

Protection of Digital Evidence After Case Administration and Electronic Court Proceedings Regulation

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Abstract:

Evidence is a crucial component of the justice system, capable of shedding light on cases and aiding in the resolution of court proceedings. As society becomes increasingly digital, the judicial system must adapt, including the handling of digital evidence. The importance of evidence, which plays a vital role in judicial processes, necessitates the protection of its confidentiality. However, in the digital era, judicial institutions in Indonesia have not fully optimized the protection of such evidence. A scientific study is required to assess the effectiveness of confidentiality protection for evidence within Indonesia's electronic justice system. The central issues include: What are the juridical provisions regarding the position of digital evidence within Indonesia's justice system? How has the protection of digital evidence evolved in the justice system following the enactment of PERMA (Supreme Court Regulation) Number 1 of 2019? This research is normative juridical in nature, employing statutory, conceptual, and case-based approaches. The findings are as follows: First, the juridical provisions concerning digital evidence are regulated under specific laws such as the ITE Law and other related regulations. Second, digital evidence is safeguarded by the ITE Law and Supreme Court Regulation Number 1 of 2019. However, this PERMA does not comprehensively regulate the protection of digital evidence. Thus, Indonesia requires stricter regulations to ensure the protection of electronic evidence and uphold the integrity of the national judiciary.

Keywords: digital evidence; protection; judicial provision.

Introduction

Digital transformation in the world of justice began to be constructed after the issuance of Supreme Court Regulation (PERMA) Number 1 of 2019 concerning Electronic Case Administration and Court Trials. Technological development has indeed penetrated into various sectors and has also become part of the civilization of m

modern society that cannot be slowed down. The presence of technology has changed the way the world works and services that have been conventionally transformed by utilizing technological sophistication. It is not only adapted to practices in the economic, agricultural and industrial sectors but has also been logged into the realm of judicial administration. The utilization of technology is a grand design contained in the blueprint of Indonesian Judicial Reform 2010-2035. Digitalization is present to answer the demands of the fast-paced needs of modern society, especially for people who seek asylum in court and in supporting the principles of simple, fast and low-cost justice.¹ The adage has the substance that a slow judicial process is the same as not providing justice to the parties. Thus, inductively from public expectations of fast case handling, it immediately provides justice, legal certainty and expediency.²

The presence of PERMA Number 1 of 2019 concerning Case Administration and Trial in Court Electronically is a breath of fresh air that is expected to dissolve the assumption that the process of litigating in court which has been considered slow and slowed down and causes expensive costs, difficult public access to justice, low integrity of the judicial apparatus due to the wide open opportunities for mala administration by some unscrupulous judicial officers.³ Digitalization is a condition in which all aspects of life use digital instruments. Digitalization is a process of change that occurs in technology that was originally analog turning into digital technology. The process that occurs is heavily influenced by technological developments, until now various aspects of human life have used electronics or digitalization in their operations.⁴ According to Sukmana, digitization is a process in media from printed, audio, and video to digital form. Digitization is carried out to create a digital form document archive. Digitization requires supporting equipment that is more systematic and practical, including computers, scanners, source media operators, and supporting software. In addition, the digitalization era also affects the stages in carrying out daily activities, including in the scope of the judiciary which has used the intervention of digitalization technology in its essence and existence.

The growth of digitalization has penetrated various sectors, one of which is the judiciary. The transition process is also aimed at facilitating all matters required by users or service users, and accessing judicial products such as the repository of Supreme Court decisions and the Public Service Information System (SIPP). The Public Service Information System is a one-stop electronic information medium that includes information storage and management as well as a mechanism for delivering information from public service delivery to the public. The various facilities available thanks to this process are expected to increase user loyalty and increase the value of transactions that occur. The use of technological advances in digitization in the judicial sphere will make it easier for the justice-seeking public and law enforcement officials to follow the trial process in court. In addition, it will streamline the procedural process so that later court proceedings will be in accordance with the principles of speed.

