

APPLICATION OF ELECTRONIC EVIDENCE AS EXTENSION OF LEGAL CIVIL EVIDENCE DIVORCE CASES IN INDONESIA

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Abstract: Electronic evidence serves as a crucial component in civil trials, such as divorce cases, offering comprehensive proof to sway judges and ensure justice and legal certainty for involved parties. Nonetheless, disagreement persists regarding its classification, whether as supplementary or primary evidence, posing significant questions within formal and material law. This study employs normative juridical legal research, which scrutinizes theories, concepts, legal principles, and statutory regulations pertinent to the subject. Under Article 5(1) of the ITE Law, electronic evidence, including electronic information, documents, and their printouts, is recognized as valid legal evidence, extending the scope of admissible evidence in Indonesia. Formal requirements for electronic evidence, or digital evidence, need not be in written form; printouts are considered presumptive or preliminary evidence. However, material requirements stipulate that digital evidence must guarantee authenticity, integrity, and availability, often necessitating testimony from digital forensic experts. This dual nature of electronic evidence highlights its importance and complexity in contemporary legal proceedings, demanding a nuanced understanding and application within the framework of Indonesian law.

Keywords: application; electronic evidence; extension; legal civil.

1. INTRODUCTION

The presence of social media has become a pattern of community behavior that causes the displacement of existing culture, ethics and norms. which contains elements such as audio, visual, audio-visual, and so on (Rulli Nasrullah, 2014). Indonesia as a country with a large total population and diverse cultures, ethnicities, races and religions has the potential to experience social change. Coming from all circles of Indonesian society have and use social media as a tool to get and convey information

to the public (Cahyono, 2016). Social media is one form of technological development today. Social media can erase human boundaries for interaction or socialization, which is not limited to space and time, with social media humans can communicate with each other wherever they are and whenever, no matter the distance, and no matter whether it is day or night. Social media has a very significant impact on our lives today.

The various functions of social media make it easier for users to communicate between individuals and communities. This also affects a person's way of life or lifestyle. Various forms of social media models, such as blogs, for example, are social media that allow users to upload their daily activities, comment on each other, and share their daily life activities. In a sense, social media as a digital communication tool allows the latest style of communication and/or interaction with both known and new people so that free communication with others is established which at the end of the couple, for example, will result in mutual suspicion until it triggers infidelity (Erna, 1999, p. 15).

The birth of a new era of culture and new legal acts resulted in the use of information technology which then affects the field of evidence in court. Evidence is a stage that has a crucial role for judges to make decisions. The evidentiary process in the trial process can be said to be central to the examination process in court. Evidence is central because the arguments of the parties are tested through the evidentiary stage to find the law to be applied (*rechoepasing*) or found (*rechtvinding*) in a particular case (Ahmad Ali, 2009). The evidence shown at trial is not only limited to letter evidence, and witness evidence, but also penetrates the use of electronic evidence, namely digital documents, either in the form of discs (CD, VCD, DVD) or in other evidence, namely writing on social media and other electronic devices. Given that proof is the central point of examining cases in court (Harahap, Discussion of Problems and Application of the Criminal Procedure Code (Court Trial Examinations, Cassation Appeals and Judicial Review), 2000, p. 273), it requires the quality of human resources of law enforcers who at least understand high technology related to electronic evidence.

The judge will refer to the evidence presented during the trial when handing down a verdict, in criminal cases regulated in Article 183 of Law Number 8 of 1981 related to

the Criminal Procedure Code (KUHAP) which states, "The judge may not impose a sentence on a person except with a minimum of two valid pieces of evidence so that the judge is convinced that a criminal act happened and that the defendant is guilty of doing it. This is known as the negative proof system or negative wettelijk stelsel, namely "even though there is valid evidence, the judge is not required to convict the defendant, if the evidence cannot convince the judge of the defendant's guilt. However, on the contrary, the judge may not base his belief other than based on valid evidence. Next we will discuss whether electronic evidence is valid as evidence in civil cases, while based on article 164 HIR, article 284 RBg and Article 1866 BW, the means of evidence in civil cases are (a) letters, (b) witnesses, (c) testimony (d) confessions and (e) oaths as well as additional evidence in the form of expert testimony (154 HIR) and local examination (153 HIR).

