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IUS CONSTITUENDUM OF ELECTRONIC EVIDENCE ARRANGEMENT IN CRIMINAL PROCEDURE LAW

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Abstract: *This research examines the legal status of electronic evidence in criminal procedures in Indonesia, highlighting the absence of its regulation within the Criminal Procedure Code (KUHAP). Electronic evidence is regulated separately from KUHAP, creating a conflict with the negative wettelijk evidentiary system, which limits evidence to the five types specified in Article 184 of the Criminal Procedure Code. The study identifies a legal gap, as some criminal laws permit electronic evidence to stand alone, while others treat it as an extension of traditional evidence. This lack of uniformity leads to legal uncertainty and overlaps in its application. The research focuses on two main issues: the legal force of electronic evidence and its potential regulation within KUHAP. Using a normative approach, including statutory, conceptual, and comparative methods, the study concludes that electronic evidence is currently categorised as "evidence" but not as "proof" under KUHAP. To address this, the study recommends revising KUHAP to explicitly incorporate electronic evidence by addressing five key points: (1) defining electronic evidence; (2) identifying which electronic evidence is admissible; (3) establishing methods for collecting electronic evidence; (4) verifying its validity; and (5) outlining its use in the evidentiary process. These revisions would provide clearer legal guidelines and ensure the criminal justice system evolves in line with technological advancements.*

Keywords: *Regulation; Electronic Evidence; Ius Constituendum.*

1. Introduction

Along with the development of globalisation, many crimes are being executed with greater sophistication and precision. Criminals increasingly plan and carry out offences in ways that minimise visibility, leaving no eyewitnesses or traces and often evading security forces. To address this challenge and enhance security and public comfort, technological tools have become essential for meeting the various demands of modern life. Measures are taken to improve security in public and private places, with Closed Circuit Television, commonly abbreviated as CCTV, as the most used technology to capture image/video footage. Some systems can record sound online or wireless.

Changes in the paradigm of more modern technology are not without issues. The existence of technology is now a polemic, particularly in settling criminal cases, making utilising technology one of the ways of proving cases.

CCTV is used to visually capture activities in public places. In its development, CCTV has been widely used in private homes. The public perceives this technology to enhance security and monitor areas that are difficult to observe. Many criminal acts, such as theft, have been successfully recorded by CCTV, but this then raises the question of how this technology can be applied to the legal

mechanism in Indonesia, considering that CCTV is categorised into electronic devices.[1]

Historically, before Electronic Information and Transactions Law was passed, digital evidence was not accepted as evidence in Indonesian law. To catch up with the Law of Criminal Procedure, Law Number 11 of 2008 was passed, as amended to Law Number 19 of 2016 concerning Electronic Information and Transactions, which places digital evidence as a measure to expand the classification of evidence in the Criminal Procedure Code. After Law No. 11 of 2008 concerning Electronic Information and Transactions, in conjunction with Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as "ITE Law") was passed, regulations related to digital evidence in several laws remained an issue and left some loopholes.

The first problem relates to the position and classification of types of evidence in the ITE Law, placing electronic evidence as new evidence positioned on par with the types of evidence as stipulated in the provisions of Article 184 of the Criminal Procedure Code. The second problem is the incompleteness of the law and the lack of legal uniformity among law enforcement officers regarding how to manage electronic evidence in the Indonesian procedural law system, starting from obtaining, examining, and managing electronic evidence to fulfil its validity as evidence.

