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Good Governance Implementation by PERMA 1/2019 in Letter Evidence Submission Regulation For E-Litigation Cases

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Abstract
The judiciary, responding to societal demands for sound governance, aligns itself with the 2010–2035 Judicial Reform Blueprint, emphasizing the use of information technology for restructuring. E-Litigation emerges as a significant outcome of Indonesia's judicial reforms, supported by SK KMA RI Number 129/KMA/SK/VIII/2019 and PERMA 1 of 2019 as the legal basis. The implementation of e-Litigation is expected to adhere to the principles of good governance outlined in legal philosophy, particularly concerning the legitimacy of evidence in civil cases during e-Litigation. However, the legislative document, specifically PERMA 1/2019, lacks explicit technological guidelines, posing a challenge to the effective implementation of good governance. This research aims to scrutinize the concept of good governance, the legal foundation for e-Litigation, and the application of responsive, effective, and efficient principles in controlling the admissibility of documentary evidence in e-Litigation within civil cases. Utilizing a statutory method, the study employs a normative approach to law. The findings indicate that the current legal framework for the admissibility of evidence in civil e-Litigation cases hinders the fulfillment of responsive, effective, and efficient e-Litigation principles. Consequently, a modification to the legal framework governing the admissibility of evidence in civil e-Litigation is warranted to align with the principles of good governance.

Keywords
Letter of Evidence; e-Litigation; Good Governance

Introduction

The borders of the global globe are today appearing to be blurred as a result of globalization. As seen by the numerous agreements reached between parties to international law in order to accomplish certain objectives, inter-human and interstate contacts and connections are growing more common.[1] The changes that take place on a global scale also have an impact on Indonesia as a member of the international community. Demands from the world community for governments in each nation to implement good governance standards is one of the upheavals.

The idea of good governance generally combines the democratic ideals of participation, fairness, equality before the law, accountability, and the legitimacy of authority with the bureaucratic reform ideas.[2] The notion develops into a normative ideal that is intended to be used in public institutions. The World Bank officially introduced this idea to the worldwide community in a paper titled "Governance and Development." In order to actualize good governance as a requirement for getting development assistance from international development organizations, the World Bank created the notion of good governance as a public sector management program.[3]

The United Nations Development Program (UNDP) expanded on this definition when it developed the idea, defining it as the exercise of political, economic, and administrative authority to manage state interests that are participative, transparent, accountable, effective, equitable, and that support the rule of law.[4] Therefore, the government (the state) is the

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1 Efan Setiadi, "Pengaruh Globalisasi Dalam Hubungan Internasional," *International and Diplomacy* 1, no. 1 (2015): 1–8.

2 Willem Trommel, "Good Governance as Reflexive Governance: In Praise of Good Colleagueship," *Public Integrity* 22, no. 3 (May 3, 2020): 227–35, https://doi.org/10.1080/10999922.2020.1723356.

3 Bayu Kharisma, "Good Governance Sebagai Suatu Konsep Dan Mengapa Penting Dalam Sektor Publik Dan Swasta (Suatu Pendekatan Ekonomi Kelembagaan)," *Buletin Studi Ekonomi* 19, no. 1 (2014): 9–30.

4 United Nations Development Programme, "Governance for Sustainable Human Development," 1997.

primary actor targeted by the idea of good governance, according to the World Bank and UNDP, even though non-state actors are also required to adopt the principles of good governance in its growth.

The Indonesian government implemented bureaucratic reform in response to the international call for national governments to adopt the principles of good governance. With the start of the reform movement in 1998, which was driven mostly by students as the principal protagonists, bureaucratic reform got underway. The existence of a protracted economic crisis and many national issues during the New Order era that the government was unable to address served as the impetus for this movement. These issues range from subpar public services to the obstruction of public social control over the government caused by widespread corruption, collusion, and nepotism (KKN), which has affected nearly every aspect of government.[5] To produce a professional and responsible bureaucracy performance, society in this scenario seeks extensive bureaucratic reform followed by significant changes in how people live. Thus, efforts to implement the fundamentals of good governance in the Indonesian government system are actually tied to the bureaucratic change that takes place there.

