

(Draft paper)

E-COURTS IN INDONESIA AND EXPERIENCE FOR VIETNAM: TOWARDS JUDICIAL HARMONIZATION AND MODERNIZATION IN THE ASEAN REGION

Dr. Nguyen Bich Thao, Dr. Truong Huynh Nga
University of Law, Vietnam National University
thaonb@vnu.edu.vn, ngath@vnu.edu.vn

Abstract: In recent years, with the impact of the Fourth Industrial Revolution, many ASEAN countries have taken advantage of technology to improve the operational efficiency of their judicial systems. Along with that tendency, the Government of Vietnam has also oriented policies and projects to gradually build an electronic court system. A necessary first step is to study experience of neighboring countries, especially ASEAN countries. Indonesia has established an online court system since 2019 in all civil cases, administrative and criminal cases, has relatively completed the construction of this system, and is in the process of re-evaluating its implementation. Therefore, this can be a good example in the ASEAN community for Vietnam. This paper explores the structure of regulations, operational methods and issues encountered in the practice of e-court system in Indonesia. In addition, it points out the problems still existing in the judicial process in Vietnam, and draws experience from Indonesia. The paper then makes recommendations to building e-courts in Vietnam in order to improve judicial efficiency and to be in line with the current trend of ASEAN courts.

I. Introduction

In recent years, with the impact of the Fourth Industrial Revolution, many ASEAN countries have taken advantage of technology to improve the operational efficiency of their judicial systems. Compared to other ASEAN countries, Vietnam seems to be slower in modernizing the court system by utilizing digital technology. Meanwhile, by 2025, Vietnam is supposed to complete the construction of e-court under its commitment in the ASEAN Chief Justices Meeting.¹ A first step is to study experience of neighboring countries in the ASEAN

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¹ https://www.tapchicongsan.org.vn/web/english/mega-story/-/-/asset_publisher/lc29uIxCb05g/content/judicial-reform-strategy-renovating-the-party-s-leadership

Community. By learning from each other, ASEAN countries can move faster towards judicial harmonization and modernization. In fact, numerous efforts have been made by the judicial bodies in the region to promote harmonization. For example, the Council of ASEAN Chief Justices (CACJ), which was formerly known as the ASEAN Chief Justices Meeting, was established in Singapore in 2013, in order to provide a regular forum for the Chief Justices to discuss and exchange views on common issues facing the ASEAN Judiciaries. It is a platform to promote close relations and build mutual understanding among the ASEAN Judiciaries, to facilitate judicial cooperation and collaboration to enhance economic growth and development in ASEAN.

Although not being the pioneer, Indonesia has taken bold steps in building its e-court system since 2018. Valuable lessons can be drawn for Vietnam, including both success stories and challenges that Indonesian courts have faced in this reform process.

This paper will proceed as follows: Part I is the Introduction. Part II explores the e-court system in Indonesia, identifying successes and challenges. Part III points out the problems existing in the civil process in Vietnam, and draws experience from Indonesia. Part IV concludes by making recommendations to building e-courts in Vietnam in order to improve judicial efficiency and to be in line with the current trend of ASEAN courts.

II. E-court in Indonesia

The Indonesian legal system is based on the civil law system (European continental System) which is influenced by local Adat Law (Customary Law) and Islamic Law. For a long time, like Vietnam, the Indonesian judiciary faced similar issues as in Vietnam. The Indonesian Ombudsman reported that the district court received many complaints from 2014 to 2016. Grievances contained 394 mal-administration, 215 delayed cases, 117 of court's incompetence, and 115 procedural irregularity. Roadmap of Indonesian judicial reform for 2010 until 2035 focuses on the modern court based on digital law.²

The process of formulating the legal framework for building court in Indonesia

Supreme Court Regulation No. 3 of 2018 on The Administration of Court Cases by Electronic Means

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² Putra, D. (2020). 'A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding', *Jurnal Hukum dan Peradilan* 9(2)

Under the mandate of article 2 paragraph (4) of Law no. 48 on Judicial Authority that asks every trial in any court level is done in simple, expeditious, and inexpensive manner, in order to solve the current problems of the judicial proceedings. Along with the development of science and technology, the Indonesian Supreme Court recognized the need to utilize information technology in mechanism reform of administrative system in court.³ In 2018, the Supreme Court issued the Republic of Indonesia Supreme Court Regulation No. 3 of 2018 on The Administration of Court Cases by Electronic Means (here in after referred to as Perma No. 3 of 2018), as an attempt to develop a procedural law by utilizing information technology.

