Digital Proofing as a Legal Reform in the Court

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Abstract. The 2010–2035 Court Update Blueprint outlines the Supreme Court's goal of establishing a cutting-edge judicial system built on integrated information technology. Utilizing Electronic Justice (E-Court) has made it possible for the Supreme Court of Indonesia to fulfill its goal of becoming a preeminent Indonesian court. The use of electronic evidence tools is crucial to the field of justice because printed results, electronic papers, and/or electronic information are all acceptable forms of evidence that supplement the evidence found in Indonesia's Law of Events. Legally speaking, Indonesia's proof law—in this case, the event law—has not accepted electronic documents as proof, but a number of recent laws have regulated and accepted electronic evidence as a valid form of proof. The study intends to examine recent developments in the law concerning the use of evidence in court proceedings, as well as normative research models utilizing conceptual and philosophical frameworks. Source of the data are from primary legal materials secondary and third-tier legal material based on perspective normative, with qualitative analysis of jurisprudence based on interpretation, reasoning and legal argumentation. The study concludes that, among other things, the proof regulation, which was initially closed to open, has to be quickly changed in order to address the rapid advancement of information technology and remove obstacles to the use of electronic evidence instruments. Furthermore, it pertains to the regulation of evidence-gathering methods, which were initially controlled in a restrictive and sequential fashion in a single article. Eventually, these methods of evidence were regulated openly and independently in multiple articles, with the sole restriction being the specifications of these methods of evidence. As a result, the judge is no longer restricted to using the evidence that the law already mentions in order to review and conclude a case.

Keywords: Proof Tool, Legal Reform, Justice.

1 Introduction

The blueprint for the Supreme Court sets out improvement efforts to create a great Indonesian judiciary. The Supreme Indonesian Judicial Body, ideally one of which can be realized is as a Modern Judicial Agency based on integrated IT.

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According to Andi Hamzah, updates are still made in accordance with the times, and the Dutch state—which colonized Indonesia for about three centuries—left behind systems, laws, and institutions that currently form the basis of the current implementation of the Indonesian judicial system: For instance, although Indonesia and Malaysia are allies, their respective colonialists—the Netherlands and England—separated their legal systems. Because of this, the Criminal Procedure Code that we currently have was written by the people of Indonesia, although Malaysia, Brunei, and Singapore are based on the Anglo-Saxon system, while ours is based on the Continental European (Dutch) system.(Andi Hamzah, 2014)

The power of President Suharto's era experienced a demonstration in May 1998, one of the demands was legal reform, this demand wanted a change in the implementation of applicable law in Indonesia, even though the journey of legal reform efforts has entered the age of 25, in fact the implementation of law enforcement in Indonesia is still far away. roast from the fire. However, efforts continue to be made so that the hope of realizing legal reform can be achieved.

In the course of efforts to increase legal reform, it turns out that there have been changes or shifts in people's lives, where people change in an era, which is called the digital era. This change, of course, affects all aspects of people's lives, not only in the social, technological, legal fields, but also changes, both in a legal action, legal event or legal action.

The impact of changes in the technological era must be followed as a form of digital-based legal transformation. Added to this is the emergence of Covid 19, which has become a new problem in solving legal issues because during the Covid 19 period, there was a change in performance, where all activities were carried out at home, which is called work from home (WFH). Activities in resolving legal issues at court are also carried out through remote trials using media such as teleconferences, where the panel of judges, clerks in the courtroom, public prosecutors attend the trial from the office, while the accused and their attorneys are in the Detention House where the accused is being held accompanied by his legal counsel. The question is how to convey evidence at a remote trial? Because based on the principle of criminal procedural law, evidence in the form of letters, witnesses, instructions must be presented before the court.

