



Civil Evidence Using Electronic Documents in Indonesia

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<http://dx.doi.org/10.18415/ijmmu.v9i11.4163>

Abstract

The rapid use of information technology in electronic-based activities in various fields, including in the business sector, has not been followed by legal developments that can keep up with the speed of advances in communication and information technology. Therefore, it is necessary to have a law that can resolve problems/disputes that occur in cyberspace. This research was conducted with the aims of (1) To find out and analyze the position of electronic documents as evidence before the court, especially in proving civil Law in Indonesia; and (2) To find out and analyze the legal power of electronic documents as evidence in civil evidence law in Indonesia. This study uses primary data from a literature review, namely the Civil Procedure Code (KUHPerdata), Law no. 11 of 2008, concerning Information and Electronic Transactions and Jurisprudence. The results of this study indicate that: (1) The position of electronic documents in judicial practice is often equated with written evidence instead of a deed because several types of electronic documents can be transferred into paper form (printout). However, electronic documents as evidence in a formal juridical manner have not been explicitly regulated in civil procedural Law, for electronic document arrangements in Law no. 8 of 2011 concerning Information and Electronic Transactions do not contain regulations regarding the procedure for submitting electronic documents in court so that according to the author, as a country that adheres to a continental European legal system, electronic documents need to be regulated in civil procedural Law or Supreme Court regulations so that. (2) The power of proof from electronic document evidence, it is recognized that its essence in judicial practice has the power of independent evidence, which is left to the discretion of the judge. The recommendation from this study is that considering that electronic documents have often been used in the trial process, it is time to formulate normatively in binding civil procedural Law and must be followed to meet the needs of judicial practice to provide a sense of justice based on achieving legal order and legal certainty.

Keywords: *Electronic Evidence; Electronic Documents; Civil Law; Indonesia; Evidence*

Introduction

The rapid development of technology has resulted in the emergence of various existing telecommunication facilities and services. Technological products that are so sophisticated are easily integrated into all information media. The development of technology and information has had a considerable influence on the lives of the world's people, especially in Indonesia; this is marked by the era

of information technology which introduces the virtual world with the presence of an interconnected network (Internet) that uses paperless communication. The development of this technology is also inseparable from its influence in various fields, especially in legal action. This is related to the emergence of various new phenomena, which are also the impact of advances in technology and information.

Where these facilities allow for global communication without recognizing national borders; in addition, the Internet has brought the world into a new phase which is more popular with the term digital economy or known as the digital economy, in the business sector, for example, the use of information systems will significantly help and improve the performance of a company, so that a company can compete, a company must perform a transformation of its internal foundation in a structured manner, namely by developing an e-business strategy. One aspect of this activity in transacting using internet media is known as e-commerce, where e-commerce uses electronic banking technology facilities.

Various changes caused by the development of community needs and legal actions affect the legal system in force in Indonesia. This also affects the applicable civil procedural Law, including the civil evidence system. In the settlement of cases in court, the proving procedure is the essential stage to prove the truth of a specific legal event or relationship or the existence of a right, which is used as the basis by the plaintiff to file a lawsuit to the court. Through the proof stage, the judge will obtain the basis for deciding to resolve a case.

In its development in Indonesia, the primary legal sources of civil procedural Law used today are still the regulations used during the colonial era, such as HIR (Het Herziene Indonesisch Reglement) and RBg (Rechtsreglement Voor de Buitengewesten) and RV (Wetboek op de Burgerlijke Rechtsvordering). In addition, some other laws and regulations partially contain provisions of civil procedural Law, such as the Law on the Supreme Court, the Law on Judicial Power, the Law on General Courts, and other laws and regulations. (Ardiansyah, 2020, p. 362)

HIR is a source of civil procedural Law used for Java and Madura, and RBg is used for areas outside Java and Madura. At the same time, RV is applied to European groups during the colonial era. Because these regulations have been made for a long time, many provisions are no longer relevant to the times to be applied today, while new problems are constantly emerging and increasingly complex. Can adapt to developments in society. (Ardiansyah, 2020, p. 363)

The proof is a stage that has an essential role in judges making a decision. The process of evidence in the trial process can be said to be the center of the examination process in court. The proof is central because the parties' arguments are tested through the evidentiary stage to find the Law that will be applied (rechoepasing) or discovered (rechtvinding) in a particular case. (Ali, 2009, p. 17)

Article 5, paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions stipulates that electronic information/electronic documents and their printouts are legal evidence and are an extension of legal evidence following procedural Law in force in Indonesia. Then in Article 164 HIR (283 RGB) AND 1903 BW, there are 5 (five) types of evidence that can be presented in court in this case in civil proceedings, namely (Taqiya, 2021):

1. Written evidence (letter);
2. Witness evidence;
3. Evidence of suspicion;
4. Evidence of confession, and;
5. Evidence of oath;

Indonesia, as a state of Law, Law requires the presence of procedural Law as formal Law, which aims to apply material law in society. (Want, 2013) This is considering that technological developments are speedy, and developments and changes in material Law with statutory regulations are formed partially

following the community's needs without the need to be carried out in formal Law. Electronic evidence is only partially regulated in Law and has not been codified, so this raises questions about the relationship of electronic evidence in national civil procedural Law.