¹ Andi Hakim Lubis, Digitalisasi, Kolegial dan Integritas, Tabloid Intelektual, Edisi XXIII, Juni 2023, hlm. 19

² Nursobah, A. (2019). Pemanfaatan Teknologi Informasi Untuk Mendorong Percepatan Penyelesaian Perkara di Mahkamah Agung. *Jurnal Hukum dan Peradilan*, 4(2), 323-334.

³ Sudarsono, Legal Issues pada Peradilan TUN Pasca Reformasi, Jakarta, Kencana, 2019, hlm.202.

⁴ Sobirin Sobirin et al., "Manajemen Perpustakaan Di Era Digital," *Cendekia Inovatif Dan Berbudaya* 1, no. 1 (2023): 64–71, <https://doi.org/10.59996/cendib.v1i1.204>.

edy justice and low costs. Law No. 48 of 2009 on Judicial Power in Article 2 Paragraph 4 explains that the judiciary is conducted quickly, simply and at low cost.⁵ This principle requires the implementation of law enforcement in Indonesia to be guided by the principles of fast, simple and low cost justice to provide protection and legal certainty to justice seekers undergoing judicial proceedings..

The principle of speedy trial associated with the digitization of the judicial process will be in line. This principle is intended that case handling can be completed in a short time, so that it does not need to take a long time, not long-winded, meaning that the judicial process is not much delayed or postponed due to obstacles from the parties and other reasons. Simple justice is the examination and settlement of cases carried out in an effective and efficient manner. This principle explains that simple means not complicated, not convoluted, and not complicated by the digitization of the judicial process.⁶ The principle of low cost means that the cost of cases can be afforded by the community. Through the digitization of the judicial process, it will facilitate the judicial process for justice seekers and facilitate the cost of following the judicial process in court. Administrative costs will be slightly lightened by the digitization of the judicial process. For example, in a litigation file, manually registering a file with the court will cost a certain amount of money for file fees and other unexpected things. Meanwhile, through the digitization of judicial procedures in accordance with the provisions of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, it automatically facilitates and eases the costs incurred by justice seekers and law enforcement officials.

Provisions related to digital evidence are regulated in Article 5 Paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) as amended by Law Number 19 of 2016 explaining that electronic information and/or electronic documents and/or their printouts are valid legal evidence. Article 5 Paragraph 2 explains that electronic information and/or electronic documents and/or their printouts as referred to in Paragraph 1 are an extension of legal evidence in accordance with the applicable procedural law in Indonesia.⁷ Based on the juridical provisions above, it can be seen that technological developments have influenced substantial legal changes. Thus, legal certainty can be obtained by transforming the law in accordance with the times. Law through substantial legislation is also influenced by technological developments in the scope of justice. The development in the judicial procedure, namely from manual to digitalization, various risks and adverse effects always threaten it. Coupled with increasingly sophisticated conditions, technological

⁵ Wika Yudha Shanty, "Sistem 'Full Pre Trial Disclosure' Dalam Penegakan Asas Peradilan Sederhana, Cepat, Dan Biaya Ringan," *Jurnal Cakrawala Hukum* 11, no. 3 (2020): 271–81, <https://doi.org/10.26905/idjch.v11i3.5473>.

⁶ Made Witama Mahardipa and Ratna Artha Windari, Ni Putu Rai Yuliartini, "Implementation of the Principles of Simple, Fast, and Low Cost Justice in Criminal Cases at Singaraja District Court Class I B," *E-Journal Komunitas Yustisia*, Ganesha University of Education, Department of Law 2, no. 3 (2019): 181-91.