The concept of the e-Court administration will be explored through the definition of the administration of court cases by electronic means (e-Court) as described in Article 1 item 5 of the Perma No. 3 of 2018, which states that e-Court consists of an electronic court administration process which includes the submission of lawsuits/applications, responses, counterpleas, rejoinders, and conclusions, as well as the management, service, and storage of documents in civil, religious, military administrative, and state administrative cases, by using the electronic system that is applied in the relevant court. Thereby, Indonesian Supreme Court Data Center, Case Search Information System Application and Case Tracking Information System are centralized systems of e-court application. They will automatically be connected to the database of each case in each court that has implemented an e-court.⁴

The electronic administration of cases is intended to provide electronic court-based services. “E-Court” services include E-Filing (electronic case registration), E-Skum (calculation of electronic advance fee cases), E-Payment (electronic down payment in advance) and E-Summons (calling parties electronically).⁵ This system promotes speed and low costs in litigation due to cases can be registered online and payment of court fees be send through electronic payment by bank account. However, PERMA no. 3 of 2018 regulates just about

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³ Heri Hartanto , Adi Sulistiyono & Isharyanto, *The Implementation of Simple, Expeditious, and Inexpensive Principle for Quality Private Court Decision Through E-Court*, Advances in Social Science, Education and Humanities Research, volume 583, p 22.

⁴ Ibid, p 23.

⁵ Hanum Rahmaniar Helmi, *The Existence of Electronic Courts (E-Court) in Realizing Simple, Fast and Low-Cost Justice*, International Journal of Innovation, Creativity and Change, Volume 8, Issue 9, 2019, p 271.

administrative system, namely electronic administrative process and case registration, while not covers matters relating to electronic litigation. Thus, the online litigation system consists of a series of litigation processes combining online and conventional systems, with the online administration being limited to the applications, responses, counterpleas, rejoinders, and conclusions, while examinations of evidence and witnesses still require the presence of the parties before the relevant court.

For requirement of case application, Article 12 paragraph (1) item c of the Perma No. 3 of 2018 states only legal attorneys are registered users and must obtain written approval from the principal to conduct litigation by electronic means. To register cases electronically an attorney must create an account of user on an e-Court application, with an electronic domicile validated by the High Court where the attorney is sworn in. After the account of user is activated, the advocate must complete the advocate data such as KTP, Advocate Member. Besides, if any one of the parties does not agree on carrying out the administration of the litigation through the e-Court system, the proceedings cannot be held electronically and will carry on with the trial under the conventional procedure. This could hinder the achievement of the initial objectives of the implementation of the e-Court system in Indonesia.

Supreme Court Regulation no. 1 of 2019 on Case Administration and Electronic litigation

To further improve the provisions of Supreme Court Regulation No. 3 of 2018 on The Administration of Court Cases by Electronic Means, on 16 August 2019 the Supreme Court issues Supreme Court Regulation no. 1 of 2019 on Case Administration and Electronic litigation (hereinafter referred to as PERMA no. 1 of 2019). It allows for an effective and efficient e-Court and e-Litigation system with the idea to actualize a simple, expeditious, and inexpensive trial. However, implementation of e-court has encountered many challenges, such as the lack of infrastructure, limited knowledge of court employees, and the reluctance of parties to deviate away from usual routines to adopt new ways of doing things. It especially seems to be the most prepared institution to face Covid-19 pandemic that left with no choice but to encourage the effective and efficient use of digital tools as an alternative to physical court sessions.⁶

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⁶ Putra, D. (2020). 'A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding', *Jurnal Hukum dan Peradilan*, 9(2): 275-297,

