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Rohyani Rigen Is Sumilat^a, Grenaldo Ginting^b

^aTomohon Indonesian Christian University, Indonesia, rigensumilat@gmail.com

^bTomohon Indonesian Christian University, Indonesia, grenaldeginting@gmail.com

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Legal Study of the Existence of Electronic Evidence in Corruption Crimes

Rohyani Rigen Is Sumilat^{a*}, Grenaldo Ginting^b

^aTomohon Indonesian Christian University, Indonesia, rigensumilat@gmail.com

^bTomohon Indonesian Christian University, Indonesia, grenaldoginting@gmail.com

*Correspondence: rigensumilat@gmail.com

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Abstract

The use of electronic information or documents as evidence in examinations of corruption cases is becoming increasingly important. Law Number 19 of 2016, concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, regulates the use of information or electronic documents as valid evidence in the examination process in criminal trials in general. However, there is a lack of regulation regarding documents and electronic transactions as evidence in resolving criminal corruption cases in the Criminal Procedure Code (KUHAP). Therefore, efforts are needed to harmonize the ITE Law and the Criminal Procedure Code regulations regarding the use of information or electronic documents as evidence in corruption cases. The data used in this research is secondary data obtained from various literature sources such as books, laws, literature, and journals. Although the Criminal Procedure Code does not regulate the position of electronic evidence and the definition of evidence itself, Article 39 paragraph (1) of the Criminal Procedure Code states that objects that can be confiscated can be considered as evidence. However, Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes recognize that electronic information or documents are valid legal evidence in the judge. Although the Criminal Procedure Code does not regulate the position of electronic evidence and the definition of evidence itself, Article 39 paragraph (1) of the Criminal Procedure Code states that objects that can be confiscated can be considered as evidence. However, Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes recognize that electronic information or documents are valid legal evidence in the judge. Although the Criminal Procedure Code does not regulate the position of electronic evidence and the definition of evidence itself, Article 39 paragraph (1) of the Criminal Procedure Code states that objects that can be confiscated can be considered as evidence. However, Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes recognize that electronic information or documents are valid legal evidence in the judge.

Keywords: Law, Electronic Evidence, Existence, Corruption

1. Introduction

A *strong nation* is a nation that has good laws and is implemented well by law enforcement officials. The process of law formation by the legislative body is expected to be in favor of legal interests for the prosperity of the people as a whole, not the interests of political party elites so that the laws created in the law are the people's laws, not the laws of party elites. In the process of nation-building, the state requires significant funds to develop. In this case, the state budget must be made right on target so that the ideals of national development can be achieved. However, this is true in the reality of life that exists both in the surrounding environment and in the mass media, electronic media, and social media. Criminal practices of corruption often involve officials with interests so that the state budget for development is not on target.

Technological advances cause changes in each person's habitual patterns, and conventional designs may become outdated so that everyone abandons them. In this case,

evidence by current developments, namely recordings, is currently in force in the criminal procedural law (KUHAP). No evidence was found in the form of a recording. Electronic evidence in the record of recordings is significant, considering that corruption is a crime of people wearing ties.

The legality of recordings or electronic evidence in criminal acts of corruption is still being debated. The difficulty of proving criminal acts is only focused on conventional means of evidence as regulated in the criminal procedural law as in law number 8 of 1981 concerning the criminal procedural code. Proof is the central point in a series of (illegal) case examinations in court. The trial boundaries are formed through the 'room,' which is called evidence, to seek and defend the truth. The proof is limited by provisions that contain guidelines and outlines of ways justified by law to prove the accused's guilt. In criminal acts of corruption displayed in the mass media, electronic evidence in conversations is often shown in the courtroom as evidence. However, in conventional law, electronic evidence is not found as evidence. Only later in the law on criminal acts of corruption is it included. Electronic evidence as evidence in criminal acts of corruption.

This study aims to examine the existence of electronic evidence in the context of criminal acts of corruption. This research will study the regulations regarding the use of information or electronic documents as valid evidence in the process of examining trials for criminal acts of corruption, both in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as in the Criminal Procedure Code (KUHAP). By achieving this goal, it is hoped that this research can provide a deeper understanding of the existence of electronic evidence in criminal acts of corruption and provide input in developing more effective legal policies and practices in handling corruption cases involving electronic evidence.

2. Methods

Methodology is an operational framework in which facts are placed so that their meaning can be seen more clearly (Ngani, 2012). Legal research is a process of discovering legal rules, legal principles, and legal doctrines to answer the legal issues faced. Research methods are ways of thinking and acting that are well prepared to conduct and achieve a research objective so that researchers can only formulate, find, analyze, or solve problems in research with research methods. The type of research used in this research is normative legal research or library research. Soekanto & Mamudji (1995), normative legal research examines law conceptualized as norms or rules that apply.

