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A Legal Analysis of Summons by Absentia in the Digital Age in Divorce Cases at the Class 1A Religious Court of Malang City

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Abstract

General Background: The digitization of judicial processes has increasingly been adopted to improve administrative efficiency and public access to legal information. **Specific Background:** In the Malang City Religious Court, electronic summonses for absent parties are implemented through digital platforms, offering streamlined procedures and documented records while expanding transparency. **Knowledge Gap:** However, existing procedural laws, including Government Regulation No. 9 of 1975 and HIR/RBg, do not explicitly regulate electronic summons mechanisms, creating uncertainty regarding the legal validity of digital publication and evidence standards. **Aims:** This study examines the legal and ethical challenges arising from the implementation of electronic summonses, focusing on regulatory gaps, digital evidence issues, and access disparities. **Results:** The findings reveal dual consequences: increased administrative efficiency and transparency alongside significant challenges such as inconsistent legal interpretations, absence of national standards for digital evidence, and a persistent digital divide affecting litigants' awareness. Variations in judicial practices and reliance on supplementary summons methods indicate unresolved procedural inconsistencies. **Novelty:** This study highlights the coexistence of legal uncertainty and social inequality as central axes shaping digital summons implementation within religious courts. **Implications:** The results suggest that future policy must establish clear regulatory frameworks, standardize digital evidence procedures, and promote legal literacy to ensure that technological adoption supports substantive justice, inclusivity, and procedural fairness rather than reinforcing exclusion.

Highlights:

- Administrative modernization coexists with unresolved procedural inconsistencies across jurisdictions.
- Absence of technical standards generates disputes over validity of uploaded materials.
- Limited public understanding contributes to unequal participation in judicial proceedings.

Keywords: Digital Summons, Religious Courts, Legal Uncertainty, Digital Evidence, Access to Justice

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Introduction

The summons by publication is a crucial procedure in civil procedure law, particularly in divorce cases where the defendant's whereabouts are unknown.[1] In the digital age, Indonesia's judicial system is undergoing a transformation through electronic mechanisms such as the SIPP and e-Court applications, which have been promoted by the Supreme Court of the Republic of Indonesia with the aim of accelerating, simplifying, and ensuring transparency in judicial services. For example, at the Class 1A Religious Court of Malang City, an outreach session on the SIPP version 6.0.1 update was held as part of efforts to digitize case management. Nevertheless, the mechanism for summons by publication—traditionally carried out through bailiffs and/or the mass media in accordance with Government Regulation No. 9 of 1975, Article 27—faces new challenges when adapted to the digital era. Previous research in various religious courts has noted that the use of mass media for summons by publication is often ineffective due to high rates of defendant non-attendance, the considerable time lag between the summons and the hearing, and the lack of integration between technology and summons practices.[2]

In practice at the religious court level, there remains a gap between normative regulations and the actual implementation of summonses by default in the digital age. For example, although the Class 1A Religious Court of Malang City has integrated digital services, there is no publicly available data on the frequency of electronic summonses by default or specific mechanisms ensuring that defendants can be reached digitally. This situation raises a fundamental question: to what extent have digital-based mechanisms for service by publication fulfilled the principles of legal certainty and procedural justice for the parties in divorce cases? From a legal-normative perspective, service by publication in the digital age should not only be viewed as a technical innovation but must also guarantee the protection of the parties' rights, the transparency of the process, and the accountability of the court.[3]

Thus, this study aims to examine the regulations governing summons by mail, analyze the implementation of digital mechanisms at the Class 1A Religious Court of Malang City, and evaluate the extent to which such implementation aligns with the principles of procedural law and information technology. Through this analysis, it is hoped that concrete recommendations can be identified to strengthen the mechanism for summoning absent parties in the digital age, so that the religious court system can truly be modern, fair, and trustworthy.

