

## Strengthening Law Enforcement: The Urgency of Establishing Regulations on Electronic Evidence in Civil Evidence



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**ABSTRACT:** The evolution of information and communication technology (ICT) has significantly altered a number of spheres of life, including law. Another result of this growth is the creation of electronic evidence, a brand-new category of evidence. When evidence is produced, kept, and transferred through an electronic system, it is considered electronic evidence. The evolution of law in Indonesia has been significantly influenced by advances in science and technology. Due to technological advancements, new lawsuits are being filed. This study employed a normative legal research design as its methodology. Both a conceptual and a statutory approach are employed. Electronic evidence's introduction has led to a number of issues in the civil because the existence of electronic evidence in the process of establishing civil procedural law has not been explicitly and definitely accepted by the Indonesian legal system. From a formal legal perspective, papers and electronic data cannot yet be admitted into evidence in Indonesian civil evidentiary proceedings to resolve legal disputes. The civil evidence system has seen major changes as a result of the development of information and technology in many facets of society. Emails, instant messages, and other electronic data are just a few examples of the diverse electronic data that is used as civil evidence in court.

**KEYWORDS:** Law Enforcement, Regulations, Electronic Evidence, Civil Evidence,

### I. INTRODUCTION

Developments in the fields of science and technology have had a major impact on the development of law in Indonesia. Technological advances have resulted in new legal actions being faced. Law is an instrument that will always develop following the times (Rahardjo, 2007). In resolving cases in court, the evidentiary process is an important stage in order to prove the truth of the occurrence of certain events or legal relationships. Proof is a stage that has an important role for the judge in making a decision.

Evidence can also be used as a basis for plaintiffs to file a lawsuit in court. It is said that the proof process must be accompanied by supporting evidence, namely evidence. According to the Civil Code's Article 164 HIR, Article 284 Rbg, and Article 1886, evidence is everything that can be used to prove a specific claim. Proof is crucial because the arguments made by the parties are put to the test in the evidentiary phase in order to determine which law will be applied in a certain situation (rechtoepasing) and which law will be found (rechstvinding).

The advancement of information and communication technology has significantly transformed multiple facets of society, particularly within the legal domain. This advancement also led to the emergence of a novel form of evidence, known as electronic evidence. Electronic evidence refers to information that is kept, produced, and sent through an electronic system. The presence of electronic evidence in civil legal matters, particularly in the domains of commercial law and banking law, has a significant impact on the advancement of civil procedural law, including the framework for presenting evidence in civil procedural law. The validity of using electronic evidence in court practice in Indonesia remain debatable.

From a legal perspective, the evidence laws in Indonesia already does not recognise electronic documents as legitimate proof, even though in practice society has used electronic evidence in many modern business transactions, such as electronic banking (Dotulong, 2014). During its development, Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE) which states that SMS and emails can be used as official evidence in trials. In the current era of digitalization, Legal experts agreed that laws must be adaptable and responsive to change. following developments over time. Law cannot be static, because it must continue to accommodate the needs and protect society.

Electronic evidence has several characteristics that are different from traditional evidence. The first fundamental characteristic is that electronic evidence is very easy to manipulate and/or fake. Second, electronic evidence is easily lost and/or

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damaged. Then thirdly, electronic evidence has eels across national borders. Some of these characteristics give rise to various problems in the civil evidence process, including the difficulty of judges determining The validity and conclusive value of digital evidence. In addition, legal systems have problems when verifying the authenticity and accuracy of electronic evidence. Judges encounter problems in having to apply civil procedural law, that is designed for traditional evidence, to electronic evidence. The problems that occur during the application of electronic evidence in civil proceedings highlight the necessity of implementing specific regulations that include electronic evidence within the context of civil evidence. Based on the background description, the problem formulation in this research is 1) What is the urgency of establishing regulations for electronic evidence in civil evidence? 2) What is the ideal form of electronic evidence regulation in civil evidence?

### **II. RESEARCH METHOD**

The method of research used in this study is a normative legal research method. The method used consists of both a statutory approach and a conceptual one. The research data was collected from main legal resources and secondary legal resources. The primary legal resources consist of Law Number 11 of 2008, which relates to Information and Electronic Transactions, and Supreme Court Regulation Number 3 of 2016, which defines the procedures for evidence and electronic evidence in civil cases. Secondary legal materials include legal doctrine regarding electronic evidence as well as scientific journals regarding electronic evidence.

