



## The Strength of Electronic Document Evidence in Crime based on Technology and Informataion (Cyber Crime)

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### ABSTRACT

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The era of globalization has had a very significant impact on human life, the emergence of internet media as a new media has also influenced various fields and sectors in the global order of life. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that as one of the sectors that is also affected by the emergence of information and communication, the legal justice process in Indonesia also adapts to various current developments, the existence of various crimes that are born through internet access or what is commonly referred to as cyber crime, the Indonesian government has made a transformation in dealing with the defendants by issuing various laws and government decisions as one way so that prosecution can be carried out quickly and precisely. involved in the trial process are several electronic documents that are indeed very influential on the judge's decision in the trial process, the presence of such evidence is indeed still a new thing in the judicial process in Indonesia but in reality This has been stated in several articles of the Information Technology and Electronic Law.

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### 1. Introduction

The increasing advances in technology and information in human life, often lead to abuse which leads to criminal acts committed using information technology known as cybercrime. Cases that are often found in social media networks or in cyberspace such as criminal acts of defamation, fraud, insults and threats or terror against someone's life, as well as other cybercrime crimes.

The development of information technology has caused the world to become borderless and caused significant social changes to take place so quickly, the rapid pace of information technology through the internet, changing life activities that originally needed to be done in physical contact, now using electronic media, daily activities can be carried out manually. So that it can be said that information technology has now become a double-edged sword, because in addition to contributing to the improvement of welfare, progress and human civilization, it is also an effective means of violating the law (Sidik, 2013; Makarim, 2015; Asimah, 2020).

The presence of the Internet has also led to changes in the activities of human life in various fields which have directly influenced the birth of new forms of legal action related to technology and information, thus requiring regulations regarding the management of information and electronic transactions at the national level as outlined in the form of legislation. , the formation of the rule of law must be carried out optimally, evenly and spread to all levels of society without exception, in the reform era since 1998, many laws and regulations have been issued and perfected in accordance with the development of globalization, it is hoped that the laws and regulations that have been issued it can bring people to a better life than before (Lestari & Damayanti, 2018; Kadir, 2018; Poluakan et al, 2019).

Technological activities through electronic media are called cyberspace and crimes using information technology are known as cybercrime, although they are virtual, these crimes can be categorized as real legal acts. Juridically, activities in cyberspace cannot be approached with conventional legal standards and qualifications, because there will be too many difficulties in uncovering crimes, and it is certain that many individuals have escaped the system of enforcing the law. , files, and recordings that are indeed related to the criminal case, related to the provisions of evidence as regulated in article 184 of the Criminal Procedure Code (KUHAP) which states that electronic information as in the article mentions tools Evidence consists of:



witness statements, expert testimony, letters, instructions, and statements from the defendant. (Hamdi & Suhaimi, 2013; Fatoni, 2019; Arifahhana, 2020).

Regarding proof of a criminal act, it has been regulated in Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code or commonly called the Criminal Procedure Code (KUHAP) as stated in Chapter XVI Part Four, Article 183-Article 189. KUHAP is a procedural law. general criminal law (lex generalist), which serves as a guideline for criminal law enforcers to deal with general crimes. In addition, there is also a criminal procedure law that is special because it is regulated outside the Criminal Procedure Code or what is often called a special law (lex specialist). The special criminal procedure law also regulates the problem of proving a crime. However, considering the increasing role of technology and information in all areas of human life, there are several pieces of evidence that are not regulated in the Indonesian Criminal Code, such evidence includes electronic information, electronic data or documents, examination of witnesses using teleconference, microfilm<sup>3</sup> containing company documents in addition to other evidence, such as radio cassette tapes, VCD (Video Compact Disk) or DVD (Digital Versatile Disk), photos, facsimiles, CCTV (Closed Circuit Television) recordings, even SMS (Short Message Service) or MMS (Multimedia Messaging Service) (Haris & Handrawan, 2020; Wirawan et al, 2020).

