

Proof Of Criminal Acts In The Field Of Information And Electronic Transactions Judging From Law Number. 19 Of 2016 Concerning Information And Electronic Transactions

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Abstract.

The aim of this research is to find out about Evidence in criminal acts of information and electronic transactions is reviewed from Law Number 19 of 2016 concerning Electronic Information and Transactions. Discussion Results: That, evidence in information crimes and electronic transactions referring to Article 184 of the Criminal Procedure Code. Where, the position of electronic evidence in proving criminal acts of information and electronic transactions is very important in accordance with the provisions of Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions for defendant statements and the provisions of Law Number 19 of 2016 Article 5 of the ITE Law which regulates that electronic information, printed electronic documents are valid legal evidence.

Keywords: *Evidence of Crime, Information and Electronics and Law Number 19 of 2016 concerning ITE.*

I. INTRODUCTION

In Indonesia, the large number of cases related to electronic transaction crimes is something that law enforcers need to pay attention to. The perpetrators of these crimes come from various different backgrounds. From ordinary people, as well as government officials. In proving criminal acts in cyberspace, there are usually many pros and cons. Sometimes it is difficult to find evidence that someone has committed a crime. Because so many cases relate to the law Information and Electronic Transactions (hereinafter abbreviated to the ITE Law), is very difficult to complete, because it is not supported by evidence that someone has committed a criminal act. Several cases that frequently occur are related to the ITE Law, namely, the spread of hoax news, hate speech, the spread of pornographic videos, defamation on social media and so on. In general, the form of electronic evidence is in the form of electronic information and electronic documents. In Article 1 number 1 of the ITE Law, it is determined that electronic information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, plans, photos, Electronic Data Interchange (EDI), electronic mail, telegrams, , telex, copy text or the like, letters, signs, numbers, codes, access, symbols or perforations that have been processed which have meaning or can be understood by people who are able to understand them. Furthermore, Article 1 number 2 states, Electronic transactions are legal acts carried out using computers, computer networks and/or other electronic media.

The rise in cases related to the ITE Law has brought new changes for the world of law enforcement, especially in law enforcement in the Cyber sector, this is very important because not all criminal acts involving the ITE Law can be resolved properly, there are weaknesses in the implementation of the ITE Law and its law enforcement. The difficulty of proving is an important point in resolving cases in the ITE sector. However, several other cases can be resolved with supporting evidence. This is the aim of this research, the author raises the title about Proof of Criminal Acts in the Field of Information and Electronic Transactions in View of Law no. 19 of 2016 concerning Information and Electronic Transactions. So with this research it is hoped that we can find out how to prove it in criminal acts of information and electronic transactions, it is reviewed from Law Number 19 of 2016 concerning Information and Electronic Transactions. From the description above, the formulation of the problem raised is: How is the proof in criminal acts of information and electronic transactions reviewed from Law Number 19 of 2016 concerning Information and Electronic Transactions?

II. METHODS

This research is normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.¹Type of normative legal research, namely legal research carried out by examining library materials or secondary data,²also called doctrinal research, where law is often conceptualized as what is written in statutory regulations (law in books) or conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.³

III. RESULT AND DISCUSSION

3.1. Proof in criminal acts of electronic information and transactions based on Law Number 19 of 2016 concerning ITE

Basically, evidence plays a very important role in the investigation of criminal acts related to information and electronic transactions, this is because evidence is an effort to obtain information through the presence of evidence and evidence. With evidence proven by existing evidence, the judge will use it to believe whether a person is truly guilty or not of committing a criminal act. If in a proof, legally valid evidence is presented, but it is not sufficient to prove what has been charged against him, then the judge must immediately acquit the defendant from all punishment. However, if the opposite happens, the defendant will receive a punishment commensurate with what he has done.

