

# Reconstruction of Evidence Regulations in Civil Jurisdiction Based on Justice Value

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## Abstract

The aims of this research are to analyze the weaknesses that exist in evidentiary regulations in civil courts and how to reconstruct evidentiary constraints in civil justice based on the value of justice. This research uses a constructivist paradigm, with a social legal research approach that uses primary data. Methods of data collection using interviews, observation, and field systems. The results of this research show that in evidentiary regulations in civil courts in Indonesia, judges are bound by valid evidence, which means that judges are only allowed to make decisions (impose decisions) based on evidence determined by law only, and From a formal juridical point of view, electronic document law has not been strictly regulated in the Civil Procedure Code so that it has not had the value of justice, namely the normalization of Articles 163 and 164 HIR and Articles 283 and 284 RBg., has not provided justice values in the evidentiary system. Current weaknesses in evidentiary regulations in civil court include weaknesses in the context of legal substance, legal structure, and legal culture, therefore it is necessary to reconstruct the provisions in Article 164 HIR or 284 RBg with the need for arrangements regarding electronic evidence, which has been validated and the strength is the same as documentary evidence. Then in Article 163 HIR/Article 283 RBg there needs to be an arrangement so that Electronic Information and Electronic Documents submitted by litigants must come from an Electronic System that meets the requirements based on Legislation In contrast, where the implication is to provide a new idea related to evidentiary regulations in civil courts based on the value of justice.

**Keywords:** Legal Reconstruction, Evidence, Civil Jurisdiction, Justice Value.

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## INTRODUCTION

The Characteristics of electronic documents that can be transferred or stored in several forms enable the electronic documents in case practice at trial not to be found in one standard form of media, this can be done considering the nature of electronic information and/or electronic documents can be transferred into several forms of media another. In the provisions of Article 6 of Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning information and electronic transactions (ITE) which reads in the event that there are provisions other than those regulated in Article 5 paragraph (4) which require that information must be in written or original form, electronic information and or electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for integrity, and can be accounted for so as to explain a situation.

The dynamic development of society and the influence of globalization and modernization which is supported by advances in technology and information science have influenced, and the way of life of humans which is marked by the dominance of technology is the impact of community dynamism in the context of social change. In the world of law, this digital phenomenon has been responded to by the issuance of Law Number 11 of 2008 jo. Law Number 19 of 2016 Concerning Information and Electronic Transactions (ITE) is the first law in the field of Information Technology and Electronic Transactions as a product of legislation that is urgently needed and has become a pioneer in laying the foundation for regulations in the field of utilization of Information Technology and Electronic Transactions. However, in reality, the implementation of the ITE Law has experienced problems in its application in court.

The decision of the Constitutional Court 20/PUU-XIV/2016 further strengthens Article 5

paragraph (2) and Article 6 of the ITE Law concerning the validity of evidence, where in principle that evidence can be guaranteed to be authentic in describing a case. The decision of the Constitutional Court is indeed based on a criminal case, but that does not mean that the decision cannot be applied in handling civil cases, because currently there are many civil issues such as contracts, transactions, and so on. However, this electronic information and transactions cannot be used as evidence, there are several conditions that must be met so that this evidence can be used.

The explanation above shows that the ITE Law has explicitly determined that Electronic Information and Documents are legal evidence and extend legal evidence in accordance with the procedural law that has been in effect in Indonesia so that it can be used as evidence in court. In order to become valid evidence, Electronic Information and Documents must meet formal and material requirements. The formal requirements are regulated in Article 6 of the ITE Law, namely Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for integrity, and can be accounted for so as to explain a situation. Meanwhile, the material requirements for electronic evidence are the relevance of the evidence to the lawsuit or disputed material, and to ensure the fulfillment of the material requirements in question, digital forensics is needed in many cases (Semko, 2023).

Electronic information and electronic documents as legal evidence in procedural law, especially civil procedures, among the two forms of evidence are electronic documents which are the most interesting. This is because electronic documents that are paperless were originally paper-based, meaning before the rapid development of technology like now, documents were made using paper so that if a dispute occurs, it is classified as written evidence or letters. Where in civil cases written evidence or evidence is the main evidence. This priority is due to the fact that the letter is made to prove a situation or event or a legal action committed by a person (Tran, 2022).

