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Legality of Electronic Information According to Law No. 19 of 2016 as Evidence in Trials at Court

Wira Indra Bangsa[1], T. Riza Zarani[2]

[1]Postgraduate Master of Law Student at Pembangunan Panca Budi University,
[2]Supervisor at the Master of Law Study Program at Pembangunan Panca Budi University

Corresponding Author: Wira Indra Bangsa

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ABSTRACT

Then in Article 5 paragraph (1), (2) and (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 it has been explained that Electronic Information and/or Electronic Documents and/or their printouts are tools valid legal evidence and is an extension of legal evidence in accordance with the applicable Law of Procedure in Indonesia, which is declared valid when using an Electronic System in accordance with the provisions stipulated in this law. However, in practice there is a legal void in procedural law in Indonesia related to the strength of electronic evidence. The method in this study uses the juridical-normative method, namely solving a problem by referring to laws and regulations. This normative juridical research starts from analyzing a case and then looking for a solution through legislation.

Electronic evidence can be used as valid evidence in criminal law, so by using one of the parameters of criminal evidentiary law known as bewijsvoering, namely the breakdown of how to convey evidence to judges in court. When law enforcement officials use evidence obtained in an illegal way or unlawful legal evidence, the said evidence is set aside by the judge or considered by the court to have no evidentiary value.

Keywords: Legitimacy, Electronic Evidence, evidence, Trial, Court.

INTRODUCTION

The phenomenon of the dissemination of information using digital media is currently of particular concern among the public. This is further exacerbated by the emergence of various practical communication tools in the form of gadgets such as smartphones, tablets and others that are so sophisticated but are not equipped with knowledge or education on how to communicate properly, so they often become a sharp edged sword. two because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means for the occurrence of illegal acts.

Digital attacks in Indonesia will increase in 2021, based on data from the Southeast Asia Freedom of Expression Network (SAFEnet). There were at least 193 incidents of digital attacks last year, mostly via WhatsApp and Instagram. The number of digital attacks is up 38% from the previous year. In 2020, there were 147 recorded cases of digital attacks. Judging by the number of victims, cyberattacks hit activists in 50 incidents, 34 incidents on ordinary citizens, and 27 incidents on students. Then digital attacks that befell journalists and the media as many as 25 incidents. (https://databoks.katadata.co.id/)

Then in Article 5 paragraph (1), (2) and (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 it has been explained that Electronic Information and/or Electronic Documents and/or their printouts are tools valid legal evidence and is an extension of legal evidence in accordance with the applicable

Law of Procedure in Indonesia, which is declared valid when using an Electronic System in accordance with the provisions stipulated in this law. However, in practice there is a legal void in procedural law in Indonesia related to the strength of electronic evidence.

This situation is then the reason for conducting this research, namely to find alternatives to solving the problem of electronic information and/or documents submitted as evidence by the public in court, is there any other way than that which is the same or at least close to the similarity in the use of electronic devices or procedures as owned by every Forensic Laboratory of the Indonesian National Police.

LITERATURE REVIEW

1. Legal Legitimacy

Legitimacy according to the legal dictionary above legitimacy means something that is certain. The definition of legality needs to be quoted in this paper to complete the notion of legal validity. If the definition of legality is known, it will be easy to relate it to the notion of legal validity which is one of the studies in this paper.

The term validity is a translation of the Dutch legal term "recht matig" which can literally be interpreted as "based on law". In English, the term validity is called "legality" which means "lawfulness" or in accordance with the law. This concept stems from the birth of the concept of a rule of law state (Rechtsstaat) in which government actions must be based on the existence of legal provisions governing "recht matig van het bestuur" (Philipus M. Hadjon, 1987. 23), which has the core of the application of the principle of legality in all government legal actions.

Thus, the principle of legitimacy/legality is very closely related to the aim of protecting people's rights from government action. According to Kuntjoro Purbopranoto, in order for a decision to become a valid decision, there are two conditions that must be met, namely material and formal conditions. Kuntjoro Purbopranoto (Philipus M. Hadjon, 1994): further stated: the material requirements for the validity of a decision are as follows:

a. Government tools that make decisions must be authorized (entitled);
b. In the will of the government apparatus that makes decisions there should be no juridical deficiencies (geen yuridische gebreken in de welsvorming);
c. Decisions must be given the form (vorm) stipulated in the regulations that form the basis and their formation must also pay attention to the procedure for making decisions if the procedure is strictly stipulated in the regulation (Rechtmatig);
d. The contents and objectives of the decision must be in accordance with the contents and objectives to be achieved (Doelmatig).