For the judiciary, the position of electronic evidence is very important and accelerates prosecution, because electronic information or electronic documents and their printouts are legal evidence and have met the requirements in uncovering every crime related to technology and information, some electronic evidence is also an extension of evidence in the procedural law applicable in Indonesia, provided that the electronic information and electronic documents use an electronic system in accordance with the provisions stipulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (Pramata, 2018).

In particular, the existence of some electronic evidence is still a big question mark for some Indonesian people, because basically the use of electronic media that is involved in the courtroom as legal evidence to decide a criminal case is not used by the Indonesian people., because basically the regulation of electronic evidence is not contained in the Criminal Procedure Code, but is only regulated in special laws. Regarding electronic evidence, there are parties who question its status when it is used to prove general crimes in court, Pribadi (2018) states that the validity of using electronic data as evidence in court seems to be questionable. In court practice in Indonesia, the use of electronic data as legal evidence is not commonly used. Whereas in some countries, electronic data in the form of e-mail has become a consideration for judges in deciding a case (civil or criminal).

The development of information technology has indeed brought many new changes in various fields of human life, but this does not seem to reduce the development of criminal acts such as crimes in cyberspace or commonly called cyber crime. These crimes directly require evidence in court and result in new evidence in the evidentiary process. The Criminal Procedure Code itself does not explain that the evidence related to cyber crime has not been legally listed in the law book, so the application process is difficult to implement in terms of evidence directed at a defendant. Politically, legally, the State of Indonesia has made a new breakthrough in terms of regulations related to cyber crime with the issuance of Law Number 11 of 2008 and changed in 2016 to Law Number 19 of 2016 concerning Electronic Information and Transactions. With this regulation, the existence of electronic information evidence has begun to be recognized and used in procedural law in Indonesia.

## 2. Research methodology

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that discusses the Power of Electronic Document Evidence in Information and Technology-Based Crimes (Cyber Crime). Qualitative research is focused on a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy discussion form so that researchers can find a complex and structured understanding in a directed manner.

## 3. Results and Discussion

### 3.1 The Relevance of Electronic Information Evidence in Indonesian Criminal Procedure Law

As one of the legal countries that upholds every legal position that applies in its society, the Indonesian state through the Constitution of the Republic of Indonesia, in article 1 paragraph (3) states that Indonesia is a legal state whose government is based on legal principles that universal nature and local wisdom. The



universal principles in question are the philosophical and theoretical foundations used to form the juridical perspective and implementation that underlie the Indonesian state administration.

The principle of the rule of law in the future will indeed experience a very big challenge. In the past what happened was the industrial revolution, but at this time what is happening is a technological revolution that is growing and increasingly showing its existence in various ways, both seen from its positive impact and vice versa. The upcoming technological revolution changes the paradigm, all fields and including the law in it, legal positions are required to adapt and continue to run in accordance with predetermined directions. As we already know, the instant impact caused by the spread of technology and information in several sectors of human life where the delivery of messages can be done in various ways such as through various applications commonly found among humans, such as email, whatsapp, telegram, line, video calls are all application-based which makes it easy for us to get them easily and quickly, according to Isma & Koyimatun (2014) The development of information technology and telecommunications has caused the world to become borderless and resulted in significant social changes that took place so quickly. However, although it was originally created to produce positive benefits for humans, there are times when it creates something that humans themselves never expected.

The development of technology and information has had a profound impact on various fields, including the judicial process in Indonesia, in the explanation of the UUTE, the second paragraph emphasizes: Currently a new legal regime has been born, known as cyber law or telematics law. Cyber law or cyber law, is internationally used for legal terms related to the use of information and communication technology. Legal problems that are often faced by law enforcement officers are when they face a problem regarding the delivery of information, communication, or transactions electronically, especially in terms of evidence and legal actions carried out through the electronic system, because basically legal procedures involving several electronic devices are indeed often raises pros and cons among the wider community, as we know that some of the reasons behind the use of electronic evidence have not yet been written down in a formally valid law book by the government or other legal institutions, according Ramiyanto (2017) and Arty (2018) in detail. juridical evidence is provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt charged to the defendant. Proof is also a provision that regulates the evidence that is justified by law and regulates the evidence that may be used by the judge to prove the guilt of the defendant. The court may not arbitrarily and arbitrarily prove the defendant's guilt.

