

## THE LEGAL CERTAINTY OF ELECTRONIC EVIDENCE AUTHENTICATION UNDER THE CIVIL PROCEDURE LAW IN INDONESIA

Kevin Dicky Aldison<sup>1\*</sup>, Patricia Audrey Ruslijanto<sup>2</sup>, M. Sudirman<sup>3</sup>

<sup>1,2,3</sup> Master of Law Program, Faculty of Law/ Brawijaya University, Malang

Faculty of Law/ Brawijaya University, Malang

Faculty of Law / Brawijaya University, Malang

E-mail: [kevienkda@student.ub.ac.id](mailto:kevienkda@student.ub.ac.id)<sup>1</sup>, [patricia@ub.ac.id](mailto:patricia@ub.ac.id)<sup>2</sup>, [m.sudirman321@gmail.com](mailto:m.sudirman321@gmail.com)<sup>3</sup>

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### Abstract

This study examines the legal certainty of electronic evidence authentication under the Civil Procedure Law in Indonesia. The research highlights the importance of providing regulation to authenticate electronic evidence, as stated in Article 5 of Law Number 1 of 2024, which concerns the Second Amendment to Law Number 11 of 2008 regarding Electronic Information and Transactions. The study adopts a normative juridical approach; the researcher's focus in this legal research is on legal principles and legal inventory research. The researcher aims to analyze the legal principles governing electronic evidence and its authentication process in civil procedure law. The primary purpose of this research is to ensure that legal certainty regarding the authentication of electronic evidence is achieved perfectly and comprehensively. It is considered necessary, given that civil procedure law in Indonesia has not explicitly regulated the authentication mechanism for electronic evidence until now. Therefore, by adding legal provisions that specifically restrict the authentication of electronic evidence in civil procedure law, the value of legal certainty can be achieved fully and comprehensively. This research is expected to contribute in the form of conceptual and normative analysis that can strengthen the argument regarding the urgency of regulating the authentication of electronic evidence. Thus, the results of this research not only provide an academic foundation but also offer constructive ideas that are relevant to the development of civil procedure law in Indonesia, particularly in the context of resolving civil disputes involving the use of electronic evidence.

**Keywords:** *The Legal Certainty Of Electronic, Authentication Under The Civil Procedure Law, Indonesia*

### INTRODUCTION

Transactions conducted electronically, in the form of messages, conversations, or letters, can be used as a reference by the parties in the event of a future dispute. These electronic transcripts can be printed out, allowing the electronic transaction to be visualized through print media. The presence of electronic transcripts as evidence of transactions requires legal arrangements so that they can be recognized as evidence by each party in the event of a future lawsuit (Rizan et al, 2022). In Indonesia, a lawsuit constitutes a legal mechanism through which an aggrieved party submits a claim to the court against another party. This instrument serves not only to safeguard judicial authority and prevent acts of vigilantism (*eigenrichting*) but also to ensure the restoration of losses suffered by the injured party (Subekti & Marbun, 2023). In civil procedure law, the plaintiff bears the burden of proving their claims through evidence, while the defendant is required to present counterevidence. The evidentiary framework in Indonesian civil procedure law is regulated by Article 1866 of the *Burgerlijk Wetboek* (BW), Article 164 of the *Het Herziene Indonesisch Reglement* (HIR), and Article 284 of the *Rechtsreglement voor de Buitengewesten* (RBG). Collectively, these provisions recognize five principal forms of valid evidence: written evidence (including letters), witness testimony, presumptions, confessions, and oaths. Beyond these categories, judges may also consider on-site examinations (*descente*) and expert testimony in adjudicating cases (Ginting, 2020). However, technology driven by innovation has also influenced civil procedure law, particularly through the expansion of the concept of evidence. The progress of information technology has necessitated legal adjustments in Indonesia, particularly in the regulation of evidence (Saputri & Azis, 2023). Article 5 of Law Number 1 of 2024, as the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (UU ITE), affirms the validity of electronic information and

