

Electronic Information as Evidence of Criminal Offense Under the Perspective of Law on Electronic Information and Transactions

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Abstract: *The enactment of Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law) creates a new emerging field of study of law in cyberspace. The presence of such latest breakthrough brings a change in the impact of law in terms of criminalization of dangerous acts in cyberspace. Evidence is one of the variables in the evidentiary system, and thus the development in the scope of civil law with the known and used electronic evidence in society, especially in the field of commerce and banking, may affect the evidentiary system. Internet impact on society is now making cultural changes around the globe and thus people are currently no longer limited by the country's territorial boundaries (borderless). The presence of internet with all the facilities and programs that go with it, such as e-mail, video chat, video conferencing, and websites has made global communication feasible as it is borderless. In the legal dispute taking place before the judge, each party competing legal claims are raised, debated and resolved. Judges may refer to expert statements to consider and assure the validity of the electronic evidence. Once the expert has declared that the evidence is valid, the judge can recognize that the evidence can be legally accounted for.*

Keywords: *Court; Evidence; Electronic*

INTRODUCTION

In the information age, the existence of information has continued to play a crucial role in aspects of life, and in turns, all critical availabilities are increasingly dependent on the information. Changes in the shape of society into an information society trigger information technology

revolution that creates more sophisticated technological devices and quality information.

People can do their daily activities electronically, anyone can easily access internet services such as e-mail, website, blogspot, even popular social networking sites among the community. Such obvious

phenomenon is one part of globalization that spreads throughout the globe. However, the development of cyberspace has not been followed by legal developments to solve legal problems/disputes in cyberspace as the existing positive laws cannot cover the problems/disputes.¹

The enactment of Law No. 11 of 2008 on Electronic Information and Transactions (ITE law) creates a new breakthrough of study of law in cyberspace. The presence of this new field has a transformational impact to the law in terms of the criminalization of dangerous acts in cyberspace.

Technological developments leading to advances in the field of communication and information as described above shall be supported by both material and formal legal instruments, in this case civil procedural law. With regard to this issue, Retnowulan Sutantio stated that civil procedural law as formal law, such as the entire code of laws that determines and regulates methods to implement civil rights

and obligations as stipulated in material civil law.²

Evidence is one of the variables in the evidentiary system, thus the developments in the scope of civil law with known and used electronic evidences in society, especially in the field of commerce and banking may affect the evidentiary system.

The internet has formed society with a new culture. Currently, the relationship between community in the global dimension is no longer limited by the territorial boundaries of the state (borderless). The presence of the internet with all the facilities and programs that go with it, such as e-mail, video chat, video conferencing, and websites has made global communication possible as it is borderless. The internet becomes more widespread and there is a growing demand in all levels of society.

The rapid advancement of science and technology in the fields of telecommunication, information and computer has resulted in an application for modern life.

¹ Efa Laela Fakhriah. (2009). *Alat Bukti Elektronik Dalam Sistem Pembuktian Perdata Di Pengadilan Sebagai Sarana Pembaruan Hukum Acara Perdata Nasional*. Dissertation. Bandung: Postgraduate Program of Padjajaran University, Bandung, p. 6.

² Retnowulan Sutantio and Iskandar Oeripkartawinata. (1993). *Hukum Acara Perdata dalam Teori dan Praktik*. Bandung: Mandar Maju, p. 4.

Information and communication technology has changed people's behavior and lifestyle globally. The development of information technology has also caused the world to become borderless and cause significant and rapid social, cultural, economic and law enforcement changes. Information technology is a double-edged sword, because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acts against the law.

The dangerous acts in cyberspace have a significant effect to other people, despite its electronic evidences. For example, electronic commerce introduces electronic records that have an equal position with written paper documents. In this regard, it is important to pay extensive attention to the security and legal certainty in the use of information technology, media and communication in order to develop optimally. Therefore, there are three approaches to maintain security in cyberspace, namely legal aspect, technological aspect, and social, cultural, and ethical aspect. To overcome security problems in the

implementation of electronic systems, the legal approach is absolute because without legal certainty, the problem resolution of information technology utilization will not be optimal.