2. Electronic information as evidence

According to Eddy O.S. Hiariej, argues that based on Article 5 of the ITE Law that electronic information evidence and electronic documents and printouts are an extension of evidence based on Article 184 of the Criminal Procedure Code. According to him, there is no need to argue anymore whether electronic information evidence and electronic documents and printouts are an expansion of documentary evidence or guidance evidence because basically electronic information evidence and printed results are additions to new evidence other than those in the ITE Law. Nur Laili Isma & Arima Koyimatun, 2014, 109-116)

So the evidence in proving criminal cases currently consists of five (5) pieces of evidence regulated in Article 184 of the Criminal Procedure Code and Article 5 of Law Number 11 of 2008 concerning Information and Electronic Transactions, namely as

follows: witness statements, expert statements, letters; instruction; statement of the accused; and electronic information and Electronic Documents and/or their printed output.

3. Court

The court is actually an institution in society that has been accepted by various groups of people, not only as a legal institution that examines and adjudicates cases, but can also be seen as an economic and political institution as well as a symbol of people's hopes for justice and so on. . The court cannot be seen as a legal institution only because it is not completely described. (Satjipto Rahardjo, 1994, 447). National courts in developing countries such as Indonesia are considered synonymous with the economic, legal, cultural and political systems of the countries where these courts are located. (D.M Lew, Julian, 1978, 12).

The court as an executing agency of judicial power actually has a very important function, the existence of a court institution is the main characteristic of a rule of law state. In accordance with the constitution, courts can play a role both politically, juridically and sociologically:

a. Political role is a general function of every state institution. This role includes the involvement of the Supreme Court who consciously brings this country towards the goals stated in the constitution. Of course, the role of the Supreme Court must be followed by court institutions under it;
b. The juridical role is the main function of the court as required by Article 1 of Law no. 4 of 2004 concerning Judicial Power, namely to administer justice in order to uphold law and justice based on Pancasila for the sake of the implementation of the Republic of Indonesia's legal state;
c. The sociological role is no less important in carrying out court life, because this role is the soul of other roles as required by Article 28 paragraph (1) of Law No. 4 of 2004 where judges are required to explore, follow, and understand legal values and a sense of justice that lives in society.

These three roles constitute one unit in its application, although each case resolved by the court is different, in practice it must be adapted to the characteristics of a case. As an institution, the judiciary cannot be separated from its human factors, judges, clerks, bailiffs and others.

The judge is the most decisive factor for the form of the court, because when talking about the court it is the same as talking about judges in their human dimension as individual beings, as well as social beings. Likewise, the work of the court institution cannot be seen solely from the perspective of normative law as an institution that implements law. Even though Law No. 4 of 2004 concerning Judicial Power expressly states that the judicial power is an independent power, free from interference from parties outside the judicial power, but in reality it cannot turn a blind eye that the judicial power is still laden with various political, social, economic and even personal interventions. the judge himself as an ordinary human being who has an attitude of ambivalence in his mind. The freedom given to the judiciary in carrying out justice is rightly owned, because adjudicating is a noble act, especially to give decisions which must be based solely on truth, honesty and justice. The task of a judge must be kept away from pressure or influence from any party, be it individuals, groups or society, especially from government powers that have a strong and wide network, so that the weak parties are harmed. Even though seekers of justice must not be distinguished by position and dignity, they must also be given the best possible guarantee by the judicial authority. (Wantjik Saleh, 1976, 17)

METHODS

This research is descriptive analysis in nature, namely with an object, condition, system of thought or an event in the present

which the end result is to make a description, a factual, systematic and accurate picture of the facts and phenomena investigated. The method in this study uses the juridical-normative method, namely solving a problem by referring to laws and regulations. This normative juridical research starts from analyzing a case and then looking for a solution through legislation. Normative legal research is legal research conducted by examining literature or secondary data. (Soerjono Soekanto & Sri Mamudji, 2003, 13)

According to Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2010, 35), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand. The data used as a data source in this study is secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials.

