Estudiante Law Journal

Volume 6 Number 1, February 2024: Pp. 121-137
Faculty of Law, Universitas Negeri Gorontalo, City of Gorontalo, Indonesia
https://ejurnal.ung.ac.id/index.php/eslaw/index

Analysis of the Legal Strength of Using *Closed Circuit Television* in Proving Crimes of Theft

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Abstract: This research aims to determine the legal strength of the use of *closed-circuit television* in proving criminal acts of theft. This research is normative legal research with a statutory approach and a conceptual approach which is then formulated systematically so that it provides an overview and is processed by researchers using descriptive analysis techniques. The results of the research show that the use of CCTV *(closed circuit television)* recordings in general crimes as electronic evidence cannot be used as stand-alone evidence in the Criminal Procedure Code because the Criminal Procedure Law only recognizes five tools. evidence as contained in Article 184, added to the evidence using the *Negatief Wettelijk theory* of evidence where the judge may only pass judgment based on valid evidence by the provisions in the Criminal Procedure Code for general crimes.

Keywords: Legal force; Closed Circuit Television; Theft Crime

How to cite (ChiChicago Style):

Handika, A., Puluhulawa, J. " Analysis of the Legal Strength of Using Closed Circuit Television in Proving Crimes of Theft." *Estudiante Law Journal, 6*(1), (February, 2024): 121-137

1. Introduction

The aim of criminal procedural law is that criminal procedural law is to seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely to find out who the perpetrator is who can be charged. violates the law, and then requests an examination and decision from the court to find out whether it is proven that a criminal act has been committed and whether the person accused can be blamed.[1]

According to Moeljatno, criminal law is the scope of all laws that play a role in the state, as for the basics and rules that have been created with the aim of:[2]

1) Determine what actions cannot be carried out and what actions can be carried out with the threat of criminal penalties for people who have violated these rules.
2) Determine when and what they have violated and can be subject to punishment or criminal sanctions as listed.
3) Determine if someone has violated the rules and what sanctions will be given when someone violates the rules.

Based on this concept, it can be understood that in enforcing material criminal law, criminal procedural law plays its role in complying with substantive (material) criminal law, hereby known as formal criminal law or criminal procedural law. One of them is the evidentiary process which has a central position in a court hearing examination process because every crime that occurs must be explored in depth based on appropriate evidence that will be given at the court hearing[3], with the material truth that has been achieved then the value of substantive justice has been realized. on criminal law enforcement *in concreto*.

Andi Hamzah's view, is "that to determine whether or not the defendant has committed a crime as charged must go through an evidentiary process which is the heart of criminal proceedings".[4] If we delve deeper into the aspects of the criminal justice system in general, the "*criminal justice system*" and criminal procedural law in particular, "*formal strafrecht/strap procesrecht*", the evidentiary process plays its role in "directing where the belief is to determine whether the subject can be sentenced to criminal sanctions by the judge".[5] This explanation provides an understanding that the evidentiary process is the main key to determining whether a criminal act occurred or not as charged by the public prosecutor.

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[1] Andi Hamzah, *Hukum Acara Pidana Indonesia*, Kedua (Jakarta: Sinar Grafika, 2016)., 7-8

[2] Moeljatno, *Azas-Azas Hukum Pidana* (Bogor: Politeia, 2001)., 112

[3] Indra Janli Manope, "Kekuatan Alat Bukti Surat Elektronik Dalam Pemeriksaan Perkara Pidana," *Lex Crimen* 6, no. 2 (March 27, 2017): 107–13.

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

[5] Lilik Mulyadi, *Hukum Acara Pidana (Normatif, Teoretis, Praktik Dan Permasalahannya)* (Bandung: Alumni, 2012)., 185

Based on the explanation above, we can understand that the law is sometimes left behind by increasingly developing social movement patterns so the law is always left behind by developments over time. This can be proven by the rapid pace of globalization in the current era of globalization, especially in the information sector, which places Indonesia in terms of world information, including in society, hereby urging the government to form regulations regarding the management of information and communication transactions at the national level.

Devices such as computers and cellphones are one of the triggers for the creation of changes in the social patterns of society, namely changes in behavior for interactions between humans, which increasingly spread to other factors found in people's lives, thereby giving birth to new values, new norms, values. -new values, and more.[6]

It is undeniable that changes in the technological paradigm to a more modern technology can give rise to new problems. The existence of mature technology has now become a polemic, one of which is the resolution of criminal cases. So the use of this technological means has become one of the approaches by law enforcers as a means of carrying out their duties, such as providing evidence in various cases.

