благополучия и процветания народу Индонезии, а также выразить глубокую признательность руководству Конституционного Суда Республики Индонезии за предоставленную возможность участия в работе международных курсов!

Уважаемые участники!

Позвольте вкратце проинформировать вас о сути конституционной реформы в нашей стране.

30 апреля 2023 года в Узбекистане прошел всенародный **референдум**, в котором граждане страны более чем **90 % голосов** сделали свой выбор в определении будущего страны, ориентированного на углубление демократизации всех сфер общественной и государственной жизни, приняв новую редакцию Конституции Республики Узбекистан.

А также, на состоявшемся **13 марта 2023 года** заседании Конституционного суда, Конституционным судом был рассмотрен вопрос о соответствии Конституции Республики Узбекистан **Постановления Законодательной палаты Олий Мажлиса Республики Узбекистан «О проведении референдума Республики Узбекистан по проекту Конституционного закона Республики Узбекистан «О Конституции Республики Узбекистан»**. Процесс данного судебного заседания была транслирована в онлайн формате на центральных телевидениях.

Пользуясь случаем, хочу остановиться на нововведениях Конституционного суда в связи с принятием обновленной Конституции.

*В Конституцию включены нормы о*б обеспечении безопасности судьи и членов его семьи, не подотчетности судей по конкретным делам, финансировании деятельности судов из государственного бюджета, способствующие формированию действительно справедливой и независимой

судебной системы и обеспечению беспристрастности судов, а также направленных на дальнейшую демократизацию порядка избрания судей Конституционного суда. Так, в соответствии со **статьей 132** Конституции судьи Конституционного суда избираются на десятилетний срок без права на переизбрание, тогда как ранее по законодательству срок полномочий судьи Конституционного суда составлял при первоначальном избрании – **5 лет**, при очередном избрании – **10 лет**.

Примечательно, что новым механизмом защиты прав и свобод, законных интересов граждан явилось закрепление **на конституционном уровне** института конституционной жалобы о проверке конституционности закона если закон, по их мнению, нарушает их конституционные права и свободы, не соответствует Конституции и применен в конкретном деле, рассмотрение которого в суде завершено и все другие средства судебной защиты исчерпаны.

На дальнейшее расширение деятельности Конституционного суда по обеспечению верховенства Конституции, направлена конституционная норма о наделении Конституционного суда полномочиями **по определению соответствия Конституции Республики Узбекистан вопросов, выносимых на референдум**. Референдум, являясь формой непосредственной демократии, имеет большое значение в системе принятия демократических решений и организации демократического государства. Проверка вопросов, выносимых на референдум, как одна из форм предварительного конституционного контроля, имея целью обеспечение стабильности в обществе, направлена на недопущение проведения референдума, результатом которого будет принятие неконституционного решения.

Уважаемые коллеги!

В целях расширения института обращения граждан и субъектов предпринимательства в суды по защите своих прав и интересов, повышения уровня достижения правосудия, а также обеспечения открытости и прозрачности деятельности судов принято постановление Президента Узбекистана «О мерах по цифровизации деятельности органов судебной власти» *(3 сентября 2020 года № ПП-4818)*.

Данным постановлением утверждены **Программа** цифровизации деятельности органов судебной власти в 2020–2023 годах и **«дорожная карта»** по интеграции информационных систем судов с информационными системами государственных органов и организаций, предусматривающая автоматическое распределение дел между судьями в судах апелляционной и кассационной инстанций, извещение участников о времени и месте судебного заседания SMS-сообщениями.

Документ является первым серьезным шагом к цифровизации судебной системы Узбекистана. С концептуальной точки зрения реформирование судебной системы с помощью цифровизации направлено на улучшение обеспечения одного из основных прав человека – права на судопроизводство,

своевременное рассмотрение и разрешение дел в целях защиты прав, свобод и законных интересов граждан, а также прав и охраняемых законом интересов предприятий, учреждений, организаций, общественных объединений и органов самоуправления граждан.

В настоящее время в судебную систему Узбекистана внедрены такие элементы цифровизации, как электронная подача исковых заявлений (заявлений) и документов, приложенных к ним, видеоконференцсвязь, электронная оплата госпошлины, доступ к текстам судебных актов и ведение электронной отчетности.

Следует отметить, что как никогда важно применить опыт цифровизации деятельности государственных органов, который был осуществлен в сфере цифровизации судов общей юрисдикции, результаты которого мы наблюдаем сегодня, и в деятельность Конституционного суда Республики Узбекистан, занимающего особое место в системе судебной власти нашей страны.

В соответствии со **статьей 29** Конституционного закона «О Конституционном суде Республики Узбекистан» **обращение** в Конституционный суд направляется в **письменной или электронной форме**. Обращение, направленное в электронной форме, должно соответствовать требованиям законодательства об электронном документообороте.

В связи с развитием информационно-коммуникационных технологий физические и юридические лица более активно обращаются в Конституционный суд в электронной форме. В основном электронные обращение поступают по электронной почте Конституционного суда и через Виртуальную приемную Президента Республики Узбекистан. С **2021 года** внедрена система согласно с которой граждане и юридические лица могут обращаться с **видеообращением** в Конституционный суд через мессенджер «Telegram».

В 2022 году в Конституционный суд поступило более 900 обращений *(62 % от общего числа обращений)*, а в первой половине текущего года около 500 обращений *(60 % от общего числа обращений)* в электронной форме.

В настоящее время Конституционном судом разрабатывается **Программа цифровизации деятельности Конституционного суда на 2024-2026 годы**, предусматривающая создание **информационной системы «E-KSUD»**. В “E-KSUD” конституционное судопроизводство будет осуществляется в электронной форме. Основными **задачами** данной системы являются:

- электронная регистрация обращений и их учет путем автоматизации процедуры работы;
- обращение в суд в электронном виде и получение судебных документов в электронном виде;
- оказание интерактивных услуг гражданам и субъектам предпринимательства в целях облегчения доступа к правосудию;
- автоматическое распределение дел среди судей;
- онлайн-мониторинг процесса рассмотрения обращений;
- оповещение участников суда через сервис «Извещение суда»;

- автоматизированное создание судебных документов с использованием информационной системы;
- создание и ведение «судебного банкинга» (депозитария) судебных документов;
- создание интеграционной платформы с информационными системами других министерств и ведомств;
- протоколирование судебных заседаний с использованием аудиозаписи;

внедрение системы видеоконференцсвязи судебных заседаний;

внедрение мобильной версии видеоконференцсвязи судебных заседаний;

- внедрение единой системы электронного документооборота;
- создание мобильных версий информационной системы;
- внедрение модуля информирования судей и работников судов о новостях и информации о деятельности судов;
- создание электронного архива судебных дел;
- создание модуля оповещения лиц, участвующих в судебных делах, о судебных документах в электронном виде, а также путем отправки SMS-сообщений и через электронной почты;
- разработка и внедрение модуля по формированию судебных дел в электронном виде;
- создание модуля подачи и приема судебных дел в государственный архив в электронном виде.

Цифровизация Конституционного суда станет важным фактором в достижении следующих **целей**:

- обеспечение открытости и прозрачности деятельности Конституционного суда;
- создание возможности физическим и юридическим лицам, а также субъектам, имеющим право на обращение в Конституционный суд, разрешать свои вопросы без посещения здания суда;
- упрощение процесса подачи обращений за счет введения альтернативной действующей бумажной процедуры обращения в Конституционный суд – электронной формы;
- упрощение производства в Конституционном суде за счет полного отказа от действующей бумажной формы производства, а также повышение эффективности работы.

В заключение следует отметить, что поэтапная цифровизация процессов осуществления конституционного правосудия послужит обеспечению верховенства закона и конституционной законности, заложенных в стратегии развития Нового Узбекистана на 2022-2026 годы.

Уважаемые участники!

В завершение своего выступления разрешите пожелать вам плодотворной работы, конструктивного диалога и эффективного взаимодействия!

SESSION III

Prof. Dr. M. Guntur Hamzah

Justice of the Constitutional Court of the Republic of Indonesia

ENFORCEMENT OF THE CONSTITUTION THROUGH THE MODERN JUSTICE ECOSYSTEM

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

ENFORCEMENT OF THE CONSTITUTION THROUGH THE MODERN JUSTICE ECOSYSTEM

Prof. Dr. M. Guntur Hamzah
Justice, Indonesian Constitutional Court

Honourable Justices and Judges of Constitutional Court and equivalent institutions, Speakers, Moderators, distinguished participants, ladies and gentlemen.

First of all, I would like to congratulate the Organizing Committee for the successful organization of this short course and also I would like to convey my appreciation to all participants taking part in this important event.

Furthermore, I would like to convey that the paper that I am about to read is largely part of my experience for more than seven years as Secretary General of the Constitutional Court and also in the capacity as the chief of supporting systems, in overseeing judicial technology applied at the Constitutional Court in the last decade. Most of the materials from my presentation has been proven and written in three books that I wrote entitled Modern Justice, Modern Bureaucracy, and Modern Constitution.

Basically, modern judiciary in a democratic country is one of the legal instruments that should be inherent, and of course it is a necessity for all citizens, even it is a *conditio sine qua non* for the continuity of law and justice discourse between citizens and judicial institutions. In this context, modern judiciary has become a pillar to ensure that people are not treated arbitrarily by those in power or anyone holding power. The modern judiciary plays its role in seeking and ensuring equal access to courts and justice through the use of legal instruments and advanced technology, and is supported by advanced human resources.

In fact, currently all judicial institutions from time to time continue to strive and experience developments, in line with the dynamics of society and the rapid progress of science and technology which always offers a variety of conveniences for interaction, including the rapid development of AI-based technology, Blockchain, Internet of Things, and other court technology. The development and progress of ICT has contributed significantly in driving the acceleration of case handling process in courts towards the era of modernization of the judiciary. The use of ICT cannot be separated from three problems that are always faced by the judiciary, namely the case

handling time which is too long, difficult access to courts, and corrupt judges or court employees. These three things are the most common complaints faced by justice seekers around the world. Therefore, the role of ICT can support the performance of the judiciary in order to overcome classic problems faced by judicial institutions and at the same time encouraging and guaranteeing that justice governance is carried out with full integrity, clean and can be trusted by the public, especially justice seekers..