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RESULT

The formal legal system (procedural law) regarding evidence in Indonesia, both the Civil Code (HIR/RBg) and the Criminal Code, have not accommodated documents or electronic information as evidence. Prior to the ITE Law which was later amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, the existence of electronic evidence had been legally regulated and recognized in several laws and regulations. (Muntasir. 2020, 5)

The existence of this type of electronic evidence is regulated in Article 5 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 confirming, "Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence" . Starting from the provisions of this article, the types of electronic evidence can be detailed, namely (Josua Sitompul, 2012):

1. Electronic information;
2. electronic documents;
3. electronic information and electronic documents and their printouts;
4. electronic information and its printed output;
5. electronic documents and printouts;
6. printout of electronic information, and
7. printout of electronic documents

To be used as valid legal evidence, electronic information and electronic documents must meet the formal requirements and material requirements that have been determined. The formal requirement is that electronic information or documents are not documents or letters which according to the law must be in written form. While the material requirements are that electronic information and documents must be guaranteed for their authenticity, integrity, and availability. (Josua Sitompul, 2012).

Electronic information and/or electronic documents as well as printouts of electronic information and/or electronic documents are an extension of valid legal evidence in accordance with the procedural law in force in Indonesia. There are 2 (two) definitions regarding electronic evidence as an "extension" of valid legal evidence. First, add evidence that has been regulated in criminal procedural law in Indonesia, for example the Criminal Procedure Code. Electronic information and/or electronic documents as electronic evidence add to the types of evidence regulated in the Criminal Procedure Code. Second, broaden the scope of evidence that has been regulated in criminal procedural law in Indonesia, for example in the Criminal Procedure Code. Printouts of electronic information and/or documents are proof of letters regulated in the Criminal Procedure Code. The existence of electronic information and electronic

documents is binding and recognized as valid evidence to provide legal certainty for the operation of electronic systems and electronic transactions, especially in evidence and matters related to legal actions carried out through electronic systems. However, the recognition of electronic evidence as legal evidence as stipulated in the ITE Law is felt to be insufficient for the benefit of judicial practice, because new electronic evidence arrangements at the level of material law have not yet reached procedural law (formal law).

Whereas because of the very inconsistent nature of digital evidence, digital evidence cannot be directly used as evidence for trial proceedings, so a standard is needed so that digital evidence can be used as evidence at trial, namely (Muhammad Neil el Hilman, 2020, 102):

1. Acceptable, namely data must be able to be received and used for the sake of law starting from the interests of investigations to the interests of the court;
2. Original, namely the evidence must be related to the events/cases that occurred and not engineering;
3. Complete, namely evidence can be said to be good and complete if it contains many clues that can assist the investigation;
4. Reliable, that is, evidence can tell what happened behind it, if the evidence is reliable, then the investigation process will be easier and this requirement is a must.

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions itself requires minimum requirements so that digital evidence can be used as evidence in court as follows (http://arijuliano, blogspot.com):

1. Can display electronic information and/or electronic documents in their entirety in accordance with the retention period stipulated by laws and regulations;
2. Be able to protect the availability, integrity, authenticity, confidentiality and accessibility of electronic information in the operation of the electronic system;
3. Can operate in accordance with procedures or instructions in the operation of the electronic system;
4. Equipped with procedures or instructions announced in language, information or symbols that can be understood by the party concerned with the operation of the electronic system; and
5. Have an ongoing mechanism to maintain updates, clarity and accountability of procedures or instructions.

That later in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions these provisions are excluded, as referred to in Article 5 paragraph 4 of Law Number 19 of 2016 concerning Amendments to Law Number 11 2008 concerning Electronic Information and Transactions, which determined that there are several types of electronic documents that cannot be used as legal evidence when they are related to the creation. Letters which according to the law must be made in written form and Letters and their documents which according to the law must be made in the form of a notary deed or a deed drawn up by the official who made the deed. These material requirements are regulated in Article 6, Article 15 and Article 16 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008, which in essence electronic information and documents must be guaranteed for their authenticity, integrity and availability. To guarantee the fulfillment of the material requirements referred to in many cases, digital forensics is needed. (http://www.hukumonline.com). Related to digital forensics (https://nasional.tempo.co.), is an absolute requirement that must be carried out so that electronic documents can be used as evidence in court. Without going

through digital forensics, an electronic document cannot be used as evidence because the validity of the electronic document cannot be guaranteed. (Santhos Wachjoe P, 2016. 13.)