Legal problems facing the internet users are "the delivery of information, communication and/or electronic transactions", especially in the context of the application of evidence and other matters related to legal acts carried out over the electronic systems. Electronic information is a new thing in Indonesian criminal law because the foundation of the Indonesian Criminal Procedure Code, Law No. 8 of 1981, does not recognize electronic evidence as one of the lawful evidences.

One example of a common cyber crime is e-mail related crime. This can be seen in the case of regional public hospital (RSUD) Tangerang in taking legal action. dr. Ira Simatupang, Sp. OG acting as a doctor at RSUD Tangerang sended e-mails containing defamatory materials. The lawsuit was filed in the District Court Tangerang in July 2012. The legal basis for the judge in including electronic mail as legal evidence in proof process in the court was unclear, because based on the provisions of Article 184 section (1) of

the Criminal Procedure Code, there is no regulation concerning electronic evidence.

In criminal cases, there is a shift in the general view of the evidence in accordance with the development of information technology. Evidence in the form of electronic evidence as a result of information technology is debatable regarding its validity in proof. The regulation of evidence stipulated in Law No. 11 of 2008 on Electronic Information and Transactions can provide legal facilities and certainty for law enforcement officers to prove perpetrators of cyber crime to be criminally accountable. The deviations of evidence set forth in Law No. 11 of 2008 on Electronic Information and Transactions are legal instruments for law enforcement officials to disclose cyberspace crime as an unconventional crime in a special way and requiring certain expertise to be able to demonstrate and charge the criminal offenders.

The legal problem is a matter of proof in court, because there is a war of evidence in the court to strengthen the arguments of the parties involved.

Therefore, the role of proof in court is significantly important. Many cases in court show that due to misjudgment of evidence, innocent people are convicted and go to prison, while due to lack of evidence, guilty people are acquitted in court. Thus, to avoid legal problems above, carefulness is needed in evaluating evidence in court, both in criminal procedural law or other procedural law.

Based on background described in this line of study, the researcher is therefore interested to conduct a study and analysis on the use of electronic evidence in the District Court for the settlement of civil disputes after the enactment of Law Number 11 of 2008 on Electronic Information and Transactions.

METHOD

This study used a normative and empirical juridicial approach. Normative research is a legal research that focuses on examining library materials or secondary data in the form of positive law, Law No. 11 of 2008 and empirical research by obtaining data relating to the practice of using electronic evidence in District Court Class IA Jayapura.

Primary data were data obtained directly through description and information from respondents and resource persons. Whereas secondary data were data obtained indirectly containing additional information and supporting information. Secondary data were obtained through literature reviews, scientific works, laws and regulations and related literature. Secondary data used in this study were obtained from various sources including: Primary Legal Material in the form of positive law, Law No. 11 of 2008 and the Criminal Procedure Code. Secondary legal materials were the materials closely related to primary legal materials, including the literature in the field of criminal procedure law. Tertiary legal materials were the materials that provide information about primary and secondary legal materials, including articles in newspapers, magazines, and internet relating to electronic evidence. The content analysis in this study was to describe and analyze the data obtained regarding the development of evidence in proving criminal acts in Indonesia. After the data analysis

was completed, the results were presented descriptively by telling and describing the finding in accordance with the problem under study and the data obtained.

DISCUSSION

Electronic Information and Transactions as Evidence in Court

Proof plays a crucial role in the court to determine the defendant's fate. If the evidences set out in the law are insufficient to prove that the defendant's guilt, then the defendant is acquitted. Conversely, if the defendant's guilt can be proven by the evidence referred to in Article 184 of the Criminal Code, then the defendant is convicted. Therefore, the judge shall be careful, thorough and mature to evaluate and consider the evidentiary value of each evidence.

Proof system aims to find out method to put evidence on the case being investigated. Based on the purpose of proof, the adopted proof system is expected to provide certainty in the form of outcome and strength of proof. The outcome and strength of proof are expected to provide conviction to the judge in deciding on whether the defendant is guilty or not guilty.

In court practice in Indonesia, the electronic data is not commonly used

as lawful evidence. In fact, electronic data has become a consideration for judges in giving verdict (both in civil and criminal) cases in some countries.

In practice in the District Court Jayapura, there has not been a criminal case that submitted electronic evidence to the court, so that the judges in the District Court Jayapura have never given a verdict on a criminal case by using electronic data as evidence that has equal strength of proof with the evidences stipulated in Article 183 of the Criminal Procedure Code.