Electronic documents that are paperless, are recognized in court decisions as evidence. This can be seen in the Denpasar High Court Decision Number 150/PDT/2011/PT.Dps which recognizes email as valid evidence. Where e-mail is a form of electronic document. However, in this decision, photos that are part of electronic documents are not considered evidence. This is the same as the Decision of the Bondowoso Religious Court Number 1537/Pdt.G/2011/PA.Bdw, which states that sound recordings cannot be used as evidence in court where sound recordings are also electronic documents. In relation to his, for example, the Decision of the Religious Court of Bitung Number

192/Pdt.G/2020/PA.Bitg, in the decision, photocopies of WhatsApp conversation screenshots, and photocopies of Instagram screenshots that have been modified and matched and are in accordance with the original, are part of the electronic document but are not used to be used as evidence. And the Wonosobo Religious Court Decision No. 1582/Pdt.G/2022/PA.Wsb, which stated that a copy of the downloaded video from the TikTok application was one of the electronic documents but was not used as evidence in court. The four decisions reflect the absence of legal certainty in electronic documents as evidence which has been regulated for validity in Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions.

In evidentiary law theory, evidence can be used as evidence in court with a number of conditions, namely: a. Admissible, permitted by law to be used as evidence b. Reliability, namely the validity of the evidence can be trusted (for example, not fake). c. Necessity, namely the evidence is indeed needed to prove a fact. d. Relevance, namely the evidence has relevance to the facts to be proven (Toebagus, 2022). Then in order for electronic evidence to be valid evidence, the evidence must fulfill the following matters: a. Electronic evidence must be able to be presented and its contents shown in court, especially to judges; b. Electronic evidence has not undergone any changes, since the evidence was obtained until it is presented in court so that the integrity or integrity of the data can be guaranteed; and c. Electronic evidence must be obtained through procedures or mechanisms that are clearly recorded or recorded so that the validity of the acquisition can be tested and that the acquisition of the evidence can be accounted for.

In this study, researchers focused on examining civil case decisions, both decisions within the General Courts and decisions within the Religious Courts. In the last 4 (four) years, the Indonesian General Courts under the auspices of the Directorate General of the General Courts of the Supreme Court of the Republic of Indonesia have decided 383,074 civil cases, and the Indonesian Religious Courts under the auspices of the Directorate General of the Religious Courts of the Supreme Court of the Republic of Indonesia. Indonesia has decided on 2,505,465 civil cases, which tend to experience ups and downs every year, especially during the Covid-19 pandemic (Permadi, 2023).

Phenomena as mentioned above, in the realm of civil law a stipulation applies that the truth to be achieved in the realm of civil law is formal truth, while in the realm of criminal law, the truth to be achieved is material truth. With these provisions, it can be concluded that the truth of civil law is the truth based on the law. Thus, the provisions in the procedural law governing evidence must be in accordance with what is stated in the law. However, what if the law does not

accommodate the form of electronic evidence, even though in its application civil relations such as buying and selling transactions have been carried out with electronic transcripts, regarding the formal truth provisions that you want to seek in the realm of civil law through a closed logical system it becomes interesting to discuss related by achieving the value of justice in civil cases.

Based on the explanation above, a study was conducted with the title "*Reconstruction Of Evidence Regulations In Civil Jurisdiction Based On Justice Value*". The problem that the author urges to study further in research are as follows:

1. What are the current weaknesses in the evidence regulations in civil courts?
2. How to reconstruct of the evidence regulations in civil courts based on the value of justice?

## METHOD OF RESEARCH

The paradigm that is used in the research is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or scientific knowledge (Faisal, 2010). Paradigm also looked at the science of society as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005), which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The source of research used in this study are:

1. Primary Data is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is the key instrument which is the researcher himself who plans, collects, and interprets the data (Moleong, 2002).

The specification of this legal research is in the form of analytical descriptive research. Descriptive means that the researcher in analyzing wants to provide

an overview or explanation of the object of his research. Primary data collection was carried out by observation (direct observation) and interviews with several informants in this study. In terms of observation or observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain community at a certain time as well. This primary data is also through interviews with several sources. Deep interview (in-depth-interview) is the process of obtaining information for research purposes using question and answer while face to face between interviewers and informants or interviewees, with or without using guidelines (guide) interviews, where interviewers and informants are involved in social life for a relatively long time (Widodo *et al*, 2023).