Proof in criminal acts of information and electronic transactions through evidence based on Law Number 19 of 2016, is regulated in Article 5 which determines that:

1. Electronic information and/or electronic documents and/or printouts are valid legal evidence.
2. Electronic information and/or electronic documents and/or printouts as intended in paragraph (1) are an extension of valid evidence in accordance with the procedural law in force in Indonesia.
3. Electronic information and/or electronic documents are declared valid if using an electronic system is declared valid in accordance with the provisions regulated in this Law.
4. Provisions regarding electronic information and/or electronic documents as intended in paragraph (1) do not apply.
 - a. Letters which according to law must be made in writing; And
 - b. The letter and its documents according to the law must be made in the form of a notarial deed or a deed made by the deed maker.

Based on the provisions of Article 5 of the ITE Law, it can be seen that evidence in proving ITE criminal acts plays an important role in revealing the true facts or not whether a person has committed a criminal act related to ITE, and states that electronic information and/or electronic documents and/ or the printouts are valid legal evidence and electronic information and/or electronic documents and/or printouts as intended in paragraph (1) are an extension of valid evidence in accordance with the procedural law in force in Indonesia, namely the Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Valid evidence according to Article 184 of the Criminal Procedure Code, namely:

- a. Witness statements
- b. Expert testimony
- c. Letter
- d. Instruction
- e. Defendant's statement

This evidence is very necessary because a judge may not impose a crime on someone unless, with at least two valid pieces of evidence, the judge is convinced that a criminal act actually occurred and the defendant was the one who committed the act.⁴Proof of information and electronic transaction crimes must be based on valid evidence as regulated in Article 5 of the ITE Law and Article 184 of the Criminal

Procedure Code. The evidence must be truly in accordance with the facts, meaning it is not fabricated. So the judge's benchmark in handing down a criminal decision only refers to Article 5 of the ITE Law and Article 184 of the Criminal Procedure Code.

1. The general understanding of witness testimony is regulated in Article 1 point 27 of the Criminal Procedure Code which states that what is meant by witness testimony is one of the pieces of evidence in a criminal case that he personally heard, saw for himself and experienced for himself by stating the reasons for his knowledge. Based on the sound of the article above, it can be concluded that the important elements of witness testimony are:⁵

- a. Statements from people (witnesses)
- b. Regarding a criminal incident
- c. What you hear for yourself, see for yourself and experience for yourself.

Article 1 point 26 of the Criminal Code states that a witness is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he himself heard, saw for himself and experienced for himself. In general, everyone can be a witness. Except as regulated in Article 168 of the Criminal Procedure Code, his statement cannot be heard and he can withdraw as a witness, namely:

- a. Family by blood or same blood in a straight line up or down to the third degree of the defendant or together as defendants;
- b. Relatives of the defendant or those who are joint defendants, mother's or father's relatives, as well as those related by marriage and the defendant's children up to the third degree;
- c. The defendant's husband or wife, even if they are divorced or who are joint defendants.

Apart from family relationships, Article 170 of the Criminal Procedure Code stipulates that those who, because of their work, dignity or position, are required to keep secrets, can ask to be released from the obligation to give information as witnesses. Article 171 of the Criminal Procedure Code adds exceptions to giving testimony under oath, namely:

- a. Children who are under fifteen years old and have never been married.
- b. People with memory problems or mental illness even though their memory is good again.

In general, witness testimony is the most important form of evidence in criminal cases. It can be said that there is no criminal case that escapes the verification of witness statements, because almost all criminal case evidence is always based on examination of witness statements. At least apart from proving it with other evidence, it is still always necessary to prove it with witness testimony. The second piece of evidence as regulated in Article 184 of the Criminal Procedure Code is witness testimony. Article 1 point 28 of the Criminal Procedure Code states that expert testimony is information given by a person who has special expertise regarding matters needed to shed light on a criminal case for the purposes of examination. Regarding who and which institution has the authority to present experts is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code in several articles as follows:⁶

- Article 65 regulates that suspects or defendants have the right to nominate someone who has special expertise.
- Article 120 stipulates that if deemed necessary, investigators can ask for expert opinions, or people who have special expertise.
- Article 133 stipulates that investigators have the authority to submit requests for expert information to judicial medical experts or doctors or other experts.
- Article 180 regulates that the chief judge can request expert testimony.
- Article 186 states that expert testimony can be provided during the investigation and examination process by the public prosecutor.
- Article 229 stipulates that experts who are present to provide information at all levels of the examination are entitled to compensation for costs according to law.

