

The Optimizing Digital Evidence: Perspective of the Criminal Procedural Law System

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ABSTRACT

Proof in the concept of procedural law is a very important condition, evidence to clarify a case a quo. However, the existence of a portrait of law-making which always limps along with the times, forces the law to be able to find its existence in the legal state of society. This also includes the state of society 4.0, which is of course proven that a case that is regulated is still conventional. digital evidence must have a certain position. This paper raises a view of the evidentiary system in procedural law, especially including in the perspective of the electoral procedural law system. Through the legal approach, case approach, library approach and comparison approach. This paper focuses on the issue of optimizing digital, especially in the view of the Criminal Procedure Law System.

Keywords: *Evidence, Criminal Procedure, Digital Evidence.*

1. INTRODUCTION

Criminal law is a study of public law. The existence of criminal law as public law provides the view that everything related to the state of the concept of criminality is aimed at one of the goals of the public interest, although it cannot be denied that individual interests are also attached to the objectives of criminal law.

In the criminal concept, the criminal system certainly has characteristics that need to be interpreted as an integrated system and cannot be separated from each other. This system is known as the integrated criminal law system.

The integrated criminal law system is attached to the criminal situation. However, before the sentencing process can be executed, it is necessary to consider the provision of criminal sanctions. To focus the provisions of this punishment, it is necessary to have a proof system. Which is known that the characteristics of the proof system itself is conventional.

However, the law must not close itself to proof of digitization. So it is necessary to expand the meaning of digital evidence. Although basically in the provisions of the criminal procedure law article 184 paragraph (1) KUHAP has outlined the concept of proof, namely the acknowledgment of evidence which is in the form of

witness statements; Expert Statement; Letter; Instruction; Defendant's Statement. However, the existence of this evidence is still conventional. Therefore, if we refer to the provisions of e-court that basically justice may be carried out with the electronic concept of Supreme Court Regulation no. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically (Perma Online Criminal Session). This regulation regulates the procedures for conducting trials of criminal cases, both criminal cases within the scope of the general court, the military, and online jinayat. The presence of this game provides a significant change to the implementation trials in Indonesia, which so far have only been in real spaces, but it is proven that the state of development of society, including the New Normal state, makes conventional courts able to transform into electronic justice.

So with the development of the characteristics of criminal justice in Indonesia, of course, it provides opportunities for the form of digital evidence previously recognized in 184 paragraph (1) of the Criminal Procedure Code only in conventional form.

Electronic court, which is meant by using the ZOOM Meeting Virtual facility, provides facilities in the form of sharing media in the form of documents, photos, videos, sounds, all of which are digital. The focus of this paper is to see that the development of the electronic criminal justice process, of course, needs to be accompanied by

the state of digital evidence. The problem arises that if all this time digital evidence has been included in the clump of evidence, then what if the expert testimony (video recording of the expert's BAP answers), Witness testimony (video recording of testimony), letters, are all digital and shared when the online trial is carried out through the facility. the screen share? Is it possible in such circumstances that evidence can be recognized or is it because the digital form makes the evidence unrecognizable?

2. LEGAL METHODS

2.1 Research Approach

In this study, the approach used includes four aspects of the study. Namely by using a statutory approach. The approach to the legislation in question sees the existence of positive norms meaning the focus of research studies, namely on digital evidence in criminal law. The second approach is a case approach where the existence of online courts is rampant when COVID-19 hit the world, so the research examines factual matters relating to the object of study, in this case digital evidence. The third approach is the library approach, for the literature approach the existence of literature becomes study material, where the knife of analysis in analyzing the object of study is to use theories, doctrines or by using concepts. The fourth approach in this study is a comparative approach, in which the intended comparison is not only limited to the comparison of laws and regulations between countries but can also be in the form of a comparison of the factual circumstances of cases handled using the characteristics of online courts.

2.1 Framework of Thought

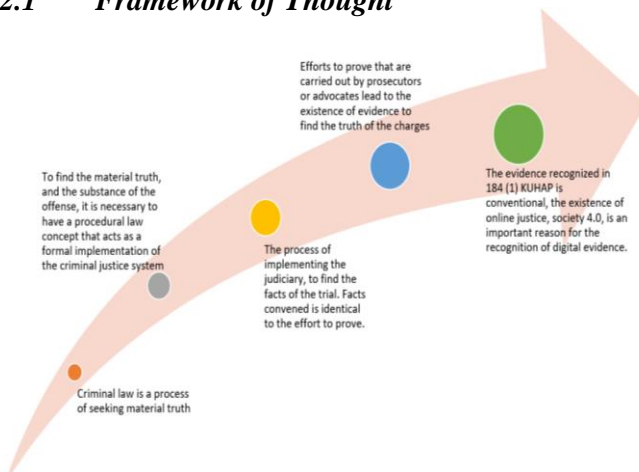


Figure 1. Framework of Thought

The framework of thought above can be explained that starting from the thought of criminal law functioning to seek material truth. To find the truth of the material, of course, is closely related to the search

for substance. The search uses criminal procedural law which is the implementation of the criminal law system. The process of implementing the judiciary to find judicial facts. The judicial fact itself is the result of a series of evidence presented. Evidence submitted by the Public Prosecutor and evidence submitted by an Advocate. However, the existence of evidence that is normatively recognized in 184 paragraph (1) of the Criminal Procedure Code has a conventional nature. The presence of online justice, society 4.0, is an important reason for the recognition of digital evidence.