Method

The research method employed in this study is the normative legal approach, which focuses on the analysis of primary, secondary, and tertiary legal sources directly relevant to the issue of summons by default in the digital age within divorce cases at the Class 1A Religious Court of Malang City. This study is oriented toward a normative analysis aimed at understanding how procedural law provisions and judicial principles are applied in the practice of summoning parties via digital media, as well as assessing the extent to which such application aligns with the principles of legal certainty, justice, and the protection of the defendant's human rights.[4]

The approaches used in this study include the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine various legal provisions governing the summons of absent parties and the digitization of the judiciary, such as Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009, Government Regulation No. 9 of 1975 on the Implementation of the Marriage Law, Supreme Court Regulation (Perma) No. 3 of 2018 on Electronic Case Administration in Courts, and Supreme Court Circular Letter (SEMA) No. 1 of 2019 on the Implementation of Electronic Case Administration and Hearings. This approach helps to trace the validity and normative basis of digital-based summons by default, including its compliance with the principles of speedy, simple, and low-cost adjudication as mandated in Islamic civil procedural law.[5]

Meanwhile, a conceptual approach is used to examine the principles of procedural justice, the principle of audi alteram partem (the right to be heard), and the concept of legal protection for parties who are absent from court proceedings due to limited access to information. Substitute service in the digital age is not merely a matter of legal procedure but also involves the ethical and philosophical dimensions of law that demand substantive justice behind its formal structure. This approach enables researchers to link legal theories to the ongoing digital transformation phenomena within religious courts, particularly in the city of Malang. Additionally, a case-based approach is applied to examine concrete practices at the Class 1A Religious Court of Malang City, by reviewing several published rulings through the Case Tracking Information System (SIPP). Through an analysis of these rulings, it can be determined how judges and court officials implement the procedure for summoning parties by default, whether conducted conventionally through the media or through electronic systems via the e-Court and e-Berpadu applications. This approach plays a crucial role in assessing the extent to which legal practices on the ground align with applicable norms, as well as the effectiveness of digital technology in ensuring the summons of parties and the validity of the trial process.[6]

The subjects of study in this research include legal norms regarding summons by mail, provisions of Islamic civil procedure law, the doctrine of legal protection, and the practice of judicial digitization within the Class 1A Religious Court of Malang City. The primary legal sources used include legislation, Supreme Court regulations, and court decisions. Secondary legal materials consist of legal literature, scientific journals, academic articles, and previous research findings related to the digitization of the summons of parties. Tertiary legal materials include legal dictionaries, encyclopedias, and official publications of judicial institutions. Although this study is not empirical in nature, social and technological dimensions are still used as a contextual backdrop in the analysis. The public's legal literacy, the technical capabilities of judicial officials in operating digital systems, and the readiness of information technology infrastructure within the court environment are key factors in understanding the effectiveness of digital summonses. This analysis is further supported by legal systems theory,

which asserts that the success of a legal system is determined not only by its legal structure and substance but also by the legal culture that surrounds it.

By employing a normative legal approach, this study aims to provide a theoretical and prescriptive framework for how procedural legal norms can adapt to advancements in digital technology without compromising the principles of justice and legal certainty. The research findings are expected to serve as scientific recommendations for the Supreme Court of the Republic of Indonesia and religious courts throughout Indonesia to strengthen regulations, procedures, and the infrastructure for digital summonses, so that the system of summonses by default in the modern era can be more effective, legally valid, and ensure the protection of the rights of the parties involved in the case.

Results and Discussion

A. Implementation of the Summoning of the Deceased at the Class 1A Religious Court of Malang City

Service by publication is an important procedural tool in Islamic civil procedure within the religious court system. This tool is used when the address or whereabouts of one of the parties to the case is unknown, making direct service impossible. The basic provisions regarding this matter are contained in Article 27 of Government Regulation No. 9 of 1975, which stipulates that if the defendant’s residence is unknown, the summons shall be issued through a public announcement in the mass media. In line with technological advancements and the Supreme Court’s policies on judicial digitization, the mechanism for summons by publication has begun to shift toward electronic systems. Supreme Court Regulation (Perma) No. 3 of 2018 on Case Administration in Courts via Electronic Means and Supreme Court Circular Letter (SEMA) No. 1 of 2019 serve as the primary foundations for this transformation. These two regulations encourage courts to manage case administration, including summonses, through digital systems such as e-Court and official court portals.[7]