Evidence does play a very important role in the trial process, because with this evidence the fate of a defendant can be determined, proof is also a provision that regulates the evidence that is justified according to law and may be used by judges to prove the guilt of the accused. Regarding the definition of proof, it is not explained in detail in the Indonesian Criminal Procedure Code, but in this case several types of evidence included in the criminal law article 184 paragraph (1) include witness statements, expert statements, letters, instructions and the last the defendant's statement, so it can be meant that proof means convincing the judge of the truth of the arguments put forward by the parties in a dispute.

Meanwhile, in the application of the law, electronic information as regulated in Article 1 Paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions is one or a set of electronic data, not limited to writing, sound images, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, processed letters, signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by people who are able to understand them. The process of proving in cyber crime cases is basically no different from proof in conventional cases, some electronic information evidence can be used in a trial to further strengthen the indictment directed at a defendant, as long as the evidence can be obtained and proven in court, the evidence Electronic information is an extension of the evidence of instructions in the Criminal Procedure Code wherein this evidence of information is expanded in meaning in accordance with developing technological developments. Electronic information evidence is evidence that cannot stand alone, but must be supported by other evidence, so that it can be accepted as legal evidence in the trial process (Harizona, 2018; Yusandy, 2019).

With the enactment of Law Number 11 of 2008 concerning Information and Electronic Transactions, electronic information is used as legal evidence in criminal procedural law. As Article 5 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions which states that electronic information and/or electronic documents and or their printed results are legal evidence. Article 5 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions states that electronic information and/or electronic documents and/or their printed results as referred to in paragraph (1) is an extension of legal evidence in accordance with procedural law. applicable in Indonesia.

The relevance of electronic information evidence as legal evidence will provide benefits for the development of the Indonesian people at large, as stated in Article 4 of Law Number 11 of 2008 concerning

Electronic Information and Transactions, with the aim of educating the nation's life as part of a society that is understand and know the correct and appropriate use of communication and information tools, then develop trade and the national economy in the context of improving the welfare of the community, increasing the effectiveness and efficiency of public services, opening the widest possible opportunities for everyone to advance ideas and abilities in the field of use and utilization. information technology as optimally as possible and responsible for applying it to various needs of the wider community, and finally providing a sense of security, justice, and legal certainty for users and providers of information technology.

Thus we can conclude that electronic evidence in the form of information or electronic documents is legal evidence in Indonesian criminal procedure law. In this case, electronic evidence has the status as a substitute for letters, independent evidence, and is an extension of directive evidence, but the status of electronic evidence is not contained in the KUHAP book, but the arrangements are contained in several special laws and legal instruments that issued by the Supreme Court. Then the status of the electronic evidence can be further narrowed down to 2 (two), namely independent evidence and non-stand-alone evidence in lieu of letters and expansion of instructional evidence. The use of electronic information evidence in criminal procedural law after the issuance of Law Number 11 of 2008 concerning Electronic Information and Transactions has the same legal force as the evidentiary process. So electronic information is used as legal evidence in criminal proceedings in Indonesia, namely the evidence has relevance to the facts to be proven and is permitted by law to be used as an indictment directed at a defendant in the trial process.

According to Lintang Sari & Hartanto (2019) argues that based on article 5 of the ITE Law that evidence of electronic information and electronic documents and their printed results is an extension of evidence based on Article 184 of the Criminal Procedure Code. According to him, it is no longer necessary to dispute whether the evidence of electronic information and electronic documents and their printouts is an extension of documentary evidence or evidence of instructions because basically electronic information evidence and the printed results are the addition of new evidence other than those in the ITE Law.