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses In The Evidence Regulations In Civil Courts

The fundamental thing in evaluating electronic evidence is regarding the validity of the electronic evidence itself, where when the electronic evidence is submitted to trial by the public prosecutor in a criminal case or submitted by the parties in a civil case, the judge does not immediately accept the validity of the electronic evidence, but first First, the judge must evaluate the authentication and integrity of the electronic evidence. The judge in assessing the authentication of electronic evidence means that the judge must make an assessment of whether the electronic evidence is genuine and not manipulated which can show that the data presented in the form of documents or electronic information is original data. Whereas what is meant by the judge in assessing the integrity of electronic evidence means that the judge must make an assessment that the condition of the electronic evidence is the same when it was presented at trial as when the electronic evidence was found (its integrity was maintained).

The urgency of authenticating electronic evidence at trial is to assess whether electronic evidence can be accepted at trial as valid evidence so that it can convince the judge in making a decision. For this reason, in the trial process, there are several criteria that must be considered by the Judge in terms of assessing the authentication of electronic evidence, including (Parvez, 2023):

- a. Admissable, namely permitted or recognized by law to be used as evidence, or in other words there must be strict regulations on electronic evidence used as evidence in court;
- b. Reliable, namely the validity of the evidence can be trusted;
- c. Necessity, namely the evidence is indeed needed to prove a fact;
- d. Relevance, namely the evidence submitted has relevance to the facts being proven.

Although until now there are no regulations governing the handling of electronic evidence by judges when electronic evidence is submitted to the court, judges as judicial officials who are authorized to receive, examine and decide cases in court have a very important role in the legal process. assess and have the authority to evaluate fairly the evidence submitted to the trial in order to reveal the truth of a fact in a legal event.

When referring to the provisions of Article 5 of the ITE Law regarding the existence of electronic evidence as one of the valid evidence according to law, it can be grouped into two. First, electronic information and electronic documents as electronic evidence (digital evidence). Both printouts of electronic information and electronic documents will be written/letter evidence.

The practice of proving in civil cases at the General Court regarding electronic evidence has been found in several cases that considered the use of electronic evidence by a panel of judges in a lawsuit against the defendant for committing an unlawful act in Case No.31/Pdt.G/2021/PN.Wsb., the lawsuit against the defendant for committing an unlawful act in Case No.1/Pdt.G/2021/PN.Mrn., and the lawsuit for divorce in Case No.81/Pdt.G/2020/PN.Jbg. Then at the Religious Courts regarding electronic evidence it has been found in several cases that consider the use of electronic evidence by the panel of judges in the case of joint property claims Case in case No.934/Pdt.G/2022/PA.Wsb., and divorce claims in cases No. 91/Pdt.G/2021/PA.Thn., case No. 1538/Pdt.G/2013/PA.Tgrs., case No. 7/Pdt.G/2022/PA.Plh., and Case No. .123/Pdt.G/2022/PA.Swl. The use of printed electronic evidence (printout) of electronic information or electronic documents as written evidence/letters is more dominant. There are several models of applying electronic evidence in judge decisions.

First, electronic evidence in the form of a printout of a cellphone photo of the object of the case, a printout of a cellphone photo of an identity card on behalf of the Defendant, a printout of a cellphone photo at the time of the sale and purchase between Mr. Setyo Sudarmo as the seller to Tri Supriowijiyanto as the buyer, Print Out of a cellphone photo in the form of the condition of the case object in 2019, Print Out of the cellphone photo in the form of the condition of the case object in 2020, Print Out of a cellphone photo in the form of CCTV condition in the case object in 2020, Print Out from a cellphone photo in the form of the condition of the object of the case in 2020, and Print Out from a photo of the cellphone in the form of the condition of the object of the case in 2020, because the defendant has unilaterally controlled the object of the dispute over a piece of land with an SHM certificate in the name of the plaintiff Number 00159, an area of approximately 1,044 Meter per square, by constructing

a building over the disputed object, because the act of illegally and without rights controlling the disputed object is an unlawful act, evidence P.III.B, P-V, P-VI, B, P-VII, P -VIII, P-IX, P-X, and P-XI, even though there is no confirmation on the electronic evidence, whether it meets the formal and material requirements as evidence, but the evidence shows that the plaintiff purchased the land before an AWTP Notary, S.H., M.Kn., and after being purchased, the Convention Plaintiff/ Counter-Defendant have built fences and signs and installed CCTV.