⁷ Natalia Maria Tumiwa, "Tinjauan Hukum Pembuktian Dalam Hukum Acara Pidana Setelah Diberlakukannya Undang Undang Informasi Dan Transaksi Elektronik Undang Undang No 11 Tahun 2008 Yang Telah Dibaharui Oleh Undang Undang Nomor 19 Tahun 2016," *Lex Privatum* 9, no. 4 (2021): 187–93, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33754/31922>.

developments have a positive impact, but do not rule out the possibility of having a negative impact as well. The development of science and technology that affects the development of the justice system from manual to digital has risks and negative impacts of this technological development. Based on research data, the crime rate has always increased from time to time in line with the development of human civilization.⁸ Especially in the digitalization period, everything can be reached very easily, so crime occurs very easily. The solution to overcoming this crime is an interesting thing to discuss. Especially in the scope of the judiciary concerning important data that is highly confidential in order to maintain the integrity and dignity of the judicial power institution in Indonesia.

Indonesia as a country based on law must make normative law the main reference in addition to the law that develops in society (the living law). the state has law as an instrument to organize and organize the country properly. An unorganized state will have an impact on hampering development, because it cannot be denied that law is one of the pillars of the state and national development. Law is a compelling rule in which there are strict sanctions if the rule is violated. This firmness is related to legal certainty which is used as one of the tools to regulate life in the state so as to achieve an ideal country to live in an atmosphere that is safe, comfortable, peaceful, and prosperous. Law aims to ensure the achievement of order and security for the community.⁹ Order can be maintained if people obey the existing laws. So with regard to the potential for crime involving the digitization system in the judicial process, the law is present to create security and order.

Juridically, the protection of electronic or digital data in the administration of justice is regulated in Article 32 Paragraph 1 of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, which explains that the Court receives information, data and electronic documents related to cases and manages them in an integrated manner in the court information system. Paragraph 2 emphasizes electronic documents as referred to in Paragraph 1 in word processing document format and/or sound or video format. Paragraph 3 electronic documents received in the Court Information System as referred to in Paragraph 1 include electronic documents of lawsuits, answers, replications, duplicates, requests for intervention, conclusions, and scans of letter evidence. These provisions only discuss the management of judicial administration through an integrated court information system, but do not contain detailed protection of digital data and evidence related to judicial purposes in Indonesia. The essence of law to create security and order when examined from these regulations has not been achieved. So it is better to update and strengthen the regulation. Novelty in this research is to propose that a Supreme Court Regulation be formed for the short term and a Legislation for the long term that regulates the protection of digital data or digital evidence so that it cannot be acces

⁸ Muhammad Bahrul Ulum and Rehnalemken Ginting, "Tinjauan Kriminologi Terhadap Meningkatnya Kriminalitas Saat Pandemi Covid-19 Di Kota Depok," *Recidive : Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 10, no. 3 (2022): 202, <https://doi.org/10.20961/recidive.v10i3.58961>.

⁹ Nur Iftitah Isnantiana, "Hukum Dan Sistem Hukum Sebagai Pilar Negara," *Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2019): 19, <https://doi.org/10.30595/jhes.v2i1.4470>.

sed by unauthorized people. The aim is also to maintain the dignity of the judiciary. If judicial institutions maintain the confidentiality of their digital evidence, public trust in judicial institutions will improve.

Digital evidence in its existence in the practice of the judicial system in Indonesia is still often found obstacles to the uncertainty of the panel of judges in interpreting digital evidence. Digital evidence as one of the valid evidence according to the law in judicial practice, for example in cases in the Religious Court, the panel of judges is still uncertain in responding to it. There are judges who can place it as evidence in the decision because other evidence is sufficient and some make it as evidence that it is equated with written / letter evidence, so that it must meet the formal requirements of letter evidence, namely postage stamped (nazegelen). In addition, judges also consider printed electronic evidence as presumptive evidence or preliminary evidence. Meanwhile, the strength of the preliminary evidence has not yet met the minimum limit of proof, because it must still be supported by one other piece of evidence to meet the minimum limit of proof. Previous research relevant to this research was researched by Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari entitled The Validity of Mail Evidence in Civil Procedure Law Through Electronic Trials published in the Undiksha Journal of Civic Education Volume 9 Number 1 February 2021.¹⁰ This research only discusses the validity of letter evidence in civil procedure law in virtual trials through electronic media.

