

Legal Analysis Of Telephone Conversation Recordings As Evidence In Civil Disputes

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Abstract: This study aims to determine and analyze the validity of telephone conversation recordings as evidence in civil disputes. This research was conducted using the Normative research method, also called doctrinal legal research, which is often conceptualized as what is written in laws and regulations or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate. The results of this study are that telephone conversation recordings can be strong evidence in civil disputes as long as they are obtained legally, do not violate privacy rights, and are accountable for their authenticity. The legal force of electronic evidence in civil cases basically depends on how the evidence can be verified and proven authentic in court. If the validity of electronic evidence can be proven, for example through expert witnesses or digital devices that can confirm its validity, then it can be considered with almost the same strength as written evidence in this case. However, in practice, electronic evidence often has a weaker position compared to letters in accordance with the provisions of the Civil Code, especially because electronic evidence can be more susceptible to forgery or manipulation.

Keywords : Recording of Conversations, Evidence, Civil Disputes.

A. INTRODUCTION

Manuscripts in this modern era technology the more advanced . Existing technology the more develop rapidly . Since emergence cell phone First until moment this . Device electronic the has through various type rapid development. Initially, smartphones were only functioning accept message in form voice Then develop functioning accept message in form text. After That mobile phones are also increasingly develop rapidly with present diverse feature sophisticated that can used until moment this.[1] Cell phone with feature advanced based technology this is what is called as a smartphone. We can use smartphone technology that has various benefits . In using our smartphones can send message and call someone in a way No directly. We can also take picture anytime and anywhere. Smartphone or can also known as cell phone smart can also record voice.[2] Existence man No can separated from the law that regulates it , because law is a set rules that regulate and limit life human beings. The law is basically determine rights and obligations including prohibitions and recommendations for every person or citizens.[3] This is based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the Republic of Indonesia is a state of law, containing understanding that all order life nation , society and state is based on on law . In case this , the State in carry out duties and obligations must based on law and constitution , the existence of distribution power ,

existence guarantee to rights humans and the existence of a supervisory body related justice . [4]Rule law the Keep going develop adapt life society , including in matter This arrange about use technology . This is due to existence development in life everyday life that seems force public For using enough gadgets advanced For make things easier do activity . However behind development technology information or social media No A little give impact , good impact positive and impact negative besides give contribution for improvement welfare , development law and progress civilization man .[5]

telecommunications , media law , and law informatics . Other terms that are also used is law technology information (law of information technology), virtual world law, and law mayantara. Terms the born remember activities carried out through network system computers and systems communication Good in scope local both global (Internet) with utilise technology information based system computer which is system electronics that can seen virtually . Problems laws that often faced is when related with delivery information , communication , and/ or transaction in a way electronics , in particular in matter proof and related matters with actions laws that are implemented through system electronics.[6]

The law that governs about use technology in Indonesia has arranged in Constitution Number 11 of 2008 and amended in 2016 to Constitution Number 19 of 2016 concerning Information and Electronic Transactions . One of things that have been arranged in Constitution the is about proof. Proof the as there is in Article 5 of the Law Number 11 of 2008 and amended in 2016 to Constitution Number 19 of 2016 concerning Electronic Information and Transactions.[7] Existence Electronic Information and/ or Electronic Documents are binding and recognized as tool valid evidence For give certainty law to Implementation Electronic Systems and Electronic Transactions, especially in proof and related matters with actions the law that is carried out through Electronic Systems. However certainty in information electronic as tool proof in dispute civil Still become question.[8]

Settlement process the most crucial dispute in stages settlement dispute in a way litigation is problem proof . Therefore that , the essence from proof is very important , because matter This will culminates to Correct whether or not the alleged evidence and its disclosure fact law in court , which will confirmed with decision the court stated the losing side and the winning side in something matter . Lots of history , stories , etc history the law that shows to We how because of a mistake in evaluate proof.[9] Then the real party No guilty must curled up inside prison consequence action Because witness lie . Vice versa , the party who has real-real do crime disconnected acquitted by the court due to misjudgment , in matter tool proof No Enough .[10] Provision about tool written evidence / letter in law civil has arranged in Articles 138, 165, 167 HIR/Articles 164, 285, 305 Rbg and Articles 1867-1894 of the Civil Code . Considering that in law civil tool written evidence is tool evidence is prioritized , in matter This position his be at number One If compared to with tools proof other .[11]