Based on the background of the problem, the author wants to examine how the position and strength of electronic evidence in civil evidence in Indonesia is

Formulation of the Problem

The formulation of the problem of this research are:

1. What is the position of electronic documents as evidence in civil procedural Law?
2. What is the power of proving electronic documents as evidence in the Law of evidence in Indonesia?

Research purposes

Research Objectives are:

1. To find out and analyze the position of electronic documents as evidence before the court, especially in the evidence of civil Law in Indonesia.
2. To find out and analyze the legal power of electronic documents as evidence in civil evidence law in Indonesia.

Urgency/Priority of Research

1. It knows the position of electronic documents as evidence before the court, especially in civil evidence in Indonesia.
2. It is knowing and analyzing the legal power of electronic documents as evidence in civil evidence law in Indonesia.

Research Methods

This study uses a normative juridical approach. The juridical approach is used to analyze various principles and theories related to research. The approach is based on the primary legal material by examining theories, concepts, legal principles, and legislation related to this research. This approach is also known as the library approach by studying books, laws and regulations, and other documents. The nature of the research is prescriptive, namely legal research, to find the rule of law, legal principles, and legal doctrines to answer the legal problems faced. The type of data used in this study is in the form of qualitative data, whose sources of legal materials are divided into primary legal sources and secondary legal sources. Primary legal materials are authoritative; that is, they have authority.

Meanwhile, secondary legal materials are all publications on Law which are not official documents. In addition, there are also tertiary legal materials that serve as instructions. The techniques used in collecting legal materials in this research are the legal approach (statute approach), historical approach (historical approach), and conceptual approach (conceptual approach). The data in this study were analyzed qualitatively, namely from the data obtained, compiled systematically, and then analyzed

in a qualitative normative manner. In conclusion, the researcher uses the syllogism and interpretation method. The use of syllogism in this legal research stems from submitting the central and minor premise; then, a conclusion is drawn.

Analysis and Discussion

1. Proof Theory

In assessing proof, the judge can act freely or be bound by the law in this case, and there are two theories, namely (Harahap, Civil Procedure Law, 2008)

- a. Free Evidence Theory** requires the broadest possible freedom for judges in assessing evidence. A legal provision does not bind judges, or the bonds by legal provisions must be limited to a minimum. Wanting broad freedom means placing trust in judges to be responsible, honest, impartial, act with expertise, and not be influenced by anything and by anyone. (Parlindungan, 2021, p. 46)
- b. Bound Evidence Theory.** The evidence presented by the litigants binds the judge. The verdict must be in line with the evidence presented in the trial. This theory is further divided into 1) Negative Evidence Theory; this theory wants harmful binding provisions. 2) Positive Evidence Theory, in addition to the prohibition, this theory requires an order from the judge. Here the judge is obliged, but with conditions. (Article 285 RBg/165 HIR, Article 1870 of the Civil Code). (Ali & Haryana, Legal Principles of Civil Evidence, 2011)

2. Legal Discovery Theory

According to Paul Scholten, the discovery of Law is something other than the mere application of rules to events. Sometimes and even very often, the rules have to be found, either by way of interpretation or by analogy or *rechtsverwijning*. (Ali, Revealing Legal Theory (Legal Theory) and Judicial Theory (Judicialprudence): Including the Interpretation of Laws (Legisprudence), 2009) Meanwhile, what is meant by the legal discovery by Sudikno Mertokusumo is the process of law formation by judges, or other law enforcement officers assigned the task of implementing general legal regulations in concrete legal events. Furthermore, it can be said that legal discovery is a process of concretization or individualization of general legal regulations (*das sollen*) by remembering certain concrete events (*das Sein*) (Jayadi, 2017)

The strength of proof of electronic documents, which is equivalent to documents made on paper, according to the general explanation of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), according to the author it is deemed necessary to understand the strength of proof of written evidence (letters) as stated in the Civil Code. The power of proving electronic documents that are expressly acknowledged, and equated with documents made on paper, is possible to do, considering the nature of electronic documents that can be transferred into several forms or printed in printout form so that they are equated with documents made on paper. (Permono, Tjoanda, & Radhawane, 2022)

In the practice of civil procedural Law, documents made on paper are categorized as written evidence (letters). The position of written evidence in the practice of civil cases is included in the most critical evidence. Sudikno Mertokusumo divides written evidence (letters) into 2 (two) categories of forms: letters, deeds, and other documents, which are not deeds. Sudikno Mertokusumo further stated that the deeds themselves are divided into 2 (two) categories, namely authentic deeds and private deeds. Provisions of laws and regulations concerning civil evidence state that an authentic deed is a deed whose form has been determined by Law, and made by and before an authorized public official. (Sembiring)