The procedural law that regulates evidence in Article 184 Paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code lists what can be used as evidence but has not accommodated electronic evidence as valid evidence. Furthermore, the Criminal Procedure Code has also emphasised that a person is determined as a suspect in an investigation if the case meets the requirements of sufficient preliminary evidence, as required by Article 1 point 14 of the Criminal Procedure Code.[2] A person can be found guilty by a judge if there are at least two valid pieces of evidence based on the judge's conviction.[3] This explanation implies that Indonesia's evidentiary system of criminal procedure law adheres to a negative statutory system. *(Negatief wettellijk bewijs theotrie).*[4]

Article 184 paragraph (1) of the Criminal Procedure Code has determined “in limitation" the evidence that is valid according to the law. Apart from this evidence, it cannot be used to prove the defendant's guilt.[5] That is, the judge, public prosecutor, defendant or legal counsel is bound and limited to using only these means of evidence. In this case, the judge is not allowed to use the evidence he wants outside the evidence specified in Article 184 Paragraph (1) of the Criminal Procedure Code, which is considered evidence and justified to have “evidentiary

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[1] Ardiansyah Rolindo Saputra, “Penggunaan Cctv (Closed Circuit Television) Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian Kendaraan Bermotor,” *Unnes Law Review* 2 no. 3 (2020): 324, 10.31933/unesrev.v2i3.125.

[2] See Pasal 1 Angka 14 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana (Article 1 Point 14 of Law No. 8 of 1981 concerning Criminal Procedure Code)

[3] See Pasal 183 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana (Article 183 of Law No. 8 of 1981 concerning Criminal Procedure Code)

[4] Effendi T, *Dasar Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuan di Indonesia).* (Malang: Setara Press, 2014), p. 171

[5] Bastianto Nugroho, “Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut Kuhap,” *Yuridika* 32, no. 1 (2017): 17, https://doi.org/10.20473/ydk.v32i1.4780.

power" only limited to the evidence. Evidence not belonging to the determined category carries no value and no binding evidentiary force. This condition raises the issue of whether digital evidence can be accepted.

Within the scope of digital evidence in conventional criminal cases, it can be understood that law enforcers are very limited by the provisions of Article 184 of the Criminal Procedure Code (hereinafter referred to as KUHAP), which determines that the legally recognised evidence in proving criminal procedure law in Indonesia consists of testimonies from witnesses, experts, and defendants, as well as letters, and instructions.

Ramiyanto, in his writing, corroborates that the regulation of electronic evidence is not contained in the Criminal Procedure Code but is only regulated in special laws.[6] Therefore, electronic evidence is of questionable status when used to prove general criminal offences in court, such as the use of CCTV evidence in proving Jessica's murder case.

This shows that the growing digitalisation era also urges the development of a national legal system related to Information and Communication Technology.[7] Integrating information technology with aspects of people's lives has a significant impact on legal developments. One of these legal developments is the recognition of the existence of digital evidence in the trial process. Moreover, Article 184 of the Criminal Procedure Code does not mention digital evidence as valid evidence.

Therefore, this article analyses and discusses the legal force and Ius Constituendum of electronic evidence arrangements in criminal evidence.

2. Method

This study uses normative juridical research methods, mainly examining library materials and legal norms contained in laws and regulations, customs, and related sources. The research adopts a combination of approaches: comparative, statutory, and conceptual approaches.

3. Analysis

3.1. Legal Power of Electronic Evidence in Proving Criminal Cases

Changes in society and technology have a huge influence on changes in criminal law in terms of criminal law implemented in the Criminal Code (KUHP) and formal criminal law contained in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).

In the context of criminal procedure law, proof is the core of the trial of a criminal case because what is sought in criminal procedure law is substantive truth, serving to prove that a criminal offence has occurred and that the defendant is guilty of committing it. This is in line with the opinion of Andi Hamzah that formal criminal law has several objectives:[8]

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[6] Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana." *Jurnal Hukum dan Peradilan* 6 no. 3 (2017): 463-486, 10.25216/JHP.6.3.2017.463-486.

[7] E. Makarim, "Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan Dan Pelayanan Publik.", *Jurnal Hukum dan Pembangunan* 45 no. 4 (2015): 508, 10.21143/jhp.vol45.no4.60.

[8] Andi Hamzah, *Hukum Acara Pidana Indonesia,* (Jakarta: Sinar Grafika, 2014), p. 249.