Previous research written by Agung Alvandi and Anggi Dwita Clara, entitled Credibility of Electronic Evidence in Civil Law Formal Hearings published in Jutke 1 Journal of Telecommunications, Control, and Electricity, Volume 3 Number 1 Year 2023.¹¹ This research emphasizes the credibility of electronic evidence in civil trials. In contrast to previous research, this research has a novelty, namely the breakthrough of the proposed idea that the protection of digital evidence is emphasized in the regulation of laws and regulations at the level of laws that are binding and compelling, so that they are obeyed throughout the scope of judicial power. This research formulated several problems, namely the first, How is the juridical provision of the position of digital evidence in the judicial system in Indonesia? Second, How is the protection of digital evidence in the judicial system in Indonesia after the enactment of PERMA Number 1 of 2019? This research uses normative juridical research methods, which examine written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure, and composition. There is also normative legal research that calls it research that focuses on analyzing legal norms and putting legal norms as an object of research. The approaches used are the statutory approach (Statue approach), case approach, and conceptual approach.¹² The sources of legal m

¹⁰ Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari, "Keabsahan Alat Bukti Surat Dalam Hukum Acara Perdata Melalui Persidangan Secara Elektronik," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 167–74, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/31440>.

¹¹ A Alvandi et al., "Kredibilitas Alat Bukti Elektronik Dalam Sidang Formil Hukum Data," ... , *Kendali Dan Listrik* 3, no. 1 (2023): 16–26, <https://ummaspul.e-journal.id/Jutkel/article/download/5983/2782>.

¹² Margie Gladies et.al Deassy J.A. Hehanussa, *Metode Penelitian Hukum*, ed. Elan Jaelani, *Jurnal Widina Bhakti Persada*, vol. 4 (Bandung: Widina Bhakti Persada Bandung, 2023), <https://medium.com>

aterials used are primary legal materials in the form of laws and regulations, second ary legal materials such as books, legal articles, information sourced from the intern et, and tertiary legal materials in the form of legal dictionaries and encyclopedias. D ata collection techniques are carried out by document study (Library research) whic h is then analyzed qualitatively and presented with descriptive analysis.

Result and Discussion

Juridical Provisions on the Position of Digital Evidence in the Indonesian

Evidence is a vital component in evidence in criminal, civil, state administrati ve and other fields. This evidence will provide a sense of justice for the justice-seekin g community. It is also through evidence that the case being handled becomes brigh tly lit. Evidence must be brighter than light. This philosophy has an adage, namely " in criminalibus probantiones bedent esse luce clariores." Based on the sound of the a dage, it explains that evidence has an important role in the process of examining cas es in the judicial power institution. 148 Page Evidence is a series of procedures that are considered very important in the process of civil, criminal, state administrative l aw, and so on. Evidence becomes very crucial because it is related to the handling o f cases of judges' decisions in court. In the trial, the panel of judges can be active and passive. For example, in the trial process of criminal cases, the panel of judges is act ive in the evidentiary process in the trial process. Whereas in civil and state adminis trative cases, the panel of judges is passive in the examination process in court. The j udges only participate in leading the trial and do not participate in the evidence. Thi s is what is called the judge in civil cases is passive.¹³ In civil cases, written documen ts will validate the agreement, so written evidence such as letters and documents bec ome strong evidence to be presented at trial.

Bambang Waluyo defines evidence as something determined by the law that w ill be used to strengthen the charges, demands, or lawsuit as well as to reject the cha rges or lawsuit.¹⁴ Evidence is everything that has to do with an act, where the eviden ce is used as evidentiary material to generate a judge's confidence in the truth of a ju dge's confidence in the truth of a criminal act or an unlawful act or other act contrar y to the law committed by a legal subject that is contrary to existing legal provision.