This incident occurred in the judiciary as a result of extensive administrative reforms (judicial reform). The 1945 Constitution of the Republic of Indonesia, an amendment to Indonesia's constitution, marked the beginning of judicial reform (UUD NRI 1945).[6] These amendments' effects, such as the emergence of the Constitutional Court (MK) and the Judicial Commission (KY) as new institutions of judicial power and the emergence of protections for the independence of judicial power in order to implement an impartial and free judicial process, gave rise to a new environment in the field of justice. influence of the legislative and executive

[5] Fitri Andalus Handayani and Mohamad Ichsana Nur, "Implementasi Good Governance Di Indonesia," *Pemikiran Administrasi Negara* 11, no. 1 (2019): 1–11.

[6] UUD 1945, "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945" 105, no. 3 (1945): 129–33.

branches. The judicial reform agenda not only strengthens institutional independence but also establishes safeguards for the independence of the judiciary (court administration). The strengthening is in accordance with Law Number 35 of 1999 about the Fundamental Provisions of Judicial Power, which calls for the complete transfer of the administration of judges and the judiciary from the Ministry of Justice to the Supreme Court (MA).[7]

The Supreme Court is encouraged to modernize the judiciary through efforts to implement the principles of good governance in the area of judicial authority through judicial reform in its growth. The release of the 2010–2035 Judicial Reform Blueprint, which included a vision for putting judicial modernization into practice as well as principles for modernizing the judiciary, came after this encouragement. As the legal foundation for the administration of electronic justice administration (e-Court) in Indonesia, the Supreme Court issued Regulation of PERMA 3/2018 on Administration of Cases in Courts Electronically based on these recommendations. Then, PERMA 1/2019 on Administration of Cases and Trials in Courts Electronically (PERMA 1/2019) was added to enhance the legislative framework. In addition to modernizing the e-legal Court's foundation, PERMA 1/2019 also established the electronic trial (e-Litigation).

With the use of information and communication technology, judicial institutions conduct a series of examination procedures and case trials in "e-Litigation."[8] The parties can only view the series of trials conducted through electronic litigation using laptops or other standalone computers connected to the internet.[9] The emergence of e-Litigation has the potential to: 1) broaden the user base of the electronic justice system; 2) solve geographic

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7 Idul Rishan, "Pelaksanaan Kebijakan Reformasi Peradilan Terhadap Pengelolaan Jabatan Hakim Setelah Perubahan Undang Undang Dasar 1945," *Hukum Ius Quia Iustum* 26, no. 2 (August 22, 2019): 259–81, https://doi.org/10.20885/iustum.vol26.iss2.art3.

8 Rio Satria, "Persidangan Secara Elektronik (E-Litigasi) Di Pengadilan Agama," 2019.

9 Siti Amatil Ulfiaha, Vena Lidya Khairunissab, and Dian Latifianic, "Urgensi Pelaksanaan E-Litigasi Dalam Persidangan Perkara Perdata Pada Masa Pandemi Covid-19," *Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 12, no. 2 (2021): 150–62.

issues; 3) lower the cost of litigation; and 4) improve the judiciary's openness.[10] As a result, the establishment of e-Litigation is consistent with good governance principles.

Although PERMA 1/2019 primarily governs the implementation of e-Litigation, the legislative document has not yet specifically specified the technological guidelines for doing so. A Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 129/KMA/SK/VIII/2019 about Technical Instructions for the Administration of Cases and Trials in Courts Electronically was subsequently issued by the Chief Justice of the Supreme Court based on his authority. In order to promote knowledge of the usage of these two facilities and to achieve more effective and efficient case administration, the decision letter intends to regulate the technical instructions for implementing e-Court and e-Litigation in detail and trials service in court.

The adoption of e-Litigation hasn't, however, been done entirely in accordance with the good governance standards, particularly those that deal with responsiveness, effectiveness, and efficiency. The challenges stem from the legal issues outlined in the Chief Justice of the Supreme Court of the Republic of Indonesia's Decree No. 129/KMA/SK/VIII/2019 on Technical Instructions for the Administration of Cases and Trials in Electronic Courts (SK KMA RI). Since parties are no longer necessary to personally appear in court for meetings, the deployment of e-Litigation should be a solution to the issues that have plagued face-to-face trials up to now.