With the growing development of globalization today, the crimes committed are very cunning, clean, and neat, criminals think about how they can commit crimes but no one sees them, and they also think about how to secure these actions and leave no traces. Various methods are used to strengthen security, whether in open or closed places. As one example, the use of technology that is often used today is *Closed Circuit Television* or what is known as CCTV which functions as an image/visual tool, it can only be images or some others that directly use sound recording *(audio video),* online or wireless.

Furthermore, in general, the use of CCTV is used as a tool to monitor activities in various public places and now many people are even using CCTV in private rooms, namely at home. The public assesses that it can provide a sense of security in monitoring places or geographies that are difficult to reach by eye. This has been proven directly, indeed there are many cases of criminal acts, one of which is the crime of theft which has been successfully recorded on CCTV.[7]

Historically, talking about digital evidence before the passing of the Information and Electronic Transactions Law, became an obstacle to dealing with crimes where digital evidence was not yet acceptable as evidence in Indonesian law. The development of regulations related to digital evidence is also included in several regulations considering the lag in criminal procedural law.

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[6] Dikdik M. Arif Mansyur and Elisatris Gultom, *Cyber Law Aspek Hukum Teknologi Informasi* (Bandung: Refika Aditama, 2005)., 3

[7] Raden Fidela Raissa Ramadhanti, Rahadi Wasi Bintoro, and Musyahadah Rahmah, "The Position Of CCTV Recording As A Tool Of Evidence In The Trial Of Theft At Minimarket (Judicial Review of Decision Number: 284/Pid.B/2019/PN Sbr)," *Soedirman Law Review* 3, no. 1 (n.d.): 69–79, https://doi.org/10.20884/1.slr.2021.3.1.120.

After ratification of the Electronic Information and Transaction regulations (later called "UU ITE"). Regulations relating to digital evidence in several laws still have various problems without legal standing.

The initial problem relates to the provisions and classification of types of evidence contained in the ITE Law and then placing electronic evidence as new evidence which is positioned the same as the types of evidence as regulated in the provisions of Article 184 of the Criminal Procedure Code. The second problem is that the law is incomplete and the laws in the APH environment are not the same regarding how to regulate electronic evidence in the Indonesian procedural law system, starting from the procedures for releasing, sanctioning, and administering electronic evidence to ensure its sufficiency as evidence.

In procedural law, evidence has been regulated in Article 184 Paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code, which lists what can be used as evidence, but electronic evidence has not been accommodated as valid evidence.

Furthermore, the Criminal Procedure Code has also emphasized that a person is designated as a suspect in an investigation, which can be carried out if the requirements for sufficient initial evidence have been met. This is also stated in Article 1 point 14 of the Criminal Procedure Code.[8] After that, the judge can decide that the person is guilty if he finds at least valid evidence that the judge believes.[9] From this explanation, it can be understood that the way to prove criminal procedural law in Indonesia leverages the regulatory system negatively *(Negatief wettellijk bewijs theotrie)*.[10]

If we look at the existence of digital evidence in conventional criminal cases, it can be understood that law enforcement is very limited by the provisions of the Criminal Procedure Law regulations (later called the Criminal Procedure Code) and it is stipulated that evidence is legally recognized so that it can be proven. Criminal procedural law in Indonesia consists of letters, witness statements, instructions, defendant's statements, and expert statements.

In line with Yahya Harahap's[11] view in his book, he explains that "limitation" means valid evidence that has been determined in the regulations. Without evidence, it cannot be used to prove that the person is guilty. The chairman of the trial, defendant, legal advisor, or public prosecutor are limited to only being allowed to use valid evidence. In this provision, judges are not permitted to use evidence as stated in

[8] Lihat Pasal 1 Angka 14 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana

[9] Lihat Pasal 183 Undang Undang No. 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana

[10] Effendi T, *Dasar Dasar Hukum Acara Pidana (Perkembangan Dan Pembaharuan Di Indonesia)* (Malang: Setara Press, 2014)., 171

[11] M. Yahya Harahap, *PembahasanPermasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2002).

Article 184 paragraph (1) of the Criminal Procedure Code. Evidence that is considered valid is that which has the power to prove, limited to that evidence alone.

Other types of evidence cannot be used as evidence, and their use has no value or persuasiveness. This raises the question of what to do with digital evidence.

