

Legal Synchronization Analysis Between Supreme Court Regulation No. 1 of 2019 on E-Litigation and Evidence Provisions in HIR/RBG

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ABSTRACT

The digitalization of the judiciary through E-Litigation, as regulated in Supreme Court Regulation No. 1 of 2019, presents challenges in synchronizing with Indonesia's classical civil procedural law (HIR/RBG), which has been in force for more than a century. This study examines the compatibility between electronic evidence mechanisms under PERMA No. 1 of 2019 and the evidentiary provisions in Article 164 of HIR and Articles 284/285 of RBG. Employing normative legal research with statutory and conceptual approaches, the analysis focuses on vertical and horizontal synchronization. The findings reveal that vertically, PERMA No. 1 of 2019 functions as a gap-filling *regeling teknis* that expands the interpretation of documentary evidence without contravening higher-level norms. Horizontally, synchronization with the Electronic Information and Transactions Law (ITE Law) provides substantive legitimacy to electronic documents as valid evidence. While procedural unification has been achieved, the main obstacle lies in the legal culture of practitioners who remain attached to paper-based evidence. This study contributes by offering a dogmatic analysis of synchronization—particularly the hierarchical and cultural dimensions—which has been less emphasized in prior studies.

Keywords: E-Litigation, Evidence, Legal Synchronization, HIR, RBG

INTRODUCTION

The existence of civil procedural law in Indonesia historically rests upon the *Herziene Inlandsch Reglement* (HIR) and *Rechtreglement voor de Buitengewesten* (RBG), both colonial legal products that have served as the compass for litigation practices for more than a century. These codifications emphasize physical formalities through the principle of *onmiddellijkheid* (immediacy), requiring the parties' physical presence and tangible evidence in the courtroom to ensure the attainment of material truth.

Entering the era of the Fourth Industrial Revolution, the conventional paper-based paradigm of litigation faces massive challenges in terms of effectiveness. Judicial modernization through E-Litigation represents a progressive response to national legal reform, accommodating

technological developments (Riyanto, 2020). The implementation of electronic systems not only digitizes administrative aspects but also serves as a crucial instrument to enhance efficiency, accessibility, and the quality of legal services for justice seekers in the digital era (Cahyadi, 2020). This transformation penetrates technical aspects of trials, including the evidentiary stage, which is considered the “heart” of civil litigation in Indonesia.

Nevertheless, the transition from HIR/RGB-based litigation to E-Litigation leaves fundamental issues of normative harmonization. Using Lawrence M. Friedman’s Legal System Theory, this complexity involves three main components: substance, structure, and legal culture (Friedman, 1975). Substantively, tension arises between the rigid provisions of HIR and the flexible-digital norms of PERMA No. 1 of 2019, reflecting challenges in integrating conventional procedural law into an electronic framework that demands legal certainty (Njatrijani, 2020). Structurally, the uneven readiness of the judicial apparatus and infrastructure across Indonesia hinders inclusive justice (Hariyanto, 2021). Juridical challenges become acute when evidentiary mechanisms in E-Litigation confront the rigidity of Article 164 HIR and Article 284 RBG. Historically, Indonesia adheres to a limited evidentiary system (*wettelijke bewijsleer*), where admissible evidence is determined exhaustively by statute, requiring electronic evidence to obtain legitimacy equal to physical evidence (Siahaan, 2022).

Normative conflict emerges because, under the hierarchy of laws in Law No. 12 of 2011, PERMA is classified as a *regeling teknis* subordinate to statutes. However, in practice, PERMA No. 1 of 2019 extends its role by redefining documentary evidence, functioning as a gap-filling instrument (*rechtvacuüm*) to modernize evidentiary procedures (Asshiddiqie, 2020); (Indrayana, 2021). This duality—technical regulation yet quasi-legislative in effect—creates ambiguity in judicial interpretation. Clarifying PERMA’s position as a *regeling teknis* with quasi-legislative function is crucial to avoid inconsistencies in evidentiary legitimacy.

Previous studies have examined the implementation of E-Litigation, but most remain limited to sociological analysis and technical-operational obstacles (Hariyanto, 2021; Rahmawati, 2020; Nurjanah, 2022). While discussions on electronic evidence and conflicts between HIR and ITE Law are not new (Nurasiah & Fakhriah, 2020; Pramono, 2021; Syahrin, 2021), few have emphasized the dogmatic synchronization of evidentiary validity within the E-Litigation ecosystem. This study contributes by refining the analysis of vertical and horizontal synchronization, highlighting the juridical implications of differing verification standards on judicial conviction in civil cases.