Supreme Court Circular Letter No. 1 of 2020 and Supreme Court Regulation No. 4 of 2020 addressing the administration and trial of criminal matters in courts electronically govern online trials during the Covid 19 period. Trials conducted online during a pandemic, is a condition extraordinary, so that it can be said that the situation can be categorized as force majeure, overmatch, so that the situation cannot be debated and accepted as a form of trial in accordance with criminal procedural law.

Statements of evidence, which include statements from witnesses, experts, letters, orders, and statements from the accused, are governed by Article 184 of the Criminal Procedure Code (KUHAP). The article has limited provisions regarding what can be used as evidence. that means of evidence is that which is capable of providing proof of someone's guilt so that a person is referred to as a defendant before the court. Other than that evidence cannot be justified as evidence in court. Technological advances where all aspects of human life change or transform into digital users, this can have a

negative impact on the development of criminal acts via electronics, in the case of crimes committed via electronics, electronic evidence is needed to prove the crimes committed.

Similarly, electronic evidence must be used in the settlement. The Criminal Procedure Code's rules are referred to in the Criminal Trial; however, electronic material that may be used as evidence in court is neither mentioned nor included in the Criminal Procedure Code. According to Law Number 11 of 2008 of the Republic of Indonesia concerning Information and Electronic Transactions (UU ITE), electronic evidence is considered legitimate evidence and is comparable to evidence governed by the Criminal Procedure Code, such as evidence in the form of letters or clues. The Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions emphasizes that the strength of evidence is capable of equating the strength of evidence with letters and instructions. In practice, judges are not bound by electronic evidence, meaning that judges are given the freedom to assess the strength of evidence by using electronics.

Prior to the Covid-19 pandemic, there had been a trial via teleconference. Witnesses had already been examined via teleconference during the examination of witnesses on behalf of B. J. Habibie who was in Hamburg, Germany, who gave information via teleconference at the Central Jakarta District Court, in the Bulog II case. in 2002 and the trial of the electronic KTP case presented witnesses from Singapore via teleconference at the Maxwell Chamber of the Singapore Arbitration Building.(Andi Hamzah, 2014)

2 Research Methods

The kind of research being done is called normative legal research, and it involves examining and gathering data from literature about tools, including books and online resources. The purpose of this literature review is to discover theories, approaches, and concepts that are pertinent to the issue at hand. In order for this data to be a resource for problem-solving. In order to analyze the legal material employed in this study, a descriptive technique is used, which is to say, a method that concentrates on problem solving, presentation, interpretation, and analysis in the hopes of drawing conclusions. depending on verifiable legal documentation.

3 Results and Discussion

A. Trial Process in Criminal Cases

Whereas basically the evidentiary system in regulation is about the kinds of evidence that can be used. Because the purpose of criminal procedural law is to establish material truth, which is what is proven during the examination of criminal cases, proof is crucial to the process of reviewing criminal cases in court. To find a truth in a matter. The most important way, the description of evidence and how the evidence is used, with the way of proof and how the judge believes in the evidence presented before the trial court.

A court cannot sentence someone unless he possesses at least two reliable pieces of evidence, according to Article 183 of the Criminal Procedure Code. Based on the facts, the judge becomes convinced that the defendant is the one who committed the crime, and as a result, the judge will not impose a penalty on the defendant. It is clear from the guidelines in Article 183 of the Criminal Procedure Code that the conviction of the judge carries greater weight than the presence of reliable evidence. According to A. F. Lumintang, the Criminal Procedure Code's evidence framework is known as:

1. Wettelijk, or in accordance with the law, as the law establishes the kind and volume of evidence that must be provided for proof.

2. Negative: Because of the kinds and quantities of evidence that the law requires, a judge cannot find a defendant guilty of a crime if the types and quantities of evidence do not convince the judge that a crime has really happened and that the defendant is guilty of performing it. (Andi Hamzah, 2014)

The system according to the law negatively regulated in Article 183 of the Criminal Procedure Code, has the following points: (Adhami Chazawi p.30)

1. Determining the outcome of a criminal case is the ultimate purpose of proof; if the case satisfies the evidentiary requirements, a sentence may be imposed. To put it another way, evidence is used to decide criminal cases rather than only to determine punishment.