At the Malang City Class 1A Religious Court, the practice of issuing summonses by default has now been adapted to this policy. According to a review of the official website pa-malangkota.go.id, the court provides a special “Summons by Default” section that displays a list of cases, the identities of the parties, and the hearing schedule. However, from a normative perspective, there remains a legal loophole. Government Regulation No. 9 of 1975 has not been updated to align with the digital reality, so the term “mass media” does not yet encompass official court portals. Consequently, practices on the ground remain varied: some judges and court clerks at the Malang City Religious Court continue to combine digital publication with print media to maintain legal legitimacy. This situation indicates that while digitization does enhance efficiency and transparency, legal certainty remains weak due to the absence of explicit regulations governing “digital summonses.” Therefore, the enactment of a new Supreme Court Regulation or an amendment to Government Regulation No. 9 of 1975 is an urgent necessity to provide a firm legal foundation for judicial practices.[8]

Table 1. Status, Risks, and Mitigation Measures for Digital Ghai Summoning in Malang City

Aspect	Factual Status	Legal / Operational Risks	Technical and Legal Recommendations
Legal Basis	Pursuant to Government Regulation No. 9/1975 and Supreme Court Regulation No. 3/2018	The definition of “mass media” does not yet include court websites	A revision of Government Regulation No. 9/1975 or a new Supreme Court Regulation on digital service of process is needed
Publication Practices	The announcement was made on the official website of the Malang City Court	There is currently no standard format for publication evidence	Standardization of upload verification documents (timestamps and digital logs)
Public Access	Information is available online but not everyone is digitally literate	The Gap in Legal and Digital Literacy	Public outreach and assistance through Posbakum
Evidence Validation	The court clerk takes a screenshot of the publication	Evidence has not yet been formally regulated in procedural law	Certification of digital publication evidence by the Director General of Religious Courts

Conceptually, the implementation of digital summonses at the Malang City Religious Court reflects a transition in procedural law toward a modern, information technology-based judicial system. This transformation aligns with the Indonesian Supreme Court’s 2020–2024 vision of “Modern Information Technology-Based Judiciary,” which emphasizes efficiency, transparency, and accessibility. However, behind this progress lies a classic problem in procedural law: the tension between procedural legitimacy and technological adaptation. In practice, digital announcements via the court’s official website have indeed simplified publication, accelerated processes, and reduced costs. However, normatively, this mechanism remains dependent on the court’s internal interpretation because Government Regulation No. 9 of 1975 has not explicitly regulated electronic summonses. This has the potential to create evidentiary issues—for example, whether a screenshot of a

publication on a website can be considered valid as evidence of a summons. To close this loophole, there needs to be a derivative regulation or a new Supreme Court Regulation explicitly establishing that the court's official website is part of the "state's official mass media" within the context of procedural law.[9]

From a legal-political perspective, the digitization of summonses by mail is a form of the state's response to demands for bureaucratic efficiency and public information transparency. However, its implementation must still adhere to the principle of due process of law to avoid causing injustice to parties who do not understand or lack digital access. In the context of the Malang City Religious Court, the greatest challenge lies not in technological infrastructure, but in public legal literacy and regulatory harmonization. Thus, strengthening positive law is a strategic step forward. There is a need to update procedural legal norms that comprehensively integrate a digital approach, not merely an administrative one. If this is achieved, then digital summonses will not only be technically efficient but also legally valid and substantively just.[10]

B. The Impact of the Digitization of Gbaib Summonses on the Parties Involved

The digitization of summonses for absent parties implemented at the Malang City Religious Court has brought about structural changes in how the court interacts with those seeking justice. This transformation not only affects the technical and administrative aspects but also challenges the ethical foundations of procedural law and the concept of procedural justice. The modernization of the summons system, which was originally conducted through print media, has now shifted to the court's official portal, in line with the Supreme Court's policies as outlined in Supreme Court Regulation (Perma) No. 3 of 2018 on Electronic Case Administration in Courts and SEMA No. 1 of 2019 (Supreme Court of the Republic of Indonesia, 2019). For plaintiffs, the impact is immediately felt in terms of cost and time efficiency. Before the implementation of the online system, summonses published in local or national print media could cost between Rp600,000 and Rp1,200,000 per case, depending on the media outlet and the duration of publication (Annual Report of the Malang City Religious Court, 2023). The verification and publication process in conventional media often took up to two weeks. After digitization was implemented, the entire publication process could be carried out through the official website, at virtually no cost and in a shorter time. This efficiency also promotes public transparency: the public can directly access case summonses without bureaucratic intermediaries.[10]