Then, what is modern judiciary? A modern judiciary is a the judiciary that uses advanced technology in the process of examining, adjudicating and deciding, and has the attitudes, ways of thinking and ways of acting of its human resources in accordance with the times. Modern judiciary is synonymous with the use of advanced and up-to-date information and communication technology. On the other hand, modern judiciary also encourages its human resources in it to behave, think and act forward and advance. A modern judiciary is a judiciary that does not only apply ICT in carrying out the business process of examining, adjudicating and deciding cases, as well as on judicial administration and general administration support, but also all judges and supporting staff who have an advanced and progressive mindset and cultureset. Thus, modern judiciary is the judiciary that is carried out with an advanced and ICT-based mindset and cultureset.

In another sense, modern judiciary is basically (1) a judiciary that fully utilizes advanced technology that facilitates work methods, that opens wide access to the public and is easy to access, (2) a judiciary whose system and working methods take place effectively and efficiently, transparent and accountable. If described in more detail, modern judiciary has three main elements, namely (1) the judiciary with an ICT-based work system; (2) the judiciary with an advanced mindset; and (3) the judiciary with a cultureset that promotes progress.

The Judicary and ICT are essentially cannot be separated. Every judicial institution certainly owns and uses information and communication technology in running its institution. In fact, it is very difficult for the judiciary to avoid technological interference in carrying out its core business. According to Herbert B. Dixon Jr., technology has actually invaded the professional lives of judges and litigants. Courts are not immune to these invasions, but actively habituate themselves to using technology in various aspects, including e-filling governance, which allows or even requires electronic defense submissions and orders, and building high-tech courtrooms for evidentiary hearings, but not all of these changes have come about because of proactive decisions to modernize. Indeed, some arise out of limitations on old ways of doing business and others out of convenience.

Although, it should be realized, there are still some parties who are not comfortable with the presence of ICT in the judicial sector, either due to the caution factor in responding to the development of ICT in judicial institutions, for example, issues of originality, validity and authenticity of data, data security from hacker attacks, fraud issues or moral hazzard of ICT control officers, as well as technical difficulties in operating judicial technology, or other reasons that may discourage efforts to implement ICT in judicial institutions. Although caution is needed in making the right choice of technology, it is necessary to reflect back on the message of Steve Jobs, the founder of Apple Inc. that 'be friendly with technology, don't fight technology, whoever fights technology will be eroded by the development of technology itself'.

Two areas that can be touched with ICT approach

Various choices of technology related to judicial institutions are widely available on the market, e-court technology and its variants have been widely used in judicial institutions. Every judicial institution that wishes to apply ICT certainly understands exactly that in the judiciary there are at least two areas or areas that can be touched by the ICT approach, namely the area of the judicial administration system (JAS) and the area of the general administration system (GAS).

In the JAS area, Judicial technology can be applied starting from consultation of applicants or parties on litigation procedures (online consultation), online applications, electronic examination of case files, electronic submission of trial schedules and case documents, virtual trials, electronic filing of case files, as well as electronic delivery of copies of decisions and minutes. Furthermore, the most important thing is that all judicial processes should use electronic signatures equipped with electronic certificates to ensure the security of case documents and decisions from all forms and modes of document forgery, so that case documents and decisions are truly guaranteed for their originality, validity and authenticity. (OVA).

In the context of the Constitutional Court of the Republic of Indonesia, the MK's vision as a modern judiciary is both the nature and ideals of the MK as guardians and enforcers of the constitution through constitutional justice mechanism. Since its inception, the Constitutional Court has adopted the concept of modern judiciary. The Consititutional Court has and continues to endeavor to provide information technology-based trial support facilities and equipment. The ease of obtaining such information provides wide opportunities for the Constitutional Court to obtain information from many sources quickly and accurately, as well as disseminate decisions as widely as possible without being hindered by distance, time and place. Vice versa, justice seekers are expected to be able to access the processes of seeking justice conducted by the

Constitutional Court at any time. For the Constitutional Court, providing optimal service to the community, especially justice seekers, is a challenge of all time that is a never ending process in accordance with the spirit of providing access to justice and courts.

In order to realize an efficient, effective, transparent and accountable work process as well as improve the quality of public services, the Constitutional Court has built and provided ICT-based applications and services, both for case handling support and general administrative support. The Constitutional Court has broken the conservatism of procedural law in Indonesia by launching electronic-based case management.

Some examples of the application of ICT in the Constitutional Court are the Electronic Application Management Information System (SIMPEL), Digital Corner, Case tracking, case retrieval, e-issues, Click MK, Case handling information system (SIMPP), live streaming and remote court services, E-Minutation, E-BN (publication of decisions in official gazzette electronically), Annotation of MK decisions, E-BRPK (constitutional case registration book), system for serial number filing of parties (NUPP), Management information system for judicial review of laws, management information system for election result disputes, and regional head election results dispute management information system.

Furthermore, **in the GAS area**, judicial technology can be applied starting from office management (e-office), external and internal correspondence both official notes, dispositions, assignment letters, decrees, and various other official letters managed electronically, digitally and online. This ICT-based way of working is not only easy to plan, but also makes it easier for leaders to make decisions and carry out monitoring and evaluation. There are several advantages of implementing ICT in the GAS area, namely (1) cutting costs and time; (2) minimize the occurrence of corrupt practices; (3) creating an efficient, effective, transparent and accountable work process; and (4) improve the quality of public services.

The advantages mentioned above also have a positive impact on the use of less and less paper, faster documents searches, reducing the paper pile on the desk, speeding up the process of coordination within and outside the organization, simplifying control of letters that need to be followed up, facilitating the monitoring and evaluation process, improving file security, easy file sharing, easy backup, reducing employee workload, reducing dependence on individual employees, and disciplining employees to follow up letters anywhere and anytime.

Several applications in the GAS area include informative and user friendly MK website, e-procurement, whistleblowing systems, E-journals, E-reporting, E-Performance, SIKD, SIVIKA (financial verification information system), E-SPD, and so on. All of these information systems

and applications are integrated into the Constitutional Court website (mkri.id) and are in the process of being interconnected with one another. Within this GAS area, employees must familiarize themselves with the technology available and continuously developed at MK, so that this area is considered successful if a culture of digital transformation has been built in every employee's work at MK.

In the world of justice, geographical, economic, and infrastructure factors in obtaining justice and access to courts should not be a significant obstacle, because as emphasized by the Constitutional Court in Decision Number 57/PUU-XIII/2015, which basically states that ".... .. the development of information and communication technology as well as the availability of sufficient time expands and facilitates people's access to justice……". This Constitutional Court's decision is important to emphasize the urgency of ICT in the world of justice in order to fulfill the spirit of public access to courts and justice.

Technology in the Courtroom

Following the recognition, use, and familiarisation with ICT in the JAS and GAS areas, the next step is how ICT is applied in court proceeding. If the verdict is seen as the 'crown' of the judge, then the courtroom can be regarded as the 'mahligai' (palace) of the judges in examining, adjudicating and deciding cases. Courtroom facilities and infrastructure should really be able to support the implementation of the constitutional duties of judges. What I mean by ICT devices here are devices such as audio, LCD monitors, recording devices, and video conferencing for remote trials. The electronic courtroom serves to increase transparency and accessibility in the trial process. Judges and parties as well as trial participants can see the minutes of the trial directly because it uses e-transcription technology, which transcribes the conversation in the courtroom from voice to text with a high level of accuracy. In addition, the electronic courtroom is equipped with live streaming devices and YouTube channels that can disseminate trial activities in real time. In fact, the Constitutional Court's decision can be downloaded by the public wherever they are both at home and abroad within a period of approximately 15 minutes after the trial is completed / closed. Finally, all case files are minuted electronically on the e-minutation application in no time.

Another technology that is no less important is the holding of remote trials, which has significantly made it easier for justice seekers to sit before the Constitutional Court. In fact, since its inception, the Constitutional Court has established itself as a modern and trusted judiciary in line with the Constitutional Court's vision and mission. The use of video conferencing at the beginning of the Constitutional Court's establishment proved that the Court was at the forefront

in the application of ICT in the judiciary. In its development, in line with today's technological advances, MK has complemented video conferencing technology with mini courtroom devices based on smartboard technology.

The use of ICT technology in the JAS and GAS areas at the Constitutional Court received a positive response from the wider community and justice seekers. For example, the Court has received the MURI (Indonesia Museum of Record) world record award as the institution that held the most transparent trial (2019), the Award as an informative institution from KIP (Public Information Commission) (2019 and 2022), and maintained the title of unqualified opinion in budget management from the BPK (Supreme Audit Board), and other awards.

In the end, the continued use and utilization of technology, information and communication shows that the Constitutional Court has a strong commitment to continue to develop a modern judiciary ecosystem and digital culture transformation (ETERNAL). The digital culture transformation carried out by the Constitutional Court is directed with the aim of providing support for the implementation of the constitutional duties of the justices to uphold the constitution and to improve the quality of decisions and institutional strengthening of the Constitutional Court through strengthening the modern judicial ecosystem by prioritizing the principle of i^5 judiciary (independence, impartiality, integrity, integration and interconnection) which are in line with the vision of the Constitutional Court since its inception, namely to become a modern and trusted judiciary.

Jongmun Park

Secretary General of the Constitutional Court of Korea

Digital Transformation in the Constitutional Court of Korea: Intelligent Constitutional Court System

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Digital Transformation in the Constitutional Court of Korea: Intelligent Constitutional Court System

Jongmun Park

Secretary General
Constitutional Court of Korea / AACC Secretariat for Research and Development

1. Introduction

Distinguished participants, I am Jongmun Park, Secretary General of both the Constitutional Court of Korea and the AACC Secretariat for Research and Development (AACC SRD).

It is a great honor for me to be invited as a speaker for the International Short Course. I would like to extend my gratitude to the Constitutional Court of Indonesia including President Anwar Usman and the Secretary General Heru Setiawan for giving me this opportunity.

Although the topic of this session could be discussed extensively, my presentation will focus on sharing the actual experiences of the Constitutional Court of Korea.

Digital transformation is the process of innovating traditional social structures by building and utilizing information and communications technology (ICT) as a platform. Our Court is also witnessing "the cultural change in systems and institutions brought about by digital technologies." I would like to elaborate on these changes by introducing you to a series of tasks our Court has undertaken under a project that we call the "Intelligent Constitutional Court System." In the later part of the presentation, I will briefly touch on its relationship with democracy and judicial independence in this context.

