

## The Validity of Electronic Evidence in Indonesian Criminal Procedure

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**Abstract.** *Proof is an important stage in the examination of a case in court, because it determines whether a person is charged with guilt or innocence. So in conducting a case examination, the most important stage is proof. Legal evidence in Indonesia is evidence that is only regulated in Article 184 paragraph (1) of the Criminal Procedure Code. Electronic evidence arising from the crime of misuse of technology is evidence that is not regulated in the Criminal Procedure Code. The purpose of writing is to determine the validity of electronic evidence in Indonesian Criminal Procedure Code and to be able to determine the strength of electronic evidence in proving criminal procedural law. In this study, this type of research was used with normative law, which was carried out using a statutory approach and analyzing legal concepts. This research is complete because it uses primary and secondary legal materials, uses library research techniques so that the legal materials are collected and the legal materials are analyzed using description and evaluation techniques. From the results of this study, electronic evidence is qualified as legal evidence, electronic evidence can be said to be the same as evidence regulated in the Criminal Procedure Code, namely documentary evidence and evidence instructions and also confirmed in the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions that the strength of proof is able to equate the strength of evidence with letters and instructions, but this is a judge who is not bound, which means he is free to assess the strength of evidence.*

**Keywords:** *Criminal; Electronic; Evidence; Justice.*

### 1. Introduction

In the process of examination at a criminal court trial, it is very important to present evidence, because a person is declared guilty or not depending on the

evidence presented at trial. So in this regard, the precautionary principle is very important to apply in assessing evidence.

The determination of someone guilty or not is determined by evidence. If the evidence presented before the court is not sufficient to prove a person's guilt then he will escape punishment, but this will turn around if the evidence presented is able to prove that someone is guilty and must be sentenced according to the applicable law. There are 2 (two) words that show the meaning of evidence in a foreign language, namely evidence and proof. "Evidence is defined as information collected so that it can become supporting data that can ensure that the facts are true, while proof refers to the results of an evaluation process.

Based on Article 184 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) it is regulated regarding information on evidence, where "the evidence is in the form of witness statements, expert statements, letters, instructions and statements of the accused." In the provisions of this article, it has been limitedly stipulated that the evidence is capable of providing evidence of guilt against the defendant before the court, because outside of this evidence cannot be justified as evidence by the head judge at trial, the public prosecutor, the defendant and legal advisors.

The development of the era is accompanied by technological developments where the use of these technologies is increasingly sophisticated, so sophisticated that sometimes technology can cause problems. Misuse of technology is often done to commit criminal acts. In the sense that, if a crime occurs through the misuse of technology, electronic evidence will be needed in the settlement at trial. What is meant by electronic evidence is "a piece of evidence that is provided in the form of electronic information, electronic documents, and can be done by examining witnesses by teleconference, as well as being able to view company documents by microfilm, but this evidence is in addition to radio cassette recordings, VCD (Video Compact Disc) or DVD (Digital Versatile Disk), photos, fax.

But as said that the Criminal Procedure Code does not include or mention electronic media that can be used as evidence in court. It is from this problem of proof that the issuance of Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) is to complete and prove a criminal case or crime that has been committed using electronic media.

There are several settlement cases using electronic evidence in court, for example in the BULOG case with BJ Habibie as a witness who gave his statement using a teleconference. In addition, there is another case, namely the defamation

case involving Mrs. Prita Mulyasari. Regarding these two cases, the settlement in court was using electronic evidence, but it is known that electronic evidence is not regulated in Article 184 of the Criminal Procedure Code.

Based on the description above, the writer is interested in developing the purpose of writing to study and analyze the Legitimacy of Electronic Evidence in Indonesian Criminal Procedure Code.

## **2. Research Methods**

To conduct research in this writing, the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis

## **3. Results and Discussion**

### **3.1. The validity of electronic evidence is valid evidence in the Criminal Procedure Code**

Specifically, it has not been found regarding evidence with electronic evidence in the Criminal Procedure Code. The development of the times, which is accompanied by the development of criminal acts which are increasing in the State of Indonesia, it is very necessary to regulate electronic evidence. The Criminal Procedure Code regulates in a limited manner regarding valid evidence in Article 184, namely evidence of witness statements, expert statements, letters, instructions, and statements of the accused. The Criminal Procedure Code adheres to the principle of legality which means "every act that is referred to as a criminal act/action must be formulated in a law that is held beforehand which stipulates a clear formulation of these actions."<sup>1</sup>But based on the principle of *lex specialis derogat legi generalis*, namely special rules that rule out general legal rules, in other words, if there are special legal rules that make electronic evidence usable as legal evidence, the Criminal Procedure Code can be set aside, so that this does not happen. legal vacuum. As a law enforcement officer whose job is to examine, try and decide cases, judges may not reject a case submitted based on unclear or incomplete legal reasons, so in this case the judge must use the argumentation method in resolving cases in court, because it has not been