DISCUSSION

Proof is one of the stages in the trial that determines the process of the case, because from the results of the evidence it can be known whether or not a case or dispute between the parties is true. (Dewi Asimah. 2020, 104). Arrangements for electronic evidence must be based on the evidentiary system and principles of procedural law that apply in Indonesia. Subekti states that the law of evidence is a series of disciplinary rules that must be heeded in holding a fight before a judge, between the two parties who are seeking justice (Subekti, 1995.2) and Hari Sasangka defines the law of proof as part of the procedural law which regulates various types of evidence that are valid according to law, the system adopted in proof, the conditions and procedures for submitting said evidence and the authority of the Judge to accept, reject and evaluate a proof.(Hari Sasangka and Lly Rosita, 2003.10) In the proving stage there are 2 (two) elements that play an important role, namely: First, the elements of evidence. The parties in the evidentiary stage must use valid evidence according to the law of evidence and may not use evidence that is not regulated in statutory regulations. Second, the Rules of Evidence. That the evidence provided for in the laws and regulations is considered valid evidence and can be used as evidence in court, this is because the laws and regulations regulate how to make, use and strength of evidence as evidence. Referring to the provisions regarding evidence stipulated in the procedural law in force in Indonesia, there must be a testing tool for electronic evidence so that the evidence can be declared valid at trial, the same as for other evidence, namely formal requirements and material requirements. These requirements are determined based on the type of electronic evidence referred to in its original form or printout. The material requirements for electronic evidence are regulated in Article 5 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, namely Electronic Information and Documents are declared valid if using an Electronic System in accordance with the provisions regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. (Dewi Asimah. 2020, 105)

The formal requirements for electronic evidence are regulated in Article 5 paragraph (4) and Article 43 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions namely:

1. Information or Electronic Documents do not apply to:

a. Letters according to law must be made in written form; and
b. Letters and documents according to the law must be drawn up in the form of a notarial deed or a deed drawn up by the official who made the deed.

2. A search or confiscation of the Electronic System must be carried out with the permission of the chairman of the local district court;
3. Searching or seizing and maintaining the maintenance of public service interests.

Article 30 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions regulates the prohibition against the law and unauthorized access to other people's computers and electronic systems. This causes there is no mechanism that can be done if someone refuses to provide password access on their device. The absence of clear rules and procedures regarding electronic evidence can create legal uncertainty for investigators and digital forensic experts who confiscate devices containing electronic evidence and make it difficult for the court to assess the

integrity of electronic data/documents presented in evidence. In the following, several cases regarding the application of electronic evidence in the evidence system in court will be described.

Criminal Case

Regarding proof with electronic evidence, it cannot be found specifically 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."(I Dewa Made Suartha, 2015, 6)

According to Munir Fuady, (Munir Fuady, 2012, 168.) 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 the signature are considered authentic, unless they 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."

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 expansion of evidence instructions regulated in Article 188 of the Criminal Procedure Code.

That the power of proof of this electronic evidence can use the power 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 (M. Yahya Harahap, 2009, 309.):

1. It is correct, unless it can be paralyzed with other evidence;
2. All parties can no longer judge the perfection of the form and manufacture;
3. It is also no longer possible to assess the truth of the information contained in the authorized official as long as the contents of the statement cannot be paralyzed by other evidence;
4. Accordingly, from a formal point of view, the contents of the statement contained therein can only be paralyzed by other means of evidence, whether in the form of witness testimony, expert testimony or the defendant's statement. (M. Yahya Harahap, 2009, 309.)

That the application of evidence with electronic evidence in criminal cases has been applied in the first case: 54/PID.B./TPK/2012/PN.JKT Jo. 11/PID/TPK/2013/PT.DKI. Jo. 1616 K/Pid. Sus/2013 Jo. 107 PK/PID.SUS/2015 which principally states that in Article 5 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions it is stated that: "Electronic Information and/or Electronic Documents and/or their printed output are valid legal evidence", the article emphasizes that the existence of electronic evidence is valid, supported by r Computer Activity Reports for Forensic Data Analysis Processes. Furthermore, Article 5 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions states that "Electronic Information and/or Electronic Documents and/or their printed output as referred to in paragraph (1) is an extension of valid evidence in accordance with the Law Events that take place in Indonesia."

Whereas then the use of electronic evidence in criminal cases has also been confirmed by the Constitutional Court through decision Number 20/PUU-XIV/2016 which basically states that the phrase "electronic information and/or electronic documents" in Article 5 paragraph (1) and paragraph (2), Article 44 letter b of the ITE Law is contrary to the 1945 Constitution as long as it is not interpreted, "electronic information and/or electronic documents obtained according to the provisions of the applicable law and/or carried out in the framework of law enforcement at the request of the Police, Prosecutor's Office, Corruption Eradication Commission and/or other law enforcement institutions".