1) Seeking substantive truth;
2) Protecting the rights and freedoms of persons and citizens;
3) Trying people in the same circumstances and prosecuted for the same offence under the same provisions;
4) Defending the constitutional system against criminal offenders;
5) Maintaining peace, human security and preventing crime.

Talking about the truth is certainly related to the evidentiary process— a set of provisions that contain guidelines regarding the methods/procedures justified by law to prove the guilt charged to the defendant. Evidence is also a provision that regulates various means of evidence that are justified by law and may be used by judges to prove the defendant's guilt.

In the practice of criminal procedure law, all pieces of evidence have the same evidentiary power, and no evidence exceeds other evidence. Hierarchy does not apply to evidence in criminal law. It can be interpreted that, in principle, between one piece and another piece of evidence does not hold any determining power. However, some provisions require the connection between the two. Therefore, some evidence in criminal procedure law is considered complementary, working together to strengthen the overall case.

Furthermore, the strength of evidence against court decisions in resolving criminal cases is essential for anyone who resolves criminal cases. The strength of evidence is also very helpful for investigators in investigating a criminal case because, without evidence, a case cannot be efficiently resolved. Conversely, with the strength of the evidence, the investigators will examine the criminal case in detail and as clearly as possible.[9]

Departing from the explanation above, it can be understood that discussions regarding the use of digital evidence, such as CCTV footage, in revealing theft cases—a type of general crime—must comply with the legal evidence provisions outlined in the Criminal Procedure Code. This is because addressing general (material) crimes inherently involves consideration of procedural (formal) law, commonly referred to as criminal procedure law or "*Strafvorderingsrecht*".

There are several theories of evidence, one of which is the theory of the negative statutory proof system (*negatief wettlijke bewijst heorie*), which determines that the judge may only impose a sentence on the defendant if the evidence is only determined by the law and supported by the judge's confidence in the existence of the evidence.

Furthermore, Wirjono Prodjodikoro opines that the system of proof based on the negative law "*negatief wettlijke bewijs theorie*" should be maintained for two reasons. First, it is appropriate that there must be a judge's belief in the defendant's guilt to impose a criminal sentence, lest the judge be forced to convict someone while the judge is not sure of the defendant's guilt. Secondly, it is useful if there are rules that bind judges in formulating their beliefs so that certain benchmarks must be followed by judges in conducting trials.

[9] Effendi T, *Dasar Dasar Hukum Acara Pidana Perkembangan dan Pembaharuan diIndonesia*. (Malang: Setara Press, 2014) 27.

When referring to Indonesian criminal procedure law, this Negative Evidence Theory is reflected in Article 183 of the Criminal Procedure Code, stating:[10]

> "The judge shall not impose a sentence on a person unless there are at least two valid pieces of evidence according to which he or she is convinced that a criminal offence has occurred and that the defendant is guilty of committing it."

The researchers believe that the logical consequence of the statement of the article is that proof must be based on the law (KUHAP), namely valid evidence as referred to in Article 184 of the Criminal Procedure Code, accompanied by the judge's confidence obtained from the evidence. When referring to Article 184 of the Criminal Procedure Code, five types of evidence can be used in court, including:

1) Witness testimony, as explained in Article 1 point 26 of the Criminal Procedure Code that "a witness is a person who can provide information for investigation, prosecution, and trial of a criminal case that he himself hears, he himself sees, and he himself experiences". This means that witness testimony is the testimony of someone who has experienced, heard, and seen firsthand. The statement must also mention the cause of what he knows.
2) Expert Testimony as information provided by a person with special expertise on matters necessary to make light of a criminal case for examination.
3) Letters: the Criminal Procedure Code does not detail the term letters, but it only suggests that letters as evidence are those made on oath or strengthened by oath, as stated in Article 187 of the Criminal Procedure Code.
4) Clues, as explained in Article 188 of the Criminal Procedure Code as actions, events or circumstances that, because of their compatibility, both between one another, as well as with the criminal act itself, indicate that a criminal act has occurred and determine the perpetrator.
5) The statement of the defendant according to Article 189 paragraph (1), the statement of the defendant is what the defendant states in court about the actions that he committed or that he knows himself or experiences himself.