The following is an explanation of E-Court procedures, namely: ⁷

E-filing

E-filing is a central online case registration. It is carried out after registration as a user by selecting a District Court, Religious Court, or TUN Court that has actively conducted e-Court services. All registration files are sent electronically via the Mahkamah Agung RI e-Court application. The benefits of online case registration through the e-court application, obtained from this application are:

- 1) Save time and money in case registration.
- 2) Satisfaction of down payment costs can be done in multi-channel forms, or through various payment methods and banks.
- 3) Documents are well-archived and can be accessed from various locations and media.
- 4) Faster data retrieval process.

E-Skum

E-Skum is by registering an online case through e-Court. The Registrant will automatically get an Estimated Payment Fee (e-SKUM) and a Payment Number (Virtual Account) that can be paid through an electronic channel (Multi Channel). After the Registrant has made the payment according to the Estimated Fee (e-Skum), the Court gives a case number, on working days and hours. The e-Court application will then provide notification that the case has been registered with the Court.

E-Summons

E-Summons is a summons and Decision Notification delivered to the parties via electronic channels, to the email addresses of the parties. Information on the summons can be seen on the e-Court application.

E-Litigation

E-Litigation is an application that supports electronic court proceedings online, so that trial documents can be sent, such as Replicas, Duplicates, Answers and Conclusions electronically.

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⁷ Hanum Rahmaniari Helmi, *The Existence of Electronic Courts (E-Court) in Realizing Simple, Fast and Low-Cost Justice*, International Journal of Innovation, Creativity and Change, Volume 8, Issue 9, 2019, p 273.

E-Verdict

The application contains information about the decision, the date of the decision. A copy of the electronic decision can be downloaded through this application.

Furthermore, there is E-Payment. It provides for the smooth running of the e-Court program of the Supreme Court, in cooperation with the Government Bank in managing a case down payment. The designated bank provides a Virtual Account (Payment Number) as a means of payment to the Court where the case is registered.

Thus, the plaintiff must provide his/her written evidence when filing a claim, while the defendant files the evidence along with the answer. The evidence must be filed in electronic form. Bigger challenges in evidencing emerge because Indonesia has not had a database that can be accessed by the judge in real time manner. This database is important for the judge to validate the evidence filed during the trial. In addition, as stipulated in article 26 of PERMA no. 1 of 2019, the decision/ruling stated by the Judge in electronic trial by delivering the copy of electronic decision to the parties through the court's information system. Although it is done electronically, the parties are considered attend the trial. As a consequence, the time for parties who attempt to legal action is counted since the day of the decision reading .

In addition, based on article 5 of PERMA no. 1 of 2019, electronic case administrative service can be used by a lawyer or an individual, however for individual it is ad hoc in nature. One of the weaknesses of e-court is that only verified lawyer that can access e-court application to litigate. This system is made as if only for lawyer so that other users (non registered lawyer) faces difficulties and are forced to use lawyer services.

Under the Supreme Court's Circular Letter No. 4/2020, the administration and e-trials for criminal cases can be conducted electronically in the special circumstance where it is impossible to conduct the case using regular procedures, for example, due to physical distance, natural disaster, pandemic, or other emergencies as determined by the GoI or the judges. The Letter also defines electronic domicile as messaging services, in the form of the verified account of the investigator, prosecutor, the court, defendant, legal consultant, witnesses, expert, detention center, and penitentiary. In e-trials for criminal cases, the parties involved consist of judges, the deputy registrar, prosecutor, legal consultant or defendant, witnesses, and experts.

Each of them can participate in the trial from the courtroom, prosecutor's office, detention center or penitentiary, or any other location as determined by the judges.⁸

The Director-General of the General Judiciary Body through Circular Letter No. 4 of 2019 concerning Obligations to Register Civil Cases through e-Court requires 56 courts under the Supreme Court to implement e-court. This letter applies to all District Courts of Special Class 1A, Class 1A, and all District Courts in the Banten High Court (PT) Territory, PT Jakarta, PT Bandung, PT Semarang, PT Yogyakarta, and PT Surabaya. These 56 courts are required to use e-court since the issuance of this Letter on June 10, 2019.