2. Digital Transformation at the Constitutional Court of Korea

1) History of Informatization Tasks

Before delving into the "Intelligent Constitutional Court System" project, I would like to give you a brief overview of the history of informatization tasks carried out by the Constitutional Court of Korea. Our Court first launched its official website in 1998 and began to pursue informatization in 2002. Please refer to the diagram for more details.

What is most notable is Period 3 of building the **Constitutional e-Court system**. The system has been available since 2010, enabling citizens to file complaints online, check the documents serviced and access case records. Currently, over 50 percent of all cases are filed in electronic

format.

<Development Stage of Informatization in the Constitutional Court of Korea>

Period 1 (2002-2003): Building "Constitutional Adjudication Management System"

Period 2 (2004-2006): Building "Integrated Data Search System"

Period 3 (2007-2009): Building "Constitutional e-Court System"

Period 4 (2010-2015): Enhancing cyber security including the establishment of "Cyber Security Center"

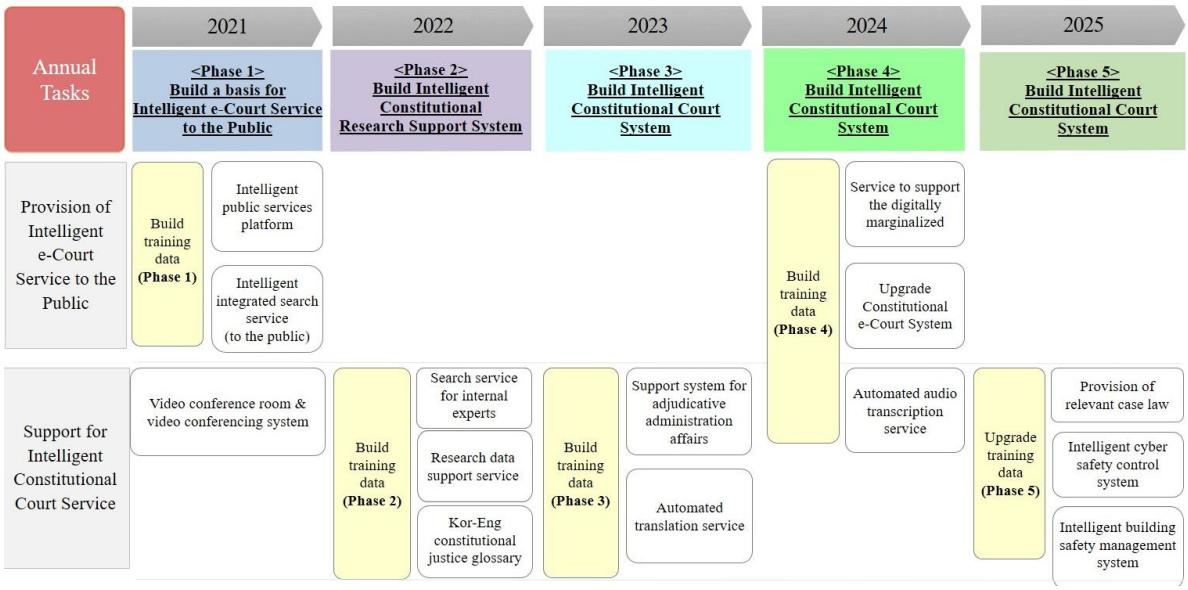
Period 5 (2016-2020): Building mobile-based services compatible with smartphones

Period 6 (2021-2025): Building "Intelligent Constitutional Court System"

2) Intelligent Constitutional Court System

In response to the increasing use of artificial intelligence technologies, our Court formulated an informatization strategy plan in 2019. Based on this plan, our Court is now undertaking a project to establish the "Intelligent Constitutional Court System" under a five-year plan from 2021 to 2025. We aim to implement the project in phases, depending on the level of technological development. We also plan to build training data as a basis for intelligent services, which will be upgraded every year.

<Development Stage of Informatization in the Constitutional Court of Korea>



The first phase of the plan in 2021 focused particularly on improving service to the public. First, our Court launched **a chatbot, which serves as an interactive public services platform**. It is a conversational messaging system, dealing with the public's inquiries and providing information such as adjudication procedures 24 hours, 365 days a year. When you look at the

number of conversations in the usage statistics, you will see a significant percentage of the usage is during working hours, as well as after work hours and holidays. Simple inquiries from citizens such as information on the adjudication procedure can be answered by the chatbot, reducing the workload of responding to inquiries from the public. Going forward, we will continue to enhance the quality of questions and answers to better serve the public.

< Monthly Usage in 2023 >

(Unit: user and conversation)

Category			**January**	**February**	**March**	**April**	**May**	**Monthly Average**
Number of Users			215	181	259	243	301	**239.8**
Number of Conversations	**Total**		602	606	671	860	983	**744.4**
	Service hours	**Weekday working hours (9 a.m. to 6 p.m.)**	363 (60%)	441 (73%)	384 (57%)	573 (67%)	637 (65%)	**479.6 (64%)**
		After work hours and holidays	239 (40%)	165 (27%)	287 (43%)	287 (33%)	346 (35%)	**264.8 (36%)**

※ Officially launched in January 2023

Our Court has also built the **intelligent case search service**. To provide easy access and search of our Court's case law for the general public, who are not legal experts, we have built a service that utilizes intelligent technology to enable users to search case information not only in legal terms but also in everyday language and sentence structures. Furthermore, in response to the pandemic, we have built **a video conference room and a video conferencing system**, facilitating non-face-to-face video conferencing and video trials.

The second phase of the plan in 2022 focused on supporting constitutional research for adjudication.

Actively incorporating feedback from rapporteur judges of the Constitutional Court of Korea, who are the actual users, we have developed an **expert search service** with better organized data such as search keywords and sophisticated functions.

The **research data support service** enables users to easily collect relevant articles and publications by simply entering keywords. This service ensures users to have access to the latest information on a regular basis.

In addition, the Court has established **the Korean-English constitutional justice glossary**, which allow users to make suggestions and contribute to the development of translations for technical terms in the field of constitutional justice.

Now, let's move on to **the third phase of the plan in 2023**.

First, our Court is building **Robotic Process Automation** which automatically performs routine and repetitive tasks. We believe that automating repetitive documentation tasks using a robot program can enhance work efficiency and prevent human errors. Accordingly, we are identifying target tasks to which the program can be applied. We are also building an **automatic translation system**. It aims to streamline the translation of internal publications and promote the collection and utilization of foreign data for research activities.

In **phase 4 of the plan in 2024**, we intend to **improve accessibility of the digitally marginalized** by providing braille files of court decisions. We are also considering introducing an **automated audio transcription service** for court proceedings.

In **Phase 5 of the plan in 2025**, we consider introducing a service that **finds similar precedents** for newly filed cases and **provides the results and their degrees of similarity** to the bench and the research department. Additionally, we are exploring the possibility of introducing **a system** that utilizes intelligent CCTV **to manage building safety.** We are also reviewing ways to **deploy intelligent technology for cyber security.**

3. Democracy and Judicial Independence in the Era of Digital Transformation

Now, I would like to reflect on two additional keywords of this session: democracy and judicial independence.

1) Democracy

The "Intelligent Constitutional Court System" that I mentioned earlier has two primary objectives: "improving service to the public" and "enhancing work efficiency in the Court." Among them, the chatbot and search system, which aim to "enhance service to the public," are projects that we believe are beneficial from a democratic perspective by enhancing universal access to information and providing easy access to the Constitutional Court at a low cost. From this perspective, enhancing accessibility through digital transformation is even more crucial for

the Constitutional Court, where constitutional complaints directly filed by the general public take up a large portion of cases. Furthermore, enhancing efficiency of judicial affairs in the Court will indirectly contribute to strengthening democracy by enabling the Constitutional Court to fulfill its missions more effectively.

As artificial intelligence is a rapidly developing technology, we will continue to eliminate the deficiencies of current systems. In this process, we need to be vigilant and prevent potential side effects from AI that would undermine democracy, such as surveillance, distortion of decision-making, and violation of privacy. Also, we need to develop a digital inclusion policy that ensures the digitally marginalized are not left behind in decision-making or the judicial system and anyone can benefit from digital transformation.

2) Judicial Independence

Discussions surrounding “digital transformation in the judicial system” and its impact on “judicial independence” often center on possible threats to the independence of courts and judges if court decisions are automated or influenced by AI software.

While the United States and some East European countries have already deployed AI systems in their criminal justice systems, the Republic of Korea has not yet implemented AI in its criminal justice proceedings. Moreover, constitutional justice has significant implications and demands a high level of comprehensive thinking as it binds all state organs (*erga omnes* effect). Therefore, when discussing the “automation of judgments” or the “introduction of AI,” it will be the last judicial process to adopt such technologies. The Intelligent Constitutional Court System project places emphasis on enhancing information access and improving procedural efficiency for the public and the Court’s staff.

From a general perspective, we need to closely monitor the potential negative impact on “judicial independence” caused by the adoption of AI systems in judicial rulings. This includes being vigilant about undue influence from the companies that develop these systems or from state agencies involved in their deployment.

4. Conclusion

“Digital transformation”, summed up as “innovation from analog to digital,” profoundly impacts people’s lives, and we experience these changes in our everyday work. I am grateful for this opportunity to present to you today the changes in the Constitutional Court of Korea.

Thank you for your attention.

Özlem Talasli Aydin

Constitutional Court of the Republic of Türkiye

The Judicial System in the Digital Era: Revisiting the Relationship between Democracy and Judicial Independence

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Session 3 "The Judicial System in the Digital Era: Revisiting the Relationship between Democracy and Judicial Independence"

Dear participants,

It is a great pleasure and honour for me to address such distinguished colleagues. Before I start my short presentation, I would like to congratulate all colleagues working at the Constitutional Court of the Republic of Indonesia on the 20th anniversary of their court. I also would like to thank the Indonesian Liaison Officer and all the other officers for their warm hospitality.

In my presentation, I will basically talk about e-government in the justice system in Türkiye. According to the Turkish Constitution, the Turkish state has a duty to establish an effective mechanism for the realization of access to justice. The problems faced by the judiciary were complex, ranging from the enormous workload, inadequate training, information and monitoring. The legal procedures were complicated and disorganized. Therefore, there was a need to carry out a reform on judicial sector in Türkiye.

