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Bewijsvoering Analysis of Electronic Evidence in Criminal Cases's Proving

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Abstract: An important aspect that cannot be separated from the evidentiary process is related to how to obtain and present evidence to the judge before the trial. Wiretapping as electronic evidence obtained secretly often gives rise to debate from the perspective of bewijsvoering, and the evidentiary value of electronic evidence obtained through wiretapping. This article will discuss the use of wiretapping results as electronic evidence in relation to its evidentiary value in court. The results of this research show that there is a dualism in bewijsvoering the results of wiretapping as electronic evidence, some are of the opinion that bewijsvoering the results of wiretapping as electronic evidence must be obtained legally, and other opinions state that bewijsvoering is a separate matter from proof, as long as the evidence is submitted to the front. the trial is in accordance with the facts and other evidence, then the evidence is considered valid.

Keyword: Bewijsvoering, Electronic Evidence, Criminal Cases.

INTRODUCTION

The evidentiary process in criminal law falls within the realm of criminal procedural law or formal criminal law. The mechanism for proving criminal cases has been detailed and firmly regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (Jaya & Rahaditya, 2021). The evidentiary process in criminal cases aims to prove something or state the truth of an event. So, in the end, a conclusion is drawn by the defendant regarding whether or not the defendant has committed the criminal act of which he is charged (Alamri, 2017).

In essence, the problem of evidence in criminal law is very urgent. When explained, it can be said that proof is a process of determining and stating someone's guilt. This evidentiary conclusion is carried out through a judicial process so that it will determine whether the defendant can be sentenced to a crime (veroordeling) because from the results of the trial it is legally and convincingly proven to have committed a criminal act, then he can also be acquitted of the charges (vrijspraak) because he is not proven to have committed a

criminal act, or be released from all legal demands (onslag van alle rechtsvervolging) because what is alleged is proven but the act does not constitute a criminal act (Mamulai, 2017).

Discussing the evidentiary system in criminal cases in Indonesia which adheres to the negative wettelijk system. This evidentiary system determines that to declare the defendant's guilt for the criminal act he is charged with is based on at least 2 (two) pieces of evidence, so that the judge can obtain a conviction. (Hawasara et al., 2022). The judge's belief is related to the fact that the crime alleged by the public prosecutor actually occurred and the defendant was the perpetrator.

Article 184 of Law Number 8 of 1981 concerning Criminal Procedure Law has determined the types/kinds of evidence that can be used in the process of proving criminal cases. The evidence consists of witness statements, letters, expert statements, instructions and defendant statements. All evidence has the same position and has independent evidentiary power in the process of proving a criminal case.

The development of technology and information influences expansion to various types of evidence. If previously the evidence was determined to be limited in Article 184 of the Criminal Procedure Code, this is expanded to include the admission of electronic evidence as a valid means of evidence. these provisions as stated in Law Number 19 of 2016 concerning Amendments Law Number 11 of 2008 concerning Electronic Information and Transactions. Expanding the use of electronic evidence in the criminal justice process. Criminal charges related to the use of technological benefits are very necessary, because they are appropriate with changes in social behavior in community life media usefulness (Astuti, 2017).

The development of evidence in the form of electronic evidence in proving criminal cases is proof that the rule of law must develop according to societal civilization. When societal civilization develops, and is followed by the development of crime, the law must accommodate these developments. It is hoped that the presence of electronic evidence will be able to prove contemporary, sophisticated crimes with complex modus operandi.

The establishment of Law Number 19 of 2016 is related with the Constitutional Court Verdict Number 20/PUU-XIV/2016. the ruling is the result of a judicial review submitted by Setya Novanto regarding provisions for electronic evidence obtained from wiretapping or interception. Setya Novanto expressed his objection to electronic evidence in the form of results the recording of the conversation was used as evidence, because it contradicted with Human Rights as regulated in the 1945 Constitution (Sumariyastuti, 2019). Setya Novanto's law material test then granted by the Constitutional Court and resulting in a decision one of which states that electronic evidence (electronic information and/or electronic documents) the results of wiretapping can be used as evidence valid, if obtained legally and within the framework of law enforcement. by or at the request of the police, prosecutor's office, and/or law enforcement institutions others whose authority is stipulated in law. If there is evidence electronic media is not obtained legally then the judge can set aside or consider that the evidence has no evidentiary value.

There needs to be a more in-depth study considering the urgency of the evidence electronics in revealing the truth of the occurrence of a criminal act and also looking for a material truth, namely the true and complete truth by applying the provisions of criminal procedural law to search for and determine who the perpetrator is accused of having committed a violation of the law and request a decision from the court to find out whether the crime was committed has been committed and the person accused can be blamed (Susatyo, 2023). An in-depth study of electronic evidence is very essential because electronic evidence is sometimes still in the form of raw data that must be processed. The data needs to be translated to meet evidentiary needs. Processing electronic evidence certainly requires special skills from someone who has expertise in the field of information technology. So that the validity of electronic evidence presented before the court is more guaranteed.