Electronic evidence can be used as the main key in proof as an expansion of evidence in trials in civil cases, such as one example of being complete evidence in divorce cases in order to convince judges as a form of benefit and justice and legal certainty for the parties in divorce cases. Meanwhile, electronic evidence presented at trial must be able to guarantee its veracity and integrity (Dewi Asimah, 2020). However, the obstacle that occurs in the field is the cross-agreement about the position of electronic evidence because it raises important questions about the position of electronic evidence, whether as an expansion of evidence or as preliminary evidence in its position in formal and material law.

This research was conducted with the aim of analyzing and finding the legal nature of electronic evidence in positive law in Indonesia. To analyze and find the enactment of electronic evidence in the settlement of divorce cases in Indonesia and to analyze and find the ideal legal concept related to the enactment of electronic evidence as an expansion of evidence in the process of proving divorce cases.

2. METHODS

In writing this article, the author employs the normative research method (normative legal research). Normative research, also known as doctrinal research,

involves the study of law conceptualized and developed based on doctrine. (Nurhayati, Ifrani, & Said, 2021). The use of this method is chosen because the research focus is on legal principles, legal norms, legal theories, and legal doctrines put forth by legal experts. To sharpen this research, the author adopts a normative juridical approach, which will discuss legal theories, principles, and regulations regarding the application of electronic evidence as an extension of evidence used in divorce cases in Indonesia.

3. RESULTS AND DISCUSSION

3.1. Electronics Evidence in Court Examinations

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), juridically constitutes a legal basis for the implementation of electronic transactions and electronic information that occur in the Indonesian jurisdiction. Therefore, every activity related to electronic information systems applies the provisions regulated in the Law. It should be understood that the ITE Law has regulated a new dimension that was previously regulated. In connection with this, several new terms or characteristics have emerged related to electronic information systems and technology, such as short message service system (SMS), email, video/camera footage, CCTV, Electronic Information, Electronic Tickets, data or Electronic Documents, and other Electronic Facilities as data storage media (Efa Laela Fakhirah, 2017). These documents can be used for electronic transactions via the internet.

Apart from being used for transactions via the internet, these electronic documents can be expressed via websites, electronic mail or Electronic Data Interchange, these electronic documents can also be used as a communication tool. Based on Article 5 paragraphs 1, 2 and 3, emails can be classified as electronic documents. E-mail (Eletronic Mail) or Electronic Mail is a communication method in the form of a collection of text or a combination of images, which is sent from one e-mail address to another address on the internet network. In the development of its use, e-mail can also cause problems, these problems include, if the e-mail is used as a communication tool in buying and selling on the internet and one of the parties is

unable to print (default) or the e-mail is used as a means of communication between people. from one another, if it turns out that the contents of the email could cause harm or a party feels harmed, then the email can be used as evidence at the conference.

This is confirmed in the explanation of Article 5 paragraph 1 of Law No. 19 of 2016, that the existence of Electronic Information is binding and recognized as valid evidence to provide legal certainty regarding the Implementation of Electronic Systems and Electronic Transactions, especially in evidence and matters relating to legal acts. which is carried out through an Electronic System. Based on this, from the research results it can be concluded that e-mail is a form of evidence regulated in the ITE Law, namely which can be in the form of Electronic Information, or Electronic Documents. According to the judges, electronic information and electronic documents can be accepted as valid evidence before a trial in civil cases if they are printed and have the same value as other pieces of evidence specified in law. For example, e-mail, namely when making an agreement via e-mail, this is because the agreements regulated in the Civil Code are open in nature, meaning that as long as the parties agree to an agreement, the agreement is made electronically using e-mail as proof of the transaction, then the agreement is made by these parties is "valid".

Another judge added that apart from basing it on Article 5 paragraph (1) of Republic Law Number 11 of 2008 concerning ITE, it was also based on the Circular Letter of the Supreme Court (SEMA) of the Republic of Indonesia Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Meeting as a Guide to Implementing Duties for Court. It is further stated that e-mail includes electronic documents in accordance with Article 5 paragraph (2) of the ITE Law, namely "Electronic Information and/or Electronic Documents and/or printouts as intended in paragraph (1) are an extension of legal evidence in procedural law civil law that applies in Indonesia". However, if the proof is difficult, expert testimony can be heard who can provide an opinion regarding the electronic evidence submitted to the trial, for example an electronic certificate from the government as regulated in Articles 13-16 of the ITE Law (Samsumar Hidayat, judge at the Purworejo

District Court), according to Sthephanus. , Temanggung District Court Judge, that Electronic Information (for example Compaq Disk/CD recordings) in divorce cases can be used as evidence at trial, as specified in statutory regulations (UU ITE)..