B. METHOD

Research methods used in study This is method study normative . Research normative This is research that examines studies document , Because the approach this focuses on the study regulation Legislation and theory law relevant . Research normative allows study For identify and analyze existing legal norms , and understand its implementation in context protection children and justice to the victim. This method also helps dig aspects related laws with rights children and consequences law for perpetrator . In addition the author also did approach bibliography (statute approach) where approach This drip focus on the approach Laws and regulations other. [12]

C. Position Recording Talks Telephone As Evidence in Disputes Civil.

Position recording talks telephone as tool proof in dispute civil law in Indonesia is an increasingly topic relevant along with development technology and needs will proof electronic in legal proceedings . Recording telephone , as one of the form proof electronics , recognized own strength significant laws , especially in context courts . Electronic evidence , including CCTV footage , can accepted as tool valid evidence in law , which shows that digital recording can functioning as valid evidence in the judicial process . This is what emphasizes importance technique forensics in handle digital evidence , including recording from CCTV cameras , which can also applied to recordings telephone. In context law positive in Indonesia, use recording telephone as tool proof must fulfil a number of conditions , including data authenticity and integrity.[13] Urgency use tool proof electronics , such as a dashboard camera, which shows that the resulting recording can used For strengthen argument in dispute law . This also applies For recording telephone , where authenticity and reliability recording must can proven For accepted in court . tool proof electronics , including recording phone , must fulfil provision applicable law . In the case of this , recording telephone can considered as valid evidence If can proven that recording the No manipulated and obtained in a way valid . Therefore that 's important For apply proper procedures in collection and storage recording phone to be able to accountable in court.[14]

Challenges faced in use recording telephone as tool proof is related with privacy and permissions from the recorded party . This is what emphasizes importance ethics and law in collection digital evidence . Therefore , before use recording telephone as tool evidence , the parties concerned must ensure that all procedure law has followed and that recording the obtained with method. legitimate position recording talks telephone as tool proof in dispute Civil law in Indonesia is highly dependent on authenticity, integrity, and manner collection . With follow provision applicable laws and apply technique proper forensics, recordings telephone can become tool strong evidence in the judicial process. Constitution Number 11 of 2008 concerning Further Information and Electronic Transactions called the ITE Law provides base law about strength law tool proof electronics and formal and material requirements tool proof electronics so that they can accepted in court . In simple, Electronic Evidence is Electronic Information and/ or Electronic Documents that meet the requirements formal prerequisites and prerequisites regulated material in the ITE Law which is used For needs evidence in court. Electronic Information and Documents can made into tool proof valid law, the ITE Law regulates that existence formal requirements and conditions material that must be fulfilled.[15]

Formal requirements are regulated in Article 5 paragraph (4) of the ITE Law, namely that Information or Electronic Documents are not document or letter according to legislation must in form written . While condition material arranged in Article 6, Article 15, and Article 16 of the ITE Law, which in essence Electronic Information and Documents must can guaranteed its authenticity , integrity , and availability . For ensure fulfillment condition the material in question , in Lots matter digital forensics is needed .

Regarding whether recording talks telephone can made into as tool proof in case criminal , we need referring to the provisions in the ITE Law. This is arranged in Article 5 of the ITE Law as following :

- (1)Information and/ or Electronic Documents and/ or results print it is tool proof valid law .
- (2)Information and/ or Electronic Documents and/ or results print it as referred to in paragraph (1) is expansion from tool valid evidence in accordance with the applicable procedural law in Indonesia.
- (3)Information and/ or Electronic Documents are stated legitimate if use Electronic System according to with the provisions stipulated in Constitution This .
- (4)Provision about Electronic Information and/ or Electronic Documents as referred to in paragraph (1) does not valid for : a) letters according to Constitution must made in form written ; and b) letter along with the document according to Constitution must made in form deed notary or deed made by an official maker deed .