3. Results and Discussion

The Existence of Electronic Evidence in Corruption Crimes

The Electronic Information and Transaction Law (ITE) is a bright spot regulating electronic evidence in Indonesia. Before the existence of this law, regulations regarding electronic evidence were spread across several statutory regulations, as mentioned above. However, this causes electronic evidence only to be used in some issues or criminal acts.

Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence. In paragraph (2), it is stated that the position of electronic evidence is as an extension of legal evidence by the procedural law in force in Indonesia. This means that with the ITE Law, electronic evidence does not only apply to specific criminal acts but also any criminal act. It even applies as evidence in every procedural law in Indonesia, not just criminal procedural law. Considering that electronic evidence is essential, the regulation of proof in the ITE Law will significantly impact procedural law in Indonesia.

Josua Sitompul stated the position of electronic evidence in the ITE Law and its relation to evidence in the Criminal Procedure Code as follows:

- 1) Electronic evidence expands the scope or scope of evidence. The extended evidence in the Criminal Procedure Code is documentary evidence. The essence of the letter is a collection of certain punctuation marks that have meaning. This essence is the same as the printout of electronic information or documents. Printouts of electronic information and documents are categorized as other letters, as referred to in Article 187, Letter D of the Criminal Procedure Code. They can only be used as evidence if they have a relationship with the contents of other evidentiary tools.
- 2) Electronic evidence is another means of proof. Electronic evidence as another form of evidence is emphasized in Article 44 of the ITE Law, which regulates that, Electronic information and/or documents are other pieces of evidence used for investigations, prosecutions, and examinations in court hearings. Affirmation that electronic information or documents in their original form constitute evidence other than those stipulated in the Criminal Procedure Code is an essential regulation considering that if such electronic communication or documents are printed, the information obtained will not be accurate when compared to electronic data or documents which remain in their original form.
- 3) Electronic evidence as a source of clues.

Article 188 paragraph (2) of the Criminal Procedure Code determines in a limited manner the sources of guidance, namely witness statements, letters, and defendant statements. However, electronic evidence can also be used as a source of guidance, namely printed information or electronic documents categorized as letters. The letter in question is "another letter" as long as the letter is related to the contents of other evidence.

Electronic evidence arrangements in the Criminal Procedure Code cannot be found in the Criminal Procedure Code. However, with the development of the times and the development of criminal acts, in line with Eugen Ehrlich's opinion, which states that in making laws, one should pay attention to what lives in society, the regulation of electronic evidence is considered essential, and increasingly needed (Hamdi et al., 2013).

Regulations regarding electronic evidence have a reasonably long history and will continue to develop. This can be seen from the many laws and regulations that have made electronic information or electronic documents into evidence. In 2008, the government issued Law of the Republic of Indonesia Number 11 of 2008 Concerning Information and Electronic Transactions commonly known as the ITE Law. The ITE Law is a bright spot in the regulation of electronic evidence. Article 5, paragraph (1) states that Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.

This article is the legal basis for law enforcers to be able to use various types of electronic evidence for law enforcement in Indonesia. However, the ITE Law is not the first regulation regulating electronic evidence use. Before the ITE Law was formed, several regulations already permitted or recognized the use of electronic evidence.

The Criminal Procedure Code does not regulate the position of electronic evidence. Even the Criminal Procedure Code does not explicitly restrict the definition of evidence itself. However, Article 39, paragraph (1) of the Criminal Procedure Code holds what can be confiscated. In other words, the confiscated objects mentioned in Article 39, paragraph (1) of the Criminal Procedure Code, can be referred to as evidence. It is different from the more specific laws, namely Law Number 11 of 2008 concerning Information and Electronic Transactions, wherein Article 5 paragraph (1) stipulates that electronic information and/or electronic documents and/or their printouts are tools of valid legal evidence. Apart from that, in other special criminal laws, namely the law governing Corruption Crimes, Law Number 20 of 2001 concerning amendments to Law number 31 of 1999 concerning the Eradication of

Corruption Crimes recognizes that electronic evidence is valid evidence in trials. This is proven by the sound of article 26 A, which explains that:

Legitimate evidence in the form of instructions as stipulated in Article 188 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically for corruption crimes, can also be obtained from:

- 1) Other evidence in the form of information spoken, sent, received, or stored electronically with an optical device or something similar, and
- 2) Document, namely any recording of data or information that can be seen, read, or heard which can be released with or without the help of a means, whether written on paper, any physical object other than paper, or recorded electronically in the form of writing, sound, pictures, maps, designs, photos, letters, signs, numbers, or perforations that have meaning. Even though in corruption cases, electronic evidence has legal solid force, this provision can only apply in corruption cases or cases related to the ITE Law in Indonesia.