The formal legal system regarding evidence in Indonesia, both in the Civil Co de (HIR / RBg) and the Criminal Procedure Code, has not accommodated electroni c documents or information as evidence. Juridical provisions relating to the essence and existence of digital evidence have been regulated in Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Trans actions. Digital evidence has been recognized and valid in several laws and regulati ons, such as Law Number 8 of 2010 concerning Prevention and Eradication of Mon ey Laundering. Evidence has several juridical provisions relating to digital evidence which are referred to in several statutory provisions, namely as follows:

/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf%0Ahttps://doi.org/10.1016/j.biteb.2021.100642.

¹³ Anita Afriana et al., "Batasan Asas Hakim Pasif Dan Aktif Pada Peradilan Perdata," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 142–54, <https://doi.org/10.23920/jbmh.v7i1.1078>.

¹⁴ Iwan Taufik Firdaus, "Pidana Melalui Teleconferensi Di Masa Pandemi," *Al Adl* XII, no. 1 (2020) : 151–71, <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/download/4324/2825>.

Law Number 11 of 2008 as amended by Law Number 19 of 2016

The existence of types of digital evidence is regulated in Article 5 Paragraph 1 of the Electronic Information and Transactions Law, which emphasizes that electronic information and/or electronic documents and/or their printouts are legal evidence. Starting from the provisions of the article, the types of digital evidence can be detailed in the form of electronic information, electronic documents, electronic information and electronic documents and their printouts, electronic information and its printouts, electronic documents and their printouts, printouts of electronic information, and printouts of electronic documents.

Electronic evidence or digital evidence acts as an extension of legal evidence. This is explained in Article 5 Paragraph 2 that electronic information and / or electronic documents and / or their printouts as referred to in Paragraph 1 are an extension of legal evidence in accordance with applicable procedural law in Indonesia. So with the expansion of this evidence, it causes an easier process of proof in criminal procedure law when it is related to digital evidence. First, it serves to add evidence that has been regulated in the Indonesian criminal procedure law, such as the Criminal Procedure Code (KUHAP). Electronic information and/or electronic documents as electronic evidence add to the types of evidence regulated in the criminal procedure law, for example in the Criminal Procedure Code. The printout of electronic information and/or electronic documents is a letter evidence regulated in the Criminal Procedure Code.

Evidentiary practices in civil cases in the Religious Courts regarding electronic evidence have been found in several cases that consider the use of digital evidence by the panel of judges in divorce cases. The use of electronic evidence of printouts of electronic information or electronic documents as written / letter evidence is more dominant. There are several models of application of electronic evidence in the judge's decision. First, digital evidence in the form of recorded conversations between the defendant and the plaintiff, due to a dispute related to the status of the motorcycle taken by the defendant, but used as evidence at trial because the panel of judges did not see who was at fault, with the recording showing that the plaintiff and defendant's household had a dispute and argued with each other.

In order 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 requirements include that electronic information or documents are not documents or letters that according to the law must be in written form.¹⁵ This is regulated in Article 6 of Law Number 11 of 2008 concerning Electronic Information and Transactions which states that in the event that there are other provisions other than those stipulated in Article 5 Paragraph 4 which requires that information must be in written or original form, electronic information and/or electronic documents

¹⁵ I Nengah Ariana, "Tinjauan Yuridis Terhadap Kedudukan Alat Bukti Elektronik Berdasarkan Putusan Mk Nomor 20/Puu-Xiv/2016," *UNES Law Review* 5, no. 1 (2022): 1–19, <https://doi.org/10.31933/unesrev.v5i1.277>.

ts are considered valid as long as the information contained therein can be accessed, displayed, guaranteed integrity, and can be accounted for so that it explains a situation.¹⁶ Meanwhile, the material requirement is that electronic information and documents must be guaranteed for their authenticity, integrity, and availability. The essence and existence of digital evidence in the Indonesian judicial system is recognized as valid evidence according to the juridical provisions in Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions. The existence of electronic evidence as one of the legal evidence can be grouped into two, first, electronic information and electronic documents as electronic evidence (Digital evidence). Second, printouts of electronic information and electronic documents become written / letter evidence.