Guided by Gustav Radbruch's theory of legal certainty and synchronization theory, this research argues that law must balance three fundamental values: justice, utility, and certainty (Radbruch, 2006). Such analysis is crucial in the context of ongoing national legal reform through the codification of the Civil Procedural Law Bill. Synchronization between classical procedure and electronic mechanisms is not merely a technical necessity but a fundamental requirement to prevent degradation of evidentiary value in civil trials (Sudirman, 2021).

Accordingly, this study aims to analyze the vertical synchronization between PERMA No. 1 of 2019, positioned as a *regeling teknis*, and HIR/RBG, which hold statutory authority, to assess the consistency of electronic evidence regulation within the hierarchy of norms. It further examines the horizontal synchronization between PERMA No. 1 of 2019 and the Electronic Information and Transactions Law (ITE Law), clarifying the legitimacy of electronic documents as equivalent to physical evidence. In addition, the research seeks to explain the dogmatic implications of PERMA's normative position—whether it should be understood merely as a *beleidsregel* or as a quasi-legislative instrument functioning as a gap-filler (*rechtsvacuüm*). Finally, this study identifies cultural barriers that continue to hinder the effectiveness of E-Litigation, particularly the persistent skepticism among practitioners toward electronic evidence compared to traditional paper-based documents. Through this focus, the research contributes a refined dogmatic perspective on synchronization, complementing prior studies that have predominantly emphasized sociological and technical dimensions.

LITERATURE REVIEW

Stufentheorie of Legal Hierarchy

The analysis of legal synchronization in this study is grounded in the concept of normative hierarchy (Stufentheorie) introduced by Hans Kelsen. Kelsen argued that the legal system is a structured order of norms, where the validity of lower norms derives from higher norms (*grundnorm*) (Kelsen, 2011). This theory was later developed by Hans Nawiasky through *die Stufennordnung der Rechtsnormen*, which in Indonesia was adapted into the hierarchy of laws as stipulated in Law No. 12 of 2011 (Wijayanti et al., 2023).

In the context of E-Litigation, a dogmatic discourse arises regarding the position of Supreme Court Regulation (PERMA) No. 1 of 2019, which formally stands below statutory law (HIR/RBG). The Supreme Court exercised its attributive authority under Article 79 of Law No. 14 of 1985 to fill legal gaps (*rechtsvacuüm*) and ensure the smooth functioning of the judiciary, which is no longer adequately accommodated by colonial regulations (Indrayana, 2021).

However, such authority must still respect the principle of *lex superior derogat legi inferior*, meaning that technical regulations may not override procedural rights guaranteed by higher-level statutes (Isra, 2020).

Theory of Legal Certainty

Gustav Radbruch emphasized that law must embody three fundamental values: justice (*gerechtigkei*t), utility (*zweckmassigkeit*), and legal certainty (*rechtssicherheit*) (Radbruch, 2014). Legal certainty requires clear, consistent, and predictable rules so that legal consequences can be anticipated by subjects of law (Mertokusumo, 2019).

In this research, Radbruch's theory is applied to evaluate whether the shift from physical to electronic evidence in E-Litigation maintains the required standard of authenticity. Legal certainty in the digital judiciary is measured by the extent to which electronic verification systems can guarantee data integrity against manipulation (Makarim, 2020). This assurance is crucial, as the evidentiary value of electronic documents must be equivalent to original physical documents under HIR/RBG to avoid uncertainty for justice seekers (Pramono, 2021).

Legal System Theory

To assess the effectiveness of legal synchronization, this study employs Lawrence M. Friedman's Legal System Theory. Friedman explained that the effectiveness of law depends on three interrelated elements (Friedman, 1975):

1. Legal Substance

Refers to norms and rules, in this case the synchronization between PERMA No. 1 of 2019, HIR/RBG, and the ITE Law.

2. Legal Structure

Concerns institutional frameworks and judicial officers (judges and clerks) responsible for operating the electronic judicial system.

3. Legal Culture

Encompasses values, expectations, and practices of society and legal professionals regarding the legitimacy of electronic documents compared to physical ones.

This theoretical framework provides a comprehensive lens to analyze not only the normative alignment of regulations but also the structural readiness and cultural acceptance necessary for E-Litigation to function effectively.

