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Legal Development for Electronic Evidence in Civil Litigation: Challenges and Future Expectations

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Abstract: *The acceleration of digitalization in Indonesia's judicial system has transformed civil procedural law evidence mechanisms to increasingly rely on electronic evidence. This study aims to analyze the legal construction and challenges of admitting electronic evidence in civil procedural law. Using a normative juridical approach, the study reviews regulations, jurisprudence, and legal doctrines related to electronic evidence. The population includes legislation and court decisions from 2020–2025, with purposive sampling of five selected cases. Data were analyzed through systematic normative interpretation. Findings indicate conditional recognition of electronic evidence, inconsistent jurisprudence, and a lack of adequate digital forensic technical guidelines. The burden of proof and role of IT experts remain unclear in practice. The study concludes that regulatory and technical guidelines need improvement to strengthen the principle of free proof and procedural justice in the digital era. Adoption of a digital chain of custody and verified electronic signatures is highly recommended.*

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INTRODUCTION

Digitalization of the Indonesian judicial system has undergone significant acceleration through the implementation of various technological innovations, such as e-court, e-litigasi, and e-payment. This system enables the processes of lawsuit registration, document submission, and trial execution to be conducted online, fundamentally transforming the mechanisms for collecting and presenting evidence in civil procedural law to increasingly rely on digital formats such as WhatsApp chats, emails, voice recordings, PDF files, and electronic transaction data. This transformation presents opportunities to expand access to justice, especially for digital business actors and the younger generation, but also raises legal uncertainties regarding the acceptance and evaluation of electronic evidence in trials (Pranoto, 2022; Wibowo, 2023).

However, judges in practice often hesitate to accept electronic evidence due to concerns over authenticity, integrity, and risk of manipulation. Relevant evidence is frequently rejected simply because it lacks a wet stamp or physical signature, reflecting the tension between traditional civil procedural regulations like HIR and Rv and the reality of

the 21st-century digital judicial system (Lubis, 2023; Kusumawardhani, 2022). Major regulations such as UU No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE) and PERMA No. 1 Tahun 2019 already recognize electronic evidence in principle, but remain general without providing clear technical standards regarding authenticity verification and evidence strength evaluation. This causes inconsistency in court rulings and low legal certainty for justice seekers (Rahmawati, 2023; Soreinda, 2023).

The main issue that arises relates to the unclear burden of proof; there is no explicit provision in procedural law about which party must prove the authenticity of electronic evidence, whether the plaintiff who submits it or the defendant who denies it. Consequently, judicial practice becomes inconsistent, with some judges requiring the plaintiff to present IT experts while others place the burden of proof on the defendant (Siregar, 2022; Fauzi, 2024). Furthermore, the role of IT experts in court is often treated as ordinary witnesses without recognition as scientific evidence based on objective digital forensic methods, contradicting modern evidentiary principles that acknowledge the importance of technical assessment of evidence (Rahmawati, 2023; Fauzi, 2024).

The absence of technical guidelines accommodating information technology developments in digital proof demands the Supreme Court promptly issue technical guidelines containing criteria for authenticity, recognized evidence formats, and detailed procedures for examining electronic evidence. The principle of digital chain of custody must also be adopted in civil procedural law to maintain evidence integrity from collection to presentation in court. The principle of free proof (vrij bewijs) needs clarification so judges are not constrained by formalities of wet signatures and focus more on the relevance and credibility of digital evidence in today's social context. The 2023 draft Civil Procedure Code that explicitly recognizes electronic evidence must be immediately ratified with additional technical explanations to enrich legal certainty (Lubis, 2023; Wibowo, 2023).

The primary aim of this study is to analyze the legal construction related to electronic evidence in the Indonesian civil procedural proof system and evaluate the legal challenges faced in judicial practice. This research is crucial to opening academic and normative discussions that strengthen the legal framework of digital proof and provide guidance for judges, academics, and policymakers so that the Indonesian judiciary can adapt to digital realities. The novelty of this study lies in proposing a conceptual framework that integrates the principle of free proof with procedural justice principles as a philosophical foundation for accepting electronic evidence, while simultaneously positioning substantive justice and access to justice as the main focus in digital proof (Pranoto, 2022; Kusumawardhani, 2022).

METHODOLOGY

The research uses a normative juridical research type aimed at analyzing positive legal rules and legal doctrines related to electronic evidence in the Indonesian civil procedural proof system. This approach refers to an in-depth legal literature study on key regulations such as UU No. 11 Year 2008 concerning Information and Electronic Transactions (UU ITE), PERMA No. 1 Year 2019, the 2023 draft of the Civil Procedure Code, and jurisprudence from recent court decisions between 2020 and 2025. The research instruments consist of primary legal documents, legal textbooks (such as works by Harahap, 2019; Subekti & Tjitrosudibio, 2018; Sudikno Mertokusumo, 2016), and accredited scientific journal articles as main data sources. The analysis technique used is normative interpretation with a systematic approach to evaluate consistency between rule

provisions, court decisions, and legal doctrines as well as to reflect emerging legal issues (Sugiyono, 2021; Creswell, 2022).

The study population includes all legislation and court decisions related to electronic evidence in the field of civil procedural law, with a sample focus on five selected court decisions from 2020–2025 from District Courts, High Courts, and the Supreme Court. The study also involves secondary and tertiary legal literature that provides theoretical and policy reviews as well as trends in civil procedural law developments in Indonesia and internationally. The selection of decisions and regulations uses purposive sampling to ensure relevance in the context of forming an electronic proof system (Sudaryono, 2023; Emzir, 2023).