3. ONLINE JUSTICE SYSTEM

3.1 Online Judiciary in Indonesia

Prior to the Covid-19 outbreak, online trials had been held, so that the current electronic trial of criminal cases is not merely a matter or a new breakthrough. In 2002, in the judiciary, there was a history of holding court hearings on criminal cases with the agenda of examining witnesses remotely online or by teleconference, namely the Buloggate corruption case. In this trial, the defendant, Rahardi Ramelan, was tried, with the witness being presented was B.J. Habibie from Hamburg, Germany which was held by teleconference via National Private television [1].

SEMA RI Number 1 of 2020 regulates Court Trials during the COVID-19 pandemic. Although the Supreme Court applies e-Litigation to replace conventional trials that present the parties in the courtroom, not all trials can be conducted with e-Litigation. The trial of criminal cases in the District Court, military crimes in the Military Court and jinayat in the Religious Courts will still be carried out specifically if in that case the Defendant is being detained, while it is not possible to extend his detention period again during this pandemic. However, in cases where it is legally possible for the defendant to have his detention period extended, the trial will be postponed until the end of the pandemic period. Specifically regarding cases whose examination period is limited by the provisions of the applicable legislation, Judges are authorized by SE MA RI Number 1 of 2020 to be able to postpone their examination hearings even though they have exceeded the examination grace period regulated by statutory provisions. The judge issued an order to the Substitute Registrar to record in the Minutes of the Session the existence of extraordinary circumstances, namely this COVID-19 Pandemic Incident. Litigation of the Supreme Court. Data on the number of active e-litigation services [2].

Regarding the administration of criminal justice, the Supreme Court (MA) established a regulation on the administration and trial of criminal cases electronically in court. The Supreme Court (MA) has issued Supreme Court Regulation No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts

Electronically (Perma Online Criminal Session). This regulation regulates the procedures for conducting trials of criminal cases, both criminal cases within the scope of the general court, the military, and online jinayat. This Perma was prepared by the Working Group based on SK KMA No. 108/ KMA/IV/2020 concerning the Administrative Working Group and the Trial of Criminal Cases in Courts Electronically. This online criminal trial regulation is a follow-up to the Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Police, the Directorate General of Corrections at the Ministry of Law and Human Rights regarding the Implementation of Trials Through Teleconference in the Context of Preventing Covid-19 on April 13, 2020. In principle, judges/assessments of judges, substitute clerks, prosecutors convene in the courtroom. Meanwhile, the defendant attended the trial from the detention center where the defendant was detained accompanied by/without legal counsel. Or a judge/assessment of judges, a substitute clerk convenes in the courtroom, while the public prosecutor attends a trial from the public prosecutor's office, the defendant with/without the assistance of his legal adviser attends a trial from the detention center where the defendant is detained. However, this is all present in a state of covid-19, it should be taken into consideration in the future that towards society 4.0 and even towards society 5.0, courts that are electronic in nature must be able to be implemented not only during pandemic times like this. However, the legal concept must be able to provide opportunities for electronic courts.

3.2 Evidence System in Criminal Justice

The development of the internet creates the formation of a new world commonly called cyberspace, where every individual can relate to one another without restrictions and does not need to meet face to face. With the existence of technology in the form of the internet, changing the lifestyle and behavior of the world community, which is usually information and communication is done using paper, turning into electronic (paperless) [3].

According to Law no. 11 of 2008 concerning Information and Electronic Transactions Article 1 point 4 defines electronic documents as any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical or similar forms, which can be viewed, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, or numbers, access codes, symbols, or perforations that have meaning or can be understood by someone who can understand it. However, the problem is whether electronic documents can be used as evidence that has

the same legal force as documents written on regulated paper [4].

In criminal procedural law, evidence is prioritized by using evidence in the form of witnesses, this means that a criminal act according to the legislators can only be known by a witness who directly knows the criminal act.

3.3 Digital Evidence System

In the regulation of Law no. 11 of 2008 concerning Information and Electronic Transactions, a witness is not required to appear before the trial, as has been explained in Law no. 11 of 2008 concerning Information and Electronic Transactions. Article 44 states "Evidence of prosecution investigations and court hearings according to the provisions of this law are as follows: evidence as referred to in the statutory provisions, evidence in the form of Electronic Information and/or Electronic Documents as referred to in Article 1 number 1 and number 4 and Article 5 paragraph (1), paragraph (2), and paragraph (3)".

In the procedure for giving witness statements in court, it can be via teleconference by referring to Article 1 point 1 and number 4 of Law no. 11 of 2008 concerning Information and Electronic Transactions which reads "number 1: Electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations, which have been processed which have meaning or can be understood by people who are able to understand them, number 4: Electronic documents are any Electronic Information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand it".

Even though through a teleconference the witness's testimony is still valid according to the law by referring to Article 5 paragraph (1) of Law no. 11 of 2008 "Electronic information and/or Electronic Documents and/or their printed results are legal evidence". With a clear formulation related to the provisions of electronic evidence, of course in the future the online criminal justice system can be implemented. Because all instruments have supported the implementation of online criminal case trials.

To prove using digital evidence, the judge must be able to reveal the facts and obtain at least 2 pieces of evidence to obtain the belief that a criminal act actually occurred and that the defendant did it.

4. CONCLUSION

Based on the description above, it can be concluded that the system of evidence and evidence based on Article 184 of the Criminal Procedure Code is able to reach evidence for crimes. Searching for conventional evidence such as statements of witnesses and expert witnesses, as well as shifting letters and instructions from conventional to electronic will be able to ensnare the perpetrators of Law no. 11 of 2008 concerning Information and Electronic Transactions in Article 5 has clearly stated that Electronic Information is a valid legal evidence in the form of electronic information and/or electronic documents and/or their printed results.

With the recognition of the existence of digital evidence, it is necessary to think that in the future courts and laws and regulations will facilitate online courts. And it can be done without having to wait for forced circumstances to implement online courts.

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