The UYAP (that is, National Judiciary Informatics System), one of the success stories of Türkiye, is an integrated computer network system involving the Constitutional Court, the Ministry of Justice, the other courts, the public prosecutors' offices, the enforcement groups, prisons, and the Forensic Medicine Institute. The project began with a focus on automating human resources, finances, and procurement processes at the Ministry of Justice in Ankara. It continued with a second phase, which installed the UYAP system and trained judges, lawyers, and others in over one thousand locations across the country. The UYAP successfully improved legal research by establishing case law, regulations, and laws more accessible online; created a Lawyer Portal that allows lawyers to file case documents and pay fees online, and prevented errors by warning users of potential problems or anomalies on forms for creating common pleadings or court decisions. The success of UYAP is largely due to its ability to effectively integrate its network with other e-government services within Türkiye.

The objectives of UYAP can be listed as below:

• Integration of judicial units with each other and with other justice agencies

• Prevent citizens from unjust treatment

• Rapid, efficient, reliable and integrated system

• Fast and efficient data exchange

• Cheaper judicial services

• Minimize the basic judicial errors

• Data standardization

• Electronic means instead of paper files

• Databank of information

• Information and basic legal aid to citizens

• Flexibility of working hours

• Audio and video record systems

Citizens can reach and examine their case information via Internet and learn the day fixed for the trial without going to the courts. By using their electronic or mobile sign, they can examine their files through the internet. SMS messages can also be sent to the people who need to be warned about when to attend the court.

Lawyers can pay their case fee from their office and/or on Network in Bars rooms through internet banking and UYAP. They can file an online claim or dispute to courts and review their cases by electronics means. They can also submit their petition online via UYAP. Online cases have begun in Türkiye within UYAP. The substructure of the system providing internet banking for the payments of court expenses, charges, fees for lawyers has been set up with UYAP.

As for the individual application lodged with the Constitutional Court, it must be made by the applicant himself, his attorney or legal representatives. However, it is possible to submit an individual application petition for the real persons via UYAP Citizen Information System, for

the representatives of legal entities through the UYAP Institution Information System and for the representatives of the parties through the UYAP Lawyer Information System. In order for the applications lodged by this method to be registered and accepted, secure electronic signature should be used.

Some people suggest the lag in use of the Lawyer Portal is due mostly to the use of e-signatures, which are mandatory when using the Lawyer Portal. They recommend that a better e-signature training should be organized to improve awareness of the system.

One of the largest challenges Türkiye faces is the digital divide. Still, a small portion of the Turkish population uses the Internet regularly. At home, particularly among the rural population, the usage of the Internet is low. Educating users is one of the prerequisites of digital communication and the use of computers will help the population take advantage of the recent developments in network coverage in our country.

In Türkiye, e-Government initiatives are relatively advanced. However, because of disparity between the rural and urban centres, and with a young population, Türkiye faces challenges but has the capability and will to succeed and adapt to the technological changes.

In general, digital technology offers ways to enhance the quality of democracy in terms of accountability and responsiveness. However, its impact on participation and inclusion can be ambivalent. Internet access and digital literacy become important criteria to ensure fully inclusive participation in the democratic process. Digitalisation of the judicial administration is led by the will to deliver better services while ensuring cost-efficiency, but it is not away from challenges: effective measures should be introduced through some actions such as training for the civil service and diversification of human resource profiles. Embracing digital transformation can also raise several issues, among which could be found accountability and transparency. Without adequate safeguards in place, technology can adversely affect the enjoyment of individual rights and freedoms, for instance as regards privacy and data protection.

The digitalisation of the judicial system has rapidly accelerated during the pandemic of Covid19. At the same time, however, digitalisation might expose democracy to new risks and influences.

I would like to once again greet you all with respect before ending my speech. I wish that the short course program this year will be successful and fruitful again, as in previous years.

Orkhan Rzayev

Constitutional Court of the Republic of Azerbaijan

Democracy, Digital Transformation, and Judicial Independence

A paper for the 6th International Short Course 2023

"Democracy, Digital Transformation and Judicial Independence"

10 – 11 August 2023, Jakarta, Indonesia

Orkhan Rzayev

Senior Adviser of the Sector for Supervision of the execution of judicial Decisions of the Secretariat of the Constitutional Court of the Republic of Azerbaijan

Dear ladies and gentlemen,

Dear colleagues!

First of all, I cordially congratulate you on the 20th anniversary of the establishment of the Constitutional Court of the Republic of Indonesia and express my gratitude for organizing such a meeting.

Valuable ideas and quite useful information on the topic were voiced here. I am pleased to share with you the experience of the Constitutional Court of the Republic of Azerbaijan in the field of judicial independence.

Thus, in the Resolution of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated January 17, 2022, the Prosecutor's Office of the Republic of Azerbaijan, having made a request to the Constitutional Court, noted that the legal provisions defining the immunity of judges in the current legislation are of a general nature, and the limits of the immunity of judges are indefinite in terms. Thus, in order to carry out criminal prosecution against a judge, both during detention for committing a crime and in other cases, it is required to obtain the consent of the Judicial and Legal Council of the Republic of Azerbaijan.

According to the investigator's conclusion, the inability to eliminate the reason that served as the basis for the suspension of proceedings, due to the failure of the Prosecutor General's submission on the deprivation of the judge's right to inviolability, may lead to the fact that the proceedings will remain suspended. At the same time, the resumption of proceedings in accordance with Article 113 of the Law "On Courts and Judges" is possible only in cases of expiration of the term of office of a judge (extended term of office), as well as early termination of his powers on appropriate grounds (when submitting a written application for dismissal at his own request, engaging in activities incompatible with his position, in accordance with the requirements established for candidates for the position of judge, when it is found that he does not correspond, etc.), it will be possible that, in this case, the question arises whether the appropriate consent of the Judicial and Legal Council should be obtained to carry out criminal prosecution in accordance with the criminal procedure legislation for an act committed by a judge whose powers have been terminated during his competent period during which he has the right to inviolability, that is, whether the procedures established by article 101 of the said Law are being followed.

The Plenum of the Constitutional Court noted in connection with the request that, according to parts I and III of Article 127 of the Constitution, judges are independent, obey only the Constitution and laws of the Republic of Azerbaijan and are unchanged during their term of office. It is unacceptable to impose restrictions, unlawful influences, threats and interference in judicial proceedings by any person and for any reason directly or indirectly.

The President of the Republic of Azerbaijan is the guarantor of the independence of the judiciary (Part IV of Article 8 of the Constitution).

The principle of judicial independence, being an important element of the independence of the judicial system as a whole, is one of the most important guarantees aimed at implementing the principles of separation of powers, the rule of law, justice, and ensuring human rights. In a democratic society, the special public interest of the state in establishing and ensuring the independence of the judiciary becomes obvious.

In accordance with the second part of article 100 of the Law "On courts and judges", the independence of judges is ensured by their apolitical character, immutability and inviolability during their term of office, restriction of their appointment, prosecution, removal from office and termination of powers, independent functioning of the judiciary and the administration of justice in accordance with the procedure provided by law., the inadmissibility of restriction and interference in judicial proceedings by any person is carried out by ensuring the personal safety of judges and providing them with material and social guarantees in accordance with their duties.

According to article 16.10 of the Law of the Republic of Azerbaijan "On the Constitutional Court", a judge of the Constitutional Court cannot be held legally responsible for his activities in the Constitutional Court, for voting, for expressing an opinion, explanations and expressions cannot be required from him in connection with these circumstances.

The Plenum of the Constitutional Court considered that the inviolability established by article 128 of the Constitution implies a guarantee of functional inviolability in relation to all judges, and this type of inviolability remains even after the termination of the judge's powers.

The opposite approach may lead to the fact that the guarantees established by the Constitution and the relevant legislative norms, contrary to the purpose and legal function of the institution of functional immunity, will acquire an “imaginary” character, which will ultimately undermine the independence of the judiciary.

The Plenum of the Constitutional Court also emphasizes that the inviolability of judges cannot be regarded as a basis for their release from responsibility for committing acts provided for by criminal law, or leaving them unpunished. The goal here is to achieve a fair balance between the protection of judges from pressure and influence and the principle of inevitability of punishment (ubi culpa est, ibi poena subesse debet) to ensure the independence of judges.

On the basis of this, the Plenum of the Constitutional Court considers that the decision of the Constitutional Court or the Judicial and Legal Council to refuse to submit the Prosecutor General to deprive him of his right to inviolability in order to carry out criminal prosecution against a judge is in the nature of an act that once and for all excludes bringing this judge to criminal responsibility and provides for bringing him to criminal responsibility, it cannot be considered as an act of postponement until the termination of his powers.

Otherwise, a rule that depends on an agreed decision of the Judicial and Legal Council or the Constitutional Court on the possibility of criminal prosecution against a judge would lose its significance as a procedural and legal guarantee of their inviolability and an effective means of ensuring their independence.

At the same time, the Plenum of the Constitutional Court also reflected similar legal positions in a number of its rulings. For example, in the Resolution of the plenum of July 18, 2008, it was noted that the independent and impartial resolution of legal disputes, conflicts and other issues arising in society was defined as the main purpose of the court, which at that time was a judicial body for the protection of human rights and freedoms. Therefore, one of the important goals in the implementation of judicial reform was the transformation of the judiciary into an independent and influential force in its activities, independent of the legislative and executive authorities within the framework of the state mechanism.The provision of Judicial power holders – judges, based on constitutional guarantees of independence and inviolability, socio-political, material and social status worthy of their high rank, is an integral component of judicial reform.

The Plenum emphasized that the independence of judges is both one of the constitutional principles of the administration of justice and the constitutional guarantee provided by the state to judges.

Dear colleagues,

With your permission, I would briefly mention a few ideas related to the use of information technology in the judicial system of Azerbaijan.

The modern development of the judicial system in Azerbaijan, as well as throughout the world, is directly related to the use of digital technologies, including the creation of electronic justice. Currently, various information and digital technologies are actively used in proving (presentation of electronic evidence), conducting various examinations, systematizing legal information (legal reference systems), organizing video conferences, audio recordings of court sessions, online broadcasts of court sessions. These innovations have led to significant improvements in improving the efficiency of the testing process.

