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POSITION OF ELECTRONIC EVIDENCE IN THE PROCESS OF PROVIDING PROCEDURE IN STATE ADMINISTRATIVE COURT
The Position of Electronic Evidence in the Evidentiary Process of State Administrative Court Procedural Law

Komang Alit Antara[1], Moh. Fadli[2], Sudarsono[3]
Program Studi Magister Ilmu Hukum di Luar Kampus Utama di Jakarta Universitas Brawijaya
Jl. Dr. Saharjo No.313, RT.7/RW.1, Tebet Bar., Kec. Tebet, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12870
e-mail: komangalitantara33@gmail.com, mfad.akad@gmail.com, sudarsono0206@gmail.com

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Abstract

This study analyzes the position of electronic evidence in the legal evidence process of the State Administrative Court. The development of information technology has had significant implications for the justice system, especially in the recognition and use of electronic evidence. However, there is a gap between the increasingly digitalized practice of government administration and the PTUN procedural law mechanism which still focuses on physical documents. This study uses normative legal analysis conducted with a statutory and conceptual regulatory approach, using data from related laws and legal literature. The results of the study indicate that the unclear regulations in Law Number 5 of 1986 concerning the PTUN, although the ITE Law has recognized electronic evidence, cause legal uncertainty, differences in judge interpretation, and potential manipulation of evidence. Therefore, this study recommends the reconstruction of PTUN procedural law norms to include explicit provisions regarding electronic evidence, the establishment of a digital forensic validation institution, and the regulation of authentication and security of electronic documents. These steps are important to ensure justice, legal certainty, and efficiency in resolving state administrative disputes in the digital era.

Keywords: ***Electronic Evidence, Procedural Law, State Administrative Court, Evidence, Digitalization***

A. Introduction

Administrative justice was established with the main aim of protecting the rights of people who feel disadvantaged by government decisions, based on the principles of justice, truth, order and legal certainty.[1]The presence of administrative justice is a real manifestation of law enforcement and justice.[2]In the context of the state administrative justice system in Indonesia, the development of information technology has brought significant legal implications, especially in the aspect of electronic evidence.

Electronic evidence is information and data of value in the investigation process that is stored on, received, or sent by electronic devices.[3]According to ISO/IEC 27073 (2012), digital evidence or electronic evidence is defined as information or data, stored or sent in binary form that is relied upon as evidence. However, in the provisions of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) does not provide a definition of what is meant by electronic evidence. The ITE Law only defines electronic information and electronic documents. Article 1 Number 1 of the ITE Law states:

[1]Supandi, State Administrative Court Law: Legal Compliance of Officials in Complying with State Administrative Court Decisions, (Medan: Pustaka Bangsa Pers, 2021), p. 76.

[2]Yos Johan Utama, "Challenging the Function of State Administrative Courts as One of the Accesses for Citizens to Obtain Justice in State Administrative Cases (A Critical Study of the Use of State Administrative Law Principles in Administrative Courts", Journal of Legal Science Volume. 19, p. 5.

[3]Michael B. Mukasey, Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition, National Institute of Justice (NIJ), Office of Justice Programs, (USA: US Department of Justice, 2008), p. ix

"Electronic Information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, 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."

Then Article 1 Number 4 of the ITE Law states:

"Electronic Documents are any Electronic Information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be viewed, displayed, and/or heard via a Computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or significance or can be understood by people who are able to understand them."

Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the AP Law) has recognized the validity of administrative decisions in electronic form. Article 1 Number 11 of the AP Law states:

"Electronic Decisions are Decisions made or delivered using or utilizing electronic media."

Meanwhile, the state administrative court procedural legal system still faces challenges in accommodating these changes.[4]This is due to the closed-system nature of evidentiary law in state administrative courts, as regulated in Law Number 5 of 1986 concerning State Administrative Courts (hereinafter referred to as the PERATUN Law) which has not explicitly listed electronic documents as valid evidence as regulated in the provisions of Article 100 of the PERATUN Law which states:

(1) The evidence is:
   a. Letter or writing;
   b. Expert testimony;
   c. Witness testimony;
   d. Acknowledgement of the parties;
   e. Judge's Knowledge."