The analysis of the concepts of good governance, the legal foundation for e-Litigation in Indonesia, and the application of responsive, effective, and efficient principles in regulating the validity of documentary evidence submitted to e-Litigation in civil cases in Indonesia are the main focuses of this study. Accordingly, the following legal issues arise from the foregoing explanation: "Are the provisions on the procedure for submitting

[10] Pepy Nofriandi, "Ketua Mahkamah Agung: E-Litigasi, Redesain Praktek Peradilan Indonesia," August 19, 2019.

documentary evidence in the electronic trial of civil cases in accordance with the responsive, effective, and efficient principles contained in the concept of good governance?"

Method

This study, which conceptualizes law as a rule of law and draws heavily on literary studies, employs a normative juridical technique (doctrinal legal research). As a result, this study draws on a literature review that was compiled into a complete information system after a process of inventorying and gathering diverse data, information, and legal documents. 1) Primary legal materials in the form of Indonesian laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2019 on Administration of Cases and Trials in Electronic Courts, and Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 129/KMA/SK/VIII/2019 on Technical Instructions for the Administration of Cases and Trials in Courts Electronically; 2) books, academic journals, news, opinions, cases, and minutes are examples of secondary legal materials. 3) dictionaries and encyclopedias are examples of tertiary legal materials. In this study, the statute approach method was employed to investigate the issue. To fully comprehend the hierarchy and concepts in the legislation, the legislative method is employed. Consequently, this research explores many laws and rules pertaining to the legal topics investigated.[11]

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[11] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Prenanda Group, 2014).

Principles Incorporated into the Idea of Good Governance

African intellectuals first developed the idea of good governance as a result of their awareness of the continent's inadequate administration in 1989. The development of relationships between the state and society, in their opinion, is crucial because it can help achieve three key objectives: 1) good economic development governance; 2) democratic life and respect for each citizen's rights; and 3) social inclusivity, which refers to the guarantee that each citizen will live a decent life and have the opportunity to participate in national affairs.[12] International development organizations, particularly the World Bank, have embraced the term "good governance," which is then used as a requirement for giving poor nations financial aid.

In its study "Governance and Development," the World Bank defines good governance as effective development management.[13] Sound economic policies must be used in conjunction with good governance in order to create and preserve the circumstances that can promote robust and equitable growth. The presence of market and governmental systems in a nation is directly tied to the World Bank's definition of good governance. The government of a nation is viewed as the key player in regulating the satisfaction of social demands. It is the sole body with the authority to enact legislation to ensure the smooth operation of the domestic market system and to avert market chaos. Therefore, the World Bank's definition of good governance refers to the harmony between the growth of sound and responsible government and the ideals of democracy and a successful market.

The United Nations Development Program (UNDP) expanded on the idea of good governance by defining it as the use of political, economic, and

[12] Syarif Hidayat, "Menimbang Ulang Konsep Good Governance: Diskursus Teoretis," *Masyarakat Indonesia* 42, no. 2 (2016): 151–65.
[13] The International Bank for Reconstruction and Development, *Governance and Development* (Washington, D. C.: The World Bank, 1992).

administrative power to manage state interests that is guided by the following principles: participation, transparency, accountability, effectiveness, equity, and promoting the rule of law.[14] Therefore, democratic governance that is practiced at every tier of governmental institutions is the idea of good governance from the UNDP's point of view. The emphasis is on a country's political dynamics, comprehending the power structure, and the democratic process of changing the power structure. In order to accomplish the desired aims and foster positive connections between the community and the state, these principles must be put into practice when a nation's government is put into action.

The preceding explanation of the idea of good governance exhibits a bias in the concept's development. Indonesia is expected to implement the principles of good governance in its governance as a member of the global community. Based on the UNDP definition, the Indonesian government practices good governance.[15] The following is a description of these principles: First, community participation or involvement of the community. This Community engagement is defined as the direct or indirect participation of the community in the decision-making process at the institutional level of government. The government's initiatives to provide avenues for community engagement are also connected to concerns of community participation.