As a comparison, the criminal case of the murder of Jessica Kumala Wongso which was committed on Wayan Mirna Salihin in the trial decision number 777/Pid.B/2016/PN.JKT.PST dated 27 October 2016 has been decided. In the process of the judge examining him in court, Wayan Mirna provided evidence such as electronic evidence, namely CCTV "*Closed Circuit Television*" to be able to reconsider the decision in the case of the alleged use of cyanide poisoning that Jessica Kumala Wongso had committed on Wayan Mirna Salihin. After the judge had made his considerations, the judge decided that Jessica had been proven to have committed Mirna's murder. In this case, it can be seen that electronic evidence such as CCTV "Closed Circuit Television" also has a big influence in being able to provide strong material for the judge's consideration in the process of proving the case.[12]

In contrast, in the criminal case of beating No. Reg. Case: PDM-0362/DENPA.KTB/04/2016. In the criminal case of beatings, there was 1 victim and 4 perpetrators. The victim could not fight back against the 4 perpetrators. Witnesses were presented at the trial and were sworn in, after which they said that they did not see the incident directly but they knew about the incident when they saw the video recording on CCTV at the scene of the beating. The perpetrator's legal team also submitted a defense note (pledoi) responding to the Public Prosecutor's indictment, with file number 16/KLO/PIDANA/VI/2016. In this document, the perpetrator's legal team essentially questions the validity of CCTV recording evidence because it is not covered by Article 184 of the Criminal Procedure Code which does not have regulations regarding CCTV evidence and also cannot allow expert testimony during the trial process.[13]

Another case regarding CCTV evidence is the Romli Bin Nawawi case. In this case, Romli stole items belonging to PT. Medco Energy Review. The theft carried out by Romli was not visible to people but there is CCTV which recorded the incident where Romli carried out the theft. The judge thought that the CCTV footage in this case was valid evidence according to law but was not used as evidence in this case.

Another case of evidence regarding CCTV is the case of Agus Rismanto Bin Dedi Samsudin. In this case, Agus stole 1 (one) motorbike belonging to Risa Afrianti. In the theft carried out by Agus, when he discovered that a motorbike was missing, the internet cafe operator looked at the CCTV footage and it was seen from the CCTV that Agus stole 1 (one) motorbike. The judge considered that the evidence presented at

[12] Aldho Galih Pramata, "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," *Verstek* 8, no. 3 (December 28, 2020): 392–400, https://doi.org/10.20961/jv.v8i3.47057.
[13] *Ibid.*

trial was 1 (one) flash disk of CCTV recordings relating to the defendant's actions in committing the crime, the judge determined the CCTV as evidence and attached it to the case file.

This started to become a concern after the Constitutional Court decision no. 20/PUU-XIV/2016 for cases regarding electronic evidence regulations under Article 26A of the Corruption Law and Article 5 Paragraphs (1) and (2) of the ITE Law. Furthermore, the Constitutional Court in its decision said that for the evidence to be valid, electronic evidence is permitted but it must also be implemented legally. Evidence that is obtained illegally means that the evidence cannot be accepted and must be ignored by the judge. To guarantee legal certainty, the rules governing the collection and administration of electronic evidence must be immediately included in the Indonesian procedural law system.

The Constitutional Court's decision also states that the provisions regarding digital evidence are considered to violate the 1945 Constitution and do not have binding legal force, but electronic evidence such as electronic data, electronic information, and anything contained in computers, but its validity is being debated again.[14]

In Arief Heryogi et al[15] research, the Constitutional Court's decision is a legislative normative decision, based on its authority, the Constitutional Court has no authority to create new norms in a law being reviewed. In every Constitutional Court decision relating to the cancellation of a norm in a law or amendment to a law, there is follow-up action from the legislative body to add norms and delete norms. Article 10 Paragraph (1) letter d Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

In the Revision of the ITE Law, Article 5 Paragraph (1), paragraph (2), and Article 44 letter b, which are the Articles at issue in the Constitutional Court Decision, have "no changes". However, in Article 5 Paragraphs (1) and (2) there is an additional explanation. The explanation sounds are as follows:

1) That the existence of Electronic Information and/or Electronic Documents is binding and recognized as valid evidence to provide legal certainty regarding the Implementation of Electronic Systems and Electronic Transactions, especially in evidence and matters relating to legal actions carried out through Electronic Systems.
2) Specifically for Electronic Information and/or Electronic Documents in the form of interception or wiretapping or recording which is part of wiretapping, must be carried out in the context of law enforcement at the request of the

[14] Hanafi Hanafi and Muhammad Syahrial Fitri, "Implikasi Yuridis Kedudukan Alat Bukti Elektronik Dalam Perkara Pidana Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU-XIV/2016," *Al-Adl : Jurnal Hukum* 12, no. 1 (February 6, 2020): 101, https://doi.org/10.31602/al-adl.v12i1.2639.