One form of electronic evidence is the results of wiretapping which can take the form of voice recordings, images, photos, and so on. Wiretapping is a coercive measure which is a development of existing coercive measures, namely the aim of secretly obtaining information or data related to the alleged occurrence of a criminal act. In connection with wiretapping, there is often debate regarding the legality of wiretapping from the *bewijsvoering* side. The fact that wiretapping was carried out secretly, without the knowledge of the party being tapped, when this evidence is presented in court, is always questioned regarding its validity. In connection with this problem, this article will discuss the legality of *bewijsvoering* electronic evidence in the form of wiretapping results.

METHOD

This research is normative legal research based on materials law and focuses on reading and studying primary legal materials and secondary so as to produce a new argument, theory or concept as a prescription for solving problems that found (Peter Mahmud Marzuki, 2016). Research approach using a statutory approach and approach concept (conceptual approach). Analysis of legal materials using deductive using the major premise, namely Law Number 19 of the Year 2016 Regarding Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and the minor premise used is the Court Decision Constitution Number 20/PUU-XIV/2016, which then comes from the major premise and the minor premise will draw a conclusion.

RESULTS AND DISCUSSION

Bewijsvoering is a description of how to convey evidence to the judge in court (Hiariej, 2020). The emphasis of *bewijsvoering* is that of evidence must be obtained legally through prescribed legal procedures. Legal consequences if evidence is obtained by violating the law such evidence will be excluded by the judge at trial or not has evidentiary value (Sekarsari, 2019). One way to obtain electronic evidence is by interception or wiretapping. Tapping is the activity of installing tools or additional devices on a telecommunications network for the purpose of obtaining information in an unauthorized way. Constitution of electronic information and transaction provide an explanation regarding wiretapping, namely activities for listening, recording, distorting, changing, inhibiting, and/or noting transmission of Electronic Information and/or Electronic Documents that are not public, using either cable communication networks or wireless networks, such as electromagnetic or radio frequency emissions.

Interception of electronic evidence has given rise to debate among legal experts. Many people give opinions about what the value is proof from electronic evidence originating from wiretapping results. First, that in criminal procedural law there are fundamental things that cannot be ignored of evidence, namely how the evidence is obtained. If tool evidence obtained in accordance with applicable legal procedures is appropriate submitted and accepted at trial. On the other hand, if the evidence comes from the results wiretapping without permission has no evidentiary value and the judge has the right to exclude electronic evidence because it was obtained in violation of the law. This needs to be done because there is a violation against a person's right to privacy because wiretapping is a criminal offense if done without permission. If electronic evidence resulting from wiretapping is recognized as a tool valid evidence in the trial then this will cause a commotion law, disorder, and also damage to the justice system in Indonesia (Bryandono, 2022).

The connection with Law Number 20 of 2001 concerning Eradication of Corruption means the status of electronic evidence is as an extension of evidence instruction. Guidance evidence in the Criminal Procedure Code is a type of circumstantial evidence. This means that the evidence is indirect evidence and is complementary so there is a need for other evidence that supports electronic evidence. Evidence as evidence in a court trial to form a

judge belief. This requires that information be intercepted electronic and/or electronic documents are carried out after the minimum principles are fulfilled proof, namely a minimum of 2 (two) pieces of evidence. Confirmation of who has the rights. When carrying out wiretapping or interception, it is necessary to remember that it is very large opportunities for violations of human rights in this case in order to guarantee legal certainty in terms of a person's right to privacy communicating in the digital world.

Second, that between *bewijsvoering* and evidence is an important thing should be separated. If the evidence is considered invalid and has no value proof only because the procedure for obtaining it violates the law. There is a tendency to cover up the truth regarding the occurrence of a criminal act. This tendency will certainly make enforcement of material laws difficult hampered. Electronic evidence is considered valid based on its authenticity or the guaranteed originality of an electronic system and not about how the evidence was obtained. In other words, there needs to be reinforcement from experts related to the content or context of the electronic evidence obtained from the results tapping. Wiretapping is a criminal act whose provisions have been regulated in the provisions of statutory regulations. Apart from that, it is related to who is. The right to conduct wiretapping has also been regulated in statutory provisions as in Law Number 30 of 2002 concerning the Police Republic of Indonesia, Law Number 16 of 2004 concerning the Prosecutor's Office, Law Number 20 of 2001 concerning Eradication of Corruption Crimes that law enforcement officers are authorized to conduct wiretapping so no need for confirmation.

A number of regulations and draft regulations open up the possibility of making wiretapping a valid form of evidence in court. An example of a regulation that opens up this possibility is Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 44b of Law Number 11 of 2008 recognizes electronic information as valid evidence in court. Meanwhile, the draft amendment to the Criminal Procedure Code gives investigators the authority to open access, examine and make copies of electronic data stored in computer files, internet networks, optical media, and other forms of electronic data storage if the data is strongly suspected to be related to the criminal case being investigated (Rachmad, 2016).