Second, the rule of law. In a democracy, law plays a significant role as an expression of the social compact of the community. The ideals of fairness and non-discrimination must be reflected in the laws that are enforced and followed in a nation. Third, transpiration. To gather enough knowledge on governance, the government must be able to meet the requirements of the community. Even the truth of the information given and its accessibility

[14] United Nations Development Programme, "Governance for Sustainable Human Development."
[15] Heru Agung Marwoto, "Analisis Penerapan Dan Pengaruh Good Governance Terhadap Kinerja Pemeriksa BPK Perwakilan Lampung" (Universitas Lampung, 2015).

must be guaranteed by the government. The democratic idea that state sovereignty rests with the people is referenced by this principle.

Fourth, responsive. One of the ways to tell if a government has put the principles of good governance into practice is by how quickly it responds to the numerous issues that the community faces. The issues that face society must be of great importance to the government. Fifth, Deal-oriented. Opinion differences exist frequently within a nation as a whole. The government must, nevertheless, be able to balance the interests of minorities with those of the larger population when making decisions.

Sixth, equality. Before the law, everyone has an equal chance to acquire and enhance their own wellbeing, regardless of gender. Since everyone has the same chance, this idea can encourage the application of the values of fairness and steady economic growth. Seventh, Efficient and Effective. The government's capacity to run affairs of state effectively and efficiently is another factor in determining good governance. The capacity of the government to implement policies in line with the goals that led to their formulation is used to assess its effectiveness. Meanwhile, a government is considered effective if it can best meet its citizens' demands by utilizing the resources at its disposal.

Eight, accountable. In performing its tasks, the government of a nation must be accountable to the people and other stakeholders. The manner of accountability is also modified in accordance with the type of decisions taken (internal responsibility or external responsibility). Nine, strategic vision. The government uses a perspective known as strategic vision to create the human economy and achieve the welfare of the populace. To actualize the nation's aspirations and accomplish its objectives, the government needs short-, medium-, and long-term plans.

Analysis of the Legal Basis for the Implementation of e-Litigation in Indonesia

Modernizing the judiciary has been fostered by judicial reform as it has developed, according to the Supreme Court. The release of the 2010–2035 Judicial Reform Blueprint, which included a vision for putting judicial modernization into practice as well as principles for modernizing the judiciary, came after this encouragement. As a result, the 2010–2035 Judicial Reform Blueprint must always serve as the foundation for judicial reform in the area of judicial authority. The 2010–2035 Judicial Reform Blueprint will serve as a roadmap for the reforms in order to make sure they proceed in a planned, quantifiable, and targeted manner while staying within the predetermined boundaries.

Electronic courts are a result of judicial modernisation based on the 2010–2035 Judicial Reform Blueprint (e-Litigation). The establishment of e-Litigation demonstrates that the Supreme Court's commitment to achieving the reform of Indonesia's judicial system was fulfilled. The integration of information technology into court procedural legislation demonstrates this updating. The Supreme Court launched e-Litigation with the intention of realizing principles in the judicial field, satisfying the demands of justice seekers (yustisiaben), keeping up with the times as they shift towards information technology, and ensuring the efficient operation of the judiciary that will be regulated. These considerations are in addition to the reasons for judicial modernization. In addition to complying with the requirements set forth by the Supreme Court and the Ease of Doing Business Survey, As a result, one of the turning points in the evolution of judicial processes, which in this case takes the shape of electronic court hearings, is the establishment of e-Litigation in Indonesia.