2. Standards/requirements regarding the results of evidence to impose a sentence with two conditions that are interconnected and inseparable, namely:

a. Must use at least two valid evidences.

b. By using at least two pieces of evidence the judge obtains a conviction.

With regard to the judge's conviction in proof, it must be formed on the basis of legal facts obtained from at least two valid pieces of evidence. The judge's conviction that must be obtained in the verification process to be able to impose a sentence, namely:

1. The judge's conviction that the crime accused has been committed is based on the facts gathered from the two pieces of objective evidence, which support the public prosecutor's allegations. In actuality, it is declared that the public prosecutor's charges have been proved beyond a reasonable doubt. legally refers to the use of evidence that satisfies the minimal standards, which call for the use of two pieces of evidence. Two more convictions are required for a conviction; the prosecutor's proof of the offense is not sufficient on its own.

2. Belief in the defendant as the perpetrator is likewise a belief in an objective reality. It is possible to refer to these two beliefs as subjective objects. Judges evaluate confidence based on subjective factors rather than objective ones.

3. Views on the defendant Beliefs regarding the defendant's guilt of committing a crime might be related to two different factors or components. First, the lack of a rationale for committing a crime is what makes anything objective. The judge finds the prisoner guilty if there is no evidence to support his innocence. While the judge's belief about subjective matters is the judge's belief about the defendant's guilt which is formed on the basis of matters regarding the defendant himself. That is, when committing a crime against the defendant there is no reason for forgiveness (fait d'excuse). It could be that the defendant did indeed commit a crime and the judge is sure

about it, but after obtaining the facts concerning the mental state of the defendant during the trial, the judge has not formed his conviction about the guilt of the defendant in committing the crime. Thus, the purpose of carrying out evidentiary activities as stipulated in Article 183 of the Criminal Procedure Code is to drop or make a decision in casu withdrawing the order of the decision by the panel of judges. To ensure the maximum level of justice and legal certainty in the judge's ruling, the proof is completed first. Therefore, the purpose of that proof goes beyond just imposing a sentence based on the two pieces of evidence that are necessary as a minimum to support the imposition of a punishment.

B. Evidence as Proof of Criminal Proceedings in Court

Judges must base their conclusions in a case on two out of every five pieces of evidence and their personal convictions, according to the notion of negative proof of law. The Criminal Procedure Code's Article 183 says the following: According to Article 184 Paragraph 1 of the Criminal Procedure Code, a judge cannot sentence someone unless he is confident, based on at least two credible pieces of evidence, that a crime has been committed and that the defendant is guilty of it. The law distinguishes between five different types of evidence that are admissible in court. If the provisions of Article 183 of the Criminal Procedure Code are linked to the type of evidence, the accused can be sentenced to a criminal sentence, if guilt can be proven at least two (2) types of evidence referred to in Article 184 Paragraph (1) of the Criminal Procedure Code. Whereas from the 5 (five) evidence referred to, the author can describe the urgency of each as follows:

1. Witness testimony

With respect to the specific constraints placed on witness testimony by Article 1 number 27 of the Criminal Procedure Code, it states as follows: A witness's testimony is one of the pieces of evidence in a criminal case that he personally heard, saw, and experienced, along with an explanation of how he came to know of the criminal event. It is evident from the aforementioned understanding that witness testimony is the most significant piece of evidence in a criminal case; in fact, it can be claimed that no criminal case is complete without the testimony of witnesses, at least when combined with other forms of evidence. However, Article 185 Paragraph (1) of the Criminal Procedure Code restricts the understanding of witness testimony in its capacity as evidence. The idea is that, according to Criminal Procedure Code Article 1 Number 26, every individual who hears, witnesses, or personally experiences an incident may be called as a witness. One cannot withdraw from an exploring nature as a witness. Article 168 of the Criminal Procedure Code, which states that witnesses may resign as follows, provided they are unable to be heard under other provisions of this legislation, confirms this. a. Blood relations, relatives descending a straight line, or relatives who are all together as defendants. b. The defendant's or co-defendants' relatives, siblings from either mother or father, as well as those connected by marriage and the defendant's relatives' children up to the third degree. c. The defendant's spouse, regardless of whether they are jointly or separately defendants.