From the provisions of Article 5 paragraph (2) of the ITE Law, it can be known that tool proof Electronic Information and Documents are not tool other and separate evidence with tools proof in Article 184 of the Criminal Procedure Code, but as expansion from tool existing evidence in Article 184 . However , the ITE Law does not explain expansion from tool which evidence among the 5 tools proof in Article 184 of the Criminal Procedure Code .

In order to provide evidence recording talks telephone can brought forward as tool evidence , then condition For made into tool proof the must relevant , material , and competent in the meaning of reliable and credible will quality . So for ensure authenticity and security proof recording talks phone , need existence expert forensics in handle matter the cooperate with agency enforcement law related . The forensic process carried out related proof electronics that are carried out expert forensics includes :

1. Collection
2. Testing
3. Analysis
4. Reporting

Due to is expansion from proof Instructions , then proof recording electronics the need customized along with proof legitimate others (Witness Statements , Letters, and Statements Defendant) for become base Judge's judgment (bewijskracht).

Before know arrangement and position tool proof electronic in a number of legislation , there is a number of things to do noticed to position from tool proof electronic as expansion tool proof letters and instructions . There are a number of criteria or conditions for the tool proof electronic Can considered as proof letter , namely First use principle authenticity It means something document or digital letters and sign hand the considered original , except can prove on the contrary .

other than That state about integrity information and authenticity document . In case this document electronic and recording electronic considered original if can display guarantee that document or recording the original , no changed , complete and the same with time during the manufacturing process the done . stated about principle equality equality functional (functional equivalent approach) which must be fulfilled with at least 3 basics so that the information and document electronic can it is said The same with proof written , namely can saved and found back , no changed the substance or what is meant guaranteed its authenticity , as well as signed if there is information that explains existence something object responsible law answer on it or there is system reliable authentication that explains identity and authority or verification from party said . In some regulations , evidence electronic can it is said as expansion proof clues . Evidence of clues arranged in Article 188 of the Criminal Procedure Code, namely " acts , incidents or circumstances , which because the suitability is good between the one with others as well as with action criminal and who the perpetrator ."

In the Criminal Procedure Code the tool proof instruction the source determined in a way limited namely originate from information witnesses , letters and statements the accused . If substance from tool proof electronic contains instruction such as : recording sound , images , video recordings and the like , then tool proof This used as expansion tool proof instructions . So that expansion tool proof instruction No only taken from conformity between information witnesses , letters and statements the defendant , however Can added with tool proof electronics . Based on Article 15 paragraph (1) which recognizes that proof electronic namely results print it is tool valid evidence , seen from the substance in the form of document electronics that contain elements understanding letter so that his position can categorized as expansion tool proof letter as arranged in Article 187 letter d of the Criminal Procedure Code, the regulation This is embryo will from confession to tool proof electronics that have promulgated so that own strength law .

Arrangement tool proof electronic can found in the Law Number 11 of 2008 and Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE). Regulations the contained in Article 44 which reads :

- a. tool proof as intended in provision Legislation ; and

- b. tool other evidence in the form of Electronic Information and/ or Electronic Documents as intended in Article 1 number 1 and number 4 as well as Article 5 paragraph (1), paragraph (2), and paragraph (3).

Constitution this also regulates conditions for the tool proof electronic can considered valid , namely condition regulated formalities in Article 5 paragraph (4) of the ITE Law that provision information and documents electronic in Article 5 paragraph (1) no valid For letter according to Constitution must made in form written as well as must made in form deed notary or deed made by officials maker deed. Next condition material arranged in Article 6 , namely requires something information must shaped written or original, information electronics and/ or document electronic considered legitimate if throughout the information listed can accessed , displayed, guaranteed its integrity, and can accountable so that explain something circumstances. see explanation in Article 5 paragraph (2) states that proof electronic in form information and/ or document electronic is expansion from tool proof which is regulated in the Criminal Procedure Code. Then the intended expansion associated with Article 5 paragraph (1) ITE Law, then can understood that functioning as expansion tools valid evidence in accordance with procedural law applicable in Indonesia. scope tool evidence that has been arranged in criminal procedure law expanded by the results print from information that has position as tool proof letter as well as tool proof instruction.