Electronic information and electronic documents (E-mail) as legal evidence in procedural Law, especially civil cases, are the most interesting electronic documents among the two pieces of evidence. This is due to paperless electronic documents (without using paper), which were initially paper-based (using paper), whereas, before the rapid development of technology, documents were made using paper so that if there was a problem, they were classified as written evidence or letters. However, in civil cases, the primary evidence is written evidence or written evidence⁶. Evidence has a significant position in the trial process in civil cases. This evidence becomes the medium in which arguments can be strengthened in court. As a result, if someone wants to commit and win a case in court, evidence should not be left behind. In everyday life, explanations stating that electronic mail is legal evidence in Article 5 No. 11 of 2008 concerning the ITE Law still often lead to many different interpretations or understandings related to the evidence carried out by litigants in court. (Permono, Tjoanda, & Radhawane, 2022)

Proving a civil case using electronic evidence so that the proof process is carried out in civil cases using electronic evidence that has the same legal force as proof in conventional civil cases as regulated in Article 1866 of the Civil Code Article 5 paragraph 1 and paragraph 2 Number 11 2008 concerning Information and Electronic Transactions.

The essential thing in the evidentiary examination stage is to convince the judge and justify the arguments made and have been submitted by the litigants in court, in the case of civil procedural Law the truth sought is the formal truth that must be supported by valid evidence. Outside of other laws, there is evidence that is used to obtain legal certainty regarding the truth of a legal event in dispute, namely local examination (Descente) as regulated in Article 153 HIR/180 RBg, and expert/witness statements (expertise) which are regulated in Article 153 HIR/180 RBg. in Article 154 HIR/181 RBg. (Permono, Tjoanda, & Radhawane, 2022)

In the legal process, evidence is an important consideration. During this proof stage, the parties can show the truth of the facts or legal events in question. As shown above, the parties who can provide/show valid evidence will win, and vice versa. The top judge examines and decides the case based on the judge's conviction, considering the evidence presented by the disputing parties. The judge accepts not all evidence unless the evidence is received in court. (Mertokusumo, 2010, pp. 134-136)

As specified in the general explanation of the Electronic Information and Transactions Act (UU ITE) that electronic documents can be used as evidence of valid instructions according to Law. This provision is excluded, as stipulated in article 5, paragraph 4 of the Electronic Information and Transaction Law (UU ITE), that there are several types of electronic documents that cannot be used as legal evidence when related to the preparation of letters which according to the Law must be made in the form of writing, and Letters and documents which according to the Law must be made in the form of a notarial deed or a deed made by the official doing the deed.

The power of proof of an authentic deed is perfect and binding evidence for both parties. In the case of formal defects in an authentic deed, the inherent power only has the strength of evidence as an underhand act. Although the authentic deed is perfect and binding for both parties, the power of proof attached to it allows it to be paralyzed by opposing evidence. (Parlindungan, 2021)

In addition, the duties and roles of judges in assessing electronic evidence that can be used in trial practice in court are still very diverse¹⁷. Regarding the strength of evidence from electronic evidence, some argue that electronic evidence is a piece of new evidence as an expansion of evidence in court, as stated explicitly in Law no. 11 of 2008. There is also an opinion that states the strength of evidence from the initial evidence, namely, evidence that cannot stand alone and must be supported by other evidence. (Parlindungan, 2021)

Regarding electronic evidence, in Indonesia, there have been several actions that led to the use and recognition of electronic documents as legal evidence, for example, known as online trading, where

the stock exchange and microfilm regulation and electronic means as a medium for storing company documents are regulated in the Act. Law Number 8 of 1997 concerning company documents, because the primary purpose of the proof is to convince the judge of the truth, what must be proven is how the events or events presented by the parties are still unclear or debated in court. The formal requirement regulated in article 5, paragraph 4 of the Electronic Information and Transaction Law (UU ITE), is that electronic information or documents are not documents or letters which, according to the Law, must be in written form. Meanwhile, the material requirements stipulated in Article 6, Article 15, and Article 16 of the Electronic Information and Transaction Law (UU ITE), essentially mean that information and electronic documents must be guaranteed their authenticity, integrity, and availability. In many cases, digital forensics is needed to ensure the fulfillment of the material requirements in question.

1866 Civil Code. The strength of proof of written documents in civil evidence law is very dependent on the form and purpose of the document. If the electronic system has not been certified, then any information and documents created are considered invalid¹⁵.

Given the nature of electronic documents that can be transferred into several printed forms so that they are the same as documents made on paper, the strength of electronic document evidence that is expressly recognized and commensurate with documents made on paper is very possible¹⁶.

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Conclusion

The position of electronic documents in judicial practice is often equated with written evidence instead of a deed because several types of electronic documents can be transferred into paper form (printout). However, electronic documents as evidence in a formal juridical manner have not been explicitly regulated in civil procedural Law, as for electronic document arrangements in Law no. 8 of 2011 concerning Information and Electronic Transactions do not contain regulations regarding the procedure for submitting electronic documents in court so that according to the author, as a country that adheres to a continental European legal system, electronic documents need to be regulated in civil procedural Law or Supreme Court regulations. The power of evidence from electronic document evidence is recognized that its essence in judicial practice has the power of independent evidence, which is left to the discretion of the judge.

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