

Electronic Court Proceeding in Indonesia

In the fourth quarter of 2022, the Ministry of Law of the Republic of Indonesia enacted the newly issued Supreme Court Regulation Number 7 of 2022 (“**SC Reg 7/2022**”) on the Amendment to the Supreme Court Regulation Number 1 of 2019 on the Administration of Cases and Legal Proceedings in Courts via Electronic Means (“**SC Reg 1/2022**”).

The SC Regulation 7/2022 clarifies Electronic Court Proceedings in Indonesia, not only in the first instance, but also for appeal, cassation, and judicial review, which were previously governed by the Decree of the Chairman of the Supreme Court Number 271/KMA/SK/XII/2019 on Guidelines for Technical Administration of Cases and Hearing in Appeal, Cassation and Judicial Review Level via Electronic Means.

In addition, the Chairman of the Supreme Court has issued Decree Number 363/KMA/SK/XII/2022 of 2022 on Guidelines on Technical Administration and Hearing of Civil, Religious and Administrative Cases In Court by Electronic Means dated 20 December 2022 (“**SC Decree 363/2022**”), which is the implementation regulation of SC Reg 7/2022. Thus, we have highlighted several important new provisions under the SC Reg 7/2022 and SC Decree 363/2022 or which amend the previous provision under the SC Reg 1/2019, as follows:

1. Electronic Domicile and Court Summons

The first significant change or amendment to the electronic court proceeding concerns the disputing parties', particularly the defendants', domicile. Article 1 number 3 of the SC Reg 7/2022 provides that “*electronic domicile means the domicile of the parties in the form of verified electronic address and/or messaging services*”.

According to this provision, the plaintiff may file a claim against the defendant by also stating its electronic domicile. It is worth noting that such electronic domicile would not change the relative competency of the court as governed under the Indonesian Civil Procedural Law. However, such provision would have a significant impact on the process of serving the court summons to the defendant and/or co-defendant.

“Article 15

- (1) *Electronic summons/notifications shall be delivered to:*
 - a. *Plaintiffs;*
 - b. **Defendants whose Electronic Domicile has been included in the lawsuit;**
 - c. *Defendants who have expressed their consent; or*
 - d. *the parties whose litigation has been processed electronically.*
- (2) *In the event that the summoned Defendants as referred to in paragraph (1) letter b is not present, then further summons shall be made through a Registered Letter.”*

According to Article 15 of the SC Reg 7/2022, a court summons could be served electronically to the Defendant or any other parties whose electronic domicile has been stated in the plaintiff's statement of claim.

“Article 17

- (1) *Bailiffs/substitute bailiffs shall deliver summons/notifications to the parties **through the Electronic Domicile of the SIP.***
- (2) *In the event the Defendant **does not have an Electronic Domicile**, the summons/notification shall be delivered through a Registered Letter.*
- (3) *Summons/notifications for parties who are **domiciled abroad and whose Electronic Domicile are known, shall be conducted electronically.***
- (4) *In the event that the Electronic Domicile of the parties as referred to in paragraph (3), **is unknown/not verified**, the summoning/notification shall be conducted in accordance with the applicable procedure.”*

Article 17 paragraph (3) of the SSC 7/2022 also provides that the same procedure is applied to foreign parties whose electronic domicile is verified. In this regard, such provision would significantly reduce the

timeframe for serving a court summons to parties that are domiciled outside the jurisdiction of the court or even Indonesia, which previously may take up to 6 (six) months adjournment.

Nonetheless, should the electronic domicile of the parties be unknown or not verified, the service of court summons would be conducted in conventional or normal procedure. However, it is unclear how the court and/or judges deemed that the electronic domicile is verified. In any case, should the parties does not satisfy the court summons on the date of hearing although the electronic court summons had been served appropriately, the subsequent (might be the last) court summons would be conducted in conventional or normal procedure.

2. Court Hearing by Electronic Means

Previously, under the SC Reg 1/2019, the electronic hearing will be commenced based on the disputing party's consent. According to Article 20 of the SC Reg 7/2022, the case that is submitted electronically by Plaintiff automatically will be conducted by electronic means.

"Article 20

- (1) Cases which are **registered electronically shall be heard electronically.**
- (2) Trial via Electronic Means, as referred to in paragraph (1), shall be started from the time the mediation is declared failed, except for cases which do not require mediation as regulated in the provisions of laws and regulations.
- (3) In the event that **the Defendant does not agree that the trial shall be conducted electronically**, the hard copy and soft copy of the answers, rejoinder, and conclusions **shall be submitted to the Registrar of the Session through PTSP no later than the scheduled date of the trial to be uploaded into SIP.**
- (4) **In the event that the Defendant is represented by a Registered User, the proceeding shall be conducted electronically.**
- (5) Approval of the Defendant as referred to in paragraph (3), is not required in case of state administration and case of Objection to the decision of the Business Competition Supervisory Commission.
- (6) In the event that a Defendant who has been legally and properly summoned does not attend, the proceedings shall be continued electronically, and the case shall be decided by default judgment.
- (7) In the event that there are Defendants who have been legally and properly summoned do not attend, the proceedings shall be continued electronically.
- (8) The notification of the decision to the Defendant as referred to in paragraph (6) shall be conducted through a Registered Letter."