[15] Arief Heryogi, Masruchin Ruba'i, and Bambang Sugiri, "Fungsi Bukti Elektronik Dalam Hukum Acara Pidana Pasca Putusan Mahkamah Konstitusi Nomor 20/PUU-XIV/2016," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (June 26, 2017): 7–17, https://doi.org/10.17977/um019v2i12017p007.

police, prosecutor's office, and/or other institutions whose authority is determined by law.

If you look carefully at the judge's considerations and the ruling of the Constitutional Court no. 20/PUU-XIV/2016 has no continuity because it is wiretapping that is the main problem, not the type of information and electronic documents as a whole, for example, CCTV, Electronic Mail (E-Mail), Electronic Chatting, etc. In this decision, the Constitutional Court narrowed the types of information and electronic documents to limited wiretapping activities. Even though the scope included in the types of electronic information and documents is very broad.[16]

In the interest of disclosing theft through evidence, the presence of objects related to criminal acts is very necessary. The presence of digital evidence in the scope of criminal law enforcement has sparked debate. Electronic evidence regulations are not yet included in the Criminal Procedure Code but are only regulated in special laws.

Based on the explanation above, it can be understood that several regulations recognize digital evidence as valid evidence for special criminal acts regulated in the regulations *(Lex Specialist)*.[17] However, the Criminal Procedure Code is a general criminal procedural law "*lex generalis*". This is to be used as a guideline in dealing with general criminal acts by criminal law enforcers. It is very clear that the existence of digital evidence still needs to be questioned regarding its legal strength when it is used to prove that general criminal acts have been committed in court.

Expressing views regarding the use of digital evidence to prove general crimes, Erma Lisnawati[18] in her writing also questioned that the status of the use of digital evidence needs to be questioned in conventional criminal cases, considering that the classification of conventional crimes is not included in special crimes where electronic evidence has been regulated. on specific criminal offenses.

Still on the same track, Ramiyanto[19] in his writing strengthened the electronic evidence regulations which are not listed in the Criminal Procedure Code, but are only regulated in special regulations. So the status of electronic evidence should be questioned when it is used to prove general crimes in court, such as using CCTV evidence to prove the crime of Jessica's murder.

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[16] *Ibid*

[17] Rizki Zakariya, Yogi Prastia, and Siti Ismaya, "Revitalisasi Pengaturan Penanganan Bukti Elektronik Dalam Proses Perkara Pidana Di Indonesia," *Jurnal Legislatif* 3, no. 1 (Desember 2019): 134–50, https://doi.org/10.20956/jl.v3i1.10211.

[18] Erma Lisnawati, "Keabsahan Alat Bukti Elektronik Pasca Putusan Mahkamah Konstitusi NO.20/PUU-XVI/2016 Dalam Prespektif Criminal Justice System," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 5, no. 4 (May 31, 2017): 677, https://doi.org/10.24843/JMHU.2016.v05.i04.p04.

[19] Nfn Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana / Electronic Evidence As An Admissible Evidence In Criminal Law," *Jurnal Hukum dan Peradilan* 6, no. 3 (November 29, 2017): 463, https://doi.org/10.25216/JHP.6.3.2017.463-486.

Likewise, research conducted by Novid Rizqi Prayoga states that Article 183 of the Criminal Procedure Code states that a judge may not impose a crime on someone unless there are at least two valid pieces of evidence and he is convinced that the defendant is guilty of committing it. This article determines the conditions that must be met by each judge to be able to impose a sentence on the defendant. What is meant by valid evidence is what is stated in article 184 paragraph (1), in decision number: 777/Pid.B/2016/PN.JKT.PST., stating that the judge can use indirect evidence or *circumstantial evidence* in cases No eyewitnesses were found who saw the murder. This conflicts with article 183 in conjunction with 184 paragraph (1) where indirect evidence or *circumstantial evidence* is not known in Indonesian law and there are no clearer regulations.[20]

This shows that the increasingly growing era of digitalization also forces the development of a national legal system related to Information and Communication Technology.[21] The integration of information technology with people's lives has an important influence on legal development. An example of legal development is the recognition of digital evidence in the evidentiary process at trial.[22] Moreover, the Criminal Procedure Code in Article 184 of legal evidence does not mention digital evidence.

