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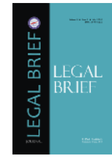

Ratio Legis Of The Policy On The Formulation Of Electronic Evidence In Special Crime

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Abstract

This study aims to identify and analyze the existence of electronic evidence in Law No. 20 of 2001 concerning corruption and Law No. 8 of 2010 concerning the eradication of money laundering in terms of the ratio of legislators to the legislature. This research uses normative research methods, which focus on written studies, namely legislation, legal theory, legal principles, library documents, and can be in the form of scientific works of legal scholars (doctrine). These legal materials were analyzed using a statutory approach in order to obtain a systematic picture which was then studied further normatively using qualitative analysis techniques with data analysis methods linked to theories from literature studies so as to obtain answers to problems. The results of the study indicate that: In terms of the ratio of legislators to the legislature, the legislators (DPR) did not discuss the existence of the position of electronic evidence as an extension of the evidence of guidance in the corruption law and electronic evidence as evidence that stand alone in the money laundering law. the legislators only explained two reasons for recognizing electronic evidence, namely as a form of anticipation of the development of information technology and as an intensive effort to uncover criminal acts. For the same reason, without any specific reason underlying the difference in the existence of the electronic evidence, it shows that the form of recognition of the electronic evidence is an open policy for legislators, so that the existence of the position of electronic evidence can be changed based on strategic considerations in accelerating criminal disclosure process.

Keywords: Policy, Electronic Evid, Crime.

A. Introduction

Indonesia is one of the developing countries in the world. One of the characteristics of this development is the many development programs and the existence of various developments in the life of society, nation and state. The developments mentioned above can be seen in developments in the field of all science and technology or what we know as science and technology, as well as developments

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in the field of information and communication that are very rapid and unstoppable today which of course will have an impact on all aspects or all aspects of life. its people.

Thus, it is not an exaggeration to say that developments, one of which is characterized by many developments, will always lead to changes, both direct and indirect changes in all aspects of social, national and state life.[1]

The development of information and communication technology has two opposing sides. On the one hand, contributing to the improvement of human civilization. On the other hand, this has the potential to encourage the development of crime, even giving rise to new types of crime. Crime in the field of information and technology has its own characteristics such as is done by people who have special skills(whitecollarcrime),and is often done in cross-border (transnational crime)[2]

Connectivity between networks with each other networks make it easier for the criminals to commit crimes . Thus, special treatment is needed in the process of proving a crime, one of which is making electronic evidence as legal evidence. Electronic evidence in proving criminal acts is recognized in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. The existence of electronic evidence is also formulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Article 26A of the corruption law states that; valid evidence as referred to in Article 188 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically for criminal acts of corruption obtained from: Other evidence in the form of information spoken, sent, received, or stored electronically by optical or similar means; and Documents, namely any recorded data or information that can be seen, read, and/or heard that can be issued with or without the help of a means, whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound , pictures, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning. This means that electronic evidence in criminal acts of corruption is only an extension of the appropriate evidence in the Criminal Procedure Code.

Meanwhile, Article 73 of the money laundering law states that; Legal evidence in proving the crime of Money Laundering is evidence as referred to in the Criminal Procedure Code; and/or other evidence in the form of information that is spoken, sent, received, or stored electronically with optical or optical-like devices and documents, meaning that electronic evidence in money crimes is recognized as valid evidence that stands alone. Based on the above background, the problem can be formulated, namely how the existence of electronic evidence of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering in the criminal justice system in terms of legal certainty theory ?

[1] Kristian and Yopi Gunawan, A Little About Wiretapping in Positive Laws in Indonesia, Nuansa Aulia, Bandung, 2012. P. 1.
[2]Budi Suhariyanto, Information Technology (Cybercrime) Urgency of Regulations and Legal Gaps, Rajagrafindo Persada, Depok , 2012. p. 12.

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B. Research Methods

Author uses normative legal research methods. The normative legal research method is library law research which is carried out by researching library materials.[3] Normative research is research that focuses on written studies, namely legislation, legal principles, state documents, and can be in the form of scientific works of legal scholars (doctrine).

The use of normative legal research methods in the effort of writing this thesis is related to the suitability of the theory with the research methods required by the author in compiling this paper. The legal research conducted by the author begins by reviewing and analyzing several legal provisions, namely Law no. 8 of 1981 concerning the Criminal Procedure Code, Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law no. 8 of 2010 concerning the Eradication of the Crime of Money Laundering, Law NO. 19 of 2016 concerning Information and Electronic Transactions, Manuscripts of the Discussion Process of the Bill on Corruption Crimes and Manuscripts of the Process of Discussing the Law on the Crime of Money Laundering.