documents as evidence equivalent to conventional evidence, thereby broadening evidentiary scope in civil and criminal proceedings. In civil procedure law, both contentious and voluntary, evidence remains a fundamental requirement for judicial assessment, as stipulated in Article 164 HIR and Article 284 RBG. Furthermore, Article 7 UU ITE underscores the pivotal role of electronic evidence in proving claims and reinforcing legal arguments (Nainggolan, 2021). Electronic evidence is regulated in Article 5 UU ITE, which indicates that electronic evidence is recognised and legally valid. However, the use of electronic evidence in civil cases remains problematic due to differing judges' opinions regarding the method of examining electronic evidence, known as authentication. Authentication is a method for determining or ensuring that something is authentic (Asti, 2021). In the Indonesian Dictionary, authentication comes from the word "authentic," meaning "original," while "authentication" means the process or method of authenticating or proving something. In short, authentication is a method for confirming the authenticity of an object. Therefore, it is essential to understand the legal certainty of electronic evidence authentication in Indonesian civil procedure law.

## LITERATURE REVIEW

A study by Arlan Ariya Mokosolang et al. from the Faculty of Law at Sam Ratulangi University investigates the electronic letter as electronic evidence. The research highlights that the UU ITE regulates the regulation of electronic letters as evidence in civil trials. Electronic information, documents, and printouts are recognized as valid evidence. To have the same evidentiary force as other evidence in court, electronic documents must undergo a verification process by a government agency and be accompanied by an electronic signature (Mokosolang, 2023). Similarly, Khairinif et al. from the Faculty of Law at Diponegoro University explore one of the electronic letters, which is an electronic certificate. It has the power to serve as evidence in civil cases following the UU ITE. Electronic certificates from providers registered in Indonesia are considered valid. The use of electronic certificates increases the admissibility of electronic evidence, as they include data and the time and place of signature. However, if the certificate is altered or falsified, its evidentiary value is reduced (Khairinif et al., 2022).

Another study by Soroinda & Nasution from Faculty of Law at University of Indonesia focuses on although the civil procedure law stipulated in the HIR/RBG does not explicitly regulate electronic evidence, its existence has been recognized through provisions in the UU ITE, specifically in Articles 5 and 6, which state that electronic evidence is considered valid if it meets specific requirements. This condition highlights the urgent need to reform civil procedure law, ensuring legal certainty and justice in the use of electronic evidence in court (Soroinda & Nasution, 2022). In the research of the Supreme Court's Judicial Judge, Riki Perdana Raya Waruwu, although the existence of electronic evidence has been legally recognised in the legal system, its application in practice is more dominantly used in the context of criminal case evidence. It is reflected in the Constitutional Court's decision Number 20/PUU-XIV/2016 regarding electronic evidence as evidence carried out in the context of law enforcement at the request of the police, prosecutors and/or other law enforcement institutions stipulated by law. So now the interpretation of electronic evidence as evidence in trials is directed towards criminal evidence rather than evidence in civil cases (Waruwu, 2019). It confirms that, in criminal cases, the practice has emerged, and the regulation regarding electronic evidence has a relatively straightforward and adequate legal basis. However, the condition is different in civil cases, where there are still gaps in norms that can make it difficult for judges to make decisions, especially when electronic evidence is part of the case material, especially regarding the authentication of electronic evidence.

In another study that prioritizes empirical, the current Chief Justice of the North Kalimantan High Court, Marsudin Nainggolan, in his book stated that various perceptions for judges in receiving and examining electronic evidence in adjudicating a case, judges should first check the validity of the electronic evidence through authentication of the procedures for retrieval, storage, and must be documented accurately and thoroughly. He also conducted a poll of many judges whose results, on average, showed that they wanted special regulations related to the handling of electronic evidence, especially in civil procedure law. It is because, considering the nature of the procedure law, it is binding for the parties who use it, including for judges (because according to the procedure law system in Indonesia, evidence is only valid if it is based on evidence that has been regulated in the procedure law), then the regulation of electronic evidence in formal law (procedure law). In civil procedure law, it is still necessary to achieve legal certainty (Nainggolan, 2021).

## **METHOD**

The type of research used by the author of this legal research is normative juridical research. It refers to primary sources, namely legal materials in the literature (Soekanto & Mamudji, 2015). The researcher's focus in this legal research is on legal principles and legal inventory research. The researcher aims to analyze the legal principles governing electronic evidence and its authentication process in civil procedure law. The study relies on legal materials categorized into: (1) Primary sources include primary legal sources such as the constitution, constitutional conventions, statutory regulations, and court decisions. In the context of this research, primary attention is paid to provisions that specifically regulate electronic evidence, and 2 Secondary sources consisting of legal literature, legal journals, research related to the research topic, legal papers, the internet, and others. Ultimately, this study aims to develop comprehensive recommendations that provide legal certainty regarding the authentication of electronic evidence in civil procedure law.