In criminal cases, there is a shift in the general view of the evidence in accordance with the development of information technology. Evidence in the form of electronic evidence as a result of information technology is debatable regarding its validity in proof.

In the practice of proof in the District Court Class IA Jayapura, proof of evidence in the form of electronic data also involves validity aspect, because electronic evidence has special characteristics compared to non-electronic evidence, these special characteristics are due to their form stored in electronic media, besides that

electronic evidence can be easily engineered so that its validity is often doubted.

Over the past decades, lawful evidence in the court was limited to material evidence or proof that can be seen and touched. In the legal context in Indonesia, the evidences of criminal offense are stipulated under Article 184 of the Criminal Procedure Code, witness statements, expert statements, letter, directive, and defendant statement. All of the evidence mentioned in the Criminal Procedure Code does not accommodate electronic evidence. Juridicially, the criminal proof law in Indonesia has not accommodated electronic information or records as evidence in resolving disputes through the court.

Proof is a decisive stage in the court proceedings as the outcome of proof can determine whether the evidence is valid or not. The evidences in the criminal procedure code based on Article 184 of the Criminal Procedural Code are as follows:

1. Witness Statements;
2. Expert Statements;
3. Letter;
4. Directive;
5. Defendant Statement.

Based on the types of evidence above, it can be seen that in criminal procedure law, it is preferred to use evidence in the form of a witness; this means that a criminal offense according to the legislators can only be known by a witness who finds out the criminal offense directly.

Among the five types of evidence recognized in the Criminal Procedure Law according to Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letter, directive, and defendant statement, then which group the electronic mail belongs to. Seeing from the five types of evidence in Article 184 of the Criminal Procedure Code, electronic mail can only be included in the category of letter evidence. This electronic mail/electronic record is essentially written in the form of an electronic system. Such electronic system is a computer system in a broad sense, which includes not only computer hardware and software, but also includes telecommunication networks and/or electronic communication system.

An electronic archive may include:

1. Validity of information determined by the information processing and legal identity of the parties.
2. Format of information determined by the interests of the parties and/or in accordance with the context of communication, specifically to whom the information is addressed.
3. Accountability of the parties, both as the originators and the recipient affected by the applicable law code, both ethically and based on laws and regulations
4. Validity of information as output, technically and juridically, determined by the validation of the existing information and communication system.

Electronic information and/or electronic records shall be declared to be lawful if using electronic systems in accordance with the provisions as governed by the ITE Law, namely a reliable and safe electronic system, and shall meet the following minimum requirements:

1. can redisplay electronic information and/or electronic records in their entirety in accordance with the retention period as provided by Laws and Regulations;
2. can protect the availability, entirety, authenticity, confidentiality, and accessibility of electronic information in the provision of electronic systems;

3. can operate in compliance with procedures or guidelines for the provision of electronic systems;
4. are furnished with procedures or guidelines that are announced with languages, information, or symbols that are understandable to parties attributed to the provision of electronic systems; and
5. adopt sustainable mechanism in order to maintain updates, clarity, and accountability for the procedures or guidelines.

Electronic evidence shall be declared to be lawful if using electronic systems in accordance with provisions applicable in Indonesia. Electronic evidence shall be deemed lawful to the extent information contain therein is accessible, displayable, assured as to its integrity, and accountable in order to be explanatory. People submitting electronic evidence shall prove that the owned information comes from a trusted electronic system.

The existence of electronic records has always been a complement to other evidences. This means that the use of printouts in legal practice in court is a summary or conclusion of other documents. Thus, electronic records cannot necessarily be lawful evidence in court because they are not specifically stated.

Based on the results of interview above, it can be concluded that the judges of District Court Jayapura understood the position and validity of electronic evidence as stipulated in Law No. 11 of 2008 (ITE Law), yet in practice, electronic evidence has not been available in any civil and criminal case in the court.

Legally during court proceedings, the electronic records should be valid as in conventional written evidence as long as there is no objection on the contents of the records. The issue of authentication is a different problem from recognition of electronic data. If the electronic information and/or electronic records are declared valid or legally recognized, then the authentication process for the data will also be valid.