According to the Supreme Court's Annual Report, 907 cases submitted to e-Court containing 445 cases for general issues, 422 cases for religious matters, and 20 cases for administrative problems. In the course of 2018, SC has completed 17,638 cases by utilizing E-court. SC has reported the number of cases submitting to e-Court around 18,544 cases containing 17,156 cases and remained ones about 1,388 disputes in 2018 and 2017 respectively. The number of cases registered through e-Court application in 2020 are: (i) 82,409 General Court cases; (ii) 102,729 Religious Court cases, and (iii) 2,143 State Administrative Court cases.⁹

E-court in Indonesia has significantly saved trial costs. Technically, e-court removes cost of summons, document copying cost, and allows easier document search. Expedient trial will lead to cost-savings. Indeed, the provision of e-court facility requires huge cost, but e-court provides long-term savings relating to paper use. E-court system brings positive influence in the form of easiness and speedy process, transparency and document administration. E-court is one of the attempts to realize a simple, speedy, and inexpensive trial process and to open wider access to information. However, such an attempt should aim to deliver a quality decision.

Challenges

Although it can be seen that in Indonesia, e-court system brings positive influence in the form of easiness and speedy process, transparency and document administration, there are still many objective and subjective obstacles to comprehensive implementation. Objectively, internet and computers are lacking in many remote and poor areas in Indonesia. According to

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⁸ Linda Yanti Sulistiawati, *Indonesian Judiciary during the Pandemic: Staying Afloat on Troubled Water*, NUS Asia-Pacific Centre for Environment Law Working Paper 21/05, p 13.

⁹ Indonesia Supreme Court (2020). *Annual Report of Supreme Court*

data from the National Development Planning Board , 4,474 villages have no internet access.¹⁰ These villages are mostly underdeveloped, close to borders, and located at the outer edges of the Indonesian archipelago. Another challenge is the lack of knowledge of court employees and their reluctance to take the initiative and be willing to transition from conventional to a new, different way of working. Many judges and court staff are not willing to learn new technology. Futhermore, many defendants refuse to proceed through e-court in order not to be easily sued, which is also one of the barriers makes the implementation of e-court obstructed.¹¹ Defendants usually do not provide approval as the first requirement to continue e-litigation. Also, e-court may require the parties to disclose their confidential information as legal documents contains such information, which raises data security concerns. Surprisingly, another obstacle comes from lawyers. Some lawyers may reject the request of taking ecourt in the courtroom. This system may decrease lawyers' income because e-litigation will cut off accommodation and transportation processes in which those can be attorneys' earnings.

III. The current state of building e-court in Vietnam

The leaders of Vietnam consider the development of science and technology as an important driving force for national growth. In the process of international integration, the Supreme People's Court (SPC) has also committed to completing the building of and operating e-courts by 2025. This requires the SPC to expeditiously formulate and implement a general strategy for digital transformation in the court system through 2025, with orientations toward 2030.

At present, the SPC is developing a draft project on building an electronic court system in Vietnam to meet the requirements of judicial reform by 2030, with a vision to 2045. The draft sets forth orientations for building the e-court system in Vietnam as follows:¹²

- (i) Building the e-court system to perform and raise capacity for court governance on digital platforms
- (ii) Building the e-court system to provide better public legal services to the people

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¹⁰ Putra, D. (2020). 'A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding', *Jurnal Hukum dan Peradilan* 9(2), p 291.

¹¹ Ibid, p 292.