## **RESULTS AND DISCUSSION**

To understand the concept of electronic evidence authentication in civil procedure law, the existence of electronic evidence in law must first be discussed. Recognition of the existence of electronic evidence in the process of proving civil cases is not limited to the legal aspect alone. Considering that evidence is a crucial element in resolving cases, the acceptance of electronic evidence as evidence plays a strategic role in ensuring legal protection and legal certainty for disputing parties (Rizan et al., 2022). Because some cases cannot currently be proven through conventional methods due to the involvement of information and communication technology, synergy between legal science and information technology disciplines is needed to identify problems and formulate appropriate solutions (Dewantoro, 2024). To measure the extent of legal certainty from the authentication of electronic evidence, the position of electronic evidence and the probative power of electronic evidence in civil procedure law are discussed.

### **Legal standing of Electronic Evidence Authentication in Civil Procedure Law in Indonesia**

From a normative perspective, electronic evidence authentication has gained legal standing based on UU ITE. This recognition is explicitly regulated within the applicable procedure legal framework. The UU ITE strengthens the legal position of electronic information, electronic documents, and printouts as legally admissible evidence (Baisa & Probondaru, 2025). This regulation reflects the expansion of the category of legal evidence based on the provisions of procedure law in Indonesia, as long as the electronic information or document can be accessed, displayed, its integrity is guaranteed, and it can be accounted for in explaining a legal event. Furthermore, in the context of civil relations, the parties bound by a contract may agree to the use of electronic evidence through an evidentiary agreement. Thus, the use of electronic evidence in civil proceedings can be carried out based on the agreement of the parties, which is formally stated in the contract. UU ITE also limits the validity of electronic information or documents, provided that the information can be accessed, displayed, its integrity guaranteed, and legally accountable (Article 6 UU ITE) based on authentication method. Therefore, recognition of electronic evidence is based not only on its digital form, but also on the reliability and integrity of the electronic data (Maulidiyah & Satriana, 2019).

To be submitted in court proceedings, electronic evidence must meet strict formal and material requirements. Formal requirements stipulate that electronic documents must not fall into the category of letters that, according to law, must be made in written form as specified in Article 5 paragraph (4) UU ITE. Material requirements include aspects of authenticity, integrity, and availability of information, as stipulated in Article 6 UU ITE. Authentication mechanisms, which can be carried out through digital forensic audits or examination of system logs, play an essential role in ensuring that documents remain original from the time they were first created. In practice, the court may involve digital forensic experts to assess the validity of electronic evidence submitted by the parties (Efendi, 2024). Through normative legitimacy and the principle of legal clarity, as stated by Jan M. Otto, the authentication value of electronic evidence can fulfill the fundamental requirements of legal certainty (Soeroso, 2011). It provides clarity and legal protection, and creates the involvement of electronic evidence in civil court practices in Indonesia. However, the legal standing of the authentication of electronic evidence cannot be said to be perfect because, in civil disputes, it is still bound by evidence in civil procedure law in Indonesia, so that the basis of evidence still uses *Het Herziene Indonesisch Reglement* (HIR) and *Rechtsreglement voor de Buitengewesten* (RBG), which are no longer relevant to the development of evidence today.

### Evidentiary Power of Electronic Evidence Authentication in Civil Procedure Law in Indonesia

In their book, Achmad Ali and Wiwie Heryani state that there are five types of evidentiary strength of evidence, namely (Ali & Heryani, 2013):

- a. Perfect evidentiary strength, meaning the evidence is complete and intact (*volledig bewijskracht*);
- b. Weak evidentiary strength, meaning the evidence is incomplete (*onvolledig bewijskracht*);
- c. Partial evidentiary strength, meaning the evidence still contains deficiencies and is not yet complete (*gedeeltelijk bewijskracht*);
- d. Decisive evidentiary strength, meaning the evidence determines the direction of the case or who wins or loses in a dispute (*beslissende bewijskracht*);
- e. Counter evident evidentiary strength, meaning the evidence can refute other evidence (*tegenbewijs or kracht van tegen bewijs*).