2. Method

This research is normative legal research or theoretical legal research which is also called library research or documentary research. Studies carried out either solely on written regulations or other legal documents should be called theoretical legal research.[23] Furthermore, the approach used is a statutory approach and a conceptual approach which is then formulated systematically so that it provides an overview and is processed by researchers using descriptive analysis techniques. This means that the researcher describes and provides an overview in the form of an interpretation of the data obtained, then tests it against applicable theories and principles by making predictions and studying the implications, from which conclusions are then drawn.

[20] Novid Rizqi Prayoga, "Keabsahan Alat Bukti Tidak Langsung (Circumstantial Evidence) Sebagai Dasar Hakim Menjatuhkan Pidana (Studi Putusan Nomor 777/PID.B/2016/PN.JKT.PST)," *Rawijaya Law Student Journal*, June 2020, http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/3869.

[21] Edmon Makarim, "Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan Dan Pelayanan Publik," *Jurnal Hukum & Pembangunan* 45, no. 4 (December 21, 2015): 508, https://doi.org/10.21143/jhp.vol45.no4.60.

[22] Heniyatun Heniyatun, Bambang Tjatur Iswanto, and Puji Sulistyaningsih, "Kajian Yuridis Pembuktian dengan Informasi Elektronik dalam Penyelesaian Perkara Perdata di Pengadilan," *Varia Justicia* 14, no. 1 (June 30, 2018): 30–39, https://doi.org/10.31603/variajusticia.v14i1.2047.

[23] Suratman and Philips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2013)., 51

3. The Legal Strength of Using CCTV (Closed Circuid Television) in Proving Criminal Cases of Theft

Changes in society and technology have had a huge influence on changes in criminal law, both material criminal law implemented in the Criminal Code (KUHP) and formal criminal law as stated in Law Number 8 of 1981 concerning Criminal Procedure Law (Criminal Procedure Code).

In the context of criminal procedural law, evidence is the core of criminal proceedings because what is sought in criminal procedural law is material truth, the aim of proof is that a criminal act has occurred and the defendant is guilty of committing it.[24] This is in line with Andi Hamzah[25] that formal criminal law has several objectives:

1) search for material truth;
2) protect the rights and freedoms of people and citizens;
3) people in the same circumstances and prosecuted for the same offense must be tried under the same conditions;
4) defend the constitutional system against criminal violators; maintaining peace, and humanitarian security, and preventing crime.

Talking about the truth will of course be related to the evidentiary process which is a set of provisions containing guidelines regarding methods/procedures permitted by law to prove the guilt of the accused. Evidence is also a provision that regulates various pieces of evidence that are permitted by law and may be used by judges to prove the defendant's guilt. [26]

In the practice of criminal procedural law, the strength of all evidence has the same evidentiary strength, no one piece of evidence is superior to another. Evidence in criminal law does not recognize the term hierarchy. This can be interpreted as meaning that in principle, one piece of evidence and another piece of evidence do not have determining or determining power.[27] It's just that there are provisions that require a link between one piece of evidence and other evidence. Therefore, in criminal procedural law, there is complementary evidence.

Furthermore, the strength of evidence in court decisions in resolving criminal cases is very important for anyone who resolves criminal cases. The strength of evidence also

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[24] Hanafi Hanafi and Reza Aditya Pamuji, "Urgensi Keterangan Ahli Sebagai Alat Bukti Berdasarkan Sistem Peradilan Pidana Di Indonesia," *Al-Adl : Jurnal Hukum* 11, no. 1 (June 26, 2019): 81, https://doi.org/10.31602/al-adl.v11i1.2020.

[25] Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016)., 19

[26] Sheila Maulida Fitri, "Urgensi Pengaturan Alat Bukti Elektronik sebagai Upaya Mencapai Kepastian Hukum," *Amnesti Jurnal Hukum* 2, no. 1 (February 24, 2020): 1–15, https://doi.org/10.37729/amnesti.v2i1.659.