This evidence will also serve as a reference for the judge to impose punishment on the defendant coupled with the judge's confidence. However, for evidence to be admissible, it must be obtained legally. If evidence is gathered unlawfully, the suspect may file a pre-trial motion, and the judge could potentially issue an acquittal or a released verdict. This highlights the importance of investigators and public prosecutors adhering strictly to legal procedures when collecting evidence.[11]

If it is associated with the evidentiary system adopted by Indonesia, where Indonesian evidence adheres to the *Negatief Wettelijk Stelsel*. Therefore, in a narrow

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[10] I Putu Agus Arya Krisna, "Penggunaan Teknologi Alat Perekam Cctv Sebagai Alat Bukti Dalam Pengungkapan Tindak Pidana Pencurian." *Jurnal Analisis Hukum Undiknas* 2, no. 2 (2019): 214, 10.38043/jah.v2i2.2557.

[11] Hanafi, M, Syahrial Fitri, "Implikasi Yuridis Kedudukan Alat Bukti Elektronik Dalam Perkara Pidana Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU XIV/2016." *Jurnal Al'Adl* 12 no. 1 (2020): 105, 10.31602/al-adl.v12i1.2639.

interpretation, it can be normatively concluded that evidence other than that contained in the law cannot be used.

After exploring the use of evidence in general criminal cases, which rely on the provisions of the Criminal Procedure Code as outlined above, is the use of evidence outside Article 184 of the Criminal Procedure Code considered valid? Specifically, how does this apply to electronic evidence, such as CCTV footage, in general crimes? Since electronic evidence is not explicitly addressed in the Criminal Procedure Code, particularly in relation to CCTV recordings, its application raises concerns. It is generally understood that electronic evidence is primarily used in special criminal cases outside the codification. This perspective is supported by Ramiyanto, who states that:[12]

> "The binding nature and recognition of electronic evidence as valid evidence is to provide legal certainty against violations of electronic systems and electronic transactions, especially for proof. Legal certainty is intended so that the use of electronic evidence to prove cases of violations of electronic systems and electronic transactions has a strong legal basis. The question is whether electronic evidence regulated in special laws can be used as valid evidence to prove all types of criminal acts in court."

KUHAP as the general master of Indonesian criminal procedure law explicitly does not include electronic evidence in the types of valid evidence. Electronic evidence itself is only found in special laws such as terrorism crimes, narcotics crimes, crimes related to information, and electronic transactions, among others.[13] Therefore, electronic evidence in court can be used to deal with cases regulated by special laws. This means that the limiting nature of Article 184 KUHAP can be overridden as a consequence of the principle of "lex specialist *derograt lex generalist*".

Based on the explanation above, the author interprets Ramiyanto's perspective as suggesting that expanding the types of evidence outlined in Article 184 of the Criminal Procedure Code is not permitted when proving general criminal offences. Consequently, in handling cases governed by the Criminal Code, the available evidence is restricted to five categories: witness testimony, expert testimony, written documents, instructions, and the defendant's statement.

Referring to the statements that have been discussed, the use of electronic evidence in general crimes cannot be used as stand-alone evidence in the Criminal Procedure Code because the Criminal Procedure Code only recognises five means of evidence as contained in Article 184 of the Criminal Procedure Code; therefore, electronic evidence is not known in the Criminal Procedure Code, and the Indonesian state in evidence refers to the *Negatief Wettelijk* evidentiary theory where judges may only impose laws based on valid evidence according to its regulation in the Criminal Procedure Code for general crimes. In other words, electronic evidence in criminal acts is positioned as evidence that experts will later explain through their testimony. Such testimonies test evidence for its authenticity

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[12] Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana." *Jurnal Hukum dan Peradilan* 6 no. 3 (2017): 475, 10.25216/jhp.6.3.2017.463-484.