In the case of being a witness whose testimony is required before the trial, witnesses are required to fulfill certain requirements, including but not limited to:

a) Formal requirements, namely taking an oath before giving testimony.

b) Material requirements, namely witnesses who have the following qualifications:

- See for yourself.
- Listen for yourself.
- Experience it yourself
- As well as mentioning the reasons for that knowledge.

That there are 2 (two) distribution of witnesses or types of witnesses, as follows:

a) Witness a charge/incriminate and witness a de charge/alleviate.

b) Crown witnesses (witnesses taken from one of the defendants who jointly committed a criminal act)

c) Witness Verbalisan (witness from the Investigator who was assigned to examine the defendant.

2. Expert Statement

Information provided by someone with specialized knowledge on subjects required to elucidate a case for examination purposes is known as expert testimony, or verklaringen van een deskundige/expect terstimony (Article 1 point 28 of the Criminal Procedure Code).

The testimony of an expert is different from that of a witness in that the former speaks about issues that the witness personally experienced (eigen waarneming), whereas the latter speaks about appreciating things that are already real and drawing conclusions from them. This is how M. Yahya Harahap defines the difference between the two types of testimony. (M.Yayah Harahap, 2003) The definition of "expert testimony" is not defined in the Criminal Procedure Code itself. Who is considered an expert and what constitutes expert testimony are not addressed in Article 186 of the Criminal Procedure Code, which defines an expert as what an expert declares at trial. The Criminal Procedure Code specifies expert testimony as acceptable evidence, notwithstanding the lack of a precise description.

3. Letters

There are several general meanings of letters that have been put forward There are several general meanings of letters that have been put forward by experts, including the following: As per Sudikno Metrokusumo, a letter is defined as a written document that utilizes punctuation to express emotions or ideas and serves as evidence. (Sasangka & Rosita, 2003)

Article 187 of the Criminal Procedure Code governs the arrangements for this documentary evidence. This rule states that a letter may be regarded as legal evidence under the law in the following situations:

a. A letter confirmed by oath, or one made under oath of office. In this instance, Article 184 paragraph (1) letter c of the Criminal Procedure Code governs the essential elements of the letter as evidence. Article 187 of the Criminal Procedure Code, which states in full as follows, governs the substance of the letter's proof: as stated in article 184 paragraph (1) letter c, made under oath of office or confirmed by oath are:

a. Minutes and other letters in an official form made by a public official, authorized or made before him.

b. It is written in accordance with the laws or a letter from an official addressing issues under his purview and meant to provide evidence of a scenario or issue concerning management.

a. A declaration by an expert that includes a view based on his knowledge on a subject or circumstance that has been formally requested of him.

Of the various types of official letters referred to in The Criminal Procedure Code's Article 187, letters a, b, and c, letters can be classified as: a. Acte ambtelijk, which is an authentic deed made by a public official. b. Acte partij, namely an authentic deed made by the parties before a public official who is the full author of the authentic deed. While the types of letters are: ordinary letters, authentic letters and private letters.

4. Hint

Difficulties often occur in judicial practice in applying evidence instructions. Where the result of being careless in using the evidence can be fatal to the decision made by the Judge. The instructions in the fourth section are evidence, based on the terms of Criminal Procedure Code Article 184, paragraph (1), letter d. Article 188 of the Criminal Procedure Code, which says, in its entirety, the following, governs the substance of this evidence:

a) An indication is any act, occurrence, or situation that, as a result of a mutual agreement and the crime itself, shows that a crime has been committed and identifies the culprit.

b) The sole sources of the hints mentioned in paragraph (1) are witness accounts, accused statements, and correspondence.

c) Based on his conscience, the judge evaluates the degree of proof of a clue in each particular case after conducting an exhaustive and completely accurate inquiry.