Then it was emphasized that to assess whether electronic evidence can be used as legal evidence in criminal law, one of the parameters of criminal evidentiary law, known as bewijsvoering, is used, namely the description of how to convey evidence to judges in court. When law enforcement officials use evidence obtained in an illegal way or unlawful legal evidence, the said evidence is set aside by the judge or considered by the court to have no evidentiary value.

The application of bewijsvoering in the use of electronic evidence is in accordance with the Constitutional Court Ruling referred to and then connected with the enactment of Law Number 20 of 2022 concerning Protection of Personal Data, the validity of the application of electronic evidence in criminal procedural law must meet formal and material requirements, one of which refers to on the provisions of privacy rights in Law Number 20 of 2022 concerning Protection of Personal Data.

Civil Cases

According to the general explanation of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), it is deemed necessary to understand the strength of proof of written evidence (letters) as stated in the Civil Code. The evidentiary power of electronic documents that are expressly recognized, and equated with documents made on paper, is very possible to do, given the nature of electronic information and/or electronic documents that can be transferred into several forms or printed in print out form, so that they are equated with documents made on the paper. Documents made on paper, in the practice of civil procedural law are categorized as written evidence (letters). The position of written evidence in the practice of civil cases is one of the most important pieces of evidence. Sudikno Mertokusumo divides written evidence (letters) into 2 (two) categories of forms namely, letters that are deed and other letters that are not deed. (Sudikno Mertokusumo. 15) Sudikno Mertokusumo further stated that the deed itself is divided into 2 (two) categories, namely authentic deed and private deed.

Provisions of laws and regulations regarding civil evidence, which states that an authentic deed is a deed whose form has been determined by law, and made by and/or in the presence of an authorized public official. The strength of proof attached to an

authentic deed is perfect and binding evidence for both parties. Regarding the existence of formal defects contained in an authentic deed, the inherent power of proof only has the power of proof as an underhand deed. The power of proof attached to an authentic deed, even though it is perfect and binding for both parties, is still possible to be crippled by the presence of opposing evidence. The position of electronic information and/or electronic documents that are transferable to other forms of media or can be printed out, so that they can be in the form of written documents, if examined in the realm of civil procedural law, still opens up opportunities for the possibility of opposing evidence (tegenbewijs). Thus the print out results of electronic documents such as online buying and selling transactions, the position of electronic payment transcripts which can be used as evidence of a sale and purchase dispute, still opens up the possibility of efforts to deny the validity of a piece of evidence, in this case the party who denies the instrument proof of the transcript is burdened with the obligation to prove that the print out of the electronic transcript is not correct. The duties and roles of judges in assessing electronic evidence that can be used in court practice are still very diverse. (Sudikno Mertokusumo.)

As for the strength of proof of electronic evidence, there are those who argue that electronic evidence is new evidence as an extension of evidence in trials as expressly stated in Law Number 11 of 2008, and there are also opinions stating the strength of evidence from electronic evidence is initial evidence, namely evidence that cannot stand alone and must be supported by other evidence. Therefore, electronic evidence is evidence as an extension of the types of evidence that have been determined in a limited and limited manner, both contained in article 184 of the Criminal Procedure Code, as well as in article 1866 of the Civil Code. Regarding the strength of proof inherent in certain electronic evidence, it can be said that electronic evidence still has the possibility of being paralyzed in the presence of opposing evidence (tegenbewijs). This does not mean that electronic evidence has final evidentiary power which cannot be disabled by any means of evidence. (Sudikno Mertokusumo)

The practice of proving in civil cases at the Religious Courts regarding electronic evidence has been found in several cases that consider the use of electronic evidence by the panel of judges in divorce cases. The use of printed electronic evidence (print out) of electronic information or electronic documents as written evidence/letters is more dominant. There are several models of applying electronic evidence in judge decisions. (Muntasir. 7)

First, electronic evidence in the form of a recorded conversation between the Defendant and the Plaintiff, because there was a dispute regarding the status of the motorbike taken by the Defendant, but was not used as evidence at trial because the panel of judges did not see who was at fault, with the recording showing that the households of the Plaintiff and the Defendant were in dispute and fighting.