[13] Rivan Nelson, "Analisis Yuridis Mengenai Pembuktian Informasi Elektronik (Digital Evidence) Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana," *LEX PRIVATUM* 10, no. 5 (2022).

and validity. In this case, it refers to testimonies by digital forensic experts, which ultimately reveal a clue.

3.2. *Ius Constituendum* of Electronic Evidence in the Criminal Case Evidence Process

Electronic evidence was introduced in 2001 with the appearance of electronic evidence in Article 26A of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. Since then, almost all laws that regulate procedural law have also set rules that recognise the use of electronic evidence used in trials, particularly following the enactment of Law No. 11 of 2008 concerning Electronic Information and Transactions.[14]

Regulations regarding electronic evidence in various laws are generally limited to defining its role within the types of admissible evidence, and there is little consistency in how this is handled. For instance, Law 20 of 2001 classifies electronic evidence as part of clue evidence, while other laws treat electronic evidence as a distinct category, equivalent to the five types of evidence outlined in Article 184 of the Criminal Procedure Code, rather than as a subset of clue evidence.

Matters regarding electronic evidence as a means of evidence are regulated, among others, in Article 5 Paragraphs (1) and (2) of the Electronic Information and Transactions Law, several special laws, and several specialised laws. These laws reveal two perspectives on the role of electronic evidence (including electronic information and documents).

Firstly, electronic evidence is not treated as an independent category but is included within the broader framework of evidence outlined in Indonesia's procedural laws. While it is not explicitly regulated in the Criminal Procedure Code, electronic evidence is recognised in criminal justice practice and governed by provisions in specialised laws. This means its use is limited to the specific crimes outlined in those laws.

Provisions in these laws that allow electronic information and documents as evidence in criminal cases create the impression that such evidence only applies to specific offences, not general crimes. This perception can result in legal uncertainty for other cases, potentially hindering criminal law enforcement.

Several laws explain that electronic evidence is independent evidence, such as in Law No. 8 of 2010 concerning the prevention and eradication of the Crime of Money Laundering Article 73, Law No. 21 of 2007, concerning the Eradication of the Crime of Trafficking in Persons in Article 29, Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing, Law No. 18 of 2013 concerning the prevention and eradication of forest destruction, and Law No. 28 of 2014 concerning Copyright.

The laws mentioned above establish that electronic evidence functions as independent evidence outside the Criminal Procedure Code (KUHAP) framework. Notably, the KUHAP, which follows the *negatief wettelijk stelsel*, does not recognise electronic evidence as admissible. This is because, when the KUHAP was enacted in 1981, advancements in science and technology had not yet progressed to their

[14] Erma Lisnawati, "Keabsahan Alat Bukti Elektronik Pasca Putusan Mahkamah Konstitusi No. 20/PUU-XVI/2016 dalam Prespektif Criminal Justice System." *Jurnal Magister Udayana* 5 no. 4 (2016): 677-693, 10.24843/JMHU.2016.v05.i04.p04.

current level. The rapid development of technology has since outpaced the legal framework, leaving the KUHAP outdated, particularly in terms of evidentiary provisions. In response, the government has worked to bridge this gap by introducing supplementary legislation to support the KUHAP, especially in addressing the role of evidence. This effort is evident in the provisions of the laws discussed earlier.

The classification of electronic evidence as independent evidence outside the Criminal Procedure Code (KUHAP) conflicts with Article 184, Paragraph (1) of the KUHAP, which strictly limits the types of evidence admissible in court. This provision mandates that only the specified categories of evidence can be used to establish a defendant's guilt. All parties involved in the trial–judges, prosecutors, defendants, and legal counsel–are bound by this limitation, prohibiting the use of evidence outside the scope of Article 184, Paragraph (1). As a result, law enforcement officers cannot freely introduce evidence beyond what is explicitly recognised. Only evidence within the defined categories is deemed to have "evidentiary power," while anything outside these classifications is considered inadmissible and holds no legal weight.