### **III. DISCUSSION**

#### **A. The Urgency of Establishing Regulations on Electronic Evidence in Civil Evidence**

The advancement of information and communication technology (ICT) has resulted in significant changes in various fields, including the legal field. One of the changes is the emergence of electronic evidence which has different characteristics from traditional evidence. The emergence of electronic evidence has given rise to various problems in the civil evidence process because the legal system in Indonesia has not properly and decisively handled the use of electronic evidence in the civil procedural law process.

Through electronic trial efforts, it is hoped that the Supreme Court will be able to answer three legal issues, the main problems that have been faced by parties when litigating in court, namely delay, access and integrity (Pujoharsoyo, 2019) There are provisions in civil procedural law that are not accommodated by PERMA Number 1 of 2009 which has been amended by PERMA Number 7 of 2022, Traditional procedural law remains applicable to civil procedural practice, provided that it complies with the PERMA.

Regulations regarding electronic evidence in civil procedural law have not been accommodated in one statutory regulation. Matters relating to the regulation of electronic evidence are still spread across various statutory regulations such as the Information and Electronic Transactions Law (ITE), the Civil Code (KUHPerdata), and the Supreme Court Regulations (PERMA) to creates confusion and legal uncertainty for the litigants. The ITE Law recognizes the existence of electronic evidence as valid evidence. With this admission, there are still doubts regarding the validity and evidentiary strength of electronic evidence. To answer this problem, special regulations regarding electronic evidence are needed.

In carrying out one of its functions, namely the regulatory function, the Supreme Court has made several regulations to fill legal gaps, especially in matters of civil procedural law (Amran Suadi, 2020) With advances in technology, especially in the field of informatics, the Supreme Court accommodates this by issuing PERMA and various technical instructions that regulate procedural practices in civil cases. These PERMAs include PERMA Number 3 of 2018, PERMA Number 6 of 2022, PERMA Number 7 of 2022 which amends PERMA Number 1 of 2019 along with its technical guidelines in the form of Decree of the Chief Justice of the Supreme Court Number 363/KMA/SK/XII/2022 and SEMA Number 1 of 2023 concerning Procedures for Summons and Notifications by registered letter.

The passing of the ITE Law in Indonesia is a response to the requirement for a comprehensive set of rules governing legal procedures. In accordance with the requirements stated in Article 5, paragraphs (1) and (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, the Law acknowledges electronic information and/or electronic documents as legitimate proof. Article 5, paragraphs (1) and (2) of Law Number 19 of 2008 concerning Information and Technology requires:

a. Electronic information and/or documents are considered legally binding and valid evidence, providing certainty in legal matters pertaining to the functioning of electronic systems and transactions. This is particularly relevant in cases involving legal actions carried out through electronic systems.

b. Specifically, the collection of electronic information and/or electronic documents through methods such as interception or recording must be carried out inside the legal structure of law enforcement, into the request of the police, prosecutor's office, or other approved institutions regulated by law.

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Article 153 HIR validates the existence of Article 5 paragraph (1) of the ITE Law which states that there are evidence that can be used to obtain legal certainty regarding the truth of legal events that are disputed outside of statutory regulations, namely local examinations. Global human life, which is increasingly developing day by day, also influences human thought patterns and habits in everyday life, including in the civil justice system. Civil relations, which all took place conventionally, have changed over time to fairly modern practices with electronic systems such as the practice of buying and selling, renting and electronic agreements. Aspects of civil relations are currently heavily influenced by electronic media. As is the case with civil relations disputes which aim to seek and find formal truth which means truth based on law (Wirjono, 1992) The practice of civil proceedings is guided by the principle of *ius curia novit*, which means that judges are assumed to know the law.

This means that judges are not allowed to refuse to hear a case on the grounds that legal regulations do not yet exist or are not complete enough. However, the problem of the absence of statutory regulations governing electronic evidence will certainly make it difficult for judges to resolve legal problems that use electronic evidence. Civil relations carried out via electronic media, in the form of messages, photo documents, recordings of conversations or conversations, letters in the form of digital documents, as well as surveillance camera recordings are examples of evidence that can be used by the parties in the future. This electronic evidence can be printed in the form of a printout, or can be presented at trial in the form of a recording, so it requires valid and legal arrangements so that it can be recognized as valid evidence.