METHODS

Type and Approach of Research

This study employs normative legal research (doctrinal research), which positions law as a system of written norms contained in statutory regulations. The approaches used include:

1. Statute Approach Examination of all regulations relevant to the research object, namely HIR/RBG, the Electronic Information and Transactions Law (ITE Law), and Supreme Court Regulation No. 1 of 2019.
2. Conceptual Approach Reference to doctrinal perspectives in civil procedural law and evidentiary theory to understand the essence of “material truth” within the digital framework.
3. Analytical Approach: Interpretation of new legal terms introduced in E-Litigation and their adjustment to conventional terminology in HIR.

Sources of Legal Materials

1. Primary Legal Materials

Binding regulations, including HIR, RBG, Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law), and Supreme Court Regulation No. 1 of 2019 on Electronic Case Administration and Trials.

2. Secondary Legal Materials

Scholarly publications that explain primary materials, such as civil procedural law textbooks, legal journals, and the draft Civil Procedural Law Bill.

3. Tertiary Legal Materials

Supporting references such as the *Kamus Besar Bahasa Indonesia* (KBBI) and legal dictionaries to clarify technical terminology.

Techniques of Collection and Processing

Legal materials were collected through library research. The gathered materials were then selected, classified, and systematically organized according to the legal issues raised in the research questions.

Techniques of Analysis

Analysis was conducted qualitatively and descriptively using deductive reasoning. The principal instrument of analysis was the synchronization of law, divided into two dimensions:

1. Vertical Synchronization (Hierarchical Consistency)

Examination of the extent to which PERMA No. 1 of 2019, hierarchically positioned below statutory law, aligns with HIR and RBG, which hold legislative status. This ensures that provisions on electronic evidence do not contradict fundamental principles of civil procedure established in higher-level regulations.

2. Horizontal Synchronization (Normative Consistency)

Evaluation of the coherence between PERMA No. 1 of 2019 and other regulations of equal standing, particularly the ITE Law. The objective is to establish a legal bridge connecting the definition of “documentary evidence” in HIR with “electronic information/documents” in the ITE Law, thereby creating a unified and coherent legal system for electronic litigation.

RESULTS

Normative Antinomy: Dogmatic Comparison of HIR/RBG and PERMA No. 1 of 2019

The study identifies operational divergences in evidentiary mechanisms between classical civil procedure and electronic administrative regulation. Based on the normative inventory, these differences are classified in Table 1 below:

Table 1. Comparison of Conventional and Electronic Evidence Parameters

Aspect	Conventional Evidence (HIR/RBG)	Electronic Evidence (PERMA No. 1/2019)
Medium of Evidence	Physical Documents (Paper/Letters)	Electronic Documents (.pdf/.jpg)
Verification	Original comparison (<i>nazegeling</i>)	Upload via Court Information System (E-Filing)
Legality	Wet-ink signatures & physical seals	Electronic signatures / scanned PDFs
Interaction	Direct examination (face-to-face)	System interface (digital platform)

The comparative inventory highlights clear distinctions between conventional and electronic evidence parameters. While HIR and RBG remain bound to physical documents and direct examination, PERMA No. 1 of 2019 introduces electronic submissions and digital verification through the Court Information System. The findings demonstrate that Article 164 HIR retains its limitative-physical nature, whereas PERMA expands its function through Article 26,

recognizing electronic documents as documentary evidence. Yet, a synchronization gap persists regarding protocols for verifying the integrity of digital files during transmission. This normative tension is reflected in judicial practice, where courts have adopted divergent approaches in interpreting the evidentiary value of electronic documents. In Decision No. 451/Pdt.G/2020/PN.Jkt.Pst, the Jakarta District Court accepted scanned contracts submitted through the E-Litigation system as valid documentary evidence, emphasizing efficiency and accessibility during the pandemic. Conversely, in Decision No. 123/Pdt.G/2021/PN.Sby, the Surabaya District Court required the physical submission of the original contract despite the electronic upload, classifying the scanned version only as a presumption under Article 173 HIR. Similarly, in Decision No. 87/Pdt.G/2022/PN.Bdg, the Bandung District Court acknowledged electronic invoices as supporting evidence but insisted that the original hard copies be presented to satisfy authenticity standards. These cases demonstrate that despite PERMA No. 1 of 2019, courts remain inconsistent in their treatment of electronic evidence, undermining predictability for litigants and highlighting the urgent need for standardized verification protocols to ensure both efficiency and legal certainty.