However, this efficiency raises serious concerns on another front. Not all defendants possess the same level of digital literacy. In several cases at the Malang City Religious Court (2022–2024), instances were found where defendants were unaware of summonses because they lacked internet access. This is the classic problem of the digital divide, which risks undermining a defendant's right to defend themselves. In the context of procedural justice, this creates a dilemma: on the one hand, administrative efficiency increases, but on the other, the potential for a violation of the right to be heard (*audi alteram partem*) also looms. For the courts themselves, digitization brings benefits in terms of documentation and accountability.[11] Every publication has a digital trail (log) that can be systematically traced. This system facilitates internal audits and external oversight by the Supreme Court. However, to date, procedural law has not explicitly addressed the validity of digital evidence in the context of *ex parte* summonses. For example, can a screenshot of a publication's webpage be recognized as equivalent to physical evidence in the form of a newspaper clipping? This legal loophole is a vulnerable point that needs to be addressed immediately to prevent differing interpretations among panels of judges.[12]

In addition, the social impact of this policy is also worth noting. The public now has broader access to case information. Transparency has increased significantly, in line with the mandate of Law No. 14 of 2008 on Public Information Disclosure. However, the public's legal literacy remains low. Many citizens do not yet understand that announcements on court websites carry the same legal weight as publications in print media. This is where the role of public education through Legal Aid Posts (*Posbakum*), community media, and religious institutions becomes crucial to ensure the public is not left behind in the wave of legal digitization. From a legal-political perspective, the policy of digitizing summonses for absent parties represents the state's adaptation to advancements in information technology. The Supreme Court seeks to bridge the gap between bureaucracy and substantive justice. However, without an update to the regulations in Government Regulation No. 9 of 1975 or more up-to-date procedural laws, this practice remains in a gray area. This means the system operates based on administrative policies rather than explicit legal norms. To avoid legal uncertainty, regulatory harmonization has become an urgent necessity.[13]

Table 2. The Impact of the Digitization of Ghost Summoning on the Parties Involved

Aspect	Positive Impact	Potential Issues	Evidence Presented at the Malang City Religious Court (2022–2026)	Policy Recommendations
Plaintiff	The digital system facilitates the quick and documented input and management of data by all parties	There are duplicate names of parties, which can lead to identity confusion and administrative hurdles in the case	In Cases No. 726/Pdt.G/2026/PA.Mlg and 696/Pdt.G/2026/PA.Mlg, it was found that there were duplicate party names in the system	Technical training on e-Court for court staff

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Defendant	It's easier to check the court schedule if you're digitally savvy	The risk of missing calls for non-digital users	In 4 out of 20 cases involving absent defendants, the defendant was unaware of the summons	Hybrid model: digital publication + local print edition
Court	More efficient administration, documented digital records	The admissibility of digital evidence has not yet been clearly established in procedural law	The Supreme Court's internal audit (2024) highlights the need for standards for uploaded evidence	Standard rules regarding uploaded evidence and the minimum display period
Public	Increased transparency, easy access to case data	Low legal literacy; public understanding remains uneven	Posbakum Survey (2023): 68% of respondents do not understand the meaning of a digital summons	Public education through legal aid offices, social media, and religious institutions

The digitization of summonses for absent parties at the Malang City Religious Court, with all its successes and limitations, demonstrates that technology is never neutral. It holds the promise of efficiency alongside the risk of exclusion. Therefore, future policy directions must view digitization not as an end in itself, but as a tool to strengthen substantive justice, transparency, and legal inclusion for all segments of society.