5. Statement of the Defendant

Part 5 of the provisions of Article 184, paragraph 1, letter e of the Criminal Procedure Code, contains the defendant's statement. If the defendant's confession is compared in terms of words. In other words, all of the defendant's remarks should be considered as evidence, and they don't all have to be the same or in the form of a confession. The defendant's testimony does not have to match the defendant's confession, even if it takes the form of a denial, confession, or acknowledgment of a portion of an act or circumstance. This is because confessions can be used as evidence under certain circumstances. a. Acknowledged that he was guilty b. Confessionally admitted to the offense. Additionally, Article 189 of the Criminal Procedure Code places restrictions on the defendant's testimony. It states:

a) The defendant's statement is what he said in court regarding the things he knew or experienced, or the things he committed.

b) As long as the accused's testimony is backed up by reliable evidence inasmuch as it relates to the charge against him, it may be utilized to establish credibility throughout the trial.

c) The accused's testimony can only be utilized against them.

C. Electronic Evidence in The Criminal Procedure Code

The Criminal Procedure Code has established guidelines for the development of evidence in trials, which is known as legal reform. Article 5 Paragraph (1) of Law No. 11 of 2008 concerning Electronic Information and Transactions states that Electronic Information and Transactions are printouts which are valid legal evidence. Electronic evidence is defined as electronic information and/or electronic documents that satisfy the formal and material requirements stipulated in Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Any electronic data, including but not limited to text, sounds, images, maps, designs, photos, and the like, is referred to as electronic information. In theory, electronic documents and electronic information can be separated but not completely. Electronic documents are containers for electronic information, whereas electronic information itself is data or a collection of data in many forms. While printouts of electronic documents and information will become documentary evidence, the electronic documents and information will become electronic evidence (also known as digital evidence).

In compliance with the Indonesian procedural law, printed information and/or electronic documents are considered an extension of legitimate legal proof, according to Law No. 11 of 2008 concerning Information and Electronic Transactions, Article 5 Paragraph 2. Here, "expansion" refers to: a. Adding evidence that is governed by Indonesian criminal procedural law.

The Criminal Procedure Code's regulations regarding the growth of evidence have also been implemented in a number of other statutes, such as the Terrorism Law and the Law on Company Documents. According to Article 5 Paragraph 4 of Law No. 11 of 2008 Concerning ITE, the formal requirements in the form of information or electronic documents are not documents or letters that, under the law, must be in writing, while the material requirements are regulated in Articles 6, 15, and 16 of Law No. 11 of 2008 Concerning ITE, there are formal and material requirements that must be met by electronic evidence. Emails, chat logs, recordings, and other electronic documents can therefore be presented in court as proof.

After the ITE Law was passed, which prioritizes that electronic evidence functions as information, electronic documents, and printouts that have the force of law as evidence in court, the legal force in proving with electronic evidence at the Indonesian State Court in the evidentiary law system related to problems with electronic evidence was previously not clearly regulated. It is therefore anticipated that this law "will address various legal rights pertaining to evidence-based 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).(Fuady, 2012)

Munir Fuady (Fuady, 2012) states that there are a few prerequisites or criteria that must be met for electronic evidence to be regarded as documentary evidence. The first is the application of the principle of authenticity, which states that a document or digital letter with a signature is deemed authentic unless proven otherwise. Munir Fuady added the concepts of information integrity and document authenticity to this list. In this instance, an electronic document or electronic record is deemed original if

it exhibits a guarantee that the document or record is authentic, full, undamaged, and consistent with the creation process at the moment it was completed.