Edmon Makarim classifies the evidentiary strength of electronic information into three categories: weak, moderate, and strong. First, in the weak category, electronic information is deemed to lack sufficient validity to explain the recorded legal event and is unable to identify or confirm the party legally responsible for the event. Second, in the moderate category, electronic information has validity in explaining the legal event and determining the responsible party; however, the electronic system used does not meet accountability or reliability standards (for example, it is not yet accredited), so its statements can still be questioned or refuted. Third, the strong category refers to electronic information that is not only substantively valid and able to explain and determine the legal subject responsible, but also originates from an electronic system that has met accountability and reliability requirements (has been accredited). In this condition, as long as there is no evidence to the contrary, the results produced by the system can be considered technically and legally valid (Makarim, 2013).

To determine the evidentiary strength of electronic evidence, essential factors must be considered, first, regarding the elements of evidence. During the evidentiary stage in court, the parties are required to submit evidence that meets the applicable evidentiary law. The evidence used must be legally valid and have a basis in statutory regulations. Therefore, any form of evidence that lacks normative legitimacy in the legal system cannot be used as a valid basis for proof in the trial process. Second, regarding the Regulations on Evidence. Evidence that has been explicitly regulated in statutory regulations is considered valid and admissible as evidence with evidentiary value in court. It is because these regulations not only restrict the types of evidence but also cover the procedures for its creation, use, and weight or evidentiary strength within the context of procedure law. With these regulations, the legality and validity of evidence can be guaranteed in accordance with the principle of due process of law (Asimah, 2023).

Strengthening the validity of electronic evidence authentication can be achieved through several steps, which are (Permono et al., 2022):

1. Electronic information or documents must be presented in their entirety and in accordance with statutory provisions. It aligns with Article 5 paragraph (3) of UU ITE, which stipulates that electronic evidence is valid if it uses an electronic system that meets legal requirements.
2. Guarantees are required for the authenticity and integrity of electronic evidence, including its ability to explain the disputed circumstances.
3. Electronic documents should be accompanied by general instructions, such as the use of language or symbols that can be understood by the parties involved in the implementation of the electronic system, so that the dispute resolution process is more effective.
4. A sustainable mechanism is needed in the evidence process, aimed at maintaining the relevance and freshness of the system along with technological developments, so that the clarity of the evidence of electronic information and electronic documents can be guaranteed.

Furthermore, the existence of electronic evidence in Indonesia has essentially been legitimized through Article 5 UU ITE. However, this guarantee of legal certainty has not been fully achieved, given that in civil procedure law practice, there is still a lack of clear and comprehensive regulations. This incompleteness of norms has implications for the emergence of differing interpretations among judges regarding the status and evidentiary strength of electronic evidence. This condition poses serious challenges in the aspects of authentication, integrity, and regulation of electronic evidence. Therefore, more comprehensive legal reforms are needed, including the establishment of standard procedures for the collection and verification of electronic evidence, strengthening mechanisms for protecting privacy rights, and increasing access to supporting technology to ensure the probative value of electronic evidence can be consistently guaranteed (Lathifah & Ariyanti, 2024).



## CONCLUSION

Legal certainty regarding the authentication of electronic evidence has received normative recognition through provisions in the UU ITE. However, in the practice of civil dispute resolution, particularly those based on provisions of the Civil Procedure Code, there remains an incomplete norm regarding the procedures for presenting and examining the authentication of electronic evidence in court. This situation is due to the continued use of the HIR and RBG provisions as the primary guidelines for civil procedure law in Indonesia, which fundamentally do not accommodate the development of information technology-based evidentiary instruments in the form of electronic evidence, including authentication aspects. To address this incomplete norm, concrete steps are needed from the legislative body, as the lawmaker, through the drafting of a new Civil Procedure Code that integrates provisions regarding the authentication of electronic evidence. Another alternative is the enactment of a Supreme Court Regulation as a regulatory legal instrument, thereby providing clear guidance for judges, legal practitioners, and parties in civil cases. Thus, comprehensive regulations regarding the authentication of electronic evidence will be achieved, so that the value of legal certainty can be fully realized while being able to answer the challenges of technological developments in the civil evidence system in Indonesia.

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