The introduction of information technologies to judicial activity continues rapidly and is applied to all developed countries, including Azerbaijan. It should be noted here that the "Electronic Court" information system was created on the basis of the Decree of the President of the Republic of Azerbaijan dated February 13, 2014.

Currently, the information system "Electronic Court" provides for the receipt of applications, complaints and other documents in electronic form; conducting electronic production and electronic circulation of documents in criminal and civil cases; recording trials using audio, video and other recording technologies and providing online monitoring of trials. Thus, the process participants have the opportunity to participate in the meeting online without attending the court.

Recently, a mobile version of the “Electronic Court” has been operating in Azerbaijan. By the way, the e-Government portal has been used in the country for many years, which provides access to electronic services by state bodies and structures on the principle of “one window”, which improves the quality of services provided and the processing of information provided from information systems.

The use of artificial intelligence in the preparation of court decisions can ease the burden on judges, speed up court proceedings, eliminate human errors and contribute to the qualitative analysis of judicial practice.

Artificial intelligence is useful at the stage of preparing court decisions. Based on the created database, the system was able to analyze the structure of cases, judicial practice in similar cases and propose the most equitable algorithm. At the same time, the judge must make the final decision by analyzing the results of the machine, guided by his own moral and ethical principles.

Artificial intelligence could ease the burden of the courts - its use in the organizational activities of the court could reduce the daily work of judges and court staff. However, it seems doubtful that artificial intellect can implement the principles of humanism and justice in sentencing, as well as reasonableness and good faith in the judicial process. Thus, it seems that the technical means developed by man in fiqh should increase the efficiency of people's work, and not displace them from this sphere.

I wish you all good health, peace and prosperity.

Thank you for your attention.

Bilguun Ganselem

Constitutional Court of Mongolia

THE JUDICIAL SYSTEM IN THE DIGITAL ERA: REVISITING THE RELATIONSHIP BETWEEN DEMOCRACY AND JUDICIAL INDEPENDENCE

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

International short course on
"Democracy, Digital Transformation, and Judicial Independence"
Jakarta, August 10th-11th 2023

SESSION 3: "THE JUDICIAL SYSTEM IN THE DIGITAL ERA: REVISITING THE RELATIONSHIP BETWEEN DEMOCRACY AND JUDICIAL INDEPENDENCE."

Honorable Moderator,

Esteemed researchers and participants,

Ladies and Gentlemen,

I extend my heartfelt gratitude to the Constitutional Court of the Republic of Indonesia for the commendable organization of the Asian Association of Constitutional Courts and Equivalent Institutions (AACC)'s 2023 international short course, and I would like to express my appreciation to all the participants contributing to this event.

It is my firm belief that this short course will prove to be instrumental in shaping our future endeavors. Allow me to present essential aspects concerning Mongolia's advancements in the digital era.

1. Mongolia's Policy in the Digital Era

In 2020, the Government of Mongolia issued the visionary "Vision 2050", a long-term policy document for the nation. Among its key goals is the establishment of "e-Mongolia", an integrated system connecting citizens, government, and private sectors. Under this initiative, the Government is actively working towards the aspiration of becoming an "e-Nation". Notably, e-Mongolia exemplifies this vision, creating a national database built on big data with a robust technological infrastructure. Efforts are underway to leverage the spatial information infrastructure at all decision-making levels.

As part of the long-term policy objectives, the Mongolian Government established the Ministry of Digital Development and Communications on January 6, 2022, and approved its operational strategy and organizational restructuring program. The Ministry has adopted six strategic goals, including digital infrastructure, e-governance, information security, digital literacy, innovation, and national development acceleration. Of particular significance among these goals is e-governance, envisaging an agile and transparent administrative structure through the incorporation of communication, information technology, and innovation across social and economic sectors to enhance productivity, competitiveness, and efficiency.

To establish a robust legal framework for e-governance, the Government of Mongolia has successfully formed a legal project working group, aligned with the "Vision 2050" document. This effort has resulted in the development of four relevant laws: The Law on the Protection of Personal Information, the Law on Public Information Transparency, the Law on Electronic Signatures, and the Law on Cyber Security, alongside draft amendments to other pertinent laws. As part of its right to initiate laws, granted by the Constitution, the government duly submitted these laws to the Parliament /State Great Khural/ of Mongolia, leading to their approval.

Additionally, the government and relevant ministries have approved 20 regulations related to the aforementioned laws, and these are presently being implemented in practice.

2. Digitization of Mongolian Courts in the Digital Age

Mongolia embraced its new democratic constitution in 1992, emphasizing the distribution of separation of powers, a fundamental principle of constitutional theory. The Constitution ensures a balanced distribution and legislation of legislative power, executive power, and judicial power.

Section 1, Article 47 of the Constitution of Mongolia firmly states that “The judicial power in Mongolia shall be exercised exclusively by the courts.”, this section expresses guaranteeing judicial independence. Also, Section 1, Article 49 of the Constitution states that “the judges shall be impartial and subject only to the law.”, and Section 2 of the same article ensures that “The President, the Prime Minister, the members of the Parliament, the members of the Government, or the officials of the State, political parties or other public organizations, citizens or anyone else, shall not interfere with the discharge of judicial duties by the judges.”.

Since 1989, Mongolia has actively introduced information technology in its judicial system. The legal basis for conducting electronic activities in the court system was solidified through the revision of the Law on Courts, approved by the Parliament of Mongolia on January 15, 2021.

Specifically, the law mandates that each court must have its own website, regularly informing the public of decisions and activities through broadcast television or the internet. Furthermore, court hearings are conducted electronically, except for cases involving sensitive information protected by relevant laws such as the Law on State and Official Secrets, the Law on Organizational Secrets, and the Personal Data Protection Law.

Article 19 of the law addresses the rights and obligations of judges to discuss and resolve issues through consultation. The Council of Judges holds the authority to issue detailed procedures for receiving and distributing cases, claims, complaints, and requests electronically. Additionally, the use of qualified software ensures the transparent and impartial allocation of judges, free from human influence. Section 20.6, Article 20 provides judges with the opportunity to vote electronically if they are unable to attend a conference in person.

The law also authorizes the Judicial General Council of Mongolia to ensure the independence of the judiciary. This includes oversight of proceedings' registration and control systems, development of software for organizing court hearings electronically, ensuring normal operation, and approval of procedures for recording and archiving audio and video recordings of court hearings and the electronic participation of court hearing participants.

The Constitutional Court of Mongolia has implemented cutting-edge technology in its internal operations, improving the organization's internal network and software, and achieving complete digitization. Nevertheless, there remains an impetus to enhance the legal framework. A working group is currently drafting the Law on the Constitutional

Court of Mongolia Procedure, reflecting the legal basis for the Constitutional Court's activities in the online environment.

In early 2023, the Mongolian Bar Association initiated a discussion on “Digitalization and Reform of Judiciary Institutions,” garnering support from employees of judicial institutions and relevant ministries. During this discussion, the General Council of Mongolia reported on the gradual implementation of policy measures aimed at delivering court services to citizens quickly and transparently through modern technology. The participants unanimously recognized the significance of enhancing the legal environment and coordinating electronic systems in legal and judicial institutions, while addressing pertinent challenges.

3. Judicial Independence in the Digital Age

A few years ago, the world faced an unprecedented challenge with the COVID-19 pandemic, resulting in numerous difficulties. During this period, countries closed their borders and imposed curfews. Society adapted to remote work and experienced firsthand the advantages and disadvantages of online operations. Consequently, many nations focused on improving their legal frameworks to accommodate this new paradigm.

As technology has become pervasive in modern times, courts worldwide have embraced digitization. Some researchers argue that digitizing courts fosters transparency, efficiency, and cost-saving benefits, with a unified court control system reducing the workload of judges.

However, concerns have been raised regarding the potential impact of court digitization on the independence of judges. Critics argue that installing software on a judge's computer may constitute monitoring of electronic communication, internet usage, and email, thus infringing on judicial independence and potentially influencing the judiciary process. Critics also question whether government policies allowing remote work through the internet may inadvertently encroach upon the judiciary's independence and violate the principle of separation of powers distribution.

The use of electronics during court sessions in deliberation rooms may affect the independence of judges and raise concerns over information security. Additionally, the application of artificial intelligence in court decision-making may reduce a judge's ability to decide cases according to their inner conviction, potentially undermining the core values of the judiciary.

Furthermore, in the online environment, some journalists or influencers with substantial followings disseminate one-sided information, impacting public perceptions before court decisions are made. Such actions represent an attempt to interfere with the independence of judges and the judiciary.

Conclusion

For Mongolia, within the framework of Mongolia’s “Vision 2050” policy document, the relevant institutions intend to intensively digitize judicial institutions. In order to create an e-court system, it is necessary to ensure compatibility between laws, eliminate the differences in understanding that have arisen in practice, and create legal regulations that are in line with the trends of modern e-courts.

In addition, the digitization of courts has the advantage of delivering court services to citizens quickly and transparently. However, there may be risks to the protection of personal privacy, data security, and protection. On the other side, the theoretical basis and legal framework for solving the conflict between human privacy and transparency are essential. Also, because the digitalization of the courts affects the independence of judges, it is lacking both in terms of the theory of judicial power and in terms of law.

Finally, I am confident that Mongolia, with its visionary long-term policy document and commitment to strengthening its legal framework, will successfully navigate the challenges of court digitization in the digital age. By promoting transparency, efficiency, and technological innovation while safeguarding judicial independence, we can build a robust and trusted judiciary system that serves the needs of our citizens.

I extend my gratitude once again to the Constitutional Court of the Republic of Indonesia for hosting this distinguished event, and to all participants for contributing to this meaningful exchange of knowledge and experiences.

Thank you for your attention.