2. Epistolary evidence is anything that, according to reading signs, is intended to express one's feelings or convey one's thoughts and is used as evidence.⁷ According to Article 187 of the Criminal Procedure Code, what is meant by a letter as referred to in Article 184 paragraph (1) letter c, made on an oath of office or confirmed by oath, is an official report and other letters in official form made by an official. public authority or made before him, which contains information about events or conditions that he himself heard, saw or experienced, accompanied by clear and unequivocal reasons for the statement. A statement from an expert containing an opinion based on his expertise regarding a matter or situation that has been officially requested from him. Other letters can only be valid if they are related to the contents of other evidence.⁸ Letters as evidence can be in the form of authentic letters and underhand letters. The Criminal Procedure Code does not regulate the evidentiary strength of general documents or special letters so it is up to the judge to consider them. In this case, the authentic deed can be considered, while private letters as in civil law are no longer used in criminal procedural law. However, in line with the material provisions of Article 187 point d, it is clear that a private letter still has value if it is related to the contents of other evidence. So, letters that can be used as evidence in proving an ITE crime are letters that are related to a crime, so they can be considered as documentary evidence in court examinations.

3. Regarding indicative evidence, clues are actions, events or circumstances which, due to their conformity either with one another, or with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is. Instructions as evidence can only be obtained from witness statements, letters and statements from the defendant.⁹ Indicative evidence is a series of events one after the other, which provide clues about the occurrence of a criminal act and can be used as evidence.

4. The defendant's statement is what the defendant stated in court about the actions he committed or that he personally knew or experienced (according to Article 189 paragraph (1)). Andi Hamzah says:¹⁰ That the defendant's statement as evidence does not need to be the same or in the form of a confession. All of the defendant's statements should be heard, whether in the form of denials, confessions, or partial admissions of actions or circumstances.

The defendant's statement does not need to be the same as a confession, because a confession as evidence has the following requirements:¹¹

- a) Admit that he committed the offense charged.
- b) Admit he is guilty.

The defendant's statement as evidence is thus broader in meaning than the defendant's confession. The defendant's statement alone is not enough to prove that he is guilty of committing the act he is charged with, but must be accompanied by other evidence (Article 189 paragraph (4) of the Criminal Procedure Code). So, the defendant's statement in the form of a confession does not eliminate the minimum requirements for proof. So even if a defendant confesses, it still has to be proven with other evidence, because what is being pursued is the material truth. Meanwhile, the recognition in civil procedural law that is sought is formal truth. So that evidence plays an important role in the examination process at the court hearing, in efforts to prove the ITE crime, the judge must be careful, thorough and mature in assessing and considering the value of each piece of evidence presented at the court hearing.

3.2. The Position of Electronic Evidence in Proving ITE Crimes

According to Article 5 of Law Number 19 of 2016 concerning ITE, electronic documents and their printouts are valid evidence. Electronic information and/or electronic documents and their printed results are an extension of legal evidence based on Article 184 of the Criminal Procedure Code. The position of electronic evidence in the form of electronic information and electronic transactions as well as printed results is legal in Article 184 of the Criminal Procedure Code. Electronic information, electronic documents and their printouts are valid evidence to provide legal certainty regarding the implementation of electronic

systems and transactions, especially proof of criminal acts committed through electronic systems. Nowadays, various crimes and crimes directly involve the use of information and communication technology as the main element. The widespread use of computers, mobile phones, e-mail, internet, websites and so on has invited various parties to commit crimes based on electronic and digital technology. Therefore, recently it has become known that there is computer forensic science which is needed and used by law enforcers in their efforts to reveal criminal incidents through the disclosure of evidence based on digital and electronic entities or devices.