The research procedures are conducted in stages, beginning with the collection of primary legal documents, then critically reviewing the contents of regulations and jurisprudence related to electronic evidence. Subsequently, supporting literature is analyzed to position findings within the conceptual framework of free proof (vrij bewijs) and procedural justice principles. The analytical results are systematically evaluated to identify legal challenges and potential solutions, while also formulating normative recommendations applicable to courts, policymakers, and academics. This qualitative approach is recognized as effective in capturing the essence and dynamics of law in the digital era, as emphasized by contemporary qualitative research methods (Creswell, 2022; Sugiyono, 2021; Wibowo, 2023).

RESULTS AND DISCUSSION

1. Normative Construction of Electronic Evidence in Civil Procedure

According to Pasal 5 ayat (1) UU ITE, electronic documents and/or electronic information as well as their results constitute valid legal evidence. However, ayat (2) emphasizes that such information must meet criteria of authenticity, integrity, and accessibility, indicating that legal recognition of electronic evidence is conditional, not automatic.

PERMA No. 1 Tahun 2019 Pasal 19 ayat (3) also supports this by stating that electronic evidence can be submitted in court proceedings electronically. Nevertheless, the regulation does not detail verification methods for authenticity, acceptance criteria, or recognized types of electronic evidence, giving judges discretion to interpret it—often based on instinct or formalities similar to traditional methods.

In Hukum Acara Perdata Reglement (HIR) Pasal 164, five types of evidence are recognized: documents, witnesses, presumptions, admissions, and oaths. This raises the question of whether electronic evidence fits into the "documents" (surat) category. According to Yahya Harahap (2019), the concept of "surat" in HIR is flexible and can include non-physical documents as long as they contain written statements with identifiable sources.

For example, in Putusan Mahkamah Agung No. 2345 K/PDT/2021, an email was recognized as valid electronic documents. However, in another case such as putusan Pengadilan Tinggi Surabaya No. 112/PDT/2022, WhatsApp communications were rejected not because the message content was irrelevant, but because the judge remained trapped in traditional views requiring documents to have wet stamps or physical seals. Yet, if younger generations rely on WhatsApp as their primary communication medium, such digital messages should qualify as important evidence. This situation reflects inconsistencies and a lack of binding technical guidelines for accepting electronic evidence.

2. Juridical Challenges in Judicial Practice

The main challenges in accepting electronic evidence relate to its authenticity and integrity. Without standard procedures like digital forensics, verified timestamps, or digital chain of custody, it is difficult to prove that a file has not been manipulated after creation. In Putusan PN Jakarta Pusat No. 78/PDT.G/2023, the judge accepted audio recording evidence because it was supported by transcripts and IT expert witnesses, while Putusan PN Bandung No. 45/PDT/2022 rejected a PDF document because its "origin was unknown".

The burden of proof also becomes complicated since civil procedural law has not clearly determined who is responsible for proving the authenticity of files—whether the plaintiff submitting it or the defendant challenging it. Consequently, judicial practices vary: some judges require plaintiffs to present IT experts, while others burden defendants to prove falsity. This demonstrates the need for comprehensive regulations to address such inconsistencies.

The role of IT experts is still viewed as "ordinary witnesses" rather than scientific evidence based on forensics, contradicting modern proof principles that emphasize technical methods. For the future, the Supreme Court needs to issue Technical Guidelines on Accepting Electronic Evidence, covering authenticity criteria, recognized formats, and examination procedures. The digital chain of custody principle must be adopted in civil procedural law to ensure evidence integrity from collection to court presentation.

The free proof principle (vrij bewijs) needs clarification so judges focus on relevance and credibility rather than wet signature formalities. The 2023 Civil Procedure Code draft (Rancangan KUHAPerdata 2023 (Pasal 182–185)) that explicitly recognizes electronic evidence must be promptly approved with additional technical explanations. The government can promote verified electronic signatures under UU ITE Pasal 11 and blockchain technology for document authenticity.

In common law countries like England, the Civil Evidence Act 1968 and Criminal Justice Act 1988 regulate electronic evidence in detail, with authenticity proven through data creation and storage methods. According to Sweet & Maxwell guidelines (2020), the key to acceptance is storage system integrity, not physical form. This approach is worth adopting in Indonesian civil procedure reforms.

CONCLUSION

This research concludes that the normative construction of electronic evidence in Indonesian Civil Procedure Law through UU ITE Pasal 5 and PERMA No. 1 Tahun 2019 provides conditional recognition based on authenticity, integrity, and accessibility requirements, but main challenges arise from jurisprudential inconsistencies—such as email acceptance in Putusan MA No. 2345 K/PDT/2021 versus WhatsApp rejection in PT Surabaya No. 112/PDT/2022—along with unclear burden of proof and lack of digital forensic standards. These varying judicial practices hinder the free proof principle (vrij bewijs) and procedural justice, where relevant evidence is often rejected due to traditional HIR Article 164 formalities, harming access to justice for digital generations and online businesses.

Research limitations lie in the normative juridical approach relying on literature analysis without field empirical data, thus not capturing implementation variations in local courts. Practical implications include recommendations for the Supreme Court to issue

technical authentication guidelines for electronic evidence along with judge forensic training, acceleration of the 2023 Civil Procedure Code draft (R-KUHAPerdata 2023), and adoption of digital chain of custody.

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