3.2. Electronic Evidence and Position in the Evidence System

According to Paton in his book *A Textbook Jurisprudence* states that evidence can be oral, documentary or material. Oral evidence is the words spoken by someone at trial: testimony about an event is oral evidence. Letters include documentary evidence, while material evidence is physical evidence that is visible or can be seen other than documents/material evidence (demonstrative evidence). The formal legal system (procedural law) regarding evidence in Indonesia, both the Civil Code (HIR/RBg) and the Criminal Code, does not yet accommodate electronic documents or information as evidence. Prior to the ITE Law which was later amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, the existence of electronic evidence had been legally regulated and recognized in several statutory regulations.

The existence of types of electronic evidence is regulated in Article 5 paragraph (1) of the ITE Law which emphasizes, "Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence". Based on the provisions of this article, the types of electronic evidence can be detailed, namely: 1. electronic information, 2. electronic documents, 3. electronic information and electronic documents and their printouts, 4. electronic information and their printouts, 5. electronic documents and their printouts , 6. printed results from electronic information, and 7. printed results from electronic documents. To be used as valid legal evidence, electronic information and electronic documents must meet the formal and material requirements that have been determined. The formal requirement is that electronic information or documents are not documents or letters which according to law must be in written form.

Meanwhile, the material requirement is that electronic information and documents must be guaranteed to be authentic, intact and available. Electronic

information and/or electronic documents as well as printouts of electronic information and/or electronic documents are an extension of valid legal evidence by the procedural law in force in Indonesia. There are 2 (two) understandings of electronic evidence as an "extension" of valid legal evidence. Firstly, 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. Secondly, 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 and/or electronic documents are documentary evidence as regulated in the Criminal Procedure Code.

The existence of electronic information and electronic documents is binding and recognized as valid evidence to provide legal certainty regarding the implementation of electronic systems and electronic transactions, especially in evidence and matters relating to legal actions carried out through electronic systems. However, it is felt that the recognition of electronic evidence as valid evidence as regulated in the ITE (Yusuf Wibisono, 2022) Law is still inadequate for judicial practice, because the new regulation of electronic evidence at the material legal level has not yet reached procedural law (*formal law*).

3.3. Practice of Examining Electronic Evidence in Religious Courts

In law, an evidentiary procedure has a juridical meaning, namely providing sufficient grounds for the judge examining the case in question to provide certainty about the truth of the events presented. According to Suyling, proving does not only provide certainty to the judge but also means proving the occurrence of an event, which does not depend on the actions of the parties (such as in allegations) and does not depend on the judge's beliefs (such as in confessions and oaths). So basically proving is a process to determine the truth of an event with certainty in a trial, with the means provided by law, the judge considers or gives logical reasons why an event is declared to have truth value. The provisions of Article 5 of the ITE Law regarding the

existence of electronic evidence as a legally valid form of evidence can be grouped into two.

First, electronic information and electronic documents as electronic evidence (digital evidence). Both printouts of electronic information and electronic documents will become written/letter evidence. The practice of evidence in civil cases in the Religious Courts regarding electronic evidence has been found in several cases that consider the use of electronic evidence by the panel of judges in divorce cases. The use of printed electronic evidence (print out) of electronic information or electronic documents as written/letter evidence is more dominant. There are several models of application of electronic evidence in judge's decisions. First, electronic evidence is in the form of a recording of a conversation between the Defendant and the Plaintiff, because there was a dispute regarding the status of the motorbike taken by the Defendant, but it was not used as evidence at trial because the panel of judges did not see who was at fault, the recording shows that that the Plaintiff and Defendant's households were having disputes and quarreling.