¹² Law enforcers will experience difficulties related to proving criminal acts in cyberspace, for example regarding cyber crime issues, especially in the case of data falsification, because they have to prove a problem that is considered something that is invisible and apparent. The evidence is electronic, including in the form of electronic documents, which until now have not been regulated in procedural law as formal law, but in practice they are known and widely used. The existing regulations regarding electronic evidence are still within the scope of material law such as in the ITE Law. Electronic information (IE) and electronic data (DE) stored in the CPU (central processing unit) precisely on the hard disk are very important evidence that can reveal a criminal act, but the IE and DE have no meaningful function if someone does not understand the contents inside it. So with the hard disk a digital forensic test must be carried out. The existence of evidence is very important in investigating computer crime and computer related cases with a very complete chronology, in order to then trace the whereabouts of criminals and arrest them. Because the position of this evidence is very strategic, investigators and forensics must understand the types of evidence. It is hoped that when he comes to a crime scene related to computer crime and computer related crime cases, he will be able to recognize the existence of the evidence and then examine it for further analysis.¹³ Evidence is goods that are used to commit a criminal act, goods that are the result of a criminal act or goods that are related to a crime that occurred.¹⁴

The classification of digital evidence is divided into:¹⁵

1. Electronic evidence
2. Digital evidence

Evidence is physical and can be recognized visually, therefore investigators and forensics must understand and then be able to recognize each of these electronic pieces of evidence when searching for evidence at the crime scene.

The types of electronic evidence are as follows:¹⁶

- a) PC computers, laptops/notebooks, netbooks, tablets
- b) Mobile phone, smartphone
- c) Flashdisk/thumbdrive
- d) Floppy disk
- e) Hard disk
- f) CD/DVD
- g) Routers, switches, hubs
- h) Video camera, CCTV
- i) Digital camera
- j) Digital recorders
- k) Music/video player.

Digital evidence that can be recovered from other electronic evidence, this evidence is known in the ITE Law as electronic information and electronic documents. This is the type of evidence that forensics must look for and then carefully analyze the relationship between each file in order to uncover crime cases related to electronic evidence. Electronic evidence can only be declared valid if it uses an electronic system that

complies with applicable regulations in Indonesia. Electronic evidence can have legal force if the integrity of the information can be guaranteed, can be accounted for, can be accessed, and can be displayed so as to explain a situation. According to Article 1 number 1 of the ITE Law, what is meant by Electronic Information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, plans, maps, photos, electronic data interchange (EDI), electronic mail (electronic mail).) telegram, 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 them.

According to Article 1 number 4 of the ITE Law, what is meant by Electronic Documents is any electronic information created, forwarded, sent, received or stored in analog, digital, electromagnetic, optical or similar form, which can be seen, displayed and/or heard via a computer. or electronic systems, including but not limited to writing, sound, images, maps, plans, photographs or the like, letters, signs, numbers, access codes, symbols or porphurations that have meaning or meaning or can be understood by people who are able to understand them. So, the conclusion is that the existence of the ITE Law is very necessary to provide legal certainty relating to cyberspace, especially covering information and electronic transactions. With the ITE Law, electronic evidence is legally recognized as evidence that can be presented at trial. Considering that judicial practice is based on procedural law as formal law that is binding, the regulation of electronic evidence as valid evidence in the Criminal Procedure Code is very necessary to achieve legal certainty in the field of ITE.

IV. CONCLUSION

Evidence in criminal acts of electronic information and transactions is reviewed from Law Number 19 of 2016 concerning Information and Electronic Transactions namely by referring to Article 184 of the Criminal Procedure Code. Where, the position of electronic evidence in proving criminal acts of information and electronic transactions is very important in accordance with the provisions of Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions for defendant statements and the provisions of Law Number 19 of 2016 Article 5 of the ITE Law which regulates that electronic information, printed electronic documents are valid legal evidence.

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