Electronic evidence can be converted and modified into many formats, including Compact Disc Read Only Memory (CD ROM) and Write On Read Many (WORM), to ensure the protection of document authenticity and security. (Dikdik, Gultom, 2005) The evidential procedure in civil disputes, which only acknowledges a restricted set of tools as outlined in article 164 HIR/284 RBg and article 1866 of the Civil Code, presents problems to the court's evidentiary process. The enactment of Law Number 11 of 2008, also known as the Electronic Information and Transactions (ITE) Law, signifies the initiation of legal reforms in the electronic sector, specifically to address the increasing number of electronic transactions. The law explains that the use of Information Technology and Electronic Transactions is conducted with the objective of ensuring a feeling of security, fairness, and legal assurance for both consumers and providers of Information Technology. (Retno, Iskandar, 2005).

Sudikno Mertokusumo believes that in the era of globalization and the development of modern technology and the emergence of cyber law, this does not rule out the possibility of the emergence of new evidence that has not yet been regulated (Sudikno, 2013). The purpose of evidence is essentially a way to give confidence to judges as to why an event is considered true. With evidence the judge can obtain certainty and confidence regarding an event, then it is sufficient for the judge to declare that the event really happened (Sudikno, 2013) The existence of electronic evidence in an evidentiary process, because it has not been clearly accommodated in the law, can be strengthened by instructions or the judge's guesses.

The judge's perceptive judgement in determining the law through logical and responsible reasoning is very important in this instance. Munir Fuady argues that the integration of electronic evidence into the evidential system should adhere to the values of legal certainty, benefit, prudence, good faith, and freedom to choose technology. (Fuady, 2006). Article 5, paragraph (2) of the ITE Law directs the use of legitimate electronic evidence in the evidential process. It defines that electronic information, electronic documents, or printouts, as defined in paragraph (1), can be regarded as an extension of electronic evidence. Legitimate evidence that complies with the relevant procedural law in Indonesia. Therefore, the expansion of this article confirms the legitimacy of electronic information and/or electronic documents as credible electronic evidence. According to the ITE Law, electronic evidence is given the same level of importance as paper documents. This implies that electronic records hold the same evidential weight as written or letter evidence in civil case proceedings.

### **B. The Ideal Form of Electronic Evidence Regulation In The Civil Evidence System In Indonesia**

From a formal juridical perspective, civil evidentiary law in Indonesia the current judicial system does not yet accept documents or electronic material as valid evidence for settling disputes. The development of technology and information has brought major changes in various aspects of life, including changes in the civil evidence system. Various electronic data such as emails, instant messages and other electronic documents are an important part of civil evidence in court. The form of electronic evidence regulation in Indonesia is still not ideal when viewed from several points of view starting from the lack of legal certainty as can be seen in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) which does not strictly regulate electronic evidence, so it is prone to creating legal uncertainty in its application in court. Weaknesses of the law also include the lack of regulation regarding the terms and procedures for the use of electronic evidence, which of course makes it difficult for judges in the civil evidence process. Another problem is that the ITE Law does not clearly regulate the authentication and verification of electronic evidence, giving rise to doubts about the validity of the electronic evidence. Based on these problems, an ideal form of electronic evidence regulation is needed in accordance with the civil evidence system in Indonesia. The ideal indicators here can be expressed in the form:

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- a) Electronic evidence regulations must clearly define what is meant by electronic evidence.
- b) Electronic evidence regulations must specifically regulate the terms and conditions for the use of electronic evidence, including terms and conditions relating to the authenticity, validity and evidentiary strength of electronic evidence.
- c) Electronic evidence regulations must be flexible and able to adapt to developments in information technology.
- d) Electronic evidence regulations must pay attention to and protect human rights starting from privacy and the right to freedom of expression.
- e) The most important thing about the ideal form of electronic regulation is that regulation of electronic evidence must facilitate access to justice for all parties.