Information generated by an electronic information system is neutral in nature. If the system runs well without interference, then the resulting input and output will be valid. Therefore, electronic records generated by electronic system that have been legalized or assured by authorized professionals, if it continues to run as long as not proven otherwise by another party, can be

accepted as in the authentic deed. This is because the existence of the records provides non-repudiation and has legal force to bind the parties.

The Electronic Information and Transactions Law is the latest breakthrough, not only in the field of law to overcome cyber crime, but also a breakthrough in the development of evidence. The law is sufficient to answer the main problem in the development of information technology-based crime, to accommodate the most needed evidence in this crime, namely electronic evidence in the form of electronic information and/or electronic records.

The provisions concerning evidence in this Law are under Article 42 stating that: “Investigation of criminal acts as intended by this Law shall be made under the provisions of the Law of Criminal Procedure and the provisions of this Law”. Furthermore, Article 44 states that: “Evidence on the investigation, prosecution and examination at court under the provisions of this Law shall be as follows:

- a. evidence as intended by provisions of laws and regulations; and
- b. other evidence in the form of Electronic Information

and/or Electronic Records as intended by Article 1 point 1 and point 4 as well as Article 5 section (1), section (2), and section (3).

Article 1 point 1: Electronic Information means one cluster or clusters of electronic data, including but not limited to writings, sounds, images, maps, drafts, photographs, electronic data interchange (EDI), electronic mails, telegrams, telex, telecopy or the like, letters, signs, figures, Access Codes, symbols or perforations that have been processed for meaning or understandable to persons qualified to understand them.

Article 1 point 4:

Electronic Record means any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical form, or the like, visible, displayable and/or audible via Computers or Electronic Systems, including but not limited to writings, sounds, images, maps, drafts, photographs or the like, letters, signs, figures, Access Codes, symbols or perforations having certain meaning or definition or understandable to persons qualified to understand them.

Article 5:

- (1) Electronic Information and/or Electronic Records and/or the printouts thereof shall be lawful evidence.
- (2) Electronic Information and/or Electronic Records and/or the printouts thereof as intended

by section (1) shall be the expansion of lawful evidence in accordance with the Law of Procedure applicable in Indonesia.

- (3) Electronic Information and/or Electronic Records shall be declared to be lawful if using Electronic Systems in accordance with provisions as governed by this Law.
- (4) Provisions on Electronic Information and/or Electronic Records as intended by section (1) shall not apply to:
 - a. certificates that under Laws must be made in writing form; and
 - b. certificates together with their papers that under Laws must be made in notarial deed or deed made by land conveyances.

Elucidation of Article 5 Section 4 Letter a: certificates that under Laws must be made in writing form include but are not limited to securities, valuable documents, and certificates used in the process of law enforcement for civil, criminal, and state administration procedures.

The provisions in Article 5 state that electronic information and/or electronic records and/or the printouts thereof shall be lawful evidence. This is an affirmation that does not exist in the previous special laws and regulations as in Law No. 21 of 2007 on Elimination of Human

Trafficking Crimes and Law No. 15 of 2002 on the Crime of Money Laundering as amended by Law of the Republic of Indonesia No. 25 of 2003, that the printout of electronic information shall be the expansion of lawful evidence. Previous special laws and regulations only set in general the information outlined in the paper as evidence and do not clearly state the printouts thereof. Article 5 of Law No. 11 of 2008 also states the requirement that electronic information shall be declared to be lawful if using electronic systems in accordance with applicable laws and regulations.

In addition, electronic system means a set of electronic devices and procedures as an application of information technology based on telecommunications networks and electronic media, that functions to design, process, analyze, display, send or disseminate electronic information.

In the field of criminal law, electronic records as lawful evidence have been recognized, although not fully understood, for example Law No. 8 of 1981 concerning Criminal Procedure Law, in which letter is

categorized as one of evidences; Law No. 2001 concerning Amendment to Law No. 31 of 1991 concerning Corruption Eradication states that the valid evidentiary material in the form of tip, especially for corruption offense may be obtained from other evidentiary material in the form of information uttered, sent, received, or kept electronically; as well as Law No. 15 of 2002 concerning Crime of Money Laundering states that evidence of the crime of money laundering shall be information electronically saved or recorded.