¹² <https://vietnamlawmagazine.vn/building-the-e-court-system-to-step-up-implementation-of-the-judicial-reform-strategy-48481.html>

- (iii) Building the e-court system to help judges improve working efficiency and quality
- (iv) Building the e-court system for organizing remote procedural activities
- (v) Building the e-court system to contribute to raising publicity and transparency of court operation
- (vi) Building the e-court system for connection with other digital platforms

The building of e-court in Vietnam will contribute to addressing the courts' backlog and inefficiency. In fact, the number of cases that Vietnamese courts has to deal with annually increases by an average of 8%. The number of court cases resolved in 2020 was 3 times higher than in 2005 and nearly 2 times higher than in 2012. Court proceedings in Vietnam today are still mainly built on the traditional method with direct human interaction. Not until 2015 did the Civil Procedure Code officially recognized electronic data as a source of evidence and permits a number of procedural activities that can be carried out by electronic means such as filing a complaint, submitting documents and evidences, and serving court documents on the parties. On December 30, 2016, the Council of Judges of the Supreme People's Court issued Resolution No. 04/2016/NQ-HDTP guiding the implementation of procedural statutes on sending and receiving complaints, documents and evidences and issuing, serving and notifying procedural documents by electronic means.

However, the implementation of the above legal documents was remarkably slow. As of the end of 2018, there was no case where the Court received and accepted online complaints according to the provisions of the Civil Procedure Code and Resolution No. 04/2016/NQ-HDTP because technology infrastructure had not been built, including physical infrastructure (hardware) and online platform (software). On October 22, 2018, the Supreme People's Court officially launched the Online Service and Records System for pilot application in some courts and then replicated nationwide. As of December 2018, only one complaint was sent by electronic means, but it was not received due to a digital signature error.

After more than 3 years since the launch of the Pilot System, the courts have yet to implement the public services of electronic filing of petitions, electronic submission of documentary evidence as well as service of legal documents. electronic media due to lack of technology infrastructure. On April 4, 2022, the Prime Minister issued Decision No. 422/QĐ-TTg dated April 4, 2022 approving the list of integrated online public services which are

provided on the National Public Service Portal in 2018. 2022, including a number of public services of the Court such as collection and payment of court fee advances and court fees; filing of complaints, documents and evidence and receive court documents and notices. It can be seen that compared to neighboring countries such as China and countries in Southeast Asia, Vietnam is still in the initial stage of digital transformation of legal proceedings and building an e-court. It takes a lot of effort to keep up with these countries to achieve the goal of completing the construction of e-court by 2025.

The Civil Procedure Code 2015 only allows litigants to file lawsuits and serve documents by electronic means, but there is no regulation on the use of videoconference to hold hearings and trials as well as conduct other online proceedings such as online mediation, online evidence exchange, taking testimonies of remote parties and witnesses... In-person trial has always been the only trial method for many years. By the end of 2021, the legal basis for holding an online court hearing in Vietnam was developed one step further in order to respond to the COVID-19 pandemic. On November 12, 2021, the National Assembly issued Resolution No. 33/2021/QH15 on organization of online court hearings (effective from January 1, 2022), which provides that the People's Courts may hold online court sessions for first-instance trial, appellate trial of criminal, civil and administrative cases with simple circumstances and nature; documents and evidence in the case are clear, with some exceptions. Next, to implement Resolution No. 33/2021/QH15, the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice issued Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC- BCA-BQP-BTP detailing and guiding the implementation of online court hearings.

However, during the first months since Resolution No. 33/2021/QH15 took effect, the number of online court sessions held in provinces and cities nationwide was still small. Most online court sessions take place within a maximum of three points, including the central points at the courtroom, the local points at the detention facility and at the headquarters of the Procuracy. Many local courts have not been able to hold online hearings and trials due to lack of necessary infrastructure.

IV. Recommendations for building e-court in Vietnam from Indonesia's experience

From Indonesia's experience, some lessons can be drawn for Vietnam:

First, it is necessary to have the Supreme Court actively involved in the formulation of policies, rules, and regulations that facilitate the development of e-court.

Second, it is highly challenging to rely on the stakeholders' voluntariness to use the e-court system. The use of e-court platforms should be made as the default option, especially for court staff.

Third, e-court system should be comprehensive, which not only focuses on certain activities such as e-filing, e-service or remote hearings. There should be an integrated platform that provides comprehensive online services.

Fourth, it is essential to raise awareness about e-court for different groups, including court staff, court users (litigants and lawyers).