[27] Nur Laili Isma and Arima Koyimatun, "Kekuatan Pembuktian Alat Bukti Informasi Elektronik Pada Dokumen Elektronik Serta Hasil Cetaknya Dalam Pembuktian Tindak Pidana," *Jurnal Penelitian Hukum* 1, no. 2 (July 2014): 109–16.

really helps investigators in investigating a criminal case because, without evidence, a case cannot be resolved quickly. On the other hand, with the strength of the evidence, investigators will examine the criminal case in detail and as clearly as possible.[28]

Based on the explanation above, it can be understood that in discussions related to the use of digital evidence such as CCTV recordings in uncovering criminal acts of theft 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 (material) crimes, of course we will also discuss the procedural law (formal) or what is better known as the "Strafvorderingsrecht" criminal procedural law.

In the theory of evidence, there are several types of theories, one of which is the theory of the negative system of evidence according to law (negatief wettlijke bewijs theory) which determines that the judge may only impose a crime on the defendant if the evidence is limitedly determined by law and is also supported by the existence of the judge's belief in the existence of the evidence.[29]

Furthermore, Wirjono Prodjodikoro[30] gave the idea that the system of evidence based on negative law "negatief wettlijke bewijs theorie" should be maintained based on two reasons, firstly, it is appropriate that there must be a judge's belief in the defendant's guilt to impose a criminal sentence, the judge should not be forced to convict someone. while the judge is not sure of the defendant's guilt. Second, it is useful if there are rules that bind judges in formulating their beliefs so that there are certain standards that judges must follow when conducting justice.

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

> "A judge may not impose a crime on a person unless he is convinced by at least two pieces of valid evidence that a crime actually occurred and that the defendant is guilty of committing it".

According to the author, the logical consequence in the statement of this article is that evidence 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.

This is also in line with Wirjono Prodjodikoro's that every judge in deciding guilt remains based on his belief in the defendant's guilt and that judges are bound to formulate their own beliefs based on certain standards that must be followed in

[28] I. Rusyadi, "Kekuatan Alat Bukti Dalam Persidangan Perkara Pidana," *Jurnal Hukum PRIORIS* 5, no. 2 (February 13, 2016): 128–34, https://doi.org/10.25105/prio.v5i2.558.
[29] Riadi Asra Rahmad, *Hukum Acara Pidana* (Depok: Rajawali Pers, 2019)., 86
[30] *Ibid.*

carrying out the trial.[31] This means that the evidence referred to in Article 184 of the Criminal Procedure Code is one unit or cannot be separated from the judge's belief.

If we refer to Article 184 of the Criminal Procedure Code, five types of evidence can be used in court, including:

1) Witness Statement, as explained in Article 1 point 26 of the Criminal Procedure Code, "a witness is a person who can provide information for investigation, prosecution, and justice regarding a criminal case that he heard, saw for himself and experienced for himself." This means that witness testimony is someone's statement that is experienced directly, heard, and seen by themselves. The statement must also state the known causes.
2) Expert testimony is information given by a person who has special expertise regarding matters needed to shed light on a criminal case for investigative purposes.
3) Letter, the Criminal Procedure Code does not explain what is meant by a letter, it only states that a letter as evidence is a letter made on an oath of office or confirmed by oath, as stated in Article 187 of the Criminal Procedure Code.
4) Instructions as in Article 188 of the Criminal Procedure Code explain that instructions are actions, events, or circumstances which, because of their correspondence, either with one another or with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is.
5) The defendant's statement as stated in Article 189 paragraph (1), the defendant's statement is what the defendant stated in court about the actions he committed or that he knew about or experienced.

This evidence will also be used as a reference by the judge to give a sentence to the defendant coupled with the judge's confidence. Therefore, in its application, the evidence must be obtained legally, because it is possible that if it is not done legally, the suspect could file a pre-trial, and it does not rule out the possibility that the judge can also give a verdict of acquittal or acquittal if it is proven in the evidentiary process by the investigator or prosecutor. the public prosecutor obtained the evidence and/or evidence illegally.

When related to the evidence system adopted by Indonesia, where Indonesia's evidence adheres to the Negatief Wettelijk Stelsel. Therefore, if interpreted narrowly, it can be normatively concluded that apart from the evidence contained in the law, this evidence cannot be used.

After discussing the evidence used in general crimes which are implemented using the Criminal Procedure Code as referred to in the article above, the question will arise about the use of other evidence outside of Article 184 of the Criminal Procedure Code, whether it is valid or not. Such as whether the application of electronic evidence is

[31] Nikolas Simanjuntak, *Acara Pidana Indonesia Dalam Sirkus Hukum* (Bogor: Ghalia Indonesia, 2009)., 244

valid in general crimes because the use of electronic evidence is not regulated in the Criminal Procedure Code, especially in the use of CCTV footage as evidence.

