IUS CONSTITUENDEM OF ELECTRONIC EVIDENCE ARRANGEMENT IN CRIMINAL PROCEDURE LAW

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Abstract: Electronic evidence as an instrument in proving criminal acts has not been regulated in the Criminal Procedure Code. Currently, electronic evidence is only regulated separately outside the Criminal Procedure Code, of course this is contrary to the negative wettelijk evidentiary system where the evidence that can be used is limited to 5 evidence contained in Article 184 of the Criminal Procedure Code. The existence of differences in the regulation of electronic evidence affects the law enforcement process to be unclear and overlapping, some special criminal regulations state that electronic evidence can stand alone outside the Criminal Procedure Code, while others categorize electronic evidence as an expansion of existing evidence in the Criminal Procedure Code. The existence of this unclear arrangement results in legal uncertainty. On that basis, this research is limited to two subjects, namely, the legal force of electronic evidence and the Ius constitutendum of electronic evidence arrangements in the Criminal Procedure Code. Both of these are analyzed normatively using a statutory approach, conceptual approach and comparative approach. The results of this study indicate that currently electronic evidence is only categorized as evidence, not evidence. KUHAP as a reference rule in criminal procedure law must accommodate so that it needs to be revised and include 5 important points in the substance of KUHAP including, (1) electronic evidence; (2) the category of electronic evidence that can be used as evidence; (3) how to take electronic evidence; (4) checking the validity of electronic evidence; (5) the use of electronic evidence. The regulation of electronic evidence is expected to provide legal certainty in the evidentiary process by following technological developments.

Keywords: Regulation; Electronic Evidence; Ius Constituendum.

1. Introduction

Along with the development of globalization today, there are many criminal acts that are carried out neatly and cleanly, criminals begin to think and plan criminal acts as little as possible without being seen by eyewitnesses, even by security forces and without leaving traces. For this reason, in order to support supervision in terms of security and comfort in society, the use of technological devices has been used in various important needs in people's lives. Various ways are done to improve security, both security in public places and private places. As one example, the use of technology that is often used at this time is Closed Circuit Television or commonly referred to as CCTV which functions as an image / visual capture device, can be in the form of images only or some others that directly use sound recording (audio video), online or wireless.

Changes in the paradigm of more modern technology do not mean without causing a problem. The existence of technology is now a polemic, one of which is in the settlement of criminal cases, so that the utilization of technological means is one
of the approaches by law enforcers as a means of carrying out their duties such as proving various cases.

The use of CCTV is used as a tool to monitor activities in various public places and even in its development, CCTV has been widely used in the scope of private homes. Its existence is also considered by the public to provide a feeling of security in order to become a supervisor of locations or spots whose geography is difficult to reach by direct eye view. Evidently, there are indeed many cases of criminal acts, one of which is theft that was successfully recorded by CCTV. But the question is, how can the existence of this technology be applied to the legal mechanism in Indonesia if we look at the workings and functions of CCTV devices, CCTV is included in the category of electronic devices.1

Historically, speaking of digital evidence before the enactment of the ITE Law, one of the things that became an obstacle in handling the practice of criminal acts was that digital evidence could not be accepted as evidence in Indonesian law. In order to catch up with the Law of Criminal Procedure, Law Number 11 of 2008 was issued which has been amended to Law Number 19 of 2016 concerning Electronic Information and Transactions which places digital evidence as an effort to expand the classification of evidence in the Criminal Procedure Code. After the ratification of Law No. 11 of 2008 concerning Electronic Information and Transactions Jo. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as "ITE Law"). Regulations related to digital evidence in several laws still have various problems and legal incompleteness.

The first problem relates to the position and classification of types of evidence in the ITE Law, which places 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 the process of obtaining, examining and managing electronic evidence to fulfill its validity as evidence.