Saud Hassan

Ministry of Law, Justice and Parliamentary Affairs, Bangladesh

Judiciary of Bangladesh

A paper for the 6th International Short Course 2023
"Democracy, Digital Transformation and Judicial Independence"
10 – 11 August 2023, Jakarta, Indonesia

Judiciary of Bangladesh

Saud Hassan[1]

The **Judiciary of Bangladesh** or **Judicial system of Bangladesh** is based on the Constitution and the laws are enacted by the legislature and interpreted by the higher courts. Bangladesh Supreme Court is the highest court of Bangladesh. The jurisdiction of the Supreme Court of Bangladesh has been described in Article 94(1) of the Constitution of Bangladesh. The Supreme Court of Bangladesh consists of two divisions namely the Appellate Division and the High Court Division. These two divisions of the Supreme Court have separate jurisdictions. The judiciary in Bangladesh consists of the higher judiciary (the Supreme Court) and the subordinate judiciary (the lower courts).

The Supreme Court of Bangladesh

Chief Justice of Bangladesh and other Judges

The Chief Justice of Bangladesh is the chief amongst the judges of the Supreme Court of Bangladesh, and also head of the whole judicial establishments, including subordinate courts. The Chief Justice of Bangladesh is appointed by the President of Bangladesh. The Chief Justice of Bangladesh sits in the Appellate Division of the Supreme Court with other judges to hear and decide cases, presides over meetings of the full Supreme Court to transact business relating to administration of the court, and supervises the discipline of the judges and magistrates of thesubordinate courts.

Judges of the Supreme Court are appointed from amongst the advocates of the Supreme Court and judicial officers. Judges appointed in the Appellate Division sit in that division with the Chief Justice, and the judges appointed in the High Court Division sit in that division.

The Appellate Division

The Appellate Division hears both civil and criminal appeals from the High Court Division. The Appellate Division may also decide a point of law reserved for its decision by the High Court Division, as well as any point of law of public interest arising in the course of an appeal from a subordinate court to the High Court Division, which has been reserved by the High

Court Division for the decision of the Appellate Division.

The Appellate Division hears appeals from the judgment, decree, order or sentence passed by the High Court Division or from any other court or tribunal, if so provided by law made by the House of theNation (the Jatiya Sangsad), such as decision of the Administrative Appellate Tribunal, Arpita Samapatti Appellate Tribunal or Land Survey Appellate Tribunal. In addition to the above appellate power the Appellate Division has advisory jurisdiction to give its opinion when sought by the Presidenton any question of law of public importance. For doing complete justice in any case, pending before it,Appellate Division has power to issue any direction, order, decree or writ including attendance of any person or discovery or production of any document.

The High Court Division

The High Court Division of the Supreme Court consists of civil courts, Criminal courts and some Special courts. Article 101 of the Constitution provides that the High Court Division shall have such

[1] *Saud Hassan, Chief Judicial Magistrate (Additional District & Sessions Judge), District-Tangail, Bangladesh (E-mail: sauddu@gmail.com)*

original, appellate and other jurisdictions, powers and functions as are or may be conferred on it by the Constitution or any other law.

The High Court Division has power of judicial review. On the application of any aggrieved person the High Court Division may give such directions or orders to any person or authority including a person performing any function in connection with the affairs of the Republic for the enforcement of any of the fundamental rights guaranteed under the Constitution. In enforcing the fundamental rights, the High Court Division is empowered to declare any law inconsistent with the fundamental right or any other part of the Constitution void to the extent of inconsistency. The High Court Division has also original jurisdiction in cases relating to company, admiralty, matrimonial issues, trade marks, copyrights, etc. The High Court Division may also withdraw a case from any subordinate court and dispose of the same if any substantial question of law as to the interpretation of the Constitution or a point of general public importance is involved in that case.

The High Court Division has appellate and revisional jurisdictions conferred on it by the laws. An appeal lies to the Appellate Division as of right from judgment, decree, order or sentence passed by the High Court Division where the High Court Division certifies that the case involves a substantial question of law as to the interpretation of the Constitution of Bangladesh or has sentenced a person todeath or imprisonment for life or has imposed punishment for contempt of that court.

Both the divisions of the Supreme Court of Bangladesh are courts of record, and have power subject to the provisions of the Contempt of Courts Act 1926 to investigate and punish anyone for contempt ofcourt. Law declared by the Appellate Division is binding on the High Court Division and the law declared by either Division of the Supreme Court is binding on all subordinate courts. All authorities executive and judicial in the country shall act in aid of the Supreme Court. Subject to any law made bythe House of the Nation (Jatiya Sangsad) the Supreme Court may with the approval of the President, make rules for regulating the practice and procedure of the High Court Division as well as of the Appellate Division. The Supreme Court may delegate any of its functions regarding appointment of employees to a division of that court or to one or more judges. Appointment of the employees of the Supreme Court is made by the chief justice or other judges or officer authorized by the Chief Justicein accordance with the rules made by the court with the approval of the President subject to any law made by the House of the Nation (the Jatiya Sangsad) to determine conditions of their service. The High Court Division has superintendence and control over all subordinate courts and tribunals established by law.

District Judiciary/District Courts

Subordinate Civil Judiciary/District Civil Courts

District Judge is the head of the judiciary in each of the districts. Subject to the superintendence of theHigh Court Division, District Judge has administrative control over all the civil courts of the district. District Judge has mainly appellate as well as revisional jurisdiction, but in some matters he has original jurisdiction too. Jurisdiction of the Additional District Judge is co-extensive with that of the District Judge. He/she discharges the judicial business assigned to him/her by the District Judge. Appeals to the judgments, decrees and orders passed by the

Assistant Judges, Senior Assistant Judges and Joint District Judges lie to the District Judge. Similarly District Judge may transfer the appeals preferred against judgments, decree or orders passed by the Assistant Judges to the Joint District Judges for disposal. Joint District Judges have unlimited civil original jurisdiction.

Civil courts while deciding any question regarding succession, inheritance, marriage or caste or any religious usage or institution apply the Muslim law in cases where the parties are Muslims and' Hindu law in cases where the parties are Hindus except so far as such law has been altered or abolished by any enactment made by the legislature.

There are five classes of subordinate civil courts in this hierarchy:

- District Judge Court
- Additional District Judge Court
- Joint District Judge Court

Subordinate Criminal Judiciary/District Criminal Courts

There are several classes of subordinate criminal courts. These are Court of Sessions Judge, Courts of Judicial Magistrates, Court of Metropolitan Sessions Judge and Courts of Metropolitan Magistrates. Courts of Judicial Magistrates include the Chief Magistrate, Additional Chief Judicial Magistrate and Senior Judicial Magistrate, Court of Judicial Magistrates of the second and third class. Courts of Metropolitan Magistrates include the Courts of Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrate and other Metropolitan Magistrates all exercising power of first class Judicial Magistrate. Since January 1999 Metropolitan Courts of Sessions have been established for the Dhakaand Chittagong metropolitan areas. For performing functions other than judicial there are Executive Magistrates for maintain law and order situation.

District Judges have been empowered to function as Sessions Judges, Additional DistrictJ as Additional Sessions Judges and Joint District Judges as Joint Sessions Judges in the districts. In every district, District Judge performs the functions of the Sessions Judge; Additional District Judge orJudges those of the Additional Sessions Judge or Judges and Joint District Judges those of the Joint Sessions Judges. Metropolitan Sessions Courts have been constituted with former District Judges as the Metropolitan Sessions Judges, former Additional District Judges as Metropolitan Additional Sessions Judges and former Joint District Judges as Metropolitan Joint Sessions Judges in those metropolitan areas. Joint Sessions Judges are subordinate to the Sessions Judges and Sessions Judges may make rules for distribution of business to Joint Sessions Judges. Though Additional Sessions Judges exercise same power as exercised by the Sessions Judges business may be distributed by the Sessions Judge of the district to the Additional Sessions Judge or Judges in that district. Judges of the Courts of Session also functions as Special Judges under the Criminal Law (Amendment) Act 1958 to try offences under the provisions of Prevention of Corruption Act 1947, and now repealed Anti-Corruption Act 1957 replaced at present by the Anti-Corruption Commission Act, 2004 (Durniti Daman Commission Ain, 2004). Judges of the Courts of Session also act as Special Tribunals to try offences under the provisions of the Special Powers Act 1974. Sessions Judge, Additional Sessions Judge or Joint Sessions Judge acting as special tribunal may award any sentence authorized by law. Sessions Judges and Additional Session Judges also act as Special Courts for suppression of repression of women and children under the provisions of the Suppression of Repression of Women and Children (Special Provisions) Act 2000. Sessions Judges also act as Public Safety Tribunals under the Public Safety (Special Provisions) Act, 2000 for trying offences under that Act. By the Public Safety (Special Provisions) (Amendment) Act, 2002 most of the provisions of the said Act has been repealed but provided for continuation of the pending cases underthe said Act reserving power in the government to withdraw appropriate cases. Those repealed provisions have been re-enacted in slightly modified form by the Law and Order Disruptive Crimes (Speedy Trial) Act 2002, and Metropolitan Magistrates and Judicial Magistrates of the first class have been empowered to try such offences within very short time as Speedy Trial Courts. Sessions Judgesand Additional Sessions Judges also act as Tribunals to try offences under the Acid Offence Suppression Act 2002. For speedy trial within specified time of offences of murder, rape, possession of illegal arms, explosives and narcotics Speedy Trial Tribunals with judicial officers of the rank of SessionsJ have been constituted initially in the six divisions to be extended later on in each

district by transferring some such cases pending before other subordinate criminal courts or tribunals under the Speedy Trial Tribunal Act 2002. Those tribunals, concerned public prosecutors and police officers shall remain responsible for failure to complete trial of such a case within the maximum period of 120 working days. Special rule of evidence for admitting into evidence video film, still picture of any criminal offence or its preparation as well as tape record or disk containing any conversation in connection with such offence have been made applicable to such trials. Sessions Judges andAdditional Sessions Judges also act as Money Laundering Court to try offences of money laundering under the Money Laundering Prevention Act 2002. Environment Courts have been constituted with Joint District Judges who are also ex-officio Joint Sessions Judges to try major environment offences

under the Environment Protection Act 1995 and other environment laws and rules and connected offences and Judicial Magistrates of first class and Metropolitan Magistrates as Special Judicial Magistrates have been empowered to try minor environment offences. Pure Food Courts have been constituted with the Judicial Magistrates having first class power to try offences under the Pure Food Ordinance 1959 as amended by the Pure Food (Amendment) Act 2005. Similarly Marine Courts have been constituted with Judicial Magistrates of the first class to try offences under the Inland Shipping Ordinance 1976 with the help of assessors. Since November 2007 Additional District Judge of the district acts as Chief Judicial Magistrate, Joint District Judges as Additional Chief Judicial Magistrates and the Senior Assistant Judge as the Senior Judicial Magistrate (first class) and Assistant Judges as Judicial Magistrate of the second and third class.