However, the phrase electronic information and/or electronic documents must be interpreted specifically, and not generally. The Constitutional Court through Decision Number 20/PUU-XIV/2016 explained that the phrase "Electronic Information and Electronic Documents" as stated in Article 5 Paragraph 1 and Paragraph 2 of the Electronic Information and Transaction Law was declared contrary to the 1945 Constitution and did not have binding legal force as long as it was not interpreted specifically. The meaning of special meaning is that the phrase is used specifically by law enforcement officials with the aim of the law enforcement process. For example, requests from the Police, the Attorney General's Office, the Corruption Eradication Commission, and / or other law enforcement institutions that have been determined based on the law. This is explained in Article 31 Paragraph 3 of Law Number 19 of 2008 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 31 Paragraph 3 of the Electronic Information and Transaction Law explains that the provisions referred to in paragraph 1 and paragraph 2 do not apply to interception or wiretapping carried out in the context of law enforcement at the request of the police, prosecutor's office, or other institutions whose authority is determined by law..

Law No. 20 of 2001 Concerning the Amendment to Law No. 31 of 1999

Law Number 2 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of Corruption. Based on the provisions in the Criminal Procedure Code, clue evidence is only obtained from witness testimony, letters, and based on the testimony of the defendant. Based on Law Number 20 of 2001, evidence can be obtained from other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar to that but not limited to electronic data interchange, electronic mail, facsimile, and from documents in the form of any recording of data or information that can be issued with or without the aid of means, whether written on paper, physical objects or other than paper, or recorded electronically which has implied or explicit meaning. The provisions as mentioned above are explained in Article 26A of Law Number 31 of 1999 concerning L

¹⁶ Muhammad Ridho, "Sebagai Alat Bukti Dalam Sistem Pembuktian Di Indonesia," *Jurnal Notarius* 1, no. 2 (2022): 226–35, <https://jurnal.umsu.ac.id/index.php/notarius/article/download/13987/8753>.

Law Number 20 of 2001 concerning the Eradication of Corruption, which explains that valid evidence in the form of clues as referred to in Article 188 Paragraph 2 of Law Number 8 of 1981 concerning Criminal Procedure Law, specifically for corruption crimes is also obtained from

- a. Other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or the like;
- b. Document is any recording of data or information that can be seen, read, and /or heard that can be issued with or without the aid of a means, whether it is contained on paper, any physical object with or without the aid of a means, whether it is contained on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

The expansion of the meaning of "clues" in addition to being obtained from witness testimony, letters, and testimony of the defendant, is also obtained from other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar to that but not limited to electronic data link, electronic mail, telegram, and facsimile, and from documents, namely any data recording. Therefore, this law has accommodated the expansion of evidence as mentioned in the Criminal Procedure Code (KUHP). The provisions of the principle used to address the general and special provisions related to evidence are the principle of *lex specialist derogat legi generalist*, which means that special laws will override general laws. The law of evidence in the Electronic Information and Transaction Law is *lex specialist* because this law regulates everything that is more specific in the law of evidence contained in the Criminal Procedure Code.¹⁷ In this regard, the provisions of evidence in the Criminal Procedure Code only become general provisions combined with the provisions of evidence as stipulated in the Law on the Eradication of Corruption which expands the provisions of evidence.

Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes explains that digital evidence or electronic evidence is explained in Article 73, that valid evidence in proving money laundering crimes are :

- a. Evidence as defined in the Criminal Procedure Code;
- b. Other evidence in the form of information that is spoken, sent, received, or stored electronically by means of an optical device or a device similar to an optical device and documents.