In the procedural law that regulates evidence as Article 184 Paragraph (1) of Law Number 8 of 1981 concerning 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 emphasized that a person is determined as a suspect in an investigation, can be done if it meets the requirements of sufficient preliminary evidence, as required by Article 1 point 14 of the Criminal Procedure Code.2 Then a person can be found guilty by a judge, if there are at least two valid evidences based on the judge’s conviction.3 From this explanation, it can

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2 Lihat Pasal 1 Angka 14 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana
3 Lihat Pasal 183 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana
be understood that the evidentiary system of criminal procedure law in Indonesia adheres to a negative statutory system. *(Negatief wettelijk bewijs theorie).*

Article 184 paragraph (1) of the Criminal Procedure Code has determined "limitatively" the evidence that is valid according to the law. Outside of this evidence, it is not allowed to be used to prove the defendant's guilt. This means that 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 as evidence, and which is justified to have "evidentiary power" only limited to the evidence. Evidence with evidence outside the type of evidence, has no value and has no binding evidentiary force. So this raises an issue, namely what about digital evidence.

When looking at the existence 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 evidence that is legally recognized in proving criminal procedure law in Indonesia consists of witness testimony, expert testimony, letters, instructions, and testimony of the defendant.

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. Therefore, electronic evidence is of questionable status when used to prove general criminal offenses in court, such as the use of CCTV evidence in proving Jessica's murder case.

This shows that the growing digitalization era also urges the development of a national legal system related to Information and Communication Technology. The integration of 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, in the Criminal Procedure Code in Article 184 valid evidence does not mention digital evidence.

Therefore, this article analyzes and discusses how the legal force and *Ius Constituendum* of electronic evidence arrangements in criminal evidence?

### 2. Method

This writing uses normative juridical research methods, namely research methods carried out by examining library materials only or the object of research focuses on legal norms, whether contained in laws and regulations, customs or so on. The research approaches used include; comparative approach, statutory approach and conceptual approach.

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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, both material criminal law implemented in the Criminal Code (KUHP) and in 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 material truth, which is the purpose of proof that a criminal offense has occurred and the defendant is guilty of committing it. This is in line with Andi Hamzah, that formal criminal law has several objectives: 8

1) Seeking material truth;
2) Protect the rights and freedoms of persons and citizens;
3) People in the same circumstances and prosecuted for the same offense must be tried under the same provisions;
4) Defending the constitutional system against criminal offenders;
5) Maintaining peace, human security and preventing crime.

Talking about the truth will certainly be related to the evidentiary process, which is a set of provisions that contain guidelines regarding the methods / procedures justified by law in order 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 guilt of the defendant.

In the practice of criminal procedure law, the strength of all evidence basically has the same evidentiary power, there is no evidence that exceeds other evidence. Evidence in criminal law does not recognize the term hierarchy. This can be interpreted that in principle between one piece of evidence and another piece of evidence does not have determining and determining power. It’s just that there are provisions that require the relationship between one piece of evidence and another. Therefore, in criminal procedure law there is evidence that is complementary.

Furthermore, the strength of evidence against court decisions in resolving criminal cases is very important 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 resolved in a short time. 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 in discussions related to the use of digital evidence such as CCTV recordings in revealing theft crimes as a class of general crimes, the use of digital evidence will certainly refer to what legal evidence is contained in the Criminal Procedure Code, because when discussing general crimes (material) we will definitely also discuss the procedural law (formal) or better known as the criminal procedure law "Strafverordnungsrecht".

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8 Andi Hamzah, Hukum Acara Pidana Indonesia, (Jakarta: Sinar Grafika, 2014), Hal. 249.
In the theory of evidence, there are several theories, one of which is the theory of the negative statutory proof system (negatief wettelijke bewijs theorie) which determines that the judge may only impose a sentence on the defendant if the evidence is limitatively determined by law and is also supported by the judge’s confidence in the existence of the evidence.

Furthermore, Wirjono Prodjodikoro gave the idea that the system of proof based on the law negatively "negatief wettelijke bewijs theorie" should be maintained based on two reasons, first, it is appropriate that there must be a judge’s belief in the guilt of the defendant in order 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 there are certain benchmarks that must be followed by judges in conducting trials.

When referring to Indonesian criminal procedure law, this Negative Evidence Theory is reflected in Article 183 of the Criminal Procedure Code which states:

“"The judge may not impose a sentence on a person, unless at least two valid pieces of evidence he or she is convinced that a criminal offense has actually occurred and that the defendant is guilty of committing it.”