Based on the explanation above, it can be understood that some laws recognise the existence of digital evidence as valid evidence in special criminal acts regulated in their laws (*lex specialist*).[15] Meanwhile, KUHAP is a general criminal procedure law (*lex generalis*), which applies as a guideline for criminal law enforcers to handle general criminal offences. The existence of digital evidence still needs to be questioned regarding its use in proving general criminal offences in court.

The legislator's intention in formulating Article 183 of the Criminal Procedure Code is clearly stated in its explanation that this provision ensures the establishment of truth, justice, and legal certainty. M. Yahya Harahap argues that this explanation reflects the legislators' deliberate choice of the *negatief wettelijk stelsel* (negative statutory proof system) as the most suitable evidentiary system for law enforcement in Indonesia. This system achieves a balance by integrating elements of the conviction-in-time system with the *positief wettelijk stelsel* (positive statutory proof system), ensuring that justice, truth, and legal certainty are upheld.

Before the ITE Law was enacted, several laws governed electronic evidence, including Law No. 8 of 1997 concerning Company Documents, Law No. 31 of 1999, as amended by Law No. 20 of 2001 concerning Corruption Eradication, and Law No. 15 of 2002 concerning Money Laundering. These three laws embrace the notion of electronic evidence as an extension of evidence from KUHAP. However, the laws enacted after ITE include Law No. 9 of 2013 concerning the Prevention and Eradication of Financing of Terrorism, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction and Law No. 28 of 2014 concerning Copyright. All of the laws enacted following the enactment of the ITE Law explain that electronic evidence is stand-alone evidence not categorised under KUHAP.

An analysis of Article 5, Paragraph (2) of the ITE Law reveals that it expands the scope of legal evidence, functioning independently of the Criminal Procedure

[15] Rizki Zakariya, Yogi Prastia, Siti Ismaya, "Revitalisasi Pengaturan Penanganan Bukti Elektronik Dalam Proses Perkara Pidana Di Indonesia." *Jurnal Legislatif,* 3 no. 1 (2020): 137, 10.20956/jl.v3i1.10211.

Code while aligning with existing procedural laws. However, the law does not clearly define what "expansion" means, raising questions about whether this refers to the introduction of additional evidence types or the inclusion of electronic evidence within the existing categories. Under Article 184 of the Criminal Procedure Code, there are five recognised forms of evidence: witness testimony, expert testimony, letters, instructions and testimony of the defendant. If the expansion introduces a new category, the total number of evidence types in Indonesian criminal procedure would exceed five. Alternatively, if the expansion incorporates electronic information and documents into the existing framework, these could be classified as written or circumstantial evidence. This ambiguity also raises the question of whether electronic evidence can serve as a valid basis for the Panel of Judges in criminal cases.

Police Commissioner Muhammad Nuh Al-Azhar believes that legally obtained evidence is paramount. Revealing criminal cases must consider the characteristics of electronic evidence. Such evidence must meet the legal requirements as recognised electronic evidence. He also added that digital forensic experts play a crucial role in determining the admissibility and credibility of electronic evidence. Referring to the principle that "every piece of evidence can speak," he explains that digital forensic specialists' expertise brings electronic evidence to life. These experts reconstruct the evidence, providing clarity and context, which ultimately helps make the trial process more transparent and understandable.[16]

The lack of clarity in regulating electronic evidence creates legal uncertainty in the legal process in Indonesia. To compare, Germany has included electronic evidence as one of the legal pieces of evidence. It explicitly regulates the problems of electronic evidence in the system of criminal case settlement, ranging from case registration and case distribution process, to case examination, including case settlement period and decision making, decision execution and provision of Court facilities in supporting the implementation of legal activities.