Second, the panel of judges considered the electronic evidence submitted by the Plaintiff (P.3) in the form of a photo of the Plaintiff's body organs/arms which were bruised due to the Defendant's grip as preliminary evidence with arguments from Paton's opinion and the ITE Law. Third, the appellate panel of judges did not agree with the first instance decision which considered evidence T.3 (in the form of a photocopy of a picture/photograph together/together of the Plaintiff and another man) as preliminary evidence. In the opinion of the appeal panel of judges, evidence T.3 has been analyzed but has not been compared with the original and has also been denied or acknowledged with clauses by the Plaintiff and evidence T.3 is not a printout of electronic information/documents as intended in Article 5 paragraph (1) of the ITE Law, but only photocopies of images.

The implementation of electronic evidence (digital evidence) in the practice of examining divorce cases in the Religious Courts can be found in the contested divorce case at the Tigaraksa Religious Court in its decision to reject the contested divorce case because the reason the Defendant committed adultery with a female commercial sex

worker (PSK) was not proven by evidence. electronics in the form of obscene photos, BBM and SMS as well as digital forensic expert witnesses from ITB to test the authenticity of electronic evidence. Electronic evidence as a form of evidence that is valid according to law in practice in the Religious Courts is diverse, some are not used as evidence in the decision because other evidence is sufficient and some use it as evidence whose position is equal to written evidence/letter, so that it must fulfill the formal requirements for proof of a postal stamped letter (nazegelen) (Hartono, et.al. 2021). the judge considers the printed electronic evidence (print out) as presumptive evidence or as preliminary evidence. Meanwhile, the strength of the initial evidence does not yet meet the minimum threshold of proof, because it still has to be supported by another piece of evidence to meet the minimum threshold of proof.

3.4. The Strength of Electronic Evidence in Divorce Cases

After the law allows electronic information and/or electronic documents and/or printouts to be used as valid evidence in trials as mentioned above, the next question is how the judge assesses the formal and material requirements of the electronic evidence. Proof of evidence in the form of electronic data also concerns aspects of the validity of what is used as evidence, because electronic evidence has special characteristics compared to non-electronic evidence, these special characteristics are due to its form being stored in electronic media, besides that electronic evidence can be easily manipulated so that it is often its validity is doubtful.

Furthermore, based on the provisions of Article 5 paragraph (3) of the ITE Law, it is determined that electronic information and/or electronic documents are declared valid if an electronic system is used by the provisions in the ITE Law. Thus, the use of electronic documents as evidence is considered valid if an electronic system is used by the provisions as stipulated in Article 6 of the ITE Law Number 11 of 2008, which determines that 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, thereby explaining a situation.

The law regulates the formal and material requirements for electronic evidence

in general, resulting in differences at a practical level. As long as the contents of the electronic evidence can be seen, read and understood, and if printed it has been stamped according to the author of the electronic evidence, it has met the formal requirements for electronic evidence (vide article 6 of the ITE Law and article 3 paragraphs (1) and (2) of Law Number 10 of 2020 concerning stamp duty). Meanwhile, materially it concerns whether the evidence in terms of its content is correct or not, whether it is related to the case or not, in this case the author believes that theoretically and practically, the principle of Presumption of Authenticity is easier and fairer to apply.

What is meant by the Presumption of Authenticity Principle is that the law of evidence assumes that a digital document/data or digital signature is considered authentic, unless it can be proven otherwise. What is done in this case is a reversal of the burden of proof (*omkering van bewijslast*), meaning that whoever states that the evidence is fake, is the one who must prove it. With the principle of presumption of authenticity as mentioned above, to materially assess electronic evidence, the judge only needs to ask the opposing party whether the evidence is true or not? If the opposing party admits, the event being postulated is considered proven, if the opposing party denies, then the opposing party is burdened with evidence to support its refutation.

Furthermore, how do judges assess the strength of electronic evidence in divorce cases? Divorce cases are specific cases, therefore the trial rules and evidence are also specifically regulated, including regarding the obligation to present witnesses who are prioritized from the family or people close to the husband and wife. In Article 22 paragraph 2 PP no. 9 of 1975 as well as in Article 76 paragraph 1 of Law no. 7 of 1989 as amended by UU.No.3 of 2006 and the second amendment by UU.No.50 of 2009, the essence of which is that in the event of a divorce suit based on reasons between husband and wife there are continuous disputes and quarrels and there is no hope to live in harmony again in the household or *syiqaq*, in deciding the divorce case the testimony of witnesses from the family or people close to the husband and wife must be heard. From these provisions it can be explicitly understood that proof in divorce

cases for this reason must be using witness evidence.

