



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 20, 2021

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Regulatory rights of electronic equipment in criminal procedure

Sarwo Waskito¹, Made Warka², Krisnadi Nasution³, Erny Herlin Setyorini⁴

^{1 2 3 4} Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesia

sarwo.poldajatim@gmail.com

Abstract. This study uses a type of normative research. The essence of Electronic Evidence in Criminal Cases is that electronic evidence must be recognized for its existence and legal strength, and be regulated in an integrated manner in one Law. Regulations regarding the existence and legal strength of electronic evidence must be set forth in regulations that are at the same level as law. However, in this case the Criminal Procedure Law is more integrated, and of course with the hope that this regulation can provide legal certainty for the community.

Keywords. regulatory; criminal

Introduction

In Indonesia, electronic evidence was introduced in 2001. With the emergence of electronic evidence in Article 26A of Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Law No. 20-2001) the same is regulated in Article 44 juncto. Article 5 of Law of the Republic of Indonesia Number 11 of 2008 (Law No. 11-2008) mentions "electronic information" and "electronic evidence". So electronic evidence is basically information or documents, or it can be called generally "data", not tools.(Kančauskienė, 2019)

Since then, almost all laws that regulate procedural law also contain rules that acknowledge the use of electronic evidence as evidence in court, especially with the enactment of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Law No. 19-2016) is a bright spot for regulating electronic evidence. Article 5 paragraph (1) states that Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence so Law No. 19-2016 extends from the provisions of Article 184 of the Criminal Procedure Code Article 5 paragraph (1) states that Electronic Information and / or Electronic Documents and /or their printouts are valid legal evidence.

The explanation above shows that Article 5 paragraph (1) becomes a legal basis for law enforcers to be able to use various types of electronic evidence for the benefit of law enforcement in Indonesia regarding Electronic Information and Transactions.

Electronic evidence is data that is stored and/or transmitted via an electronic device, network or communication system.("Electronic Evidence in Criminal Procedural Law," 2020) This data is needed to prove a crime that occurred at trial, not the physical form of the

electronic device. Regulations related to electronic evidence in various laws are generally still limited to their position in the types of evidence.(Jokubauskas & Świerczyński, 2020) In this problem there is also diversity. Regulations or regulations regarding electronic evidence should place the object of electronic evidence in the form of "data", not "tools / equipment".(Prasetyo et al., 2018)

The problem is the regulation of electronic evidence in Law Number 8 of 1981 concerning Criminal Procedure Law, that the general law of criminal procedure doesn't regulate electronic evidence as a type of valid evidence as stated in Article 184 of the Criminal Procedure Code. This shows that juridically, the regulation of electronic evidence in the Criminal Procedure Code hasn't specifically been found in the Criminal Procedure Code until now.

The above problems, reinforced by the results of research by Individuals, say that the Criminal Procedure Code doesn't explicitly regulate legal electronic evidence, this is related to the existence of a legality principle which states that Law no. 11-2008 in Article 54 paragraph (1), to use electronic data can be used as valid evidence.(Januar Wilyana et al., 2020) As well as the legality of electronic evidence of Law no. 19-2016 in Chapter III concerning Information, Documents and Electronic Signatures, as well as the explanation in Article 44 and Article 5 of Law no.19-2016. Based on the introduction, is the problem formulation in the form of the nature of electronic evidence in criminal procedural law and the concept of regulating electronic evidence in criminal procedural law?

Method

This study uses a type of normative research.(Michael, 2019)

Research Results and Discussion

The essence of electronic evidence according to the criminal procedure law

Articles 183 and 184 of the Criminal Procedure Code don't state that technology or electronic media can be used as valid evidence in solving criminal cases. This means that the investigation of criminal cases is due to a legal vacuum in the formal system of law. In fact, in recent cases many criminal cases require electronic media as evidence of guidance.(Ardiansyah, 2020) In order to avoid a legal vacuum, it's necessary to use the expansion of evidence provided outside the Criminal Procedure Code, various scattered laws such as the Company Documents Law, the Terrorism Law, the Corruption Eradication Law, the Money Laundering Law. Constitution Number 19-2016 confirms that in all applicable procedural laws in Indonesia, electronic information and documents can be used as legal evidence.