Before the publication of the ITE Law, the existence of electronic evidence had been spread out in several laws and regulations, viz.

- (i) UU no. 8 of 1997 concerning Company Documents;
- (ii) (UU no. 15 of 2003 concerning Stipulation of Government Regulations instead of Law no. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism;
- (iii) (UU no. 15 of 2002 concerning the Crime of Money Laundering as amended in Law no. 15 of 2003;
- (iv) (UU no. 31 of 1999 concerning the Eradication of Corruption as amended by Law no. 20 of 2001;
- (v) UU no. 30 of 2002 concerning the Corruption Eradication Commission. However, the existence of electronic evidence is recognized as legal evidence, further strengthened by the issuance of the ITE Law, namely in Article 5 paragraph (1) and paragraph (2) of the ITE Law, which states:
 - 1) Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.
 - 2) Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence in accordance with the Procedural Law in force in Indonesia.

With the enactment of the provisions in Article 5 paragraph (1) and paragraph (2) of the ITE Law, valid evidence in civil and criminal procedural law is not only limited to evidence contained in the HIR/RBg, the Civil Code and the Criminal Procedure Code but also includes the evidence referred to in Article 5 paragraph (1) and paragraph (2) of the ITE Law, namely Electronic Information and/or Electronic Documents and/or their printouts.

This expansion of evidence has brought about changes in the law of evidence that applies in procedural law in Indonesia so that electronic evidence in the form of electronic information and/or electronic documents and/or printouts are legally recognized as evidence that can be presented in court. Furthermore, Article 5 paragraph (4) jo. Article 6 jo. Article 15 jo. Article 16 of the ITE Law regulates the requirements for the validity of electronic evidence, both formal and material requirements, namely:

- 1) Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, its integrity is guaranteed and can be accounted for so that it explains a situation;
- 2) Electronic Information and/or Electronic Documents originate from reliable, safe and responsible Electronic Systems;
- 3) Can display Electronic Information and/or Electronic Documents again in their entirety;

- 4) Can protect the availability, integrity, authenticity, confidentiality and accessibility of Electronic Information;
- 5) Equipped with procedures or instructions that can be understood;
- 6) Have an ongoing mechanism to keep procedures or instructions up to date, clear and accountable;
- 7) Not a letter which according to the law must be made in written form; And
- 8) Not a letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by a deed-making official.

It has been previously described that arrangements for electronic evidence can be found in several special laws, such as RI Law Number 31 of 1999 concerning Eradication of Corruption as amended by RI Law Number 20 of 2001, RI Law Number 21 2007 concerning the Eradication of the Crime of Trafficking in Persons, Republic of Indonesia Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by RI Law Number 19 of 2016, RI Law Number 35 of 2009 concerning Narcotics, RI Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes and Law of the Republic of Indonesia Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism.

In special criminal law, electronic evidence is formulated expressly and has the power as legal evidence. However, in the criminal legislation that regulates electronic evidence, there are different policies regarding the status of digital evidence or electronic evidence, namely in legislation where one piece of electronic evidence is recognized as an extension of evidence, whereas in legislation where others are recognized as stand-alone evidence (Suseno, 2012).

The latest breakthrough in the development of evidence can be seen in Law no. 11 of 2008. This law is the answer to the main problems in the development of information technology-based crime (cybercrime) and is able to accommodate the most necessary evidence in that crime, namely electronic evidence in the form of electronic information and electronic documents.

Article 5 paragraph (1) Law no. 11 of 2008, electronic information and electronic documents are valid evidence. Then in paragraph (2) of the article it is emphasized that electronic information and electronic documents are an extension of valid evidence in accordance with the procedural law in force in Indonesia. Affirmation of electronic information and documents as evidence is also included in Article 44 of Law no. 11 of 2008, the formulation of which is "Evidence for investigation, prosecution, and examination in court according to the provisions of this law is as follows:

- a. The evidence as referred to in the statutory provisions; and
- b. "Other evidence is in the form of Electronic Information and/or Electronic Documents as intended in Article 1 number 1 and number 4 as well as Article 5 paragraph (1), paragraph (2) and paragraph (3)." In accordance with Article 5 paragraph (1) Jo. Article 44 of Law no. 11 of 2008, the status of electronic evidence is evidence that stands alone and is an extension of legal evidence as regulated in the criminal procedural law in force in Indonesia, so that it can be used as evidence at trial.

Evidence of information or electronic documents is included in the type of evidence of instructions and letters. Information evidence is an extension of the guidance evidence in the Criminal Procedure Code, where this information evidence is expanded in accordance with the development of developing technology. This informational evidence is evidence that cannot stand alone. If this evidence cannot stand alone, then this information evidence must be supported by other evidence, so that it can be accepted as valid evidence in court. Electronic documentary evidence is included in the type of documentary evidence. So that documentary

evidence is not only limited to letters made by authorized public officials, letters from an expert which contains his expertise, or other documents related to criminal acts.