According to the researchers, 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, there are five types of evidence that 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 the purpose of 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, is information provided by a person who has special expertise on matters necessary to make light of a criminal case for the purpose of examination.

3) Letters, the Criminal Procedure Code does not explain what is meant by letters, only suggesting that letters as evidence are letters made on oath or strengthened by oath, as stated in Article 187 of the Criminal Procedure Code.

4) Clues as in Article 188 of the Criminal Procedure Code explain clues are 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 who the perpetrator is.

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5) The statement of the defendant in accordance with 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 be a reference by the judge to give punishment to the defendant coupled with the judge’s confidence. Therefore, in its application, evidence must be obtained legally, because it is possible that if it is not done in a legal way, the suspect can file a pre-trial, and it is possible that the judge can also give a free or released verdict, if it is proven that in the process of proof, the investigator or public prosecutor obtained the evidence and / or evidence in an illegal way.\(^{11}\)

If it is associated with the evidentiary system adopted by Indonesia, where Indonesian evidence adheres to the Negatief Wettelijk Stelsel. Therefore, if interpreted narrowly, it can be normatively concluded that other than the evidence contained in the law, the evidence cannot be used.

After discussing the evidence used in general criminal offenses, which in its application uses the Criminal Procedure Code as referred to in the article above, the question will arise what about the use of other evidence outside of Article 184 of the Criminal Procedure Code, whether it is valid or not. As in the application of electronic evidence, is it valid in its application in general crimes, because the use of electronic evidence is not regulated in the Criminal Procedure Code, especially in the use of CCTV recordings as evidence. It is understood that electronic evidence only applies to special criminal offenses outside the codification. This is corroborated by Ramiyanto’s statement 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 into 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 and so on.\(^{13}\) Therefore, the use of electronic evidence in court can be used when dealing with cases regulated in special laws. This means that the limitative nature of Article 184 KUHAP can be overridden as a consequence of the principle of "lex specialist derogat lex generalist".

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Based on the explanation above, according to the author, Ramiyanto’s view implies that the expansion of evidence in Article 184 of the Criminal Procedure Code is not allowed in proving general criminal acts, so when in handling general criminal cases regulated in the Criminal Code, it is only limited to five means of evidence, namely witness testimony, expert testimony, letters, instructions, and testimony of the defendant.

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 recognizes 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, plus the Indonesian state in evidence uses the Negatief Wettelijk evidentiary theory where judges may only impose laws based on valid evidence in accordance with its regulation in the Criminal Procedure Code for general crimes. Therefore, electronic evidence in criminal acts is positioned as evidence that will later be explained by experts who can later become expert testimony, where the electronic evidence is first tested for its authenticity and validity by expert testimony, in this case it is digital forensic expert testimony, which ultimately from this information can be a clue.

3.2. \textbf{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 also contain rules that recognize the use of electronic evidence as evidence in trials, especially with the enactment of Law No. 11 of 2008 concerning Electronic Information and Transactions.\textsuperscript{14}

Regulations related to electronic evidence in various laws are generally still limited to their position in the types of evidence. There is also a lack of uniformity in this matter. Law 20 of 2001, for example, places electronic evidence as part of due evidence, while a number of other laws do not categorize electronic evidence as part of due evidence but as a new evidence equivalent to the 5 types of evidence regulated in Article 184 of the Criminal Procedure Code.

Regulations regarding electronic evidence as a means of evidence have been regulated, among others, in Article 5 paragraph (1) and paragraph (2) of the Electronic Information and Transactions Law and several special laws. Based on 9 (nine) special laws and the Electronic Information and Transaction Law that contain regulations regarding electronic evidence, there are 2 (two) views stating the position and existence of electronic evidence (electronic information and electronic documents), namely first, electronic evidence is evidence that does not stand alone and is included in the categorization of evidence regulated in the applicable Law of Procedure in Indonesia. Electronic evidence is not regulated in the Criminal Procedure Code, but is recognized in criminal justice practice and its regulation is

contained in several special laws so that its regulation is only binding on the proof
of the specific criminal act it regulates. Provisions in several laws that state that
electronic information/documents can be used as evidence in criminal cases in the
law, create the impression that electronic information/documents can only be used
for certain criminal offenses, and not crimes in general. This impression can lead to
legal uncertainty in other cases which can hamper criminal law enforcement.