This law accommodates evidence other than using evidence specified in the Criminal Procedure Code. So electronic evidence is allowed to be one of the evidence that is recognized. This juridical provision only explains that evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices similar to that. Documents are data, recordings, or information that can be seen,

¹⁷ Gabriella Apriyani Anes, Veky Y. Gosal, and Dientje Rumimpunu, "The Crime of Suspects in Illegal Access to Instagram Accounts Seized by Investigators as Evidence Under the Criminal Code," *Lex Privatum IX*, no. 13 (2021): 231-41.

read, and/or heard that can be issued with or without the aid of a means, whether written on paper or any physical object other than paper or recorded electronically, including but not limited to:

- a. Text, sound, or image;
- b. Maps, plans, photographs, or the like;
- c. Letters, signs, numbers, symbols, or perforations that have meaning or can be understood by people who are able to read or understand them. Tulisan, suara, atau gambar;

Article 44 Paragraph 1 letter h of Law Number 8 Year 2010 explains that it is important for law enforcers to intercept or tap electronic information and/or electronic documents in accordance with the provisions of laws and regulations.

Law Number 15 of 2003 Concerning the Stipulation of Government Regulation

Law Number 15 Year 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 on the Eradication of the Criminal Acts of Terrorism. This article of the Terrorism Law stipulates that evidence for the examination of criminal acts of terrorism includes other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices similar to this. This provision accommodates digital evidence if there is content or recordings that contain elements of radicalism that lead to terrorism, this evidence can be used as evidentiary data in the criminal law enforcement process.

Protection of Digital Evidence in the Indonesian Judicial System

The rapid growth and development of information and communication technology encourages the emergence of crime in it. The crimes that emerge range from ordinary crimes to systematic crimes. Crimes in the field of information and communication technology, especially crimes related to the internet, are commonly referred to as mayantara crimes or in English, cyber crimes. This crime is a threat caused by someone having illegal access to a computer network, damaging the network, changing it, and performing actions that harm many parties.¹⁸ Cyber crime usually damages the network system and enters into a confidential system so that the secret is hacked. Crimes like this are undeniably happening more and more. This is the responsibility of all information and/or electronic document providers who must keep all data safe and not hacked by anyone. In addition, if hacked, the law must be present as part of the realization of legal certainty. Legal certainty is one of the principles in law enforcement that emphasizes that regulations are present as a form of maintaining order and security with certainty. Legal certainty embodies the normative principle and the nature of legal positivism. Legal certainty requires that the law be carried out to the fullest and must not be violated. So that if someone does not obey the law, then that is when the law is present to enforce the substance of the law in order to achieve security, peace and order as the purpose of the law should be.

¹⁸ Pandoe Pramoe Kartika, "Data Elektronik Sebagai Alat Bukti Yang Sah Dalam Pembuktian Tindak Pidana Pencucian Uang," *Indonesia Journal of Criminal Law (IJoCL)* 1, no. 1 (2019): 33–46, <https://journal.ilinstitute.com/index.php/IJoCL>.

Article 16 of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions explains that as long as it is not determined otherwise by a separate law, every electronic system operator must operate an electronic system that meets the following minimum requirements:

- a. Can retrieve electronic information and/or electronic documents intact in accordance with the retention period stipulated by laws and regulations.
- b. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in procedures or instructions for organizing the electronic system.
- c. Can operate in accordance with the procedures or instructions in the operation of the electronic system.
- d. Equipped with procedures or instructions that are announced with language, information, or symbols that can be understood by the parties concerned with the implementation of the electronic system.
- e. Have an ongoing mechanism to maintain the novelty, clarity, and accountability of procedures or guidelines.

Article 16 of the Electronic Information and Transaction Law contains the phrase "can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in procedures or instructions in the implementation of the electronic system." The sentence contains the phrase "may" which means that it is not absolute and not mandatory. This is a weakness of this juridical provision which certainly contradicts the principle of legal certainty and the nature of law to create security and order.

Electronic system organizers carry out electronic-based activities including judicial institutions with electronic systems in them, of course, must be required to maintain all data related to the existing system. Talking about the system, it will involve a unity that supports each other so that a unity is formed. Therefore, a strict regulation is needed regarding the protection of digital evidence data within the scope of justice in Indonesia in order to achieve the principle of legal certainty within the scope of judicial power.