Normative legal research consists of several approaches, namely the legal approach (statue approach), conceptual approach (conceptual approach), case approach (case approach), historical approach (historical approach), and comparative approach (comparative approach).[4]

Related to the research that the author did, this research uses a legal approach (statue approach). This approach is basically done by reviewing all laws and regulations related to the legal issues being handled.[5] This approach opens the opportunity for the author to study the consistency and conformity between the constitution and the law, or between one law and another.[6]

The legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials in question are as follows;

1. Primary Legal Material Primary

Legal material is an authoritative legal material consisting of legislation, official documents or minutes in making legislation or judge decisions.[7]

2. Secondary Legal Materials Secondary

Legal materials are not applicable laws, but they are very useful materials to improve the quality of applicable positive law. Secondary legal materials are reading materials and literature in the form of documents, theses, theses, dissertations, and legal research journals.

3. Tertiary Legal Material Tertiary

Legal material is a guide to primary legal materials and secondary legal materials, such as legal dictionaries and encyclopedias.[8]

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[3] Soerjono Soekanto, Introduction to Legal Research, University of Indonesia. 2014. p. 135.
[4] Soejono Soekanto and Sri Mahmudji, Normative Legal Research, A Brief Overview, Rajagrafindo Persada, Jakarta, 2003. p. 13.
[5] Irwansyah., Legal Research, Choice of Methods & Practice of Article Writing (Revised Edition), Mirra Buana Media, Yogyakarta, 2020. p. 133.
[6]Ibid, hal. 135.
[7] Peter Mahmud Marzuki, Legal Research, Kencana, Jakarta, 2005. p. 133-135.
[8] Ibid, hal. 17.

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The technique of collecting legal materials that the author uses in writing this journal is library research. This literature research is used to obtain legal materials needed in this paper, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The target of this library research is mainly to find the theoretical basis and the object of study by:

a) Identifying legal facts and eliminating irrelevant matters to determine the legal issues to be determined;
b) Conduct a study of the proposed legal issues based on the materials that have been collected;
c) Draw conclusions in the form of arguments that answer legal issues and provide prescriptions based on the arguments that have been obtained in the conclusions.

These legal materials are analyzed using a statutory approach in order to obtain a systematic picture which is then further studied normatively using qualitative analysis techniques that describe legal materials by providing interpretations and conclusions.

C. Discussion

Sarjono Soekanto said that advances in technology will go hand in hand with the emergence of changes in society.[9] These changes may include social values, social rules, behavior patterns, organization and structure of social institutions. This crime is considered very sophisticated and difficult to know who the perpetrators are. This is because the internet is an invisible (virtual) communication medium, so that criminals can easily remove their tracks without clearly knowing who and where they are. This crime is known as cybercrime or cyber crime.[10] The crime of corruption is part of a special criminal law that has certain specifications that are different from general criminal law, such as differences in the provisions of the procedural law.[11]

The law on criminal acts of corruption is one of the laws and regulations that recognize the existence of electronic evidence, so that the legal ratio of electronic evidence can be known by examining the process of forming this law. To understand the ratio legis of an article provision in the law, there are several steps taken, namely tracing the academic text that accompanies the Draft Law from the institution that submitted the Draft Law, and tracing and reviewing the minutes of discussion of the law in the Council session. People's Representative.

The Draft Law concerning Amendments to the Law on Corruption Crimes is a bill resulting from a Government Initiative which was officially submitted for discussion in the DPR Session through Presidential Letter Number R.10/PU/IV/2001 dated April 24, 2001. Since Law Number 31 1999 concerning the Eradication of Corruption Crimes.[12]

Basically the Draft Law on the Corruption Crime Act is not accompanied by an academic text because the obligation to make new academic texts appears in Law

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[9] Sitompul J, Cyberspace, Crybercrime Cryberlaw Review of Aspects of Criminal Law, Tatanusa, Jakarta. 2012, p. 15.

[10] Barda Nawawi Arief, Mayantara Crime (Development of Cybercrime Policy in Indonesia, Raja Grafindo Perkasa, Depok. 2006. p. 25.

[11] Dyah Octorina Susanti and A'an Effendi, Legal Research, Sinar Graphic. 2014 p. 20.

[12] Secretariat of the House of Representatives of the Republic of Indonesia, Manuscript of the Discussion Process on Draft Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, 2001. page 1

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Number 12 of 2011 concerning the Establishment of Legislation. Thus, the author immediately moved to explore and examine the process of discussing the law in the DPR session.[13]

The trial period for discussing the Draft Law on corruption was attended by various factions. In the Plenary Session of the DPR on May 21, 2001, the government said that the guidelines for valid evidence as referred to in Article 188 paragraph (2) of the Criminal Procedure Code (KUHAP) were expanded. Expansion of the instructions for valid evidence by adding 2 (two) elements, namely, other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or similar but is not limited to electronic link data, telegrams, teletext, facsimile, and e-mail, as well as documents in the form of written pictures, sounds, maps, designs, photos, letters, signs, numbers, or data that have meaning.[14]

Directly, it can be concluded that the government only provides information regarding the instructions for valid evidence as referred to in Article 188 Paragraph (2) of the Criminal Procedure Code which is expanded by adding two elements as referred to in Article 26A namely electronic information and electronic documents without explaining the basic reasons for the recognition of evidence. electronic devices and the legal consequences that will be obtained by such arrangements.