Electronic evidence shall be deemed to be lawful to the extent information contain therein is assured as to its integrity, accountable and accessible, and electronically recordable in order to be explanatory, this indicates that the electronic information has been accepted as lawful evidence in the courts in Indonesia even though in the search for evidence, it requires expert statements in the field to corroborate an evidence using electronic records.³

Based on the explanation above, it can be seen that the electronic data has been accepted as lawful evidence

in the District Court Jayapura, although in the case of finding evidence, it requires expert statements in that field to corroborate a proof using the electronic records. Presenting electronic evidence shall require a proof that the information comes from a trusted electronic system.

Thus, it can be said that after the enactment of the ITE Law, there are additional types of evidence, and the recognition of electronic records as lawful evidence, as stipulated in Article 5 section 1 and 2 jo. Article 6 of the ITE Law stipulating that electronic records or printouts thereof shall be lawful evidence and can be used before a court, as long as the information contained therein is accessible, displayable, assured as to its integrity, and accountable in order to be explanatory. In addition, electronic records are equivalent to documents made on paper, as stipulated in the General Elucidation of the ITE Law.

Electronic proof using electronic evidences such as electronic information and/or electronic records in

³ Interview with Hakim Judge of Jayapura IA Class District Court, November, 15. 2016

ordinary criminal cases shall be deemed to be lawful based on the provisions of criminal procedure law, specifically Article 184 of the Criminal Procedure Code and Article 5 section (1) and 2), as well as Law No. 11 of 2008 on Electronic Information and Transactions.

With the enactment of the Law on Electronic Information and Transactions (ITE Law), there is a new provision on electronic records as evidence. Based on the provisions of Article 5 section 1 of the Law on Electronic Information and Transactions, it is stipulated that electronic information and/or electronic records and/or printouts thereof shall be lawful means of proof. Furthermore, Article 5 section 2 of the Law on Electronic Information and Transactions (ITE Law), it is stipulated that electronic information and/or electronic records and/or printouts thereof as intended by section (1) shall be the expansion of lawful means of proof in accordance with the Law Procedure applicable in Indonesia.

Based on the description above, it can be concluded that the Law on Electronic Information and

Transactions (ITE Law) stipulates that the electronic records and/or printouts shall be a lawful evidence and the expansion of lawful evidence in accordance with the Law of Procedure applicable in Indonesia, so that it can be used as evidence before the court.

However, the judge of District Court Jayapura has not found any criminal or civil case reaching the court by submitting electronic evidence. In Article 6 of Law No. 11 of 2008 concerning Electronic Information and Transactions, it is stipulated that electronic information and/or electronic records shall be deemed to be lawful to the extent information contained therein is accessible, displayable, assured as to its integrity, and accountable in order to be explanatory.

The relevance of the ITE Law provides the following benefits:

- a. Ensure legal certainty for people who conduct transactions electronically.
- b. Encourage economic growth in Indonesia.
- c. As one of the efforts to prevent crime based on information technology.
- d. Protect any service user by utilizing information technology.

However, not all electronic records can be used as lawful evidence. According to the Law on Electronic Information and Transactions (ITE Law), electronic information and/or electronic records shall be declared to be lawful if using electronic systems in accordance with provisions as governed in ITE Law, namely reliable and safe electronic systems, and shall meet the following minimum requirements:

1. can redisplay electronic information and/or electronic records in their entirety in accordance with the retention period as provided by Laws and Regulations;
2. can protect the availability, entirety, authenticity, confidentiality, and accessibility of electronic information in the provision of electronic systems;
3. can operate in compliance with procedures or guidelines for the provision of electronic systems;
4. are furnished with procedures or guidelines that are announced with languages, information, or symbols that are understandable to parties attributed to the provision of electronic systems; and
5. adopt sustainable mechanism in order to maintain updates, clarity, and accountability for the procedures or guidelines.

Furthermore, Article 35 of the ITE Law stipulates that any person who

knowingly and without authority or unlawfully manipulates, creates, alters, deletes, tampers with electronic information and/or electronic records with the intent that such electronic information and/or electronic records would seem to be authentic data. Moreover, the sanctions for these criminal offenses are severe as stipulated in Article 51 point (1) of Law No. 11 of 2008 “Any person who satisfies the elements as intended by Article 35 shall be sentenced to imprisonment not exceeding 12 (twelve) years and/or a fine not exceeding IDR. 12,000,000,000 (twelve billion rupiah).