As a result, there is a gap between the increasingly digitalized practice of government administration and the legal mechanisms of state administrative court procedures which still rely on the concept of physical documents in the evidence process.[5]The ambiguity in this regulation raises various problems in the implementation of the evidentiary system in state administrative court procedural law. One of the main problems is the difference in interpretation among judges in assessing the legal status of electronic documents. Some judges consider electronic documents as part of the judge's knowledge that can be considered in court, while others place them as written evidence that must meet certain requirements in order to have evidentiary force. The absence of uniform standards in assessing electronic evidence has the potential to create legal uncertainty for the parties to the case. In addition, the absence of a clear validation mechanism for electronic documents can also open up opportunities for abuse, such as forgery of digital documents or manipulation of electronic data that can harm one of the parties in a state administrative dispute.

In addition to the challenges in terms of evidence, existing regulations also do not comprehensively regulate the authentication and security of electronic documents in the context of administrative law. Unlike physical documents that can be declared valid if signed by an authorized official and stamped, electronic documents require different authentication methods, such as digital signatures or encryption systems based on cryptographic technology. However, regulations related to electronic signatures recognized in court are still limited to the ITE Law, which does not specifically regulate the mechanism of evidence in PTUN procedural law. As a result, although digital-based administrative decisions are increasingly used in various government sectors, their legal status in the evidence system still lacks strong certainty.[6]

To answer this challenge, a more comprehensive reconstruction of norms is needed to provide legal certainty regarding the position of electronic evidence in the trial process at the PTUN.[7]One step that can be taken is to revise the provisions of the state administrative court procedure to include explicit provisions regarding electronic

[4]Safri Nugraha, et.al, State Administrative Law, Publishing Agency of the Faculty of Law, University of Indonesia, Depok, 2023, p. 25.

[5]Jonaedi Efendi et. al, Popular Legal Dictionary of Terms, (Jakarta: Prenada Media Group, 2022), p. 14.

[6]Ali Abdullah, Theory and Practice of State Administrative Court Procedure Law Post-Amendment Paradigm Shift and Expansion of Norms, Prenadamedia group, Jakarta, 2021 p. 98.

[7]SF Marbun, State Administrative Law, FH UII Press, Yogyakarta, 2024, p. 110.

documents as valid evidence. In addition, it is necessary to form a digital forensic institution under the Supreme Court that is tasked with the validation and authentication process of electronic documents. This institution can play a role in ensuring that digital documents submitted in court have met the security and validity standards set out in the regulations.

With clearer recognition of electronic documents in the PTUN procedural legal evidence system, the integration of technology in the government administration system can run in line with the principles of legal certainty and justice in resolving state administrative disputes. In addition, legal certainty in the use of electronic documents can also increase efficiency and transparency in the government process, while strengthening legal protection for the public who are faced with state administrative decisions. Therefore, concrete steps are needed both in terms of legislation and policy implementation to ensure that the legal system in Indonesia can adapt to developments in information technology without sacrificing the principles of justice and legal certainty.

So far, the verification of electronic documents carried out by the panel of judges in trials through the court information system (e-Court) has not been included in the evidence procedure as regulated in the provisions of PERMA Number 7 of 2022.[8]The ambiguity regarding the definition of electronic evidence in state administrative court procedural law has implications for the existence of vague legal norms (vague norms) which have the potential to cause legal uncertainty in the proof of electronic documents in the evidentiary process in state administrative court procedural law.

Based on the ambiguity of norms in the ITE Law and the PERATUN Law, the author is interested in conducting research with the research title "THE POSITION OF ELECTRONIC EVIDENCE IN THE PROCESS OF PROVIDING LAW IN STATE ADMINISTRATIVE COURT PROCEDURE".

B. Research Methods

This research uses a normative legal approach, namely a legal research method that is oriented towards the study of written legal norms that apply in a country's legal system.[9]This research uses a normative legal method with a statutory and conceptual regulatory approach.[10]The data used in this study are primary legal materials such as Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments, as well as secondary legal materials relevant to the research topic. The analysis was conducted using the Prescriptive Interpretation Method approach to describe and evaluate how electronic evidence can be accepted in PTUN procedural law.[11]

C. Discussion

1. Electronic Evidence in State Administrative Court Procedure Law

a. Definition of electronic evidence

According to Mason (2008), the term "electronic evidence" or "digital evidence" includes two categories, namely analog evidence and digital evidence. This evidence is in the form of data, either from analog or digital devices, which is produced, processed, stored, or transmitted by various devices, computer systems, or through communication networks, and has relevance in the judicial process. In practice, electronic evidence is often identified with digital evidence due to the complexity of understanding and the process of obtaining it.[12]According to the ISO/IEC 27073 (2012) standard, electronic evidence, also known as digital evidence, is data or information stored or transmitted in binary format and can be used as legal evidence. The ITE Law only provides an explanation of electronic information and electronic documents, without explicitly defining electronic evidence. After considering the various definitions that have been presented, it can be concluded that electronic evidence is data stored or sent via electronic devices, networks, or communication systems, which has an important role in proving legal actions in court.