Second, the panel of judges considered the electronic evidence submitted by P.13's Plaintiff in the form of (printed Screenshots of conversations on the WhatsApp application between the Legal Counsel for the heirs of Keurani Ubit and Nita, a BPN Pidie Jaya employee in the field of case analysis without date and without comparison). This evidence was ruled out by the Panel of Judges because it was not supported by digital forensics and expert testimony regarding its validity and truth.

Third, the panel of judges considered the electronic evidence submitted by the plaintiff of P.8 in the form of (Video acknowledgment of the Plaintiff's and Defendant's children for the Defendant's tough stance on him) and P.9 concerning (Voice messages from the plaintiff's and defendant's children to the plaintiff). The two pieces of evidence were ruled out by the Panel of Judges because they were not regulated in civil procedural law and were only regulated in material law.

Fourth, the panel of judges considered the electronic evidence submitted by the defendant evidence T.11, in the form of a VCD containing 2 (two) videos of the tampering with doors allegedly carried out at the order of xxxxxx and evidence T.12, in the form of 3 (three) photos of the damage to doors at T. 11. The Panel of Judges dismissed this evidence because it was not supported by digital forensics.

Fifth, the panel of judges considered the electronic evidence submitted by the plaintiff for evidence P.6, in the form of printed electronic documents dated 14 February 2020. The panel of judges dismissed this evidence because it was not supported by digital forensics.

Sixth, the panel of judges considered that the electronic evidence submitted by the plaintiff in evidence P.7, in the form of photo printouts, BBM, and SMS chats, had been tested forensically by experts in the field of IT (Information Technology) Forensics from the Bandung Institute of Technology (ITB). Exhibit P.7 has fulfilled the formal and material requirements so that it can be accepted and has evidentiary value. However, materially the panel of judges had seen, read, and paid attention to the Defendant's photos and sms, it

turned out that there were no elements of adultery, as well as the witnesses presented by the plaintiff were only two people and even then they did not see directly the adultery act, only in the form of conclusions from the photo shown. witness saw. Therefore, the plaintiff's argument underlying the reason for the divorce because the Defendant is an adulterer or likes to commit adultery with female commercial sex workers (PSK) is declared not proven.

Seventh, the panel of judges considered the electronic evidence submitted by the plaintiff marked P.3, P.4, P.5, P.6, and P.7. The Panel of Judges dismissed this evidence because it was not supported by digital forensics.

Eighth, the panel of judges considered the electronic evidence submitted by the defendant evidence T.3 in the form of a printout screenshot of the conversation between the applicant and the respondent on social media, this evidence as preliminary evidence with the argumentation of Paton's opinion and the ITE Law. The decision to reject the divorce case was contested with the argument that the Defendant's reason for committing adultery with a female commercial sex worker (PSK) was not proven by electronic evidence in the form of obscene photos, BBM, and SMS as well as a digital forensic expert witness from ITB to test the authenticity of electronic evidence.

Electronic evidence as a legal means of evidence in practice both in General Courts and in Religious Courts is diverse, some are not used as evidence in decisions because other evidence is sufficient and some are used as equivalent evidence. position with written evidence/letters, so that it must meet the formal requirements for proof of a postal stamp (*nazegelen*), and the judge considers the printed electronic evidence (printout) as evidence of suspicion or as preliminary evidence. Meanwhile, the strength of the initial evidence has not met the minimum limit of proof, so it must be corroborated by one other piece of evidence.

## 2. Reconstruction of the Evidence Regulations in Civil Courts Based on the Value of Justice

As a stage in the procedural process that has a very important urgency, evidence is a process in which the stages as well as the estuary of the judge's decision will be known. Regarding the judge's decision which has permanent legal force (*in kracht van gewijsde*), the implementation stage of the decision (execution) will be carried out (Kurniawan, 2022). The task and role of a judge in handling a case is to look at the extent to which the arguments for a dispute between the parties are proven so that the judge will determine which party is then entitled to win in a court decision.