Information generated by an electronic information system is neutral in nature. If the system runs well without interference, then the resulting input and output will be valid. Therefore, electronic records generated by electronic system that have been legalized or assured by authorized professionals, if it continues to run as long as not proven otherwise by another party, can be accepted as in the authentic deed. This is because the existence of the records provides non-repudiation and has legal force to bind the parties.

Based on the provisions of Article 5 section 1 of the ITE Law, it is stipulated that electronic information and/or electronic records and/or the printouts thereof shall be lawful evidence. Furthermore, Article 5 section 2 of the ITE Law stipulates that electronic information and/or electronic records and/or the printouts thereof as intended by section (1) shall be the expansion of evidence in accordance with the Law of Procedure applicable in Indonesia.

Thus, the ITE Law stipulates that electronic records and/or the printouts thereof shall be lawful means of proof and shall be the expansion of lawful means of proof in accordance with the Law of Procedure applicable in Indonesia, so that they can be used as evidence before the court.

Evidences recognized in the Criminal Procedure Law according to Article 184 of the Criminal Procedure Code are witness statements, expert statements, letter, directive, and defendant statement, then which group the electronic mail belongs to. The electronic mails/electronic records are

essentially written in the form of electronic systems. Such electronic systems are computer systems in a broad sense, which include not only computer hardware and software, but also include telecommunications networks and/or electronic communication systems.⁴

Electronic system means a set of electronic devices and procedures as an application of information technology based on telecommunications networks and electronic media, that functions to design, process, analyze, display, send or disseminate electronic information.⁵

Email is evidence that cannot stand alone but requires other evidences. For example, evidence of witness statement that they knew when the defendant wrote the e-mail or expert statement explaining the authenticity of the e-mail as evidence. Thus, if there is a criminal offense with evidence in the form of an e-mail, it will be judged to be highly insufficient for law enforcement officials to arrest the suspect. Nonetheless, it does not

⁴ Refly Aditia Mamitoho, in *Lex Societatis*, Vol. II/No. 1/January, 2014.

⁵ Siswanto Sunarso. (2009). *Hukum Informasi dan Transaksi Elektronik*. Bandung: Rineka Cipta, p. 42.

mean that the criminal offense (for example criminal defamation) can be discharged from the law.

Police officers shall conduct an investigation and verification to find strong evidence that supports the occurrence of criminal events. They can obtain information by asking the witnesses who knew the sender of the e-mail (electronic system provider) or by testing the authenticity of the e-mail sent by the suspect. Law No. 11 of 2008 on Electronic Information and Transactions on April 21, 2008, juridically created a legal basis for electronic information and transactions in the jurisdiction of Indonesia.

Evidentiary system adopted in Indonesian criminal procedure law is evidentiary system based on the negative law or *Negative Wettelijke*, namely a judge can impose a criminal sentence based on two lawful evidences according to the laws and regulations and based on both evidences, the judge is convinced whether the defendant is guilty or not guilty.

Judge's Consideration on Electronic Evidence in Court

The judge is the person who has the most power in deciding a case settled in court, by first determining and assessing the strength of the evidence against the evidence presented by the disputing parties. This is in accordance with conviction raijsonce. The judge makes judgment based on the evidences in court in accordance with the laws and regulations. In other words, although the judges have the freedom to decide the case in court, they are bound by a law that requires them to be able to balance between the facts presented in court and relate them to the existing regulations in the proof as governed by Law of Procedure.

In making judgment, the judge at the District Court Class IA Jayapura is affected by his own views or thoughts. A judge does not only maintain existing values, but also dynamically create new values or engineer society in accordance with the current development.

In connection with the existence of electronic transactions in which electronic records are used, one Article in the ITE law stipulates that any person who asserts rights, affirms rights, or

denies other persons' rights with respect to the existence of electronic information and/or electronic records must ensure that electronic information and/or electronic records with him/her originate in electronic systems eligible under Laws and Regulations.

Furthermore, it needs to be understood that in the context of evaluating the validity of evidence use in criminal procedure law, Article 183 of the Criminal Procedure Code stated that: "A Judge must not impose criminal penalty to someone unless there are at least two valid evidences and believe that a criminal offence has been occurred and the defendant is in guilty of such criminal offense".

