

IMPLEMENTATION OF ELECTRONIC EVIDENCE IN CIVIL TRIALS AT THE DENPASAR DISTRICT COURT

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Abstract

The regulation of electronic evidence in trials is regulated in the Electronic Information and Transactions Law. Article 5 paragraph (1) of the Electronic Information and Transactions Law states that electronic information, electronic documents, and/or printouts are valid legal evidence. This means that evidence produced or stored in electronic form, which in the implementation of electronic trials at the Denpasar District Court is regulated in Supreme Court Regulation Number 1 of 2019 and its amendments, Supreme Court Regulation Number 7 of 2022, concerning Electronic Administration of Cases and Trials in Court. This system allows case registration, payment of court fees, summons, and trials to be carried out electronically through the e-Court application. There are several obstacles in the implementation of electronic evidence at the Denpasar District Court, including: lack of public understanding of electronic evidence, difficulties in ensuring the authenticity and integrity of electronic documents, and limitations of laws and regulations that specifically regulate electronic evidence. and also technical obstacles.

Keywords: regulations, electronic evidence, and the Denpasar District Court

Introduction

Evidence is one of the provisions in the trial stages of a case examination according to the applicable procedural law in court, bound by the rules of evidence, starting from the type of evidence, the burden of proof, the strength of proof and matters related to the evidence have been regulated in the main provisions of the applicable procedural law. It can be understood that the evidentiary process has its own codification rules as in other stages of case examination. Problems regarding the existence of evidence other than those mentioned in limited terms in the practice of civil procedural law, as well as the emergence of new evidence (electronic) due to the increasingly developing pattern of human civil relations will lead to an atmosphere full of legal uncertainty, namely the regulatory aspect regarding electronic evidence that cannot yet be fully accepted in the process of proving civil cases.

Methods

The research method used in this study is a normative research method supported by empirical research that uses various types of primary legal materials in the form of statutory regulations and secondary legal materials in the form of library materials related to the regulation of electronic evidence in court proceedings as sources of research material. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on the logic of legal science reviewed from the normative part, or which is in the form of an effort to discover law that is adapted to a particular case.

Results and Discussion

Regulation of Electronic Evidence in Civil Trials at the Denpasar District Court

Every evidentiary event in court involves an examination process with statements presented, in which the parties to the case can cite events that they can use to establish their civil rights or dispute the rights of the other party. Certainly, to ensure legal validity, the events described cannot simply be presented orally or in writing. However, to ensure their truth, they must be balanced or accompanied by legally valid evidence. Legal evidence must accompany the events. Therefore, evidence is intended to provide the judge examining a case with valid evidence to verify the validity of the events raised or described.

The parties have a legally binding interest in providing information and evidence concerning the events directly known to the witness, and the judge requires evidence to convince him or herself so that he or she can correctly apply the law. Each party must prove, that is, convince the judge, of the validity of the arguments they use in their dispute. In procedural law, *Contensius Jurisdictio* is used when two disputing parties have differing interests in a legal relationship. On the other hand, there are cases called *Voluntair Jurisdictio*,

where only one party appears before a judge to determine their status and obtain legal certainty that must be respected. Normatively, in procedural law, evidence, also known as *bewijsmiddel*, is a tool that can be used to provide information and explanations regarding disputed issues in court. Evidence is used by the parties to strategize to support their arguments in a lawsuit or rebuttal. The judge determines which party has the most comprehensive evidence based on the information and explanation of the evidence. Over time, the meaning of evidence has expanded as a result of the development of technology and information, which has resulted in evidence that can be used in legal proceedings must also include electronic information and/or documents to support the digital era and facilitate legal practice. Consequently, in practice, this has developed and become known as electronic evidence. However, to date, there are no formal and specific laws and regulations governing electronic evidence.

With the enactment of the ITE Law, new regulations regarding electronic document evidence have been introduced. Based on the provisions of Article 5 paragraph 1 of the ITE Law, it is determined that electronic information and/or electronic documents and/or printouts are valid legal evidence. Furthermore, in Article 5 paragraph 2 of the ITE Law, it is determined that electronic information or electronic documents and/or printouts as referred to in paragraph 1 are an extension of valid evidence and are in accordance with the applicable procedural law in Indonesia. Thus, the ITE Law has determined that electronic documents and/or printouts are valid evidence and are an extension of valid evidence in accordance with the applicable procedural law in Indonesia, so that they can be used as evidence in court.