Several laws explain that electronic evidence is an independent and
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 Rights. 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 the Financing of Terrorism, Law No. 18 of 2013
centering the prevention and Eradication of Forest Destruction and Law No. 28 of
2014 concerning Copyright.

All of the above laws explain that electronic evidence is an independent and
independent evidence outside of the Criminal Procedure Code, while the Indonesian
Criminal Procedure Code adheres to the negatief wettelijk stelsel. It should be noted
that the KUHAP does not regulate electronic evidence as valid evidence, this is
because when the Indonesian Criminal Procedure Code was born in 1981 the
development of science and technology was not yet rapid. With the rapid
development of technology, the law is left behind, this is what happened to the
KUHAP, especially regarding evidence. Thus, the government is trying to catch up
with the law from technology so that the government issues supporting
legislation for the Criminal Procedure Code, especially regarding evidence. This can be seen
from the contents of the previously mentioned laws.

Regarding the position of electronic evidence as an independent evidence
outside the Criminal Procedure Code, it violates the provisions of Article 184
paragraph (1) of the Criminal Procedure Code which explains that the "limitative"
nature of the tool. Outside the provisions of the Criminal Procedure Code, it is not
allowed to be used to prove the guilt of the defendant. The chairman of the trial, the
public prosecutor, the defendant or legal counsel, is bound and limited to using only
these tools of evidence. This means that law enforcement officers are not free to use
the evidence they want outside the evidence specified in Article 184 paragraph (1)
of the Criminal Procedure Code. What is considered as evidence, and which is
justified to have "evidentiary power" is only limited to these means of evidence.
Evidence with evidence outside the type of evidence, has no value and has no
binding evidentiary force.

Based on the explanation above, it can be understood that some laws recognize
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

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.
general criminal offenses. It is very clear that the existence of digital evidence still needs to be questioned when it is used to prove general criminal offenses in court.

The legislator's intention in formulating Article 183 of the Criminal Procedure Code has been clearly stated in its explanation, that this provision is to ensure the establishment of truth, justice and legal certainty. M. Yahya Harahap argues that from this explanation, the legislator has chosen the most appropriate proof system in the life of law enforcement in Indonesia is the negative statutory proof system for the sake of justice, truth and legal certainty. This is because in this evidentiary system, the unity of the combination between the conviction-in-time system and the positive statutory proof system (positief wettelijk stelsel) is integrated.

Before the ITE Law was born, there were several laws that contained electronic evidence, namely: Law No. 8 of 1997 on Company Documents, Law No. 31 of 1999, as amended by Law No. 20 of 2001 on Corruption Eradication, and Law No. 15 of 2002 on Money Laundering. These three laws embrace the notion of electronic evidence as an extension of evidence from KUHAP. However, the laws born after ITE are Law No. 9 of 2013 on Prevention and Eradication of Financing of Terrorism, Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction and Law No. 28 of 2014 on Copyright. All of the laws enacted after the enactment of the ITE Law explain that electronic evidence is a stand-alone evidence outside of KUHAP.

If we analyze the provisions of Article 5 paragraph (2) of the ITE Law, it says that they are an expansion of legal evidence and stand alone outside the Criminal Procedure Code in accordance with the applicable procedural law. There is no valid explanation of what is meant by the expansion, so the question arises whether the expansion is interpreted as an addition to the evidence or is part of the existing evidence. In Article 184 of the Criminal Procedure Code, there are five means of evidence, namely witness testimony, expert testimony, letters, instructions and testimony of the defendant, and if the expansion is interpreted as an addition, then the means of evidence in the Indonesian criminal procedure code in general become more than five. The next question is whether electronic information and electronic data can be used as a basis for evidence for the Panel of Judges. Then if the expansion is interpreted as part of the existing evidence, the evidence in criminal law in general remains five, but both electronic information and electronic documents can be included in the evidence of clues or evidence of letters.