In light of the above, it is worth noting that it is possible for the defendant to not give consent to conduct the hearing electronically, in that case, the hearing of cases will be conducted by hybrid means, in which any submission of hearing documents by the defendant will be conducted by submission to the One Stop Integrated Services (*Pelayanan Terpadu Satu Pintu*) of the relevant court and the court would serve the plaintiff's hearing documents to the defendant by the normal or conventional procedure. However, such procedure is not available should the parties i.e. the defendant be represented by a registered user.

Evidentiary Hearing

The electronic hearing has been conducted in Indonesia for a couple of years, however, the electronic hearing is limited to the documentary hearing such as the submission of a statement of defence, reply, rejoinder, and statement of conclusion by the parties. Under the SC Reg 7/2022, the electronic hearing is not merely conducted for the documentary hearing but also includes the pre-evidentiary hearing.

"Article 24

- (1) Prior to the trial by way of examination of written evidence, **the parties have uploaded the stamped documents of proof to SIP.**
- (2) The Defendant who does not approve the Trial via Electronic Means shall submit the evidence in front of the court which will then be uploaded by the Registrar of the Session into SIP.
- (3) Evidence trial through the examination of witnesses and/or experts may be conducted remotely through audiovisual communication media.

(4) *The trial as referred to in paragraph (3) shall be carried out with the infrastructure of the Court.*
 (5) *All costs incurred in the proceedings as referred to in paragraph (3) shall be borne by the party proposing witnesses and/or experts."*

Article 24 of the SC Reg 7/2022 provides that before the documentary evidence hearing, the parties shall upload the stamped documentary evidence to the e-court system. However, it is unclear whether the uploaded documentary evidence is accessible, or even downloadable, by the opposing parties (similar to the previously implemented for the documentary hearing documents). In such circumstances, it would be a significant development for the court hearing in Indonesia, in which enable the parties to scrutinize (or may also obtain a copy of) the documentary evidence submitted in the hearing of the case.

Bankruptcy and Suspension of Payment Proceeding

In addition, the new SC Reg 7/2022 regulates that the administration and settlement of the bankrupt assets by the receiver in a bankruptcy proceeding also could be conducted electronically through the e-court system. In this case, SC Decree 363/2022 further stipulates the guidelines of technical administration for the electronic administration and settlement of bankrupt assets.

According to SC Decree 363/2022, the electronic newspaper is recognized and acknowledged as the announcement media throughout the suspension of payment and/or bankruptcy proceeding. In addition, in the submission of the Proof of Debt, the creditors shall also submit the electronic domicile to be used in the proceeding. Further, SC Decree 363/2022 also stipulates the utilization of audio-visual communication media for any meeting and discussion during the proceeding, including but not limited to the Creditors Meeting, Verification Meeting, and Discussion on the debtor's composition plan.

The SC Decree 363/2022 also stipulates that there are several agendas that would be conducted by electronic means through the e-court system, as follows:

1. Submission of Proof of Debt;
2. Submission and Hearing of the Renvoi Petition;
3. Submission of debtor's composition plan;
4. Voting upon debtor's composition plan and/or permanent suspension of payment request.;
5. Petition for Correction of the Minutes of Voting;
6. Pronouncement of the Court Judgement;
7. Legal remedies against the Homologation Judgment;
8. Submission of Receiver's working plan and report;
9. Announcement of the on-sale bankrupt assets;
10. Submission of Receiver's proposed appraiser;
11. Submission of the Distribution List;
12. Objection against the Distribution List; and
13. Rehabilitation petition.

This new electronic method in the administration and settlement of bankrupt assets may improve the efficiency of the bankruptcy and suspension of payment proceedings and optimize the use of the e-court system which not be fully utilized during the Covid-19 Pandemic.

Appeal and Legal Remedies

According to the new SC Reg 7/2022, the entire appeal proceeding will be conducted electronically through the e-court system, however, the service of notification or summons to the parties would be in accordance with the parties' consent upon the electronic hearing in the first instance.

"Article 14

- (1) *Registration of legal remedies shall be conducted through SIP.*
- (2) *Registration of legal remedies as referred to in paragraph (1) shall consist of a **statement of countermeasures (verzet), objections and appeals.***

(3) In the event that the Defendant files a legal countermeasure (verzet) against the verstek decision and the Plaintiff files an appeal, the appeal submitted by the Plaintiff shall be declared invalid."

Article 14 paragraph (2) of the SC Reg 7/2022 stipulates that the case registration of statement of countermeasures (*verzet*), objection and appeal is also conducted by electronic means through the e-court system. However, in accordance with Article 28A of the SC Reg 7/2022, the appeal petition is possible to be submitted through the e-court system or conventionally (through the court registrar).

"Article 28A

- (1) Legal remedies shall be conducted electronically through SIP.*
- (2) In the event that an application for an appeal **is directly filed**, the Court Registrar of the applicant shall formulate a deed of appeal.*
- (3) The deed of appeal as referred to in paragraph (2) shall be uploaded to SIP.*

Should the registration of the appeal cases be conducted conventionally through the court registrar, the court will issue the deed of appeal which is further will be uploaded by the court registrar to the e-court system. Further, the appeal procedure would be conducted electronically through the e-court system.

Remarks

Based on the foregoing, we believe that the enactment of SC Reg 7/2022 and issuance of SC Decree 363/2022 would give significant changes and development to the administration and hearing of cases in court, not only for the civil proceeding at the first instance but also provide clearer guidelines for the implementation for other proceedings as well as legal remedies.

In the upcoming client update, we will strive to address these developments as well as the most recent developments from the clarifies Electronic Court Proceedings regime. If you would like to discuss this with us, please contact us by email at info@tnklaw.id or phone at (021) - 2528636.

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