Furthermore, based on the provisions of Article 5 paragraph 3 of the ITE Law, it is stipulated that electronic information and/or electronic documents are declared valid if they use an electronic system in accordance with the provisions of the ITE Law. Therefore, the use of electronic documents as evidence is considered valid if they use an electronic system in accordance with the provisions stipulated in Article 6 of the ITE Law, which stipulates that electronic documents are considered valid as long as the information contained therein can be

accessed, displayed, guaranteed for its integrity, and can be accounted for so as to explain a situation. Furthermore, electronic documents are considered to be equal in status to documents created on paper, as stipulated in the General Explanation of the ITE Law.

Furthermore, the ITE Law excludes this provision, as stated in Article 5 paragraph 4 of the ITE Law, which stipulates that certain types of electronic documents cannot be used as valid evidence if they relate to their creation. These include letters that, by law, must be in writing, and letters and documents that, by law, must be created in a notarial deed or a deed drawn up by a deed-making official. These material requirements are regulated in Articles 6, 15, and 16 of the ITE Law. Essentially, electronic information and documents must be guaranteed for authenticity, integrity, and availability. To ensure the fulfillment of these material requirements, digital forensics is required in many cases.

The regulation of electronic evidence must be based on the system and principles of evidentiary law applicable in Indonesian procedural law. Subekti stated that the law of evidence is a set of rules of procedure that must be adhered to in a legal proceeding between two parties seeking justice. Hari Sasangka defined the law of evidence as a subset of procedural law that regulates the types of legally valid evidence, the system adopted in proving evidence, the requirements and procedures for submitting such evidence, and the judge's authority to accept, reject, and evaluate evidence. In the proving stage, there are two crucial elements: First, the elements of evidence. The parties in the evidentiary stage must use valid evidence according to evidentiary law and may not use evidence that is not regulated by statutory regulations. Second, the Regulation of Evidence. That the evidence regulated by statutory regulations is considered valid evidence and can be used as evidence in court, this is because the statutory regulations regulate the method of creation, use and strength of evidence as evidence.

Referring to the provisions regarding evidence stipulated in the Indonesian Procedural Law, there must be a testing tool for electronic evidence for it to be declared valid in court, just as with other evidence, namely formal and material requirements. These requirements are

determined based on the type of electronic evidence in question, whether in original or printed form. The material requirements for electronic evidence are regulated in Article 5 paragraph (3) of the ITE Law, namely, Electronic Information and Documents are declared valid if they use an Electronic System in accordance with the provisions stipulated in the ITE Law.

To keep up with technological developments and avoid a regulatory vacuum regarding electronic evidence in court proceedings, the Supreme Court issued regulations providing electronic court services since 2018, namely the issuance of Supreme Court Regulation (PERMA) No. 3 of 2018. These electronic services include electronic registration, payment, and summons of parties. The following year, the Supreme Court completed these electronic services by introducing an electronic trial system regulated in Perma Number 1 of 2019. In fact, from this Perma, electronic appeals services were also born. The Supreme Court further strengthened electronic court services with Supreme Court Regulation Number 7 of 2022, an amendment to Supreme Court Regulation Number 1 of 2019 concerning Electronic Case Administration and Court Trials. One of the contents of this Regulation is that trials can proceed even if the Defendant does not consent. Supreme Court Regulation 7 of 2022 regulates several aspects of changes to the electronic trial system. These changes encourage the implementation of electronic trials more widely and under any conditions, including for defendants who do not express their consent to electronic trials and/or are located abroad. Defendants who "do not want" to participate in electronic trials can still follow manual procedures without losing their right to defend their interests. The court does not force them to participate in electronic trials. The court bridges the manual process by digitizing documents and inputting them into SIP so that they can be accessed by the plaintiff. Instead, the plaintiff's electronic documents are downloaded by court officials and delivered directly to the defendant.

Obstacles Encountered in the Implementation of Electronic Evidence Proof in Civil Case Trials at the Denpasar District Court

Electronic evidence is an extension of the types of evidence that have been defined in a limited and restricted manner, both as stipulated in Article 184 of the Criminal Procedure Code and Article 1866 of the Civil Code. Regarding the evidentiary power inherent in certain electronic evidence, it is still possible for electronic evidence to be invalidated by opposing evidence (*tegenbewijs*). This does not mean that electronic evidence has final evidentiary power that cannot be invalidated by any other evidence. The validity of email in court proceedings is linked to Article 1866 of the Civil Code, which states that formal truth is based on legal form, so that a correct text provides sufficient evidence and binding force. Judges do not need other evidence to decide a case other than the relevant evidence. The binding medium means that unless it can be proven by other means, judges must accept tangible evidence.