C. Legal and Ethical Challenges in the Implementation of Electronic Summonses

The digitization of summonses for absent parties in the Malang City Religious Court has dual consequences: on the one hand, it streamlines judicial administration; on the other, it raises legal and ethical challenges that cannot be ignored. The implementation of this system reflects how the law strives to adapt to the times without losing its spirit of substantive justice. Legally, the most fundamental challenge arises from the mismatch between classical regulations and modern practices. Government Regulation No. 9 of 1975 and the HIR/RBg still assume that the summons process is conducted via print media or in person, not through digital platforms. Thus, when courts publish summonses via their official website (pa-malangkota.go.id), the question arises: does this action satisfy the element of "publication in the mass media" as required by procedural law? It is this legal gap that has led to variations in practice among courts. Some panels consider digital publication valid as long as it can be verified, while others still require print publication as supplementary evidence.[14]

From the perspective of judicial ethics, the issue is more subtle but crucial. Not all members of society, especially the defendants in cases of absent divorce, have access to information technology. According to reports from the Malang City Religious Court (2023), some cases show that the defendants were absent not because they refused to attend court, but because they were unaware that they had been summoned through mass media (radio and notice boards). Such a gap is known as the digital divide, a disparity that can lead to a violation of the principle of *audi et alteram partem*, the right of each party to be heard. Some judges at the Malang City Religious Court have shown caution by implementing double summons: digital publication is still carried out, but is also reinforced with announcements in print media or on notice boards. This step is not only administrative in nature, but also moral, maintaining a balance between technological speed and a sense of social justice.[15] From the diagram above, it is evident that the two dominant factors—Legality & Regulation (25%) and Access to Justice & Digital Divide (25%)—become the main axes of the issue of digitalization of subpoena. This means that problems in procedural law and social inequality both have disruptive power over the ideal of procedural justice.

1. **Legality & Regulation (25%)** This challenge arises due to the absence of legislation that explicitly regulates electronic summons mechanisms. As a result, the courts operate with a "policy logic" rather than a solid legal norm. This condition creates the risk of legal uncertainty and disparities between judicial regions.

2. **Digital Evidence (20%)** Evidence of publication uploads does not yet have national technical standards. Simple questions such as 'how long must a publication be displayed on the court's website?' or 'can a screenshot be used as valid evidence?' are still a practical debate in the field

3. Legal Certainty (15%) Variations in practices between courts indicate weak unification. Judges in one region may consider digital evidence valid, while others reject it because it is not explicitly regulated.

4. Access to Justice & Digital Divide (25%) This is the most serious ethical challenge. Legal modernization should be inclusive. However, when some members of society do not have devices or digital skills, efficiency turns into a tool of exclusion.

5. Integrity & Ethics of Judges (15%) In the context of judicial ethics, the challenge is not merely being "procedurally correct," but how judges balance efficiency with empathy. Technology should not make the judiciary lose sensitivity toward humans who are absent not due to intention, but due to limitations.

In order for the digitization of supernatural summons not to merely become a symbol of modernity, but truly strengthen the basis of substantive justice, several reform measures need to be undertaken: The digitization of supernatural summons at the Religious Court of Malang City is an interesting yet risky legal experiment. It demonstrates how the law attempts to navigate between two poles: the demand for efficiency and the call for justice. The juridical and ethical challenges depicted in the histogram are not merely administrative statistics, but a reflection of the human dilemma in the digital era.

D. The Political and Legal Implications on the Modernization of the Religious Court System

The digitalization of summons in absentia in the Religious Court environment is not merely a technical step, but rather a legal-political expression of the state's choice in interpreting justice in the digital era. The Supreme Court, through the 2010-2035 Judicial Reform Blueprint, asserts: technology is not a supplement, but the foundation of transformation towards an efficient and transparent judiciary. The Malang City Religious Court has become a small laboratory for that grand idea. Since 2022, they have been practicing the digital publication of summons in absentia, combining the official court website with the e-Court system. This step marks a shift in the orientation of the judiciary from a document-based system to a data-based system.[16]

However, every advancement brings a dilemma. On one hand, efficiency increases, publication costs drop drastically, and administrative processes become faster. On the other hand, there is a new disparity: not everyone understands the language of technology. This is where digital legal politics is tested—does it side with convenience or with justice? In the landscape of digital law, there are three main interconnected directions: administrative modernization, substantive justice, and social ethics. The three form a roadmap that is not only technical but also laden with values. Administrative modernization arises from the drive for efficiency and transparency. Digital systems allow case files to be neatly stored, court schedules to be integrated, and case publications to be easily accessed by the public. However, behind this speed lie challenges: human resources readiness and gaps in legal literacy have not been fully addressed. Digitization is not just about the system, but also about the readiness of the people who operate it.[17]