Information evidence or electronic documents are valid evidence and can be used to reveal a criminal act of corruption. Information evidence and electronic documents can be used as two valid pieces of evidence. Because information evidence and electronic documents are two different types of evidence. Electronic information or document evidence in corruption cases is a type of evidence regulated in Law Number 30 of 1999 concerning the Eradication of Corruption Crimes, in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 30 of 1999 concerning Eradication Corruption Crimes and Law Number 11 of 2008 concerning Information and Electronic Transactions.

Based on article 5 paragraph (2) of the ITE Law, it is regulated that Electronic Information and/or Electronic Documents and/or printed results are an extension of valid legal evidence in accordance with the procedural law in force in Indonesia. What is meant by expansion here must be related to the types of evidence regulated in Article 5 paragraph (1) of the ITE Law.

- 1) Adding evidence that has been regulated in criminal procedural law in Indonesia, for example the Criminal Procedure Code. Electronic Information and/or Electronic Documents as Electronic Evidence add to the types of evidence regulated in the Criminal Procedure Code
- 2) Expanding the scope of evidence that has been regulated in criminal procedural law in Indonesia, for example in the Criminal Procedure Code. Printouts of Information or Electronic Documents are documentary evidence regulated in the Criminal Procedure Code.

Information evidence or electronic documents are a type of evidence that is regulated outside the Criminal Procedure Code. Information evidence or electronic documents are evidence that can assist in uncovering a criminal act of corruption.

With the publication of the Constitutional Court decision no. 20/PUU-XIV/2016 has the consequence that electronic information and/or electronic documents can be used as legal evidence in court, in the event that the evidence in question meets the formal and material requirements above, as well as electronic information and/or documents the electronic device must be a request from the police, prosecutors, and/or other law enforcement agencies in the context of law enforcement.

The emergence of the Amendment Law on the ITE Law was based on the issuance of the Constitutional Court Decision No. 20/PUU-XIV/2016 discussed in this thesis. Regarding electronic evidence, this amendment law only adds a general interpretation or explanation to Article 5 paragraph (1) and Article 5 paragraph (2) of the ITE Law. Explanation of Article 5 paragraph (1) reads:

Whereas the existence of Electronic Information and/or Electronic Documents is binding and recognized as valid evidence to provide legal certainty for the Operation of Electronic Systems and Electronic Transactions, especially in evidence and matters relating to legal actions carried out through Electronic Systems.

The explanation of Article 5 paragraph (2) reads:

Specifically for Electronic Information and/or Electronic Documents in the form of interception or wiretapping or recording as part of wiretapping, it must be carried out in the context of law enforcement at the request of the police, prosecutors, and/or other institutions whose powers are determined by law.

Thus, it can be understood that electronic evidence in the form of information and/or documents is valid evidence in criminal procedural law. In this case, electronic evidence is a substitute for letters, stand-alone evidence, and an extension of evidence instructions. The three levels of electronic evidence are not contained in the Criminal Procedure Code. Still, the

regulations are contained in several special laws and legal instruments issued by the Supreme Court. The three statuses of electronic evidence can be further narrowed down to 2 two (independent evidence and non-stand-alone evidence (replacement of letters and expansion of evidence instructions).

4. Conclusion

Article 5 paragraph (2) Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions stipulates that Electronic Information and/or Electronic Documents and/or printouts thereof are extensions of valid legal evidence by the applicable procedural law in Indonesia. What is meant by expansion here must be linked to the types of evidence regulated in Article 5, paragraph (1) of the ITE Law. Expansion here means adding proof that has been held in criminal procedural law in Indonesia, for example, the Criminal Procedure Code. Electronic information and/or electronic documents as electronic evidence add to the types of evidence regulated in the Criminal Procedure Code, especially Article 184, and expand the scope of evidence provided for in the criminal procedural law in Indonesia, for example, in the Criminal Procedure Code. Printouts of Information or Electronic Documents are documentary evidence regulated in the Criminal Procedure Code.

Electronic evidence is currently necessary to reveal criminal acts of corruption that are tried in court, especially those that are difficult to prove and/or still not convincing enough as evidence as regulated in the Criminal Procedure Code and the Corruption Law. Even though the criminal procedural law does not explicitly state electronic evidence, judges can use electronic evidence as indicative evidence by other evidence. The Supreme Court, since 1988 has recognized electronic evidence in court hearings. Therefore Constitutional Court decision no. 20/PUU-XIV/2016 has the consequence that electronic information and/or electronic documents can be used as legal evidence in court, especially in corruption cases in terms of the evidence in question has met the formal and material requirements

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