Deputy Commissioner of the district acted as District Magistrate and the Additional Deputy Commissioner as Additional District Magistrate. Additional District Magistrate had all or any of the powers of the District Magistrate. But the Additional District Magistrate is subordinate to the District Magistrate for certain purposes. Besides the District Magistrate and Additional District Magistrate there are Executive Magistrates subject to the control of the government defined local areas within which such Executive Magistrates may exercise powers vested on them mainly in maintain law and order situation.

Two types of Criminal Courts exist in this hierarchy:

Sessions Judge Court

- Sessions Judge Court
- Additional Sessions Judge Court
- Joint Sessions Judge Court

Magistrate Courts

- Chief Judicial Magistrate Court
- Additional Chief Judicial Magistrate Court
- Senior Judicial Magistrate Court (1st Class)
- Judicial Magistrate Court

Metropolitan Sessions Court & Metropolitan Magistracy

Metropolitan Court is a different type of court found in the metropolitan city of Bangladesh. As perthe Criminal Procedure Code (CrPC) of 1898, the constitution, procedure, forces and jurisdiction ofthis court are resolved. After the commencement of Metropolitan Police in 1976, the statute was revised in 1976 by an Ordinance and became effective in 1979. As indicated by this revised law, separate Metropolitan Courts in metropolitan cities have to be set up by the government. By this revision, the Criminal Procedure, at present recognizes the two kinds of judicature based on establishment's location. The first one in District Courts, situated in Districts and the second is the Metropolitan Courts situated in the Metropolises. The flowing cities have metropolitan courts:

- Dhaka, Chittagong, Rajshahi, Khulna, Sylhet, Barishal, Rangpur, Gazipur

Classification of Metropolitan Courts

Generally, Metropolitan court deals the criminal offenses occur in the metropolitan area. Metropolitan Court doesn't deal with civil cases. Thus Metropolitan courts are of 2 subtypes of session or criminal. Those are,

- Metropolitan Sessions Judge Courts

- Metropolitan Magistrate Courts

Metropolitan Sessions Judge Courts

Metropolitan Sessions Judge Courts are presided by Sessions Judges. It has started to function from 1999.There are two additional type of session judge courts namely, **Addition Metropolitan SessionsJudge courts** and **Joint Metropolitan Sessions Judge courts**.

Metropolitan Magistrate Courts

Metropolitan Magistrate Courts are presided by Metropolitans who are appointed by the Government. These Magistrates work under the supervision of Metropolitan Sessions Judge. There are three types of Metropolitan Magistrate Courts. Those are,

- Chief Metropolitan Magistrate Courts
- Additional Chief Metropolitan Magistrate Courts
- Metropolitan Magistrate Courts(1st Class)

Specialized Courts and Tribunals

- **Constitutional Court**
  - None
- **Administrative Court**
  - Administrative Tribunals
- **Finance Court**
  - Money Loan Courts
  - Insolvency Courts
  - Income Tax Appellate Tribunals
  - Special Tribunal for Share Market Scam
- **Labour Court**
  - Labour Courts
- **Court of Justice**
  - International Crimes Tribunal
- **Social Court**
  - Druto Bichar Tribunal
  - Bangladesh Cyber Tribunal

There are also some other special courts both in civil and criminal matters.

Artha Rin Adalat (Loan Court) has been set up in each district under the provisions of the Artha Rin Adalat Ain 1990 by the government appointing Joint District Judges as judges of such courts in consultation with the Supreme Court. All suits for realization of the loan of the financial institutions e.g bank, investment corporation, house building finance corporation, leasing company etc and non- banking financial institutions constituted under the provisions of Financial Institutions Act 1993, are to be filed in the Artha Rin Adalats, and such suits are exclusively triable by such courts. Artha Rin Adalat is a civil court and has all the powers of the civil court.

Deulia Adalat (Bankruptcy Court) has been constituted under the Bankruptcy Act, 1997.

District court in each district is the Bankruptcy court of that district, and District Judge is the presiding judge ofthat court and is authorized to deal with and dispose of bankruptcy cases arising within the district andhe/she may authorise an additional (district) judge to deal with and dispose of any such case.

Assistant Judges, Senior Assistant Judges as well as Joint District Judges have been empowered with the functions of Courts of Small Cause to entertain and try suits for realization of money up to thirty thousand taka and for ejectment of the monthly tenant by the landlord when twelve months' rent of the premises is equivalent to the above amount. No appeal lies from the decree or most of the orders passed by the Court of Small Cause except appeal to the District Judge from certain orders. But a revision may be filed to the High Court Division by an aggrieved party against decree or non- appealable order. Assistant Judges and Senior Assistant Judges also perform the functions of the Rent Controller deciding disputes between the landlords and monthly tenants of house premises otherthan suits for realization of arrear of rent or ejectment from the rented premises such as deposit of rent by the tenant on the refusal of the landlord to accept the same, repair of the premises, fixation of standard rent etc. Assistant Judges and Senior Assistant Judges also constitute Family Courts to entertain and try suits arising from family disputes such as restitution of conjugal rights, dissolution of marriage, maintenance of wife and children, custody of children etc.

Administrative Tribunals and Administrative Appellate Tribunals-

Administrative tribunals have been established by the government and each of the tribunals consists of one memberappointed by the government from amongst persons who are or have been District Judges.Administrative tribunal has exclusive jurisdiction to hear and determine applications made by anyperson in the service of the Republic (excluding a person in the defence service) or specified bodies and organizations such as Bangladesh Bank etc in respect of terms and conditions of his service including pension rights or any action taken in relation to him as a person in such service. Appeal lies from the decision of the administrative tribunal to the **Administrative Appellate Tribunal** consistingof a chairman and two members. The chairman shall be a person who is, or has been, or is qualifiedto be a Judge of the Supreme Court or is or has been an officer in the service of the Republic not below the rank of Joint Secretary to the government. The government appoints a retired Judge of theSupreme Court as Chairman. One of the members is appointed from amongst the retired or serving District Judges and another from amongst the retired or serving Joint Secretaries of the government.Appeal from the decision of the Administrative Appellate Tribunal lies to the Appellate Division of theSupreme Court with leave of that division.

Labour Courts and Labourt Appellate Tribunal- Labour Courts have been established to adjudicate disputes regarding employment of commercial or industrial labour. Each of the Labour Courts consists of a chairman and two members. The chairman is appointed from amongst the DistrictJudges or Additional District Judges and one of the members is appointed in consultation with the employers and the other in consultation with the workmen. Labour Court adjudicates and decides industrial disputes, implementation or violation of settlements, and complaints made between the employers and workers and complaints made by workers in respect of retrenchment, lay off, termination and dismissal from service, nonpayment of wages or compensation for disablement in course of service, and it also tries offences in respect of unfair labour practices, breach of or failure to implement settlement, illegal strike or lock-out and non-compliance of Labour Court's order. Any party aggrieved by an award of the Labour Court may prefer an appeal to the ***Labour Appellate Tribunal.*** Such tribunal consists of one member only appointed by the government from amongst the sitting or retired Judges of the Supreme Court. Labour Appellate Tribunal is required to dispose of an appeal against an award of the Labour Court in respect of any labour dispute as reinstatement

of any worker or workers in service within 180 days of filing the same. But no appeal lies from the decision of the labour court. If any party feels aggrieved by the decision of the labour court he may file an application before the High Court Division for issuing a writ of certiorari to examine the record of the case to satisfy itself as to the legality or propriety of the same. Decision of the labour court as commissioner ofworkmen's compensation is appealable to the High Court Division.

Court of Settlement. Following the liberation of Bangladesh the government promulgated Abandoned Property (Control, Management and Disposal) Order 1972 (President's Order No.16 of 1972) and made provisions for taking over control, management and disposal of properties which fell within the definition of abandoned property. Disputes arose about the decision of the government in respect of such properties and to set at rest such disputes for ever the government made provisions under the Abandoned Buildings (Supplementary Provisions) Ordinance 1985 for publishing list of all abandoned buildings in the official gazette and for deciding the claims to such properties by a tribunal

called the Court of Settlement. The court of settlement has been constituted by the government with achairman and two other members. The chairman is appointed from amongst persons who are or havebeen or are qualified to be a Judge or Additional Judge of the Supreme Court. Of the two members one is appointed from amongst persons who are or have been judicial officers not below the rank of Additional District Judge and the other from amongst persons who are or have been officers not belowthe rank of a Deputy Secretary of the government. The court of settlement decides the application made to it by any aggrieved person for excluding a property from the list of abandoned buildings after hearing the parties and considering the evidence adduced before it. No appeal lies from the decision of the Court of settlement. An aggrieved party may file an application to the High Court Division for issuance of a writ of certiorari to examine the record of the case to satisfy itself as to the legality or propriety of the decision of the court of settlement.

Arbitration and Arbitration Appellate Tribunal -Government may requisition or acquire any land or building owned by any person for public purpose or in public interest and pay compensation to the owner and occupier of such land or building as per assessment made by the land acquisition officers. Any person aggrieved by an order of assessment of compensation may file an application to the Arbitrator appointed by the government from amongst persons holding post not below the rank of the joint district judge. An appeal lies to the Arbitration Appellate Tribunal constituted with a member appointed from amongst persons who are or have been district judges against the award of the Arbitrator. Decision of Arbitration Appellate Tribunal determining the amount of compensation is final. An aggrieved party may file an application to the High Court Division for issuance of a writ of certiorarito examine the record of the case to satisfy itself as to the legality or propriety of the decision of the Arbitration Appellate Tribunal. Generally one of the joint district judges of the district court is appointed as the arbitrator and the district judge of the district as the Arbitration Appellate Tribunal to decide questions of quantum of compensation.