It is understood that electronic evidence only applies to specific criminal acts outside of codification. This is confirmed by Ramiyanto's statement that:[32]

> "The binding nature and recognition of electronic evidence as valid evidence is to provide legal certainty regarding 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: Can electronic evidence regulated in special laws be used as valid evidence to prove all types of criminal acts in court?".

According to Ramiyanto[33], the Criminal Procedure Code as the general body of Indonesian criminal procedural law strictly does not include electronic evidence among the types of legal evidence. Regarding electronic evidence itself, it is only found in special laws such as criminal acts of terrorism, narcotics crimes, criminal acts relating to electronic information and transactions, and so on. So the use of electronic evidence in court can be used when dealing with cases regulated by Special Laws. This means that the limitative nature in Article 184 of the Criminal Procedure Code can be set aside as a consequence of the principle "lex specialist derogat lex generalist".

Based on the explanation above, according to the researcher, Ramiyanto's view suggests that it is not justified to expand the evidence in Article 184 of the Criminal Procedure Code in proving the crime of theft as a general crime, so when handling cases of general crimes as regulated in the Criminal Code it is only limited to five only evidence, namely witness statements, expert statements, letters, instructions, and defendant statements.

However, the position of CCTV recordings as valid evidence in the criminal process is based on Article 5 of the ITE Law as valid legal evidence and MK decision Number 20/PUU-XIV/2016 dated September 7, 2016, which states that electronic information (including CCTV camera recordings)) does not have binding legal force as long as it is not interpreted specifically the phrase "Electronic Information and/or Electronic Documents" as evidence carried out in the context of law enforcement at the request of the police, prosecutor's office, and/or other law enforcement institutions determined by law.[34] This means that CCTV camera recordings can be valid evidence if they are carried out in the context of law enforcement at the request of the police,

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[32] Ramiyanto, "Bukti Elektronik Sebagai Alat Bukti Yang Sah Dalam Hukum Acara Pidana / Electronic Evidence As An Admissible Evidence In Criminal Law.",*Op.cit*

[33] *Ibid.*

[34] Ardiansyah Rolindo Saputra, "Penggunaan CCTV (Closed Circuit Television) Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian Kendaraan Bermotor (Studi Pada Satreskrim Polres Sawahlunto)," *UNES Law Review* 2, no. 3 (July 1, 2020): 321–30, https://doi.org/10.31933/unesrev.v2i3.125.

prosecutor's office, and/or other law enforcement institutions as determined by law.[35] On the other hand, if the recording is not carried out at the request of the police, prosecutor's office, and/or other law enforcement institutions stipulated by law, then all electronic information as evidence in the trial will be invalid.

In terms of proving criminal acts of theft, it is an important process in examining suspects, especially when recorded and revealed via CCTV. The reason is that CCTV footage can be used as evidence that a criminal act has occurred, making it easier for investigators to prove the criminal act that occurred, considering that there are no witnesses who directly saw each crime of theft, heard and felt directly a criminal incident.

Then in the process, investigators' general criminal acts will take the results from recorded data, especially in this case CCTV recording data, at this stage the CCTV recording data is still in the form of evidence, which will then be questioned and processed by experts, in this case, experts. digital forensics, after there was information from experts who said that there had been no changes to the CCTV data. So the results of CCTV recordings do not become electronic evidence, but become expert testimony, or witness statements which then give rise to clues because general crimes do not recognize electronic evidence. Therefore, the use of CCTV recordings in general crimes is used as evidence, not as evidence.

This means that electronic evidence can only be used after receiving an explanation from an expert, and from the expert's testimony which can ultimately become expert testimony, it is from the expert's testimony that ultimately expands the electronic evidence into indicative evidence in the trial. Therefore, you must understand the difference between evidence and evidence, because before CCTV footage can be used as evidence, its position is still evidence.

The definition of evidence itself is not clearly explained in the Criminal Procedure Code. However, Article 39 paragraph (1) of the Criminal Procedure Code states what items can be confiscated. According to Ratna Nurul Afiah, objects that can be confiscated as mentioned in Article 39 paragraph (1) of the Criminal Procedure Code can be referred to as evidence.[36]

The shift in electronic evidence in the form of CCTV into evidence, and the change in electronic evidence into evidence for clues to general crimes is because in Indonesia *real evidence* is not yet recognized as evidence. Therefore, the evidence is not evidence, the evidence can be a witness statement, or other information if the action has been stated by an expert witness.