However, in the Criminal Justice System, especially electronic evidence, this is very important and very much needed to become evidence of a crime committed by the perpetrator and proven in the Criminal Court.(Fitri, 2020) The relationship between this electronic evidence and the Criminal Justice System, especially in the function of the Criminal Justice System, has two major goals, namely to protect the public and enforce the law. This is in line with Gustav Radbruch's theory of legal objectives, stating that there are 3 (three) ideal goals of law, namely justice, benefit and legal certainty.(Paulson, 1994)

The findings of his research are that the Criminal Procedure Code doesn't explicitly regulate evidence through electronic evidence in criminal or civil proceedings, so it's still based on the provisions of the Criminal Procedure Code. This is reflected in Article 184 paragraph (1) of the Criminal Procedure Code to solve these relevant problems using the theory of legal objectives.(“KEABSAHAN ALAT BUKTI ELEKTRONIK DI TINJAU DARI PASAL 184 KITAB UNDANG-UNDANG HUKUM ACARA PIDANA,” 2018)

The aspect of justice means that the Panel of Judges in deciding cases uses the consideration of electronic data evidence.(Kartika, 2019) The benefit aspect means emphasizing the interests of the litigant parties and the interests of the public in general, and the juridical aspect is an aspect that is based on the prevailing laws and reflects legal certainty benefit, certainty, and justice. However, in carrying out these three legal objectives, the principle of priority must be used, where the first priority is justice, then benefit and the last is legal certainty.(Krems, 2003)

The Concept of Regulating Electronic Evidence in Criminal Procedural Law

The concept of regulating electronic evidence in Criminal Procedure Law cannot specifically be found in the Criminal Procedure Code. However, with the development of times and the development of criminal acts, the regulation of electronic evidence has spread in several laws and regulations in force in Indonesia and the electronic data can be used as valid evidence. These laws and regulations include: (1) Law of the Republic of Indonesia Number 8 of 1997 concerning Company Documents, (2) Law of the Republic of Indonesia Number 20 of 2001 in conjunction with Law Number 31 of 1999 concerning Eradication of Corruption Crimes, (3) Law of the Republic of Indonesia Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, (4) Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, (5) Law of the Republic of Indonesia Number 25 of 2003 jo. Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

However, in analyzing the problem of evidence according to the Criminal Procedure Code using the theory of evidence and the theory of the formation of the new Criminal Procedure Code legislation. To solve the problem of electronic evidence, which specifically cannot be found in the Criminal Procedure Code. So the solution is to form a new Criminal Procedure Code legislation.(Aldho Galih Pramata, 2020)

In the opinion of Wirjono Prodjodikoro that the negative legal evidence system (*negatief wettelijk*) should be maintained based on two reasons, first, it's appropriate that there must be a judge's conviction about the defendant's guilt in order to impose a criminal sentence, lest the judge be forced to convict people if the judge doesn't believe the defendant's guilt.(Prodjodikoro, 1967) Second, it's useful if there are rules that bind judges in formulating their convictions, so that there are certain standards that must be obeyed by the judge in conducting the trial. Meanwhile, the defendant's decision was made to reflect legal justice.(Chroust, 1944)

Aspects of justice(Moore, 2020) means that the Panel of Judges in deciding a case uses the consideration of electronic data evidence or conventional evidence. The benefit aspect means emphasizing the interests of the litigant parties and the interests of the public in general, and the aspect of legal certainty is an aspect that is based on the applicable law and reflects legal certainty.(Muhaimin, 2017)

The theory of the formation of legislation according to Burkhardt Krems, states that the formation of statutory regulations (*Staatliche Rechtssetzung*) includes two main things, namely activities to determine the content of regulations (*inhalt der regeling*) on the one hand, and activities related to fulfilling the form of regulations (*form der regeling*). The formation of laws and regulations is an interdisciplinary activity.(Krems, 2019)

Conclusion

The essence of Electronic Evidence in Criminal Cases is that electronic evidence must be recognized for its existence and legal strength, and be regulated in an integrated manner in one Law. Regulations regarding the existence and legal strength of electronic evidence must be set forth in regulations that are at the same level as law. However, in this case the Criminal Procedure Law is more integrated, and of course with the hope that this regulation can provide legal certainty for the community.

The concept of regulating electronic evidence in Criminal Procedure Law cannot specifically be found in the Criminal Procedure Code. However, with the development of times and the development of criminal acts, the regulation of scattered electronic evidence is contained in several laws and regulations in force in Indonesia, which include: (1) Law of the Republic of Indonesia Number 8 of 1997 concerning Company Documents, (2) Law -The Law of the Republic of Indonesia Number 20 of 2001 jo. Law Number 31 of 1999 concerning Eradication of Corruption Crime, (3) Law of the Republic of Indonesia Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Crime of Terrorism Into Law, (4) Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, (5) Law of the Republic of Indonesia Number 25 of 2003 jo. Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

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