PERMA 1/2019 serves as the overall legal foundation for e-Litigation in Indonesia. Since e-Litigation is an invention that falls under the purview of judicial (judicial) power and the Supreme Court is the highest judicial

power actor in the judicial field in Indonesia, the legal instrument of the Supreme Court Regulation (PERMA) serves as the foundation for this innovation. Article 79 of Law Number 14 of 1985 on the Supreme Court (UU-MA), which establishes the Supreme Court's authority to further regulate matters necessary for the smooth operation of the judiciary if this has not been done, further clarifies the issue on the policy of regulating e-Litigation through PERMA. The relevant laws and regulations have specific regulations. This demonstrates that the regulation of e-Litigation through PERMA 1/2019 is the appropriate course of action since it is consistent with the range of e-existence Litigation's and the range of content that may be included by a PERMA.

The wider society must abide by the terms of PERMA 1/2019, which is a legal document produced by the Supreme Court and includes provisions related to procedural law. This is in conformity with the guidelines in Law Number 12 of 2011 On the Establishment of Legislation's Article 8 paragraph (2) jo. paragraph (1). In essence, the article states that the rules established by the Supreme Court (in casu PERMA) are acknowledged for their existence and have legal effect as long as they are governed by higher laws and regulations or were established based on authority. In the meanwhile, the order of Article 79 of the MA Law, as indicated in the paragraph above, is the foundation for the rule of e-Litigation through PERMA 1/2019.

The fact that PERMA 1/2019 has binding effect further demonstrates that it is subject to the lex specialis derogat legi generalis concept. The legal reference from the e-Litigation trial process must first relate to the steps outlined in PERMA 1/2019. This is because PERMA 1/2019 is thought to be the only piece of legislation that specifically governs the use of e-Litigation. If there are procedural law arrangements that are not governed by PERMA 1/2019, then such arrangements may make reference to the procedural law rules that are used in face-to-face trials.

In actuality, PERMA 1/2019 with e-Litigation merely stipulates basic arrangements; thus, it hasn't specifically controlled the technical guidelines for putting e-Litigation into effect. As a result, the Chief Justice of the Supreme Court issued Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 129/KMA/SK/VIII/2019 on Technical Instructions for the Administration of Cases and Trials in Electronic Courts based on his authority (SK-KMA-RI). In order to make the use of the two facilities more clear, the decision letter as a whole attempts to regulate the technical instructions for their execution in detail. Thus, more effective and efficient case administration and trial services in court can be realized. This can be seen from the anatomy of the substance of the decree, namely: 1) classification of types of e-Court service users; 2) case registration procedures and electronic payment of litigation fees; 3) the procedure for calling and notification electronically; 4) procedures for conducting the trial electronically; 5) technical management of case administration; 6) validation procedures for prospective registered users of advocates; 7) technical administration of e-Court user accounts; and 8) technical management of e-Court and e-Litigation user information.

Implementation of Responsive, Effective, and Efficient Principles Analysis of the E-Litigation Legality Evidence Letters Cases in Indonesia

In the trial of civil matters, the law of evidence, which is covered under civil procedural law, is a crucial subject. This is founded on the idea that the purpose of procedural law, as formal law, is to uphold and uphold the rules established by material law. The Herziene Inlandsch Reglement (HIR) and Rechtsreglement voor de Buitengewesten (RBg), two legal documents that govern how evidence is submitted before a trial, are examples of formal regulations governed by the law of proof. As stated in the Burgerlijk Wetboek (BW), the law of proof substantially controls whether or not the

evidence presented in civil case trials is accepted and governs the degree of proof that each sort of evidence must possess.

The preceding session outlined how civil procedural law encompasses the law of evidence. The primary source of civil procedural law in Indonesian court practice is written rules, such as:

1) *Herziene Inlandsch Reglement* (HIR) S. 1848 Number 16 promulgated with S. 1941 Number 44

   The HIR is the civil and criminal procedural legislation that is applicable in Java and Madura. A common translation of HIR is "Updated Indonesian Regulations."

2) *Rechtsreglement voor de Buitengewesten* (RBg) S. 1927 Number 227

   RBg is sometimes translated as the Seberang Regional Legal Regulation, which is the civil and criminal procedural law that governs areas outside of the Java and Madura islands.

3) *Burgerlijk Wetboek* (BW/KUHPerdata) S.1847 Number 23

   The Civil Code essentially codifies substantive civil law. However, the Civil Code's content demonstrates that it also governs civil procedural law, as noted in Book IV on Evidence and Expiration (Article 1865-1993).