D. Strength Recording Talks Telephone in Dispute Evidence Civil.

Use recording talks telephone as tool proof in dispute civil arranged in a number of regulation legislation in Indonesia. In general general , tools proof in dispute civil regulated by the Civil Code (KUHPerdata) and the Law about Electronic Information and Transactions (ITE). Next , regarding whether recording telephone can made into as tool proof in case civil , we need referring to the provisions of Article 5 of the Law Number 1 of 2024 concerning change second regarding the ITE Law which states :

1. Information electronics and documents electronics and results print it is tool proof valid law .
2. Information electronics and documents electronics and results print it as intended in paragraph (1) is expansion from tool valid evidence in accordance with procedural law applicable in Indonesia
3. Information electronics and documents electronic stated legitimate if using system electronic in accordance with the provisions set out in Constitution This .
4. Provision about information electronics and documents electronic as referred to in paragraph (1) does not valid in matter otherwise regulated in Constitution .

Explanation of Article 5 Paragraph (1) of the Law Number 1 of 2024 explains that existence information electronics and/ or document electronic binding and recognized as tool valid

evidence For give certainty law to Implementation Electronic Systems and Electronic Transactions , especially in proof and related matters with actions the law that is carried out through system electronics . Then, specifically For information electronics and/ or document electronic in the form of results interception or tapping or recording which is part from tapping must done in frame enforcement law on request police , prosecutors , and/ or institutions others whose authority set based on Constitution .

Important For known that information electronic is One or a collection of electronic data , incl but No limited to writing, sound , images , maps , designs , photos , Electronic Data Interchange (EDI), letters electronic mail, telegram, telex , telecopy or similar , letters , signs , numbers , codes access , symbol , or perforation that has been processed which has meaning or can understood by people who capable understand it . While document electronic is is every information electronically created , forwarded , sent , received , or saved in analog, digital, electromagnetic , optical , or other forms similar , which can viewed , displayed , and/ or heard through computer or system electronics , including but No limited to writing, sound , images , maps , designs , photos or similar , letters , signs , numbers , codes access , symbol or perforation that has meaning or meaning or can understood by capable people understand it .[16]

Since decision Court Constitution Number : 20/PUU-XIV/2016 is enforced , impacting the validity of Constitution Number 11 of 2008 concerning Changed Electronic Information and Transactions become Constitution Number 19 of 2016. Starting from party Setya Novanto together with power the law as party The plaintiff who requested that there be change especially on evidence electronics in Article 5 paragraphs (1) and (2), Article 44 letter b of the ITE Law. Which become highlight on application the so that Supreme Court with his authority inspect or test return material (judicial review) of the law the is provision proof electronic in the form of results wiretapping / interception in article articles that have been mentioned earlier . In case this , of course there is an impact on continuity proof recording electronic become part tool proof legitimate as recognized in the Criminal Procedure Code.[17]

Constitutional Court Decision on tool proof electronic that is Constitutional Court Decision Number 20/PUU-XIV/2016 states that the phrase “ information electronics and documents electronics ” no have strength law tie throughout No interpreted specifically the phrase “ information electronics and documents electronics ” as tool proof done in frame enforcement law on request police , prosecutors , and/ or institutions enforcer law others . For become tool valid evidence , documents electronic in the form of content recording telephone must on request enforcer law. Recording results through telephone both incoming and outgoing that you mention can categorized as information electronics and documents electronics regulated in the ITE Law and its amendments. Based on Article 164 HIR/Article 284 RBG, what is meant by with tool proof consists of from :

1. Written evidence / proof with letter
2. Evidence with witness

3. Suspicion
4. Confession
5. Oath

As for what is meant with proof written according to Article 1867 of the Civil Code is proof in writing/ deed authentic or below hands . However along with development of the times, tools proof electronic in civil procedure law start recognized . For example in scope Religious Courts. Based on Meeting Commission Judicial Technical Field 17 September 2019, as reported article development tool proof in civil procedure law , arrest screen conversation or screenshots, photos and chats from social media / applications conversation electronic recognized as proof beginning . Initial evidence in context This is tool proof electronics that can prove existence something events that require investigation more continue.[18] For example , video recording or message electronics that show existence action criminal , which then used as base For start investigation or investigation more continued by the authorities enforcer law .