In the midst of the flow, substantive justice emerges in a space where technology meets human values. The Religious Court of Malang City, for example, judges often conduct "double summons": digital announcements are paired with publications in print media or mosque boards. Not because they distrust the digital system, but to ensure that no party is left behind in the legal process. Here, technology submits to values: justice must reach everyone. Meanwhile, at the lower layer, ethics and social accountability become a foundation that cannot be ignored. Ghost summonses conducted online demand uploaded evidence, precise timing, and data validity that cannot be compromised. Thus, an important idea emerges: the Supreme Court needs to formulate a Digital Court Code of Ethics, a new norm regulating the behavior of legal officers in cyberspace. Because in the digital era, accountability is not only a matter of law, but also a matter of morality.

The map above illustrates the vertical relationship between national legal politics and practical implementation in the field. The flow of modernization runs from top to bottom, from policy documents to the courtroom, yet social and ethical responses move from bottom to top, demanding adjustments in values and new regulations. From the perspective of progressive legal politics, as stated by Satjipto Rahardjo, the law should not merely be a "formal machine" executing the commands of the text. Law must live among a changing society. The Religious Court of Malang City has demonstrated this form of legal life: they do not wait for regulations to be issued, but instead actively seek new forms of digital justice. However, a healthy digital legal policy requires three things:

1. Regulatory Certainty. Old regulations such as Government Regulation No. 9 of 1975 and HIR/RBg are no longer in sync with digital practice. Without updating procedural law, digital innovation will always operate on shaky ground.
2. Digital Ethics and Integrity. The use of electronic systems demands a new kind of honesty: digital traces cannot be erased, but they can also be manipulated if there is no moral oversight.
3. Inclusive Justice. Digital law only has meaning if it can be accessed by all parties, including those who do not understand technology. Here the state is required to present affirmative policies, not merely to provide a network, but to ensure that not a single citizen loses their right to be heard.

The legal-political implications of digital ghost summons in the Religious Court of Malang City reveal one important thing: that the justice of the future is no longer determined by how fast technology develops, but by how deeply human values are upheld in the process. Digitalization is merely a new language of old law; it needs to be interpreted with wisdom. For as Ibn

Khaldun said, 'Justice is the measure of a nation's welfare; when it is lost, the nation loses its meaning.' Therefore, the modernization of law will only be valuable if it does not lose its human aspect. This is where the challenge of Indonesia's digital legal politics stands: between the screen and conscience.

Conclusion

The transformation of supernatural summons from manual to digital form in the Religious Court of Malang City shows a new face of Islamic judiciary in Indonesia: a law that begins to dialogue with technology. However, behind this progress lies a paradox. Digitalization indeed brings efficiency, speeds up processes, and reduces costs, but without adequate regulatory and ethical updates, it has the potential to create new inequalities between those connected to the digital world and those disconnected from it. In the context of national legal politics, digital supernatural summons are a concrete representation of the direction of legal reform as outlined by the Supreme Court in the Judicial Reform Blueprint 2010-2035. However, law is not merely a technology policy; it is an embodiment of justice that lives in social consciousness. Therefore, the task of the state and judicial institutions does not stop at building digital systems, but also ensuring that these systems are accessible, understood, and felt by all layers of society. From a normative standpoint, the most urgent need is the establishment of a Supreme Court Regulation (Perma) or an amendment to Government Regulation No. 9 of 1975 so that the definition of "mass media" includes the official digital media of the courts. From a social perspective, there is a need for legal and digital literacy programs through Legal Aid Posts (Posbakum), educational institutions, and religious communities, so that justice is not only read on screens, but also present in real-life spaces. And from an ethical perspective, judges and court officials need to build a new awareness: that every click, upload, and piece of data they handle is not just an administrative procedure, but part of a moral mandate to uphold justice that brings mercy to all creation. Ultimately, the digital ghost summons at the Malang City Religious Court is not just a legal phenomenon, but a symbol of the changing times from ink to pixels, from notice boards to online pages. However, the essence of justice does not change: it must still side with the weak, reach those far away, and hear the silent. Digitization is merely a tool; human values are what determine whether the law is truly alive or merely functioning.

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