The faction that stated its approval was the National Awakening Party Faction of the opinion that the expansion of evidence guides was progress that needed to be supported by all parties on the basis of the rapid and complex development of information technology.[15]

In line with the National Awakening Party faction, the Crescent Star Party Faction also said that it is necessary to expand evidence related to corruption, namely by expanding the provisions of Article 188 paragraph (2) of the Criminal Procedure Code, namely evidence of instructions that can be in the form of information that is spoken, sent and so on as stated in Article 188 paragraph (2) of the Criminal Procedure Code. Which has been proposed by the Government.[16]

The National Unity Party faction also supports the expansion of evidence, provided that the method of obtaining it does not conflict with positive legal principles (not against human rights) and does not conflict with the morals of Pancasila.[17]

However, not all factions agreed on the discussion of the Draft Law. It can be seen from the rejection opinion submitted by the Kasih Bangsa Democratic Party faction which stated that the evidence contained in Article 26A was prone to fabrication. The government immediately responded that the data in the form of recordings or documents were genuine or not, the court could present the necessary experts.[18]

The same refusal was also expressed by the Faction. The United Development Party said that Article 26A is a systematic demolition in our legislation, it does not make it clearer, but on the contrary it further obscures an existing legal provision. The government immediately responded that Article 26A is only an extension of legal

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[13] Article 43 paragraph 3 of Law Number 12 of 2011 concerning the Establishment of Legislation.
[14] Secretariat of the House of Representatives of the Republic of Indonesia, Manuscript of the Discussion Process on Draft Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, 2001. p. 34.
[15] Ibid, p. 42.
[16] Ibid, p. 62.
[17] Ibid, p. 69.
[18] Ibid, p. 79.

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evidence in the form of instructions that have not been included in the Criminal Procedure Code. [19]

The same refusal was also expressed by the Faction. The United Development Party said that Article 26A is a systematic demolition in our legislation, it does not make it clearer, but on the contrary it further obscures an existing legal provision. The government immediately responded that Article 26A is only an extension of legal evidence in the form of instructions that have not been included in the Criminal Procedure Code. [1 It can be concluded that there are two reasons that form the basis of the importance of electronic evidence as evidence to reveal corruption. First, as a form of anticipation of the development of technology and information that has the potential to be used as a medium for committing criminal acts of corruption. Second, as an intensive effort to uncover criminal acts of corruption, considering that corruption is an extraordinary crime that uses technological sophistication to smooth its actions. The expansion of the evidence guide is a progress that must be supported by all parties on the basis of the development of information technology. This shows that the evidence guides as a form of anticipation of developments and information technology that has the potential to be used as a medium for committing criminal acts of corruption.[20]

If it is considered further in the discussion session on the Draft Law on the Eradication of Criminal Acts of Corruption, it can affect the legal certainty of the law. The legislators, in this case the government, should pay more attention to electronic evidence in the Corruption Eradication Act. If electronic evidence becomes independent evidence even by adding existing evidence, then the electronic evidence has the same strength as other evidence.[21]

This will ensure legal certainty in the law. Legal certainty is an inseparable feature of law, especially for written legal norms. Law without certainty value will lose its meaning because it can no longer be used as behavior for everyone. Certainty itself is referred to as one of the goals of law. Legal certainty will ensure that a person conducts behavior in accordance with applicable legal provisions, on the other hand, without legal certainty, a person does not have standard provisions in carrying out behavior in the order of social life related to legal certainty.

D. Conclusion

Based on Ratio legis formation Act of Corruption and the Law on Money Laundering obtained from the process of discussing legislation there is no discussion about the position of electronic evidence as guidance in the Act Corruption and electronic evidence that stand alone in the Money Laundering Law. The legislators only explained two reasons for recognizing electronic evidence, namely as a form of anticipation of the development of technology and information and as an intensive effort to uncover criminal acts. For the same reason, without any special reasons underlying the difference in the position of electronic evidence, it shows that the form of recognition of electronic evidence is an open legal policy for legislators, so that the

[19] Ibid, p. 101.
[20] Eka Surya Prasetyo, "Juridical Implications of Electronic Evidence Policy", Lantern Law Volume 5, Issue 2 (June 2018): 193.
[21] Ibid, 193.

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position of electronic evidence can be changed based on strategic considerations in speed up the process of uncovering criminal acts.

It is necessary to include electronic evidence as an independent evidence in the Criminal Procedure Code in order to accommodate the incompleteness of regulations related to the regulation of electronic evidence so that it is able to achieve legal objectives, namely legal justice, legal benefits, and most importantly legal certainty.

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