Based on the Article above, it can be seen that a judge is bound by the use of evidence as governed in Article 183 of the Criminal Procedure Code. Regardless of whether the defendant is guilty or not guilty, a judge shall use his reasoning to use the evidence (likened) as evidence of letter as governed in the Article.

In this case, the use of electronic media focuses on e-mail, that inevitably leads to consequences in the use of such media as electronic evidence in criminal procedure law.

In the context of identifying material truth, in addition to transparency of the court proceedings to be witnessed by the public, it shall be beneficial and not violate the provisions of the laws and regulation and not cause harm to one of the parties, it shall be seen as an additional statement that can increase the judge's conviction and be understood objectively by prosecutors and defendants or their legal counsels, yet it has not positioned as limitatively evidence regulated by current rulings laws and regulations.

If a judge is not convinced, then he has the authority to hand down the acquittal verdict, thus, suppose that there are five witnesses explaining on oath that they have seen someone commit murder, then the judge shall not give sentence, if he is not ensured that the testimonies are reliable, and because the purpose of the criminal proceedings is to search for and find material truth. Therefore, the judge shall release the defendant.

It should be remembered that the judge's conviction does not arise by itself, but shall be arised by lawful evidence referred to in the laws and regulations and not from other

conditions. Judge's decision based on sufficient lawful evidences does not necessarily be accountable. The judge can simply states that he is not convinced, and therefore he acquits the defendant without explaining further why he is not convinced.

Judge is an ordinary person who can be wrong in determining his conviction on a case. Moreover, judge's decision on criminal offense can limit the interests of the defendant, that are upheld by the community, namely soul, body, independence, honor and wealth of the defendant.

Based on the description, it can be concluded that the use of electronic evidence remains questionable. The use of electronic evidence shall have consequences. The legal consequence of the use of electronic evidence on the judge's decision in court is the existence of an injustice in giving the verdict against the defendant, this is considered unfair for the victim. This is because judges are only based on their conviction in providing criminal convictions for convicted criminal cases. In addition, another consequence is the existence of a lack of clarity and unclear justice.

This situation will benefit the defendant who should have received the sentence for the criminal offense committed, but due to judge's uncertainty, the defendant can be free from punishment.

CONCLUSION

In the case of the validity of electronic evidence presented in the court proceedings, the judge refers to expert statements to consider and assure the validity of electronic evidence. The expert as a person who has special expertise regarding the matters needs to explain a criminal case for the purpose of the examination, offers their point of view to the judge on the validity of evidence presented in the court. Once the expert has declared that the evidence is valid, the judge can recognize that the evidence can be legally accounted for.

In practice, the judge recognizes electronic evidence as evidence used to support and strengthen the existence of other evidence presented in the court. As the objective of criminal procedure law is to find material truth, the proof process is a crucial stage for the judge to obtain conviction in making judgment.

Electronic information as the evidence of electronic technology-based crime is a matter of debate about its validity in the proof process in the court. Along with the current development, law reform especially the evidence presented in the court is extremely important. This provision describes that the judge as the main organ of the court and as the executor of the judicial authority shall be obliged to find law in a case even though there are no or unclear legal provisions.

Electronic evidence shall be deemed to be lawful to the extent information contained therein is assured to its integrity, accountable, accessible and displayable in order to be explanatory. People who submit electronic evidence shall prove that the information comes from a trusted electronic system. After the enactment of the ITE Law, there are additional types of evidence, and the recognition of electronic records as lawful evidence, as stipulated in Article 5 section 1 and 2 jo. Article 6 of the ITE Law stipulating that electronic records or printouts thereof shall be lawful means of proof and can be used before a court, as long as the information

contained therein is accessible, displayable, assured as to its integrity, and accountable in order to be explanatory.

Although electronic evidence has been recognized as lawful evidence and can be presented in the court so that it can be legally accounted for and has legal force as evidence, in practice in the District Court Jayapura, no cases have been filed using electronic evidence. Thus, the strength of the evidence of electronic mail is equivalent to the evidences regulated in Article 184 section (1) letter c of the Criminal Procedure Code, and the value of the strength of proof of electronic mail depends on the Judge's conviction. The judge makes judgment based on the evidence in court in accordance with the laws and regulations. In other words, although the judges have the freedom to decide the case in the court, they are bound by a law that requires them to be able to balance between the facts presented in court and relate them to the existing regulations in the proof as governed by Law of Procedure.

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