

# 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 Judiciary 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-filing 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 hazard 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 Constitutional 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 gazette 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<sup>5</sup> 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.