Formal Position and Hierarchical Tension

Normative identification reveals three key findings. First, under Law No. 12 of 2011, PERMA No. 1 of 2019 is formally categorized as a *regelung teknis* subordinate to statutes, which means it cannot override the provisions of HIR/RBG that hold legislative authority. This classification affirms the principle of *lex superior derogat legi inferior*, ensuring that technical regulations remain bound by higher-level norms (Asshiddiqie, 2020). Second, despite its formal status, PERMA operates as a gap-filling instrument (*rechtsvacuüm*) by redefining the scope of documentary evidence to include electronic documents. In this sense, PERMA assumes a quasi-legislative function, extending beyond mere administrative regulation to address substantive procedural matters (Indrayana, 2021). Third, the absence of statutory-level synchronization—particularly the lack of revision to HIR/RBG—creates a legal vacuum that forces PERMA to function as an “emergency instrument.” This duality, being formally a *regelung teknis* yet functionally quasi-legislative, generates hierarchical tension and interpretive ambiguity in judicial practice. Clarifying this position is essential to ensure doctrinal consistency and to minimize disputes over the evidentiary legitimacy of electronic documents in civil litigation.

Typology of Judicial Interpretation of Digital Evidence

Observation of electronic judicial practice reveals two major typologies of judicial attitudes:

1. Progressive Typology

Judges accept electronic copies (scanned documents) as independent documentary evidence, prioritizing efficiency and accessibility.

2. Conservative Typology

Judges classify electronic documents merely as “presumptions” (Article 173 HIR) and require the physical presence of original documents to satisfy classical authenticity standards.

DISCUSSION

Stufentheorie Discourse: Delegated Authority and Constitutional Boundaries of PERMA

From the perspective of Hans Kelsen’s Stufentheorie, the validity of a norm depends on its conformity with higher-level norms. PERMA No. 1 of 2019, as a *regelung teknis*, derives its legitimacy from statutory law, particularly HIR/RBG. Dogmatically, the Supreme Court’s use of attributive authority under Article 79 of Law No. 14 of 1985 to issue PERMA on E-Litigation is often regarded as an extraordinary measure to fill legal gaps (*rechtsvacuüm*). Yet, because PERMA redefines evidentiary standards, it operates with a quasi-legislative function. This dual character must be acknowledged explicitly to avoid ambiguity in judicial interpretation (Isra, 2020).

Effectiveness of the Legal System (Friedman): From Rigidity to Adaptability

Applying Lawrence M. Friedman’s Legal System Theory, the failure of harmonization reflects the unpreparedness of three legal components simultaneously.

1. Legal Substance

Divergence exists between positive law (HIR), which remains stagnant, and aspirational law (PERMA), which is progressive. This divergence often traps judicial officers in normative ambiguity.

2. Legal Structure

Judges, as the “mouth of the law” (*la bouche de la loi*), are tested in their capacity for legal discovery (*rechtsvinding*) regarding digital evidence. Disparities in judicial decisions on the probative value of scanned PDFs indicate a lack of uniform understanding at the structural level (Hariyanto, 2021).

3. Legal Culture

Cultural resistance persists in the form of public distrust toward data integrity. Indonesian legal culture remains oriented toward “physical legality” (wet-ink signatures and seals), hindering the acceleration of trust in the authenticity of electronic documents.

Judicial practice demonstrates contrasting approaches: in Decision No. 123/Pdt.G/2021/PN.Sby, judges insisted on the submission of original hard-copy contracts despite electronic uploads, reflecting structural ambiguity. Conversely, in Decision No. 451/Pdt.G/2020/PN.Jkt.Pst, scanned contracts were accepted as valid documentary evidence, prioritizing efficiency during the pandemic. These contrasting practices illustrate Friedman’s argument that structural readiness and cultural acceptance are as crucial as substantive norms in determining the effectiveness of legal synchronization. The divergence between positive law (HIR) and aspirational law (PERMA) reflects the complexity of a *regelung teknis* that assumes quasi-legislative functions, leaving judges confronted with normative ambiguity: whether to treat PERMA strictly as subordinate regulation or as a substantive instrument redefining evidentiary legitimacy.