The civil evidence system in Indonesia currently still adheres to the *Het Herziene Indonesia Reglement* (HIR) and the *Rechts Reglement Buitenwesten (RBg)* where legally recognized evidence is still limited to written evidence, witnesses, allegations, confessions and oaths. The rapid development of information technology (ICT) has given rise to various forms of electronic evidence that have not been accommodated by HIR or RBG, resulting in problems regarding legal uncertainty in the civil evidence process. Based on these problems, ideal regulations are needed to accommodate electronic evidence in the civil evidence system in Indonesia. The limitations regarding what regulations must be able to accommodate electronic evidence in the civil evidence system are described as follows:

- a) Define electronic evidence clearly and comprehensively

The definition of electronic evidence must include various forms of electronic data such as emails, SMS, conversation evidence, voice recordings, video recordings, digital images, and electronic documents.

- b) Determine the legal requirements for electronic evidence

Regarding the legal requirements for electronic evidence, aspects of authentication, integrity and non-repudiation must be considered. Determine the method of proving electronic evidence. Methods of proving electronic evidence must consider the special characteristics of electronic data such as the use of electronic certificates and electronic signatures.

- c) Regulates the evidentiary power of electronic evidence

The strength of electronic evidence must be determined based on the type of electronic data, how it was obtained, and its relevance to the case being filed.

- d) Ensure protection of personal data privacy

There are electronic evidence regulations that make provisions that guarantee the protection of privacy and personal data of the parties involved in the case.

- e) Facilitate access to electronic evidence

Electronic evidence regulations must facilitate parties' access to electronic evidence relevant to the case being filed.

- f) Establish a special institution to handle cases related to electronic evidence

This special institution is in the form of a special court or other institution that has the authority to resolve disputes related to electronic evidence.

- g) Increase education and training for judges and law enforcement officer

Judges and law enforcement officials need to be equipped with adequate knowledge and skills to handle cases involving electronic evidence.

- h) Strengthening information and communication technology infrastructure to support the civil evidence system

There is a need to strengthen information and communication technology infrastructure to support an electronic-based civil evidence system.

- i) Harmonize with other related regulations

Harmonization of electronic evidence regulations with other regulations such as the Information and Electronic Transactions Law (UU ITE) and the Civil Procedure Code (KUHAPer).

Encouraging the realization of ideal electronic evidence regulations in the civil evidence system in Indonesia requires cooperation from various parties. This step can start from initiation and active collaboration between the Government, DPR, Supreme Court, professional organizations in the legal sector and society. Then proceed with taking a comprehensive approach by classifying all types of electronic evidence that must be accommodated by electronic evidence regulations, starting from emails, instant messages, electronic documents, audio and video recordings, as well as other digital evidence.

The next step is to determine clear terms and procedures for the use of electronic evidence, followed by strengthening adequate technological infrastructure to support the use of electronic evidence in court, accompanied by increasing human resources through training and education for judges, court staff and law enforcement officers. Others to understand and be able to apply electronic evidence regulations correctly. The most important part is ensuring that the regulations guarantee the protection of human rights including the right to privacy and the right to freedom of expression.

### IV. CONCLUSION

The development of technology has had a major impact on the development of law in Indonesia, especially in relation to the evidentiary system in civil procedural law. The minimal evidence recognised in the evidential system in Indonesia is due to Indonesia's attachment to legal principles gained from the Dutch legal system, especially influenced by HIR and RBg. The current state of evidence in civil procedural law is reliant on the civil procedural law book, which has specific constraints when it involves electronic information, electronic documents, and printed results. Article 153 HIR/Article 180 RBg allow for the recognition of electronic evidence that is different from the evidence recognised by Article 164 HIR and Article 284 RBg. The passing of the ITE Law in Indonesia is a response to the necessity for a comprehensive procedural law. In accordance with the stipulations outlined in Article 5, paragraphs (1) and (2) of Law Number 11 of 2008 regarding Electronic Information and Transactions, the Law acknowledges electronic information and/or electronic documents as legally acceptable proof.

To encourage the implementation of optimal electronic evidence regulations in the civil evidence system in Indonesia, the collaboration of multiple stakeholders is necessary. This process can commence with the initiation and dynamic collaboration among the Government, DPR (House of Representatives), Supreme Court, professional organisations in the legal field, and society. Following that, establish an extensive plan by classifying all forms of electronic evidence that must be covered by legislation on electronic evidence. This includes emails, instant messaging, electronic documents, audio and video recordings, as well as other forms of digital evidence.

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