Real Evidence or *Physical Evidence* is quite significant evidence in criminal trials, but this does not mean that it is not used in civil cases. In criminal cases, *Real Evidence* or *Physical Evidence* is briefly defined as things that are admitted as evidence by the

[35] *Ibid.*

[36] Ratna Nurul Afiah, *Barang Bukti Dalam Proses Pidana* (Jakarta: Sinar Grafika, 1989)., 14

public prosecutor to expose the defendant or by legal counsel to extenuate the defendant. It can be said that Real Evidence or Physical Evidence is Circumtantial Evidence or indirect evidence. This evidence must be supported by testimony or vice versa, the testimony must be strengthened by other evidence. In the legal context of evidence, it is known as corroborating evidence, which means evidence that is strengthened by testimony before the judge considers it.[37]

One thing that strengthens Real Evidence or Physical Evidence as evidence is an expert who explains the Real Evidence or Physical Evidence to shed light on a legal event. Real Evidence or Physical Evidence is a guide to be explored further to find the truth of a fact which is usually referred to as trace evidence. One of the sciences related to deciphering Real Evidence or Physical Evidence is forensic science. In simple terms, forensic science is a unique scientific discipline, which uses basic scientific principles and techniques to analyze evidence to retrieve information to solve problems related to criminal law.[38]

Eddy O.S. Hiariej[39] gives the idea that clues are circumstantial evidence or indirect evidence that is complementary or accessory evidence. This means that instructions are not independent evidence and depend on previous evidence, they are secondary evidence obtained from primary evidence, in this case witness statements, letters, and the defendant's statement. This means, according to researchers, if it is interpreted as an extension of indicative evidence, then CCTV evidence has a weaker position than other evidence

If based on Article 188 of the Criminal Procedure Code, then the value of the evidentiary strength of indicative evidence when linked to evidence such as CCTV is independent in the sense that:

a) The judge is not bound by the correctness of the agreement established by the instructions;
b) Instructions as evidence cannot stand alone to prove the defendant's guilt and remain bound by the principle of the minimum threshold of proof.

So in principle, electronic evidence does not have binding and determining power. Thus, the value of the evidentiary strength of electronic evidence is the same as the value of the evidentiary strength of other evidence. Therefore, the value of the evidentiary power inherent in electronic evidence, namely:

a) It has a free evidentiary strength value or vrij bewijskrachf, meaning that it does not have a perfect and decisive evidentiary strength value attached to electronic evidence. It all depends on the judge's assessment, the judge is free to assess and is not bound by the evidence. There is no obligation for the judge to accept what is in the electronic evidence.

[37] Eddy O.S. Hiariej, *Teori Dan Hukum Pembuktian* (Jakarta: Erlangga, 2012)., 74
[38] *Ibid.*,75
[39] *Ibid.*

b) The minimum principle of proof applies to electronic evidence, meaning that electronic evidence alone is not sufficient to prove a person's guilt, therefore electronic evidence can be considered sufficient to prove a person's guilt and must be accompanied by other evidence.

Referring to the statements that have been described, it can be said that the use of CCTV recordings in general crimes as electronic evidence cannot be used as stand-alone evidence in the Criminal Procedure Code, because the Criminal Procedure Code only recognizes five pieces of evidence as contained in Article 184 of the Criminal Procedure Code. , therefore electronic evidence is not recognized in the Criminal Procedure Code, plus the Indonesian state uses the *Negative Wettelijk theory* of evidence in proof where judges can only pass laws based on valid evidence by the provisions in the Criminal Procedure Code for general crimes. Therefore, electronic evidence in criminal acts is positioned as evidence that will later be explained by an expert which can later become expert testimony, where the electronic evidence is first tested for its authenticity and validity by expert testimony, in this case, the digital forensic expert's testimony, Ultimately, this information can be a clue.

4. Conclusion

The use of CCTV *(Closed Circuid Television)* recordings in general crimes as electronic evidence cannot be used as stand-alone evidence in the Criminal Procedure Code, because the Criminal Procedure Code only recognizes five pieces of evidence as contained in Article 184 of the Criminal Procedure Code, plus proof using the theory of evidence. Negatief Wettelijk where judges may only impose laws based on valid evidence by the provisions in the Criminal Procedure Code for general crimes.

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