### 3.2 The Power of Evidence of Electronic Evidence

In criminal procedural law, the strength of all evidence is essentially the same value, there is no difference from one another, evidence in criminal procedural law does not recognize a hierarchy, it's just that there are certain provisions that require the link between one evidence and the other evidence. Therefore, in criminal procedural law there is complementary evidence, basically in modern evidence there is what is known as universal evidence. One of the universal evidences in this world is documents, basically there are documents that are in electronic form, including some print-outs which are legal documents and are included in the legal electronic evidence section and can be proven in the trial process. but in the process need further verification.

Before discussing too much about some electronic evidence and electronic documents, as we know that in Indonesia, the latest law has been announced through a government regulation, namely Law Number 19 of 2016 concerning Electronic Information and Transactions, which is the basis for organize various crimes in the world of telematics. Before discussing the meaning of electronic documents, it is necessary to know the meaning of computer crime and computer related crime, the meaning is the same but the meaning is different. Computer crime (computer crime) is the misuse of technology that is concentrated (converged) on computers, media and informatics, based on criminal motives or against the law for reasons that cannot be accounted for.

There are three things related to the validity of documents as legal evidence in the eyes of the court, namely, the authenticity of the document, the contents of the document, as well as its substance, which is strengthened through several other evidences that can confirm the position of the electronic document, but information evidence According to Slamet & Paililing (2019) the legitimacy of electronic information evidence and electronic documents is still very much needed further proof. This proof is closely related to the originality of the instrument. evidence of electronic information and electronic documents considering that the assessment of the validity of evidence of electronic information and electronic documents is very difficult, because it is feared that the existence of evidence of electronic information and electronic documents can harm other parties.

Electronic evidence was first regulated in 1997, namely in Law no. 8 of 1997 concerning Company Documents. In the law, it is not explicitly stated the word electronic evidence, but in article 15 it is stated that data stored in microfilm or other media is considered as legal evidence. changes from Law no. 31 of 1999 concerning Corruption Crimes, Article 26 A states that information stored electronically is evidence of instructions. This is emphasized again in the ITE law in Article 5 which states that electronic information, electronic documents and their printouts are recognized as legal evidence. Based on these regulations, the definition of electronic evidence is data stored or transmitted through an electronic device, network or



communication system. This data is needed to prove a crime that occurred in court, not the physical form of the electronic device (Tinring et al, 2019).

Thus, the use of electronic documents as evidence is considered valid when using an electronic system in accordance with its provisions, as regulated in Article 6 of the ITE Law, which stipulates that electronic documents are considered valid as long as the information contained in them can be accessed, displayed, and displayed. its integrity is guaranteed and can be accounted for so as to explain a situation, in another article of the ITE Law it states that an electronic information or electronic document is declared valid to be used as evidence if it uses an electronic system in accordance with the provisions stipulated in legal procedures recognized by the state. Among them is an electronic system that is safe and can be proven by applicable law, and meets the following minimum requirements, can display electronic information or electronic documents in full in accordance with the retention period stipulated by law. the laws and regulations can then protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in the operation of the electronic system, which can then operate in accordance with procedures or instructions in the operation of the electronic system, and the last one is equipped with procedures or instructions announced in English. , information, or symbols that can be understood by the parties concerned with the operation of the electronic system.

#### **4. Conclusions**

The increasing development of Information and Communication systems in recent years has indeed given rise to adequate benefits in various fields of human life, but in practice there are some losses caused by these technological developments, the emergence of several crimes arising from the misappropriation of people who do not responsible for causing various losses both materially and loss of one's self-esteem, it is undeniable that this era of technology and information has also brought humans to a new cultural civilization, namely social growth and global structure which is greatly increasing and has an impact on shifting values, norms, morals and decency. As a result, all sectors of human life undergo various changes, including the judicial process. One of the crimes caused by the development and advancement of information technology is a crime related to internet applications. Or often referred to as Cyber Crime, the government has officially issued various new policies to process the defendants involved in the information and communication case, even though the scope is not officially stated in the Criminal Code, but the establishment of the ITE Law at least becomes a new judicial process that can bring changes to the legal process in Indonesia.

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