[8]Muhammad Adiguna Bimasakti, et.al, Electronic Court Procedure Law in State Administrative Courts, (Bogor: Guepedia, 2023), p. 90.

[9]Mukti Fajar ND and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, First Edition, (Yogyakarta: Pustaka Pelajar, 2010), p. 36.

[10]Peter Mahmud Marzuki, Legal Research Revised Edition, (Jakarta: Prenada Media Group, 2021), p. 35.

[11]Maria SW Sumardjono, Legal Science Research Methodology, (Yogyakarta: Gadjah Mada University, 2023), pp. 6-7.

[12]Eddy Army, Electronic Evidence in Judicial Practice, (Jakarta: Sinar Grafika, 2020), p. 12.

b. Types of electronic evidence

Although there are various ways to categorize electronic evidence in the context of information and communication technology, in general, information and communication technology consists of three basic components, namely hardware, software, and brainware. Understanding electronic evidence helps judges evaluate the evidence presented, both in terms of formal and material. With this knowledge, judges can ask relevant technical questions to determine the validity of the evidence. In addition, judges can be more critical in assessing expert opinions, not only based on the ability of argumentation during the trial. The history of the recognition of electronic evidence began in 1997 through Law Number 8 of 1997 concerning Company Documents. Although the term "electronic evidence" is not used explicitly, Article 15 recognizes data stored on microfilm or other media as valid evidence. The term 'electronic' first appeared in Law Number 20 of 2001, an amendment to Law Number 31 of 1999 concerning Corruption, which states electronic information as indicative evidence in Article 26A. This recognition is reinforced by the ITE Law, which recognizes information, documents, and electronic printouts as valid evidence in Article 5 of the ITE Law.

Thus, electronic evidence includes data, both information and documents, stored in electronic media. To obtain this evidence, investigators or prosecutors need to access electronic media or devices and extract relevant data. Lawful interception is one of the recognized methods for obtaining legal electronic evidence.

2. The Position of Electronic Evidence in State Administrative Court Procedure Law

a. Electronic Evidence in State Administrative Court Trials

Electronic evidence has been recognized as valid evidence in the Indonesian judicial system, as regulated in Article 5 of the ITE Law. The provisions in this law stipulate that:

(1) Electronic Information and/or Electronic Documents and/or printouts thereof constitute valid legal evidence.
(2) Electronic Information and/or Electronic Documents and/or printouts thereof as referred to in paragraph (1) constitute 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 they use an Electronic System in accordance with the provisions stipulated in this Law."

Meanwhile, provisions regarding the types of evidence in state administrative court procedural law are regulated in the provisions of Article 100 of the State Administrative Law which states:[13]

a. letter or writing;
b. expert testimony;
c. witness statement;
d. acknowledgement of the parties;
e. Judge's knowledge.

At the stage of the trial process, documents used as written evidence must be identical to the original document and authorized by an official institution, such as the Post Office. In line with technological developments, the use of the e-Court application has enabled the delivery of evidence digitally. Electronic evidence in this context refers to digital documents that function as written evidence and have been stamped before being uploaded to the Court Information System (e-Court) for the purposes of evidence in the trial process.

In the context of State Administrative Courts, there is no specific digital forensic institution tasked with validating electronic evidence. This creates a challenge for the Panel of Judges, especially in terms of the validity of electronic evidence. If the Panel of Judges verifies evidence that has been uploaded to the court information system (e-Court), the parties involved in the case can access the opposing evidence before the trial begins. This situation has the potential to raise concerns about possible attempts to secure or manipulate evidence in the e-Court system. Nevertheless, the use of electronic evidence still has a strong legal basis, as stated in Article 5 of the ITE Law.

b. Electronic evidence validation procedures

[13]Enrico Simanjuntak, State Administrative Court Procedure: Transformation and Reflection, (Jakarta: Sinar Grafika, 2020), p. 145.