Reconstructing Radbruch’s Legal Certainty: Toward Triadic Balance

Within Gustav Radbruch’s triadic framework, E-Litigation has successfully achieved utility (*zweckmassigkeit*) through cost and time efficiency. However, legal certainty (*rechtssicherheit*) is reduced due to weak dogmatic verification of electronic evidence. To achieve Radbruch’s balance, integration of Public Key Infrastructure (PKI) into the E-Litigation system is necessary. Certified electronic signatures, as mandated by the ITE Law, must become a mandatory standard so that scanned documents possess independent authenticity without requiring physical verification (Makarim, 2020).

Resistance in Legal Culture: The Paradox of Ritualism and Digital Trust

From Friedman’s cultural perspective, the effectiveness of legal reform depends on societal values and attitudes toward law. Analysis shows that E-Litigation in Indonesia encounters a paradox of judicial ritualism. For centuries, civil litigation has constructed wet-ink signatures and physical presence as symbolic rituals conferring psychological legitimacy to parties (Ali, 2021).

This cultural mismatch can be analyzed through two fundamental aspects:

1. Erosion of Symbolic Value The shift from physical documents to scanned files is perceived as diminishing the dignity and authenticity of legal formalities. Indonesian society tends to exhibit low trust toward digital data integrity. Concerns about manipulation, hacking, and misuse of electronic documents foster latent resistance, relegating digital documents to “auxiliary instruments” rather than independent evidence (Makarim, 2020).
2. Gap in Legal-Digital Literacy Legal culture encompasses not only lay society but also judicial officers and advocates. The phenomenon of “legal technophobia” among senior practitioners creates a tendency to demand original documents in court despite electronic submissions. This reflects a cultural defense mechanism to minimize perceived risks of losing physical control over documentary evidence (Wibowo, 2020).

Such gaps demonstrate that E-Litigation has not yet become a living law in Indonesia. As long as legal culture continues to equate justice with physical presence and paper-based evidence, the certainty offered by PERMA No. 1 of 2019 will remain overshadowed by dogmatic skepticism. A massive social engineering effort is required to shift paradigms from paper-based to digital trust, supported by comprehensive cybersecurity regulations (Rifan & Rahmawati, 2020).

The paradox of ritualism is further evident in judicial practice. In Decision No. 87/Pdt.G/2022/PN.Bdg, electronic invoices were admitted only as supporting evidence, while judges demanded physical originals to confirm authenticity. This demonstrates how cultural skepticism toward digital documents continues to overshadow PERMA No. 1 of 2019, reinforcing the persistence of paper-based legitimacy in Indonesian legal culture.

CONCLUSION

This study concludes that the synchronization of law between Supreme Court Regulation (PERMA) No. 1 of 2019 and HIR/RBG has functionally taken place through the expansion of interpretation of conventional documentary evidence. Vertically, PERMA does not annul the provisions of Article 164 HIR or Articles 284/285 RBG; rather, it serves as a gap-filling instrument (*rechtsvacuüm*) that modernizes evidentiary procedures without undermining the pursuit of material truth. Horizontally, synchronization with the Electronic Information and Transactions Law (ITE Law) provides substantive legitimacy to electronic documents, thereby equating their evidentiary value with physical documents. Through this integration, the dualism of civil procedure—historically divided between Java-Madura and regions outside Java—has been unified under a single E-Litigation framework. Nevertheless, the effectiveness of

synchronization remains overshadowed by legal-cultural challenges, as practitioners continue to exhibit skepticism toward digital authenticity compared to traditional paper-based evidence. Based on these findings, it is recommended that lawmakers accelerate the enactment of the Civil Procedural Law Bill to strengthen vertical synchronization at the statutory level, thereby eliminating debates over the hierarchical relationship between PERMA and HIR/RBG. The Supreme Court should also standardize digital evidence verification protocols across all courts to minimize disparities in judicial interpretation.

This research is limited by its normative focus, which does not empirically capture how synchronization is applied in judicial decisions across different court levels. Furthermore, restricted access to technical data on the security infrastructure of the Court Information System constrains the analysis of data protection in evidentiary processes. Future research should adopt empirical or socio-legal approaches to assess the practical effectiveness of E-Litigation in courtroom proceedings. Subsequent studies may also explore issues of personal data protection and the enforceability of judgments based entirely on electronic evidence in cross-border disputes.

This study confirms that PERMA No. 1 of 2019 must be consistently understood as a *regeling teknis* within the hierarchy of laws, while acknowledging its quasi-legislative function as a gap-filling instrument. Such clarification strengthens doctrinal consistency and minimizes interpretive ambiguity in judicial practice.

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