Police Commissioner Muhammad Nuh Al-Azhar believes that the most important thing is that the evidence is obtained legally. Then used to reveal criminal acts, it must of course be seen from the characteristics of electronic evidence itself, which must meet the legal requirements as recognized electronic evidence. He also added that a digital forensic expert will determine the validity of electronic evidence in court. Starting from the principle that every evidence can talk, what can make electronic evidence "talk" is a digital forensic expert. The expert's explanation will later be carried out by reconstructing electronic evidence, thus making the trial clearer.16

The lack of clarity in the regulation of electronic evidence creates legal uncertainty in the legal process in Indonesia. If we look at other countries such as Germany, which has included electronic evidence as one of the legal evidence, and explicitly regulates the problems of electronic evidence in the system of criminal case settlement. Starting from case registration, case distribution process, case examination including case settlement period and decision making, decision execution and provision of Court facilities in supporting the implementation of legal activities.

Germany is a country in Europe that applies a civil law system like in Indonesia, the judicial system in Germany consists of several levels, namely the first level court (amisgericht), the second level court (oberste landgericht) and the high court (oberstegericht) with its peak in the Supreme Court (Bundesgerichterhof). The examination of electronic evidence cases is regulated by law and in principle is conducted in public, unless otherwise provided for in the law, for example in cases involving children or family cases.

German courts have utilized Information Technology (IT), including equipping judges with online computer systems and recording devices for courtroom conversations. With an online system, the progress of the case can always be monitored. So that cases that use electronic evidence have been clearly regulated in law.

Meanwhile, the judicial system in the United Kingdom distinguishes procedural laws for criminal and civil cases. In criminal court electronic evidence, cases are submitted to the Magistrate Council for minor cases or offenses and the Crown Court for serious cases conducted by Judges and Juries. Cases using electronic evidence may be brought in the High Court and County Court, depending on the size and complexity of the case. Furthermore, the High Court consists of three divisions, namely:

1) The Queen's Bench hears tort and contract cases, and consists of specialized 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 has the status of stand-alone evidence and non-stand-alone evidence (substitution of letters and expansion of clues). Electronic evidence is not regulated in the Criminal Procedure Code, but is recognized in criminal justice practice and is regulated in 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, both 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, until the trial becomes biased due to unclear arrangements related to electronic evidence even though the use of electronic goods such as CCTV has been widely used and has become a necessity for the community because it is considered useful in terms of supervision.

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, which is a tool included in the category of electronic evidence, can record a criminal act clearly which can be played back whenever the recording is needed. This certainly facilitates the arrest process by the police so that it can 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, namely negative wettelijk where the evidence is limited to only 5 means of evidence listed in Article 184 of the Criminal Procedure Code, so that the regulation of the use of independent electronic evidence outside the Criminal Procedure Code is considered contrary to the Criminal Procedure Code because of the limitation of evidence. It should be noted that the Criminal Procedure Code does not regulate electronic evidence as valid evidence, this is because when the Indonesian Criminal Procedure Code was born in 1981 the development of science and technology was not yet rapid, with the rapid development of technology making the law lag behind. So it is necessary to update the latest criminal procedure code by including electronic evidence in criminal evidence instruments.

4. Conclusion

The legal force of electronic evidence such as CCTV recordings in general criminal offenses cannot currently be used as stand-alone evidence in the Criminal Procedure Code, because the Criminal Procedure Code is only limited to five means of evidence as contained in Article 184 of the Criminal Procedure Code, so that electronic evidence is not known in the Criminal Procedure Code, besides that Indonesia adheres to the Negatief Wettelijk evidentiary system where judges may only impose laws based on valid evidence in accordance with the arrangements in the Criminal Procedure Code for general criminal offenses. Therefore, electronic evidence in criminal acts is only as evidence explained by experts who can later become expert testimony, where the electronic evidence is first tested for its authenticity and validity by expert testimony, in this case it is digital forensic expert testimony, which in the end can become clue evidence.

Ius constitutendum for the regulation of electronic evidence in the Criminal Procedure Code, which hopefully can be updated immediately following the development of existing technology. In revising the Criminal Procedure Code, the substances that need to be regulated in the Criminal Procedure Code include, (1) electronic evidence; (2) the category of electronic evidence that can be used as evidence; (3) how to take electronic evidence; (4) checking the validity of electronic evidence; (5) the use of electronic evidence.
Referensi


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