Although it is possible to upload electronic evidence through the e-Court platform, conventional judicial practices with direct examination in the courtroom are still maintained. This aims to provide an opportunity for judges to directly examine and assess the authenticity of documents or letters submitted by the parties to the case. In practice, the focus of the judge's assessment remains on the physical evidence presented during the trial, and not just on the digital version uploaded to the e-Court. The procedure for submitting electronic evidence in trials is still undergoing an adaptation process. There are differences in its application in various courts. However, referring to the Decree of the Director General of the Military Court and State Administrative Court Number 238/DjMT/KEP/HK.00.6/IV/2022 which refers to the Decree of the Chief Justice of the Supreme Court (KMA) Number 363/KMA/SK/XII/2022, several important provisions have been stipulated:

1) In the context of the evidentiary process, the Panel of Judges provides an opportunity for each party to the case to submit written evidence that they have prepared and registered previously;
2) In the verification and validation process, the Panel of Judges conducts an in-depth study of each piece of written evidence submitted by the parties. This examination includes matching physical evidence with documents that have been uploaded to the court's electronic system. If the evidence is in the form of a CD, the judge will play and listen to it in front of the parties, and record the action in the trial minutes;
3) After ensuring that all written evidence submitted in the trial is in accordance with the documents uploaded electronically, the Panel of Judges will continue the verification process in the e-Court application by activating the verification button on each piece of evidence;
4) In the event that the written evidence submitted in the trial does not match the documents that have been uploaded to the e-Court application, the Panel of Judges will not carry out the verification process. The judge has the authority to provide advice to the party submitting the evidence to re-upload it on the next trial schedule, with the agenda of adding written evidence. Meanwhile, for electronic evidence in the form of forensic reports, its validity has been recognized and does not require further examination by the Panel of Judges.

Before accepting electronic evidence, the Panel of Judges has the responsibility to conduct a thorough assessment of the formal and material aspects of the evidence. This aims to ensure that the evidence submitted meets the criteria set by the laws and regulations. The Panel of Judges has the obligation to conduct a critical assessment of electronic evidence, by ensuring that:

1) Data integrity in electronic media is maintained, without any unauthorized changes.
2) The information contained in the evidence comes from an electronic source that is the subject of a dispute between the parties.
3) The process of obtaining this information is carried out accurately and in accordance with applicable legal procedures.
4) The information is consistent with other evidence submitted, thus enabling the Panel of Judges to determine the legal status of the electronic evidence.

Given the absence of a digital forensic institution officially appointed to validate electronic evidence, as well as limited facilities, infrastructure, and funding, in the practice of examining electronic evidence classified as scientific evidence, the Panel of Judges needs to change it into legal evidence. This is done by relying on expert testimony to provide their opinions. In addition, to facilitate the review of electronic evidence by the High Court, a link is created that allows access to the evidence.

D. Conclusion

1. Conclusion

In the context of state administrative courts in Indonesia, the integration of electronic evidence as valid evidence faces significant challenges due to the unclear regulations in the PERATUN Law which do not explicitly recognize electronic documents, although the ITE Law has regulated them; this creates a gap between increasingly digitalized government administration practices and procedural law mechanisms that still focus on physical documents. The implications of this ambiguity are the potential for legal uncertainty, differences in judges' interpretations, and the risk of manipulation of electronic evidence, which requires the reconstruction of PTUN procedural law norms to include explicit provisions regarding electronic evidence, the establishment of a digital forensic validation institution, and the regulation of authentication and security of electronic documents, in order to ensure fairness, legal certainty, and efficiency in resolving state administrative disputes.

2. Suggestion

Regulations regarding electronic evidence and digital forensic institutions need to be regulated in the provisions of Law Number 5 of 1986 concerning State Administrative Courts.*junction*Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts*junction*Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts as a form of*constitution.*

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AUTHOR BIOGRAPHY

Komang Alit Antara, a young professional in the field of law, made his academic mark at the Faculty of Law, Udayana University, where he successfully earned a Bachelor of Law degree in 2020. His passion for studying law led him to continue his studies to a higher level, and he is currently studying for a Master of Law at the Off-Campus Study Program (PSDKU) at Brawijaya University, Jakarta.

In addition to being active in the academic world, Komang Alit Antara has also pursued a career in the judicial field. Currently, he is entrusted as a Candidate Judge at the Medan State Administrative Court. This experience provides valuable practical insight, complementing the theoretical knowledge he gained from his formal education. The combination of strong education and practical experience in the field makes Komang Alit Antara a figure who has a deep understanding of the ins and outs of law, especially in the context of state administrative justice.