Second, the panel of judges considered the electronic evidence submitted by the Plaintiff (P.3) in the form of a photo of the Plaintiff's organs/arms which were bruised as a result of the Defendant's grip as preliminary evidence with the argumentation of Paton's opinion and the ITE Law.

Third, the panel of judges for appellate disagreed with the first instance decision which considered evidence T.3 (in the form of a photocopy of a picture/joint/couple photo between the Plaintiff and another man) as preliminary evidence. In the opinion of the panel of judges on appeal, evidence T.3 which has been tampered with but has not been matched with the original and has also been refuted or acknowledged by the clause by the plaintiff and evidence T.3 is not printed electronic information/documents as referred to in Article 5 paragraph (1) of the ITE Law, but only a photocopy of the image.

The implementation of electronic evidence (digital evidence) in the practice of examining divorce cases in the Religious Courts can be found in the divorce case contested at the Tigaraksa Religious Court in its decision to reject the divorce case contested on the grounds that the Defendant's reason for committing adultery with a female commercial sex worker (PSK) is not proven by evidence. electronics in the form of obscene photos, BBM and SMS as well as digital forensic expert witnesses from ITB to test the authenticity of electronic evidence.

Electronic evidence as legal evidence in practice in the Religious Courts is diverse, some are not used as evidence in decisions because other evidence is sufficient and some are used as evidence that has the same position as written evidence. / letter, so that it must meet the formal requirements for proof of letter stamped by post (nazegelen), and the judge considers the printed electronic evidence (print out) as evidence of suspicion or as preliminary evidence.

State Administrative Dispute Case

The Supreme Court has implemented Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials at Courts, but in practice, especially regarding Evidence, trials are generally still conducted manually. From a formal juridical point of view, evidentiary law in Indonesia (in this case procedural law as formal law) has not yet accommodated electronic documents as evidence, while several new laws have regulated and recognized electronic evidence as valid evidence, namely, among others: Law Number 30 of 2002 concerning the Corruption Eradication Commission, Law Number 24 of 2003 concerning the Constitutional Court, Law Number 11 of 2008 concerning Information and Electronic Transactions and further Law no. 30 of 2014 concerning Government Administration, which has regulated Official Decisions in Electronic form (which has shifted the concept of objects in TUN disputes, which are written in nature). (Dewi Asimah. 99).

The application of electronic evidence in the evidentiary system at the State Administrative Court has been confirmed through Circular Letter Number 4 of 2016 concerning the Enforcement of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chambers as a Guideline for the Implementation of Tasks for the Court which states that the evidence regulated in Article 100 of the Law The State Administrative Court Law, coupled with electronic evidence in Law Number 11 of 2008 (Electronic Information and Transaction Law) can be used as evidence in the procedural law of the State Administrative Court. More specifically, the legal basis for the State Administrative Chamber for using electronic evidence as valid evidence in procedural law is the provisions of Law Number 11 of 2008 concerning information and electronic transactions, article 5 paragraph (1) and (2): “Electronic information and/or documents electronic and/or printed results as referred to in paragraph (1) are an extension of valid evidence and in accordance with the applicable procedural law in Indonesia.

CONCLUSION

The use of electronic evidence in criminal cases has also been confirmed by the Constitutional Court through decision Number 20/PUU-XIV/2016 which basically states that the phrase "electronic information and/or electronic documents" in Article 5 paragraph (1) and paragraph (2)), Article 44 letter b of the ITE Law is contrary to the 1945 Constitution as long as it is not interpreted, "electronic information and/or electronic documents obtained according to the provisions of the applicable laws and/or carried out in the context of law enforcement at the request of the Police, Prosecutor's Office, Corruption Eradication Commission and/ or other law enforcement agencies.

Then it was emphasized that to assess whether electronic evidence can be used as legal evidence in criminal law, one of the parameters of criminal evidentiary law, known as bewijsvoering, is used, namely the description of how to convey evidence to judges in court. When law enforcement officials use evidence obtained in an illegal manner or unlawful legal evidence, the said evidence is set aside by the judge or is considered to have no evidentiary value by the court.

The application of bewijsvoering in the use of electronic evidence is in accordance with the Constitutional Court Ruling referred to and then connected with the enactment of Law Number 20 of 2022 concerning Protection of Personal Data, the validity of the application of electronic evidence in criminal procedural law must meet formal and material requirements, one of which refers to on the provisions of privacy rights in Law Number 20 of 2022 concerning Protection of Personal Data.

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