Election Tribunals -Election disputes require to be settled by tribunals appointed by the Election Commission which is entrusted with the functions of organizing, holding and conducting the election ofmembers of the House of the Nation (the Jatiya Sangsad) and the mayor or chairmen, commissionersor members of local bodies such as union parishads in the rural areas and pourashavas (municipalities) in the urban areas and city corporations in metropolitan areas. To decide election disputes arising from the election of the members of the House of the Nation (the Jatiya Sangsad) the Election Commission previously appointed as many tribunals as found necessary from amongst persons who are or have been district judges. Appeal from the decision of such election dispute lay to the High Court Division. Since 2001 a judge of the High Court Division performs the function of such tribunal to decide such election disputes. Similarly to decide election disputes arising from the electionof mayor or chairman and commissioners/members of the municipalities or union parishads and city corporations, Election Commission appoints judicial officers as Election Tribunals. Appeal from the decision of such election dispute lies to the District Judge of the district in which such tribunal is situated. Revision lies to the High Court Division against the decision of the district judge made in appeal from the decision of the Election Tribunal. A judicial officer of the rank of district judge or the district judge of each district was appointed Election Tribunal prior to 2001 for adjudication of election disputes arising from the election of members of the House of the Nation (the Jatiya Sangsad). But Assistant Judges are appointed Election Tribunals to decide election disputes arising from the election of chairman and members of the union

parishads. Similarly, Joint District Judges are appointed Election Tribunals for deciding the disputes arising from the election of mayor and ward commissioners of the municipalities and the city corporations.

Vested Property Return Tribunal and Vested Property Return Appellate Tribunal -Under the provision of the Vested Property Return Act, 2001 the government shall by notification in the official gazette appoint ordinarily one tribunal for each district or if necessary one tribunal for more than one districts or additional tribunal for any one district to be known as Vested Property Return Tribunal. Tribunal shall be constituted with a judicial officer of the rank of District Judge or Additional District Judge and the government may appoint a Judge of such tribunal or Additional tribunal to act solely or in addition to his ordinary duties as such tribunal. In case of necessity the government may appoint oncontract basis a retired district judge not exceeding sixty years of age to act solely as such tribunal. The said law provides for preparation and publication by gazette notification a list of returnable vested

properties within 180 days of coming into force of the Act and for the owner of such property for filing application to the tribunal within ninety days of publication of such list for return of such property to him and the tribunal to deliver judgment within 180 days of receipt of such an application. The lawalso provides for preferring appeal within 45 days of the judgment or decision of the tribunal against the same to the appellate tribunal. The law also provides for constitution of one or more appellate tribunals to be known as Vested Property Return Appellate Tribunal by the government and in case ofconstitution of more than one appellate tribunals to determine their respective territorial jurisdiction. In consultation with the Chief Justice of Bangladesh the government shall appoint judge of the appellate tribunal from amongst persons eligible to be judge of the Supreme Court or a retired judge of the Supreme Court whose tenure shall expire on completion of sixty seven years of his age. Appellate tribunal shall sit in the capital of the country and in case of constitution of more than one appellate tribunals at the places directed by the government. Appellate tribunal shall pass its judgment within 180 days of filing of the appeal. A further appeal shall lie against the judgment of the appellate tribunalto the appellate division of the Supreme Court on specific question of law with leave of that division.

Land Survey Tribunal and Land Survey Appellate Tribunal -Under the provisions of the State Acquisition and Tenancy (Amendment) Act 2004 government may, by notification in the official gazette, establish as many Land Survey Tribunals as may be required to dispose of the suits arising out of final publication of the last revised record of rights prepared under section 144 of the said Act. Government may, by notification in the official gazette, fix and alter the territorial limits of the jurisdiction of any land survey tribunal. Government shall, in consultation with the Supreme Court, appoint the judge of the land survey tribunal from among persons who are Joint District Judges. An appeal arising out of judgment, decree or order of the land survey tribunal shall lie to the land survey appellate tribunal established by the government by notification in the official gazette. More than one such appellate tribunals may be established to hear such appeals. Government may, by notification inthe official gazette, fix and alter the territorial limits of jurisdiction of any land survey appellate tribunal. Government shall appoint the judge of the land survey appellate tribunal from among persons who areor have been Judges of the High Court Division of the Supreme Court. An appeal from a judgment or order of the Land Survey Appellate Tribunal shall lie to the Appellate Division of the Supreme Court only if the appellate division grants leave to appeal.

CLOSING REMARK

Muhidin

Head Registrar of the Constitutional Court of the Republic of Indonesia

Representatives of the AACC's Members, participants of the Short Course.

Ladies and Gentlemen,

Praise be to God, as we come to the end of this enlightening event, the sixth International Short Course of AACC.

The short course program is part of the momentum of the 20th Anniversary of the Constitutional Court of the Republic of Indonesia. All has the same objective; that is, to build the synergy of knowledge which hopefully could be implemented in their respective countries and organizations. In line with that, we hope that positive collaboration can be made in the effort to build cooperation through exchange of information.

Through this short course, we also learned from speakers and all participants that Democracy, Digital Transformation, and Judicial Independence, as its main theme in this course are essentially needed in judicial practices. With regards to the work of the Constitutional Court, our democratic principles grant every citizen a voice and the right to participate in the decision-making process. However, the Court cannot work alone, there must be a collaboration between the use of technology and judiciary to enhance the values of liberty, equality, and justice for all.

Furthermore, in this age of rapid technological advancements, we cannot underestimate the significance of digital transformation. The Constitutional Court must remain at the forefront of this transformation, harnessing the power of technology to improve accessibility, transparency, and efficiency in the administration of justice. Embracing digital innovations will ensure that justice reaches every corner of our nations, bridging gaps and fostering inclusivity.

Now, as we turn our attention to Judicial Independence, we are reminded of the crucial role played by an impartial and autonomous judiciary. It is through this independence that the Constitutional Court stands as the guardian of our Constitution, ensuring that the rule of law prevails over all else. Let us affirm our unwavering commitment to preserving the integrity and dignity of our judiciary, free from any undue influence or interference.

There were many more that we learned but it will be too long if I am to list all of them.

Finally, I would like to express my gratitude to all the Speakers, and moderators who participate in this activity, the committee, and every party involved, both directly and indirectly. The success of this event is possible due to great collaboration and initiative.

Let this gathering serve as a testament to our shared commitment to a better and brighter future, where the pillars of democracy, digital transformation, and judicial independence stand strong, anchoring our nation's progress.

Once again, on behalf of the Constitutional Court of the Republic of Indonesia, I would like to apologize for any shortcomings. We welcome any inputs and suggestions that will be beneficial for us in the future.

Thank you very much. billahi taufiq walhidayah wassalamualaikum wr. wb.

I, hereby, close the sixth International Short Course of AACC.

ANNEX II

LIST OF PARTICIPANTS

ANNEX II

LIST OF PARTICIPANTS
THE 6TH INTERNATIONAL SHORT COURSE OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURT AND EQUIVALENT INSTITUTIONS 2023

DEMOCRACY, DIGITAL TRANSFORMATION AND JUDICIAL INDEPENDENCE

Jakarta, Indonesia, August 10 2023

Participants		
No	**First Name**	**Position**
1	Ei Ei Soe	Constitutional Tribunal of the Union of Myanmar
2	Shokhrukh Majidov	Office of the Constitutional Court, Uzbekistan
3	Firdaus Md Isa	Federal Court of Malaysia
4	Syahrin Jeli Bohari	Federal Court of Malaysia
5	TANAWOOT TRISOPON	The Office of the Constitutional Court, Thailand
6	SHAHERYAR RANA	Supreme Court of Research Center, Pakistan
7	SAUD HASSAN	Ministry of Law, Justice and Parliamentary Affairs, Bangladesh
8	Bilguun Ganselem	Constitutional Court of Mongolia
9	ÖZLEM TALASLI AYDIN	Constitutional Court of the Republic of Türkiye
10	Sora Kang	Constitutional Court of Korea
11	JUNSEONG LEE	Constitutional Court of Korea
12	Sojung Kim	Constitutional Court of Korea
13	Pavel Ulturgashev	Constitutional Court of the Russian Federation
14	Orkhan Rzayev	Constitutional Court of the Republic of Azerbaijan
15	Alua Nadirkulova	Constitutional Court, Kazakhstan
16	Hawwa Mohamed Waheed	Supreme Court of the Maldives
17	Rizki Amalia	Substitute Registrar, MKRI

18	Syukri Asy'ari	Substitute Registrar, MKRI
19	Hani Adhani	Substitute Registrar, MKRI
20	Mardian Wibowo	Substitute Registrar, MKRI
21	Ria Indriyani	Substitute Registrar, MKRI
22	Wilma Silalahi	Substitute Registrar, MKRI
23	Ery Satria Pamungkas	Substitute Registrar, MKRI
24	Yunita Rhamadani	Substitute Registrar, MKRI
25	Anak Agung Dian Onita	Substitute Registrar, MKRI
26	Dian Chusnul Chatimah	Substitute Registrar, MKRI
27	Fransisca	Substitute Registrar, MKRI
28	Nurlidya Stephanny Hikmah	Substitute Registrar, MKRI
29	Jefri Porkonanta Tarigan	Substitute Registrar, MKRI
30	I Made Gede Widya Tanaya Kabinawa	Substitute Registrar, MKRI
31	Fatma Ulfatun Najicha	Lecturer
32	Willy Naresta Hanum	Researcher
		SPEAKERS
1	M Guntur Hamzah	Constitutional Justice
2	I Gusti Ayu Ketut Rachmi Handayani	Dean of Faculty of Law Universitas Sebelas Maret
3	Hartiwiningsih	Head of the Postgraduate Law Study Program
4	Edmon Makarim	Lecturer at University of Indonesia
5	I Dewa Gede Palguna	Former Justice
6	Heru Setiawan	Secretary General
7	Murat Şen	The Constitutional Court of the Republic of Türkiye
8	Jongmun Park	The Constitutional Court of Koreas

PHOTOGRAPHS FROM THE 6th INTERNATIONAL SHORT COURSE OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURT AND EQUIVALENT INSTITUTIONS (AACC) 2023 DEMOCRACY, DIGITAL TRANSFORMATION AND JUDICIAL INDEPENDENCE

Opening ceremony by constitutional justice H.E. Arief Hidayat

Group photo session I

International short course participants

Speakers deliver presentations in first session

Sharing Session I

Speakers deliver presentations in second session

Sharing Session II

Speakers deliver presentations in third session

International short course participants

International short course participants

AACC SPC presenting token of appreciation to speakers

AACC SPC presenting token of appreciation to speakers