The Civil Code regulates the forms of evidence that are permitted to be presented in a face-to-face (conventional) civil case trial. Article 1866 of the Civil Code states that written evidence, witness testimony, suspicions, confessions, and oaths are all acceptable forms of proof. To keep up with the times, the limitations on the categories of evidence have been loosened (extension of the types of evidence). It is essential to pay close attention to the different categories of evidence when attempting to present evidence in court because it affects how much weight each piece of evidence used to support an argument.

The Civil Code has specified the degree of proof that each of these evidences possesses. Article 1888 of the Civil Code, which stipulates that: "The power of proof in writing is in the original deed," governs the strength

of evidence held by written evidence in this instance. If the original deed is present, copies and quotations are only reliable if they are in agreement with the original, which may always be requested to be displayed. The same arrangement is also stated in Article 301 Rbg (S. 1927-227), which states that: "(1) The original deed is the strongest source of proof for a derivative evidence. (2) If the original does exist, the derivative and quote can only be trusted if they are in line with the original, which may always be required to be demonstrated (KUHperd. 1888).

The PERMA 1/2019 and SK-KMA-RI are essentially used as the foundation of "procedural law" or as a guide for its execution in the electronic trial or e-Litigation. From the first day before the e-Litigation trial begins until the process for reading the court judgment, the two agreements have outlined in full how the e-Litigation trial would be conducted. However, while using e-Litigation, issues relating to evidence still correspond to the rules that govern traditional court procedures (see Article 25 PERMA 1/2019). This suggests that the rules governing the sorts of evidence, the degree to which such evidence is supported by evidence, and the method for presenting such evidence at the time the trial is held also apply to the rules that govern traditional trial practice.

Users of e-Litigation face challenges as a result of these agreements during the deployment phase. Users of electronic litigation must convert the type of evidence that will be presented in court into an electronic document and upload it via e-Court in accordance with Article 22, Paragraph 2, of PERMA 1/2019. In addition, as required by Part E Number 5 letter b SK-KMA-RI, users who submit letter-type evidence via e-Court must additionally bring the original physical evidence of the letter before the judge for validation.

These circumstances are unquestionably in opposition to the responsive, effective, and efficient ideals outlined in the idea of good government. The government (in this example, judicial institutions) appears to be unconcerned with social issues, as seen by its slow response

to the community's demands for an efficient and swift legal system (responsive principle). The government also appears unable to put rules into practice that would support the goals of the creation of e-Litigation, including expediting the accountability and responsibility process, reviewing the evidence, and reviewing court rulings (Makmur, 2019). In fact, it appears that the government is unable to make the best use of the resources at its disposal. One example is the development of e-Litigation, which incidentally makes use of APBN money to deliver a straightforward, quick, and affordable judicial process.

Therefore, the execution of responsive, effective, and efficient principles in the adoption of e-Litigation in Indonesia is hampered by restrictions linked to confirming the quality of documentary evidence presented to e-Litigation in civil cases. As a result, Indonesia's use of e-Litigation has not completely incorporated the concepts of good governance.

Conclusion

The research findings indicate that the concept of good governance encompasses key elements such as community involvement, the rule of law, transparency, responsiveness, consensus-oriented decision-making, equality, effectiveness, efficiency, accountability, and strategic vision. In parallel, an examination of the legal framework for e-Litigation in Indonesia underscores the significance of PERMA 1/2019, governing the electronic administration of cases and trials, and SK KMA RI Number 129/KMA/SK/VIII/2019, providing instructions for electronic court case administration.

However, a closer look at the application of the responsive, effective, and efficient principles within Indonesia's e-Litigation regulations, specifically in addressing the admissibility of documentary evidence, reveals a gap in adherence to these criteria. Consequently, to truly advance judicial

reform, it becomes imperative to revisit and refine the legal substance of regulations governing the validity of evidence presented in e-Litigation of civil cases in Indonesia. This refinement should align with the principles of good governance, particularly focusing on responsiveness, effectiveness, and efficiency.

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