Germany, like Indonesia, follows a civil law system. Its judicial structure is organised into multiple levels: the first-level court (*amisgericht*), the second-level court (*oberste landgericht*), and the high court (*oberstegericht*), with the Supreme Court (Bundesgerichterhof) at the apex. The handling of cases involving electronic evidence is governed by law, and, as a general rule, court proceedings are conducted publicly. Exceptions are made in certain cases, such as those involving children or family matters, where privacy considerations take precedence.

German courts have utilised Information Technology (IT), including equipping judges with online computer systems and recording devices for courtroom conversations. With an online system, the case's progress can always be monitored.

Meanwhile, the judicial system in the United Kingdom distinguishes procedural laws for criminal and civil cases. In criminal court, cases with electronic evidence are submitted to the Magistrate Council for minor cases or offences and the Crown Court for serious cases conducted by Judges and Juries. Cases using

[16] Aldho Galih Pramat, "Analisis Kekuatan Dan Nilai Pembuktian Alat Bukti Elektronik Berwujud CCTV (Closed Circuit Television) Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU-XIV/2016 dalam Hukum Acara Pidana." *Jurnal Verstek* 8 no. 3 (2020): 392-400, 10.20961/jv.v8i3.

electronic evidence may be brought to the High Court and County Court, depending on the size and complexity of the case. The High Court consists of the following three divisions:[17]

1) The Queen's Bench, which hears tort and contract cases, and consists of specialised Courts such as the Admiralty Court, Commercial Court and Technology, and Construction Court.
2) Chancery Division for disputes concerning insolvency and enforcement of mortgages, trusts and intellectual property and special laws relating to Companies Court and Patent Court.
3) Family Division which hears cases of family disputes, guardianship and others related to child protection.

In Indonesia, electronic evidence is classified as stand-alone and non-stand-alone evidence (substituting letters and expanding clues). Electronic evidence is not regulated in the Criminal Procedure Code but in criminal justice practice. It is regulated by several special laws and legal instruments issued by the Supreme Court. In special laws, it has been determined that electronic evidence can be used to prove criminal cases at the investigation, prosecution and court levels.

KUHAP, as a regulation that becomes a reference in implementing criminal procedural law, should be able to answer existing problems. Overlapping arrangements related to digital evidence make law enforcement, starting from the investigation process to the trial, become biased due to unclear arrangements related to electronic evidence, even though electronic devices such as CCTV have been widely used and become a necessity for the community because the supervision it shows is considered useful.

The rise of criminal acts in increasingly sophisticated ways requires the community and law enforcement to be alert with all efforts, including preventing criminal acts. CCTV, categorised as electronic evidence, can record and show footage of a criminal act that can be played back. Such a feature will facilitate police arrest, enabling it to be the basis for deciding criminal cases in court.

The regulation of electronic evidence that stands alone outside the Criminal Procedure Code will certainly conflict with the evidentiary system adopted in Indonesian procedural law: *negative wettelijk,* where the evidence is limited to only five pieces as listed under Article 184 of the Criminal Procedure Code. Therefore, the regulation of independent electronic evidence outside the Criminal Procedure Code contravenes the Criminal Procedure Code because of the limitation of evidence. It should be noted that the Criminal Procedure Code does not account for electronic evidence as valid evidence because science and technology were not developed as they are today when the Criminal Procedure Code was enacted in 1981. This, therefore, highlights the urgent need to update the Criminal Procedure Code to include electronic evidence as a legitimate category within the evidentiary framework.

[17] Fredesvinda Insa, "The Admissibility of Electronic Evidence in Court (A.E.E.C.): Fighting against High-Tech Crime—Results of a European Study." Journal of Digital Forensic Practice, aylor & Francis Group, LLC ISSN: 1556-7281, 2007.

4. Conclusion

The legal force of electronic evidence such as CCTV recordings in general criminal offences cannot currently be used as stand-alone evidence in the Criminal Procedure Code (KUHAP) because Article 184 of the KUHAP limits admissible evidence to five types, and electronic evidence is not included. Additionally, Indonesia follows the *negatief wettelijk* evidentiary system, where judges can only base their decisions on evidence explicitly recognised by the KUHAP for general criminal offences. Consequently, electronic evidence can only serve as supplementary material, typically validated through expert testimony. For example, digital forensic experts verify the authenticity and reliability of electronic evidence, which can then contribute to clue evidence.