For the purposes of investigation, prosecution, and examination in court proceedings, electronic evidence in the form of information and/or electronic documents is considered additional evidence, as defined by Article 44 of the ITE Law, in addition to the evidence mentioned in the legislative regulations. Electronic documents in their original format are considered evidence different from that which is governed by the Criminal Procedure Code. The ITE Law's Article 5 paragraph (4) specifies that letters are exempt from the provisions on electronic information and documents in Article 5 paragraph (1). According to the law, letters must be made in writing and must take the form of a notarial deed or a deed prepared by the official who made the deed. This law also governs the requirements for electronic evidence to be considered valid. Additionally, Article 6 regulates the material requirements, which state that information must be in written or original form. Electronic documents and/or information are accepted as long as the information can be accessed, displayed, its integrity is guaranteed, and it can be accounted for to provide an explanation of a situation. Additionally, according to the ITE Law, electronic evidence is an addition to the types of evidence covered by the Criminal Procedure Code. Printouts from electronic papers fall under the Criminal Procedure Code's Article 187, letter d, which states that they are considered other letters.

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 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, namely 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. 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.

The Law of the Republic of Indonesia Number 8 of 1997 concerning Electronic Documents, Article 15 paragraph (1), recognizes that electronic evidence is the result print is valid evidence in terms of its substance in the form of an electronic document containing elements of the definition of a letter, so that its position is an extension of documentary 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. Moreover, electronic evidence is explicitly defined as an extension of the directive evidence regulated in Article 188 of the Criminal Procedure Code in Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes in Article 26A.

Therefore, the Criminal Procedure Code regulates the legality of evidence, which includes electronic information and/or documents. This type of evidence is sometimes referred to as an enlargement of already-existing evidence. The expansion in question

has been associated with the following paragraph (1) of Article 5 of the ITE Law: 1. Expands the scope of admissible evidence in compliance with Indonesia's procedural legislation; 2. Printouts of information, including documentary evidence and evidence instructions, broaden the definition of admissible evidence as defined by the criminal procedural law.

4 Conclusion

1. Provisions for evidence regulated in Article 184 of the Criminal Procedure Code are limited because they are limited to consisting of witness statements, expert statements, letters, instructions, statements of the accused.
2. In imposing a sentence on a defendant, the judge has a more dominant function than the presence of valid evidence. Because article 183 of the Criminal Procedure Code states that judges must obtain confidence that a crime actually occurred based on evidence.
3. For the purposes of investigation, prosecution, and examination in court proceedings, electronic evidence in the form of information and/or electronic documents is considered additional evidence beyond that which is mentioned in the statutory provisions, according to Article 44 of the ITE Law.
4. The Criminal Procedure Code regulates the validity of evidence, which includes electronic documents and/or information that might be considered an addition to the existing body of evidence. The expansion in question has been associated with the following paragraph (1) of Article 5 of the ITE Law: 1. Acts as an extension of admissible evidence in compliance with Indonesian procedural law; 2. Printouts of information, including documentary evidence and evidence instructions, broaden the definition of evidence as defined by the criminal procedural legislation.

4.1 Recomendation

1. Immediately create a legal protection regarding the legitimacy of electronic evidence.

2. The era of digital technology requires an open judiciary to reform the law as a need to develop the society.

3. Conducting comparative studies to other countries which previously used electronic evidence as an effort to for Indonesia to Digital Proofing as a Legal Reform in the Court

References

1. Andi Hamzah. (2014). Hukum Acara Pidana Indonesia. Sinar Grafika.
2. Fuady, M. (2012). teori hukum da pembuktian pidana dan perdata. PT Citra ditya.
3. M.Yayah Harahap. (2003). Pembahasan permasalahan dan penerapan KUHP, Pemeriksaan sidang pengadila, Banding, Kasasi dan peninjauan kembali (kedua). Sinar Grafika.

4. Sasangka, H., & Rosita, L. (2003). Hukum Pembuktian dalam Perkara Pidana. maju mundur.