Supreme Court Regulation Number 1 of 2019 on Case Administration and Electronic Court Proceedings Article 32 Paragraph 1 explains that the court receives information, data, and electronic documents related to cases and manages them in an integrated manner in the court information system. Paragraph 2 emphasizes electronic documents as referred to in Paragraph 1 in word processing document format and/or sound or video format. Paragraph 3 electronic documents received in the Court Information System as referred to in Paragraph 1 include electronic documents of lawsuits, answers, replications, duplicates, requests for intervention, conclusions, and scans of letter evidence. The juridical provisions in the regulation only regulate data management with the court information system and are not accompanied by a digital evidence data protection mechanism. Since the Supreme Court regulation is essentially a *lex specialist* for judicial power institutions that apply specifically within the scope of judicial power. In addition, the protection of digital data is urgently needed to maintain the noble and dignified spirit of the judiciary. The judiciary acts as God's representative on earth to uphold the principles of justice on earth.

Evidence in the justice system is an important element in the judicial process which is vital and confidential. So the digitization of evidence must be maximally protected by electronic system administrators including judicial institutions with good management. This is an extraordinary challenge that requires maximum foresight. Crime has entered across sectors including in cyberspace. The existence of individuals who hack data will certainly be very dangerous for the confidentiality of judicial data. This is the responsibility of the judiciary although there are still no juridical provisions that strictly regulate the protection of electronic evidence data.

Protecting electronic evidence data is needed in the digitalization era to ward off various cyber crime efforts that are harmful to the confidentiality of judicial data in Indonesia. Talking about this matter can certainly adopt from the Legal System theory conveyed by Lawrence Meir Friedman that there are three elements that form the legal system, including structure, substance, and legal culture.¹⁹ Therefore, the legal structure includes all components of the state apparatus and law enforcement to carry out the task of developing a digital evidence data protection system in the justice system in Indonesia which is urgent. The development of human resources who master the field of technology must be maximized. In addition, it is necessary to develop legal substance in the form of changes and strengthening of laws and regulations to ensure legal certainty for the sake of upholding the law.²⁰ The substance needed is legislation that regulates details and is firmly related to the protection of digital evidence data in the judicial system carried out by judicial institutions. In addition, the laws and regulations needed are those that are able to provide strict penalties for those who damage and hack electronic evidence data managed by judicial institutions. To date, Indonesia does not have a legal substance that strictly regulates efforts to damage and hack electronic evidence data in judicial institutions.

Conclusion

The conclusion of this discussion is first, that the juridical provisions related to the position of digital evidence in the justice system in Indonesia are regulated in Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, in Article 5 Paragraphs 1 and 2 it is emphasized that in the judicial evidentiary system in Indonesia recognizes the existence of digital evidence in the judicial evidentiary system in Indonesia. There are several laws that accommodate digital evidence in evidence, including Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, Law Number 2 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of the Crime of Corruption, and Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of the Crime of Terrorism. Until now, the comprehensive use of digital evidence has not been accommodated into the substance of legislation in Indonesia. So it is neces

¹⁹ Ana Aniza Karunia, "Penegakan Hukum Tindak Pidana Korupsi Di Indonesia Dalam Perspektif Teori," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 1 (2022): 1–17, <https://jurnal.uns.ac.id/hpe/article/view/62831/pdf>.

²⁰ Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68, <https://doi.org/10.21274/legacy.2021.1.1.46-68>.

sary to revise the national legislation by making digital evidence as valid evidence based on the relevant laws.

The second conclusion is that the protection of digital evidence in the Indonesian Judicial System after the enactment of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, there is no firmness of regulations and sanctions in the regulation regarding the protection of digital evidence in the scope of justice in Indonesia. In addition, there are no provisions in the laws and regulations governing the regulation of data protection of digital evidence within the scope of judicial power in Indonesia. So it is necessary to strengthen the firmness of the legal substance related to the protection of digital evidence data in the judicial system in Indonesia that applies to all national judicial power institutions.

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