In *Ius contituendum,* there is an urgent need to revise the Criminal Procedure Code (KUHAP) to align with technological development. Aspects that should be considered in updating the KUHAP include (1) electronic evidence; (2) the category of electronic evidence that can be admitted as evidence; (3) how to take electronic evidence; (4) checking the validity of electronic evidence; and (5) the use of electronic evidence.

Reference

Aldho Galih Pramat, "Analisis Kekuatan Dan Nilai Pembuktian Alat Bukti Elektronik Berwujud CCTV (Closed Circuit Television) Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU-XIV/2016 dalam Hukum Acara Pidana." *Jurnal Verstek* 8 no. 3 (2020), 10.20961/jv.v8i3.

Andi Hamzah, *Hukum Acara Pidana Indonesia,* (Jakarta: Sinar Grafika, 2014)

Ardiansyah Rolindo Saputra, "Penggunaan Cctv (Closed Circuit Television) Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian Kendaraan Bermotor," *Unnes Law Review* 2 no. 3 (2020): 324, 10.31933/unesrev.v2i3.125

Bastianto Nugroho, "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut Kuhap," *Yuridika* 32, no. 1 (2017), https://doi.org/10.20473/ydk.v32i1.4780.

E. Makarim, "Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan Dan Pelayanan Publik.", *Jurnal Hukum dan Pembangunan* 45 no. 4 (2015), 10.21143/jhp.vol45.no4.60.

Effendi T, *Dasar Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuan di Indonesia).* (Malang: Setara Press, 2014),

Effendi T, *Dasar Dasar Hukum Acara Pidana Perkembangan dan Pembaharuan diIndonesia*. (Malang: Setara Press, 2014)

Erma Lisnawati, "Keabsahan Alat Bukti Elektronik Pasca Putusan Mahkamah Konstitusi No. 20/PUU-XVI/2016 dalam Prespektif Criminal Justice System." *Jurnal Magister Udayana* 5 no. 4 (2016), 10.24843/JMHU.2016.v05.i04.p04.

Fredesvinda Insa, "The Admissibility of Electronic Evidence in Court (A.E.E.C.): Fighting against High-Tech Crime—Results of a European Study." Journal of Digital Forensic Practice, aylor & Francis Group, LLC ISSN: 1556-7281, 2007.

Hanafi, M, Syahrial Fitri, "Implikasi Yuridis Kedudukan Alat Bukti Elektronik Dalam Perkara Pidana Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU XIV/2016." *Jurnal Al'Adl* 12 no. 1 (2020), 10.31602/al-adl.v12i1.2639

I Putu Agus Arya Krisna, "Penggunaan Teknologi Alat Perekam Cctv Sebagai Alat Bukti Dalam Pengungkapan Tindak Pidana Pencurian." *Jurnal Analisis Hukum Undiknas* 2, no. 2 (2019), 10.38043/jah.v2i2.2557.

Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana." *Jurnal Hukum dan Peradilan* 6 no. 3 (2017), 10.25216/JHP.6.3.2017.463-486.

Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana." *Jurnal Hukum dan Peradilan* 6 no. 3 (2017): 475, 10.25216/jhp.6.3.2017.

Rivan Nelson, "Analisis Yuridis Mengenai Pembuktian Informasi Elektronik (Digital Evidence) Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana," *LEX PRIVATUM* 10, no. 5 (2022).

Rizki Zakariya, Yogi Prastia, Siti Ismaya, "Revitalisasi Pengaturan Penanganan Bukti Elektronik Dalam Proses Perkara Pidana Di Indonesia." *Jurnal Legislatif,* 3 no. 1 (2020): 137, 10.20956/jl.v3i1.10211.