Law Number 48 of 2009 concerning Judicial Power in Chapter II concerning the Principles of

Administering Judicial Power, in Article 3 paragraph (2) states that "*All interference in judicial matters by other parties outside the Judicial Power is prohibited, except in matters as stipulated referred to in the 1945 Constitution of the Republic of Indonesia*"

The provisions in the article above provide an affirmation that the judiciary is a state institution that is independent, and free from interference by other parties outside the jurisdiction of the judiciary. As a state institution, courts at the level of judicial power have an important role in receiving, examining, deciding, and resolving disputes submitted to them. This means that every case examination process in court has a standard reference for case examination that must be obeyed and is binding on all parties, including the panel of judges. Ignoring the provisions of procedural law as a reference in the examination of cases in court, resulting in the decision (verdict) handed down by the panel of judges being "*null and void*".

Proof as a provision in the procedural law stages applicable in court, is bound by the rules governing evidentiary issues, starting from the type of evidence, the burden of proof, the strength of proof, and matters related to it, which have been determined in the main provisions of the procedural law. It can be understood that the evidentiary process has its own codification rules as is the case in other stages of case examination.

Indonesia, as a former Dutch colony, adheres to the Dutch legal system (Continental Europe) and adopts various legal rules that were once enforced by the Netherlands in various codification books. The existence of the codification book is scattered in various case examination rules and procedural law books which are currently partially abandoned because they are considered unable to adapt to the aspirations of the global community and are in conflict with Indonesian laws and regulations. Unlike the case with the Criminal Procedure Code (KUHAP), which has its own codification book as a masterpiece of the Indonesian nation, which has replaced the position of HIR and RBg with the promulgation of Law Number 8 of 1981. The provisions regarding this law regulate the process of examining criminal cases, the criminal examination rules contained in the HIR and RBg are automatically declared invalid.

The situation as explained above, is different from the case with civil procedural law, until now there is no specific book that regulates in detail the examination of civil cases in court. Civil case examination rules are still scattered in various codification books such as HIR, RBg, WvK, Rv, Civil Code as well as contained in several Supreme Court Jurisprudence. In fact, a draft civil procedural code of law already exists, but it has not yet been ratified by the People's Representative Council (DPR) considering that

the phenomena that occur in the DPR are various crystallizations of interests, and of course, this phenomenon cannot be separated from the legal political aspects that occur.

Reconstruction of evidentiary regulations in HIR and RBg., is very important to do. This is because the evidentiary system adopted in Indonesia is still limited and closed so the parties are not free to submit the type or form of evidence in court. Meanwhile, in the Netherlands, the evidentiary system adopted is an open and free system, the parties are free to present the type or form of evidence in court.

Reconstruction of evidentiary regulations in HIR and RBG can be carried out by reconstructing the provisions in Article 164 HIR/Article 284 Rbg, each plus 1 (one) item, namely: electronic evidence as in Article 1 Number 1 of the ITE Law, namely writing, sound, images, maps, plans, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols or perforations that have been processed which have meaning or can be understood by people who are able to understand it which has been validated and has the same strength as documentary evidence. Then it is necessary to reconstruct Article 163 HIR/Article 283 RBg, that is, with Everyone who declares rights, strengthens existing rights, or rejects the rights of others based on the existence of Electronic Information and/or Electronic Documents must ensure that Electronic Information and/or Electronic Documents contained in it originate from Electronic Systems that meet the requirements based on Legislation.

## CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. The current weaknesses in evidentiary regulations in civil courts are that there is no regulation regarding electronic evidence in civil procedural law and arrangements for examining electronic evidence do not yet exist in the HIR/RBg which are further worsened due to the fact that the structure does not play a role in the realization of justice as the purpose of making laws and there is no institution that can validate electronic evidence in the district/city area and the culture of proof in civil courts (written evidence) is still in the nature of letters and the civil justice system is still mostly carried out conventionally.
2. The Reconstruction of evidence regulations in civil courts so that it can be based on justice value can be done by reconstructing the provisions in Article 164 HIR/Article 284 Rbg, each plus 1 (one) item, namely: electronic evidence as in

Article 1 Number 1 of the ITE Law, namely writing, sounds, pictures, maps, plans, photos, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand it which has been validated and has the same strength as documentary evidence. Then it is necessary to reconstruct Article 163 HIR/Article 283 RBg, that is, with Everyone who declares rights, strengthens existing rights, or rejects the rights of others based on the existence of Electronic Information and/or Electronic Documents must ensure that Electronic Information and/or Electronic Documents contained in it originate from Electronic Systems that meet the requirements based on Legislation.

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