Likewise Article 42 and Article 43 The Telecommunications Law states that telecommunications service providers can record information or provide recorded information to users telecommunications services in the context of law enforcement or at the request of the authorities law enforcers, in this case the Attorney General, the Head of the Republic of Indonesia Police Indonesia, or investigators for certain criminal acts (Agen Nia Dara, 2017). Apart from that, the ITE Law also provides legality for law enforcement officers to carry out or request wiretapping. In the explanation of Article 31, it is explained that wiretapping is permitted according to law is wiretapping carried out in the context of law enforcement and above request from law enforcement officials. This has different consequences what is regulated in the Telecommunications Law, because it is based on Article 42 and Article 43. The Telecommunications Law only provides legality regarding the procedures for a request recording information to telecommunications service providers, not providing legality of wiretapping law enforcement officers.

The authority of law enforcement officials to carry out wiretapping in the context of law enforcement, it has also been given to KPK agencies since KPK Law was promulgated in 2002. Article 12 of the Corruption Eradication Committee Law stipulates that in terms of eradicating criminal acts of corruption, one of the authorities of the Corruption Eradication Commission is wiretapping and recording conversations. Despite the legality of the KPK to carry out wiretapping has been regulated, the Corruption Eradication Committee Law itself does not regulate it or clearly define the definition of wiretapping and limitations wiretapping authority. Likewise with the Corruption Law, in the Corruption Law also does not provide a separate definition regarding wiretapping. Although, in the explanation of Article 26 of the Corruption Law, it is written that wiretapping what is meant is wiretapping (Yunus & Hofi,

2021). Meanwhile, in the Narcotics Law, wiretapping is defined as an activity in the context of an investigation or investigation by tapping into conversations, messages, information and/or communication networks carried out via telephone and/or electronic communication other devices (Hidayat, 2020). Investigators, in this case BNN, are given the authority to carry out this wiretapping when sufficient initial evidence has been obtained.

Even though it has been regulated in several laws and regulations, in In practice, there is still confusion in the implementation of wiretapping in Indonesia. This is reinforced by the submission of a request for judicial review against the Corruption Eradication Commission Law, the ITE Law, and the Corruption Law in 2003, 2006, 2010, and 2016. The request for judicial review resulted in at least several decisions including the Decision of the Constitutional Court of the Republic of Indonesia Number 006/PUU-I/2003, Constitutional Court Verdict of the Republic of Indonesia Number 012-016-019/PUU-IV/2006, Constitutional Court Verdict of the Republic of Indonesia Number 005/PUU-VIII/2010, as well as the Decision of the Constitutional Court of the Republic of Indonesia Number 20/PUU-XIV/2016. In general, the application for a judicial review of a number of these laws are caused by internal practices enforcement of laws that tend to violate the constitutional rights of citizens, in this case related to the right to privacy. Apart from that, the application for a judicial review also based on the provisions in the law being assessed contrary to the constitution. Therefore, it is necessary to form new legal regulations which regulates related to more comprehensive wiretapping so that the regulations. This is in line with existing legal principles and aims determined to be achievable.

The assessment of the evidentiary strength of electronic evidence is not yet clear regulated in special regulations. Judges are required to be careful in their actions technical assessment of electronic evidence. Criminal procedural law does not recognize there is a hierarchy in terms of the strength of evidence. Evidence in procedural law punishment is free, non-binding and non-determinative. This is reflected in the provisions of Article 183 of the Criminal Procedure Code which regulates the evidentiary system in Indonesia. If the criminal sentence against the defendant is based only on evidence which is valid then will only get a formal truth and will have an impact on justice and truth in enforcing material law (Sugi Hartono & Rai Yuliantini, 2020). On the other hand, if If the sentence is only based on the judge's belief, there will be disparity and different law enforcement and judgment tendencies will occurs subjectivity (Harahap, 2009). The judge's belief is based on valid evidence. The existence of a criminal act plays an important role in the imposition of a crime against the defendant. The judge as someone who examines and adjudicates must act carefully in terms of evidence and are bound by the provisions of the criminal law proceedings.

CONCLUSION

Based on the description above, there is a study of bewijsvoering in the law of evidence like two opposing sides. On the one hand, this is something that cannot be done separated from proof but on the other hand there must be a separation between the two things the. If there is a separation between bewijsvoering and evidence then it will can shed light on the truth of the crime. However the opposing argument states that if bewijsvoering on evidence is not obtained according to the law, it will have no evidentiary value and if it remains If it is recognized as valid evidence, there will be legal uncertainty. The evidentiary power of electronic evidence is the same as strength proof of other evidence in criminal procedural law, namely free, non-binding and not decisive. This is because there is no hierarchy in the strength of evidence evidence in criminal procedural law, apart from that because there is no law which specifically regulates this matter.

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