To present witnesses who formally meet the requirements in an increasingly individualistic life is certainly not easy, especially witnesses who meet the material requirements, namely those who see, hear and directly witness the husband and wife's quarrel, therefore the author believes that the presence of family witnesses or people close to the husband and wife In essence, the law wants to tap the concern of the family or people close to them to take part in playing a role in reconciling the husband and wife, so witnesses are presented for divorce on the grounds of article 19 (f) PP number 9 of 1975 in conjunction with article 116 (f) Compilation of Islamic Law, you don't have to see and witness the incident that was the cause of the quarrel directly and in conditions like this electronic evidence can be used as evidence that convinces the judge regarding the cause of the quarrel between the husband and wife, for example printout evidence of WhatsApp, Instagram, Facebook and media social other.

electronic evidence in special divorce cases is based on article 19 (f) PP Number 9 of 1975 in conjunction with article 116 KHI, so electronic evidence becomes preliminary evidence and at the same time presumptive evidence if the family witnesses did not see the incident directly, or did not does anyone know the cause of the dispute between the parties? Electronic evidence can also be an easy means for parties to prove events that are often denied by the perpetrator, for example cases of infidelity from the lightest to the most serious are currently easier to reveal with electronic evidence and with the Presumption of Authenticity Principle, so it is not easy for the perpetrator to avoiding it as long as the incident is true.

From the description above, it can be concluded that specifically for divorce because there are continuous arguments and there is no hope of reconciliation again (vide Article 19 (f) PP Number 9 of 1975 in conjunction with Article 116 KHI) electronic evidence cannot stand alone, because of the regulations. it does require the parties to present witnesses from family members or close people, whereas for divorce for other reasons, the strength of electronic evidence can be assessed by the judge by applying the principle of Presumption of Authenticity. By applying the principle of Presumption of Authenticity, in assessing the strength of electronic evidence, the judge must look at

the attitude of the opposing party:

1. The opposing party admits either expressly (confession statement) or tacitly (does not deny it), then the strength of the electronic evidence is the same as the Confession.
2. The opposing party denies it, then they are burdened with evidence to confirm their argument and if the opposing party can prove that the electronic evidence is not true, then this electronic evidence is incapacitated/has no power, so it should be set aside. In proving this rebuttal argument, all provisions for verification and authentication of electronic evidence, namely digital forensics, expert witness testimony and so on, apply.

The opposing party denies, but cannot fully prove that the electronic evidence is untrue, then the judge can assess the strength of the electronic evidence as preliminary evidence or presumptive evidence that must be linked with other evidence.

4. CONCLUSIONS

Electronic information is a valid form of evidence in civil cases, this is because it is categorized as written evidence. Electronic Information or Electronic Documents are considered valid as long as the information can be accessed, displayed, its integrity is guaranteed and can be accounted for so that it can explain a situation. Therefore, electronic information has the power of proof like written evidence if it can be displayed or printed and acknowledged by the owner. Because evidence is part of the realm of formal law, to avoid disparities in assessment standards for electronic evidence, ideally there should be at least a SEMA that guides this issue, because Formal Law always prioritizes procedural justice and legal certainty, formal legal problems should not be resolved through fardi (individual) ijtihad but must be the result of congregational ijtihad (*institutional ijtihad*).

The existence of electronic evidence, as regulated in Article 5 paragraph (1) of the ITE Law, in the form of electronic information and/or electronic documents as well as printouts of electronic information and/or electronic documents has been recognized as valid legal evidence, as an "extension" of the instrument. valid evidence by the

procedural law in force in Indonesia. The formal requirements for electronic evidence (*digital evidence*) do not have to be in written form, printouts of electronic information/documents are included in the written evidence section/letters bearing postal stamps (*nazegelen*) are considered as presumptive evidence or as preliminary evidence, while the requirements The material is that digital evidence must be able to guarantee its authenticity, integrity and availability by digital forensic expert witnesses.

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