The evidentiary power inherent in electronic evidence is stipulated by the Electronic Information and Transactions (ITE) Law, which states that electronic documents are equal to documents created on paper. This means that the evidentiary power of electronic documents in civil litigation is equal to that of written evidence (letters). Equating electronic documents with paper documents raises the question of whether electronic copies have the same evidentiary power as originals, given that an electronic document is indistinguishable from an original, just as a photocopy, as a copy, can be distinguished from an original.

Electronic evidence has evidentiary weaknesses because virtual letters/deeds are highly susceptible to alteration, forgery, or even fabrication by individuals who are not authorized to create them but who pretend to be the actual parties, as is often the case in hoax news. Electronic information/data as evidence is not only not yet accommodated in the Indonesian legal system, but in reality, the data in question is also highly vulnerable to alteration, interception, forgery, and transmission worldwide in a matter of seconds. Consequently, the impact is rapid, even devastating. Electronic evidence presented in court must be guaranteed to be of integrity. One

guarantee is that electronic evidence has been examined using the correct procedures. If electronic evidence has been examined using the correct procedures, it can be concluded that there has been no change to the evidence, or in other words, the integrity of the electronic evidence is maintained, thus having evidentiary value in court. However, currently there is no universally accepted procedure for examining electronic evidence in Indonesia. Furthermore, in practice at the Denpasar District Court, the procedure for examining electronic evidence is delegated to each institution examining the electronic evidence. This can lead to different procedures across institutions. Furthermore, it can make it difficult for judges to determine whether electronic evidence has been examined using the correct procedures and therefore has evidentiary value.

At the Denpasar District Court, there are several obstacles in the implementation of electronic evidence in the Denpasar District Court, including: lack of public understanding of electronic evidence, difficulties in ensuring the authenticity and integrity of electronic documents, and limitations in laws and regulations that specifically regulate electronic evidence. He explained these obstacles, namely (1). Lack of Public Understanding. Many people, including justice seekers and court users, still do not fully understand the procedures, documents, and requirements required for electronic evidence. This can cause confusion and errors in the trial process according to the Denpasar District Court. (2). Challenges of Authenticity and Integrity. Electronic documents, such as digital files, are vulnerable to manipulation and changes. Ensuring the authenticity and integrity of electronic evidence is a challenge for the court, because it requires a reliable mechanism to verify the authenticity of the evidence. (3). Limitations of Laws and Regulations. Although there is recognition of electronic evidence in several regulations, there are no comprehensive and specific regulations that regulate in detail regarding electronic evidence in court. This creates uncertainty in the process of proving and accepting electronic evidence, as mentioned in legal journals. (4). The Need for Special Expertise. Handling electronic evidence requires specialized expertise in

information technology. Court officials and parties involved in the trial need to have a sufficient understanding of technology to be able to properly handle and examine electronic evidence.

(5). Potential for Manipulation and Forgery. Electronic documents can easily be manipulated or falsified. This is a concern in the evidentiary process, due to the potential for misuse of electronic evidence for improper purposes.

Despite obstacles, electronic litigation (e-litigation) has been implemented at the Denpasar District Court since 2019, despite limited facilities and resources at the Denpasar District Court. The implementation of e-litigation is expected to provide a solution to overcome various challenges in electronic evidence, although further efforts are needed to improve understanding, expertise, and a more comprehensive system to support the electronic judicial process.

Conclusion

The regulation of electronic evidence in trials is regulated by the Electronic Information and Transactions Law (UU ITE). Article 5 paragraph (1) of the ITE Law states that electronic information, electronic documents, and/or printouts thereof constitute valid legal evidence, in the implementation of which electronic trials at the Denpasar District Court are regulated in Supreme Court Regulation (PERMA) Number 1 of 2019 and its amendment, PERMA Number 7 of 2022, concerning Electronic Administration of Cases and Trials in Court. This system allows case registration, payment of court fees, summons, and trials to be conducted electronically through the e-Court application. However, there are obstacles in the implementation of this electronic evidence.

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