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<sup>1</sup>I Dewa Made Suartha, 2015, "Shifting from Formal to Formal and Material Legality Principles in National Criminal Law Renewal" Faculty of Law, Udayana University, *Yustitia*, Vol. 4 Number 1, January-April 2015, p. 235

regulated. specifically in the Criminal Procedure Code regarding electronic evidence. in court,

The Indonesian state in the evidentiary law system related to problems with electronic evidence has not previously been regulated clearly, but after the promulgation of the ITE Law, which prioritizes that electronic evidence functions as information, electronic documents, and printouts that have legal force as evidence in court . Thus, this law is expected "to answer various rights related to law (including evidentiary law) relating to cyberspace (cyber law, virtual world law), law on technology and communication (law technology of information and communication), and law on trading using electronics (e-commerce).<sup>2</sup>

The interesting thing about the existence of electronic evidence is that in the use of electronic information technology or the internet, electronic evidence is a very hot issue. Apart from Indonesia, there are several countries that recognize electronic evidence, namely Singapore, Japan, China, Chile and Australia, which regulate the legal system in which recognition of electronic data is used as evidence in court. In Article 5 paragraph (1) the ITE Law has provided a legal basis, namely that electronic information is capable of producing printed results which is an extension of a valid evidence as in accordance with the procedural law in force in Indonesia. The expansion in question is that electronic evidence adds to the evidence previously regulated in the Indonesian criminal procedural law.

Based on Article 44 of the ITE Law, electronic evidence in the form of information and/or electronic documents is other evidence besides the evidence as referred to in the statutory provisions for the purposes of investigation, prosecution and examination in court proceedings. In its original form, electronic documents are evidence other than the evidence regulated in the Criminal Procedure Code. This law also stipulates the conditions for electronic evidence to be considered valid, namely the formal requirements stipulated in Article 5 paragraph (4) of the ITE Law that the provisions on electronic information and documents in Article 5 paragraph (1) do not apply to letters which according to Laws must be made in written form and must be made in the form of a notary deed or a deed drawn up by the official who made the deed. Furthermore, the material requirements are regulated in Article 6, namely requiring that information must be in written or original form, electronic information and/or electronic documents are considered valid if as long as the information included can be accessed, displayed, guaranteed for its integrity, and can be accounted for so that it explains a situation. Furthermore, the ITE Law states that electronic evidence is an extension of the evidence regulated in the Criminal Procedure Code. Printouts

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<sup>2</sup>Munir Fuady, 2012, "Legal Theory of Criminal and Civil Proof", PT. Citra Aditya Bakti, Bandung, p. 168.

from electronic documents can be categorized as other letters as stipulated in Article 187 letter d of the Criminal Procedure Code. and can be accounted for so as to explain a situation. Furthermore, the ITE Law states that electronic evidence is an extension of the evidence regulated in the Criminal Procedure Code. Printouts from electronic documents can be categorized as other letters as stipulated in Article 187 letter d of the Criminal Procedure Code. and can be accounted for so as to explain a situation. Furthermore, the ITE Law states that electronic evidence is an extension of the evidence regulated in the Criminal Procedure Code. Printouts from electronic documents can be categorized as other letters as stipulated in Article 187 letter d of the Criminal Procedure Code.

According to Munir Fuady,<sup>3</sup>There are several criteria or requirements so that electronic evidence can be considered as documentary evidence, namely the first is to use the principle of authenticity meaning that a document or digital letter and signature is considered authentic, unless it can prove otherwise. In addition to these principles, Munir Fuady also stated information integrity and document authenticity. In this case, an electronic document or electronic record is considered original if it can display a guarantee that the document or record is original, unaltered, complete and the same as the time when the creation process was carried out. Furthermore, there is business notarization, the task of a notary "is not only to make authentic deeds but also to register and legalize private documents."<sup>4</sup>In this way, a notary or special officer must be formed to carry out a review, check the use of certain standards, which then the notary can state that the electronic signature is correct or not signed by the party written as the signatory.

According to Edmon Makarim, states the principle of functional equivalent approach which must be fulfilled at least with 3 (three) basics so that electronic information and documents can be said to be the same as written evidence, namely "can be stored and recovered, not changing in substance or the intended authenticity is guaranteed, as well as the signature if there is information explaining the existence of a legal object who is responsible for it or there is a reliable authentication system that explains the identity and authority or verification of the party."<sup>5</sup>Furthermore, electronic evidence can be regarded as an extension of evidence evidence. Evidence of clues is regulated in Article 188 of the Criminal Procedure Code, namely "actions, events or circumstances, which

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<sup>3</sup>Ibid., p. 156.

<sup>4</sup>I Ketut Tjukup, et.al., 2016, "Legal Power of Proof of Waarrmerken (Deed Under Hand Registered) at Notary", Scientific Journal of Notary Masters Study Program, Faculty of Law, Udayana University, p. 154.