Electronic Records in particular Good recording voice and videos are recognized its existence in Decision Court Constitution Number : 20/PUU XIV/2016 , if indicated evidence nature electronic is expansion tool evidence in Article 184 of the Criminal Procedure Code . Although in the book Not yet confirmed group tool proof What recording electronics . However If analyzed return meaning expansion , then can known If proof recording electronics can classified to in tool proof Instructions (Aanwijzingen). The evidence of the intended clue is tool proof electronics that are often used as proof clues leading to proof something incident criminal as example , conversation data in application messages , digital footprints on the internet, or CCTV footage showing presence someone in a place incident case can become supporting instructions proof other in the trial process .

In progress proof in civil proceedings from the events submitted by the plaintiff must be proven the truth . So in civil trial , the truth must be sought by the judge is truth formal . Formal truth means that the judge did not may exceeds the limits proposed by the litigant . If plaintiff can prove all the arguments on lawsuit filed in advance court so with this judge will grant lawsuit from plaintiff and so on on the contrary when defendant in answer on lawsuit plaintiff can prove arguments his rebuttal so lawsuit plaintiff can rejected by the judge. This matter in accordance with Article 163 HIR in conjunction with 1865 BW which is principle proof in civil procedural law which states that goods who confessed have something rights , or put forward something events (conditions) for strengthen his rights or deny the rights of others, then He must prove existence right or incident That .

In Law No. 11 of 2008 concerning ITE , the principle proof related with things to do proven in events or rights that contain dispute or dispute filed by one of the party and denied by other parties such as In Article 1865 of the Civil Code there is also in Article 7 of the ITE Law which states that Every person who declares rights , strengthening rights that have been there is , or reject the rights of others based on existence information electronics and/ or document

electronic must ensure that information electronics and/ or document existing electronics originate from system electronics that meet condition based on regulation legislation .

The provisions of Article 7 of the ITE Law are also the same case in point with Article 1865 of the Civil Code besides used For prove things that are true must proven . Article 7 of the ITE Law in the explanation on can used by the same judge matter his in the process of the case civil law in general that exists in Article 1865 of the Civil Code as benchmark for the judge to determine distribution proof special relation with transaction electronics . Strength tool proof electronic can recognized Because arranged in a way clear in the ITE Law. Evidence electronic can recognized its validity in a way civil procedure law during tool proof electronic the in accordance with provisions ± provisions referred to in Law no . 11 of 2008 concerning ITE. As regulated in Article 5 of the ITE Law regarding with Miscellaneous tool proof electronics . Whatever explanation in a way details related with validity tool proof electronic stated clear in Article 5 of the ITE Law:

1. Information electronics and/ or document electronics and/ or results print it is tool proof valid law
2. Information electronics and/ or document electronics and/ or results print it is expansion from tool valid evidence in accordance with procedural law applicable in Indonesia
3. condition legitimacy something information and/ or document electronic if use system electronic in accordance with the provisions stipulated in Constitution This
4. Provision about information and/ or document electronic as intended with in paragraph (1) not valid For :
 - a. The letter according to Constitution must made in form written and
 - b. document letter according to Constitution must made in form deed notril or deed made by an official maker deed

Apart from Article 5 of the ITE Law, the provisions of Article 6 of the ITE Law are also mandatory provisions filled For become tool valid evidence in a way law . Article 6 of the ITE Law states as follows: following : That in matter there is other provisions besides those regulated in Article 5 paragraph (4) which requires that something information must form written or original , Information electronics and/ or document electronic considered legitimate throughout the information contained therein can accessed , displayed , guaranteed its integrity and can accountable answer so that explain something condition . From the explanation chapter on can it is said that information electronics and/ or document electronic can stated legitimate as tool proof electronic provided information and/ or document electronic That fulfil all existing provisions in Articles 5 and 6 of the ITE Law.

D. CONCLUSION

Position recording talks telephone as tool proof in dispute civil is recording talks telephone can made into as tool valid evidence in dispute civil , with conditions certain . which is regulated in law , good That in Civil Code and in Constitution special such as the ITE Law (Information and Electronic Transactions) even though Thus, there are also several restrictions related reception recording telephone as tool evidence . If the recording the obtained in a way illegal or violate privacy , then recording the can canceled as evidence.

E. REFERENSI

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