<sup>5</sup>Ramiyanto, 2017, "Electronic Evidence as Valid Evidence in Criminal Procedure Law", Journal of Law, Faculty of Law, Sjakhyakirti University, Palembang, p. 475, quoted from Edmon Makarim, 2015, "Authenticity of Electronic Public Documents in Government Administration and Public Administration" Journal of Law and Development, Number 4, 2015, p. 532

because of their agreement, both between one another and with a crime and who did it." In the Criminal Procedure Code, the source of evidence is determined in a limiting manner, that is, from witness statements, letters and statements of the accused. If the substance of the electronic evidence contains instructions such as sound recordings, pictures, video recordings and the like, then this evidence is used as an extension of the evidence evidence. So that the expansion of evidence leads is not only taken from the agreement between witness statements, letters and statements of the accused, but can be added to electronic evidence.

There are several special laws that regulate electronic evidence which can be said to be an extension of the evidence regulated in the Criminal Procedure Code, namely the Law of the Republic of Indonesia Number 8 of 1997 concerning Electronic Documents Article 15 paragraph (1) recognizes that electronic evidence is the printed output. is valid evidence seen from its substance in the form of electronic documents containing elements of the meaning of letters so that their position is an extension of documentary evidence. Furthermore, in the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes in Article 26A it is stated emphatically that electronic evidence is an extension of the directive evidence regulated in Article 188 of the Criminal Procedure Code.

So the validity of evidence, namely electronic information and/or electronic documents as can be referred to as an expansion of existing evidence that is regulated in the Criminal Procedure Code. The expansion referred to has been linked to Article 5 paragraph (1) of the ITE Law as follows:

1. Serves as an extension of valid evidence in accordance with the applicable procedural law in Indonesia;
2. The scope of evidence that has been regulated in the criminal procedural law is expanded by printouts of information which are documentary evidence as well as evidence instructions.

### **3.2. The Power of Electronic Evidence in Criminal Procedure Law**

The strength of proof of electronic evidence has not been regulated in Indonesian criminal law and there is no legal force in court. Usually in the settlement of cases at trial, the electronic evidence presented at the trial will cause a conflict with the technical assessment of the electronic evidence. With this, the judge is expected to be able to decide on the technical evaluation of the electronic evidence. It is also requested that if a general crime has occurred, and with no regulation of electronic evidence in the Criminal Procedure Code, the

judge is hereby required to make legal discoveries in order to prevent a legal vacuum from occurring.

Actually, if you look further, the strength of proof of this electronic evidence can use the strength of proof of letter evidence and evidence of instructions. In accordance with the explanation on the validity of the electronic evidence above, it is said that electronic evidence is an extension of the evidence regulated in the Criminal Procedure Code, namely documentary evidence and directive evidence. Strength of proof of documentary evidence "From a formal point of view, documentary evidence as referred to in Article 187 letters a, b, and c has perfect formal proof value, by itself the form and content of the letter:

- That's right, unless it can be paralyzed with other evidence;
- All parties can no longer judge the perfection of form and manufacture;
- It is also no longer possible to judge the truth of the information set forth by the authorized official insofar as the contents of the statement cannot be paralyzed by other means of evidence;

Thus, from a formal point of view, the contents of the statement contained therein can only be paralyzed by other means of evidence, either in the form of witness testimony, expert testimony or the defendant's statement.

This review from a formal point of view is emphasized from a "theoretical" point of view, not necessarily something that can be justified in theory can be justified in practice, because in fact what is justified from a theoretical point of view is overruled by several principles and provisions contained in the Criminal Procedure Code.

From a material perspective, all forms of documentary evidence mentioned in Article 187 are not binding evidence. The judge is free to judge the strength of the evidence. The reason for the judge's disengagement from the letter of evidence is based on several principles, including:

- The principle of the process of examining criminal cases
- The principle of the judge's conviction
- The principle of the minimum limit of proof.

From the description above, it can be understood that even though it is said to be perfect, it still cannot have binding evidentiary power and is still said to be an

imperfect proof strength value, the judge still evaluates how strong and correct it is which must be reviewed from several reasons.

Furthermore, the strength of proof of evidence, namely:

- The judge is not bound by the truth of the agreement embodied by the instructions. Therefore, the judge is free to assess it and use it as an effort to prove;

Instructions as evidence cannot stand alone in proving the guilt of the accused. Guidance evidence remains bound by the principle of the minimum limit of evidence. Therefore, in order for the evidence to have sufficient probative value, must supported by at least one other piece of evidence.

From the information regarding the strength of evidence above, it can be said that documentary evidence and directive evidence have the same evidentiary strength, that is, imperfect proof strength and based on the judge's conviction. In other words, because the judge is not bound and is free to judge how later in assessing the strength of the electronic evidence and must be supported by at least one other piece of evidence so that the electronic evidence can be used in terms of evidence at trial.

#### **4. Conclusion**

The validity of an electronic evidence has been recognized as evidence that can be legalized in criminal procedural law, namely letter evidence and evidence evidence. In addition, recognition of electronic evidence is emphasized in the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions, it is explained that electronic evidence is an addition/extension of evidence that has been regulated in criminal procedural law in Indonesia. The strength of electronic proof has not been regulated in the Criminal Procedure Code. However, because electronic evidence has been recognized as valid and qualified as documentary evidence and evidence, it is possible to equate the strength